

INFORMATION ON MARIA MATTI YAQUB

My name is Maria Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group al Qaeda. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to Hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of al Qaeda. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the al Qaeda members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was kidnapped while he was at the liquor store. My father did not come home from work that night, we were all very worried. Later that night my mother received a phone call from an unknown man using my father's mobile phone. He told her we would have to pay \$10,000 for my father's return. He instructed us to deliver the money to a street in the Doura neighborhood, which is an area in Baghdad controlled by al Qaeda. Fortunately, my mother and I had some savings and I delivered the money two days later. My father who had been badly beaten was released after we paid the ransom. If we hadn't paid the ransom, I'm sure he would have been killed.

That same month, al Qaeda seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

INFORMATION ON MARIA MATTI YAQUB

My name is Maria Matti Yaqub. I am a 23-year old Chaldean Christian. In Baghdad, my father and uncle co-owned and operated a liquor store. I worked as an accounts assistant at the Arabic Children's Hospital. We lived in the Hayy al Ghadeer area of Baghdad that used to be predominantly Christian.

After the U.S. forces arrived in 2003, we began to hear reports of physical attacks on Christians by Muslim extremists. Several of our neighbors left Iraq after receiving such treatment. After they left, Muslims moved into the places that had been vacated. Some were said to be members of the group Islamic State of Iraq. However, we stayed in the area because our family business was there and we did not have any family in other countries. At the time we finally left Iraq, we were one of ten remaining Christian families in the neighborhood.

In 2006 our family began receiving threatening phone calls at the store, demanding that we stop selling liquor because it was an insult to Islam. On one occasion my father found a note under the door of the store that said "you dirty Christians go to hell, leave Iraq because your loyalty is to the Americans." My father and uncle reported the incidents to the local police. The police made a formal report but we never heard from them again.

After that, I began receiving threats from members of the Islamic State of Iraq. They knew of me through people I worked with at the Hospital. They told me all Christians are traitors and do not deserve to live in Iraq because they are aligned with America. They demanded on several occasions that I convert to Islam or leave the country. Once, they said I would either be a Muslim, or dead. I stopped attending church because Muslim extremists often gathered near the church and threatened to kill those who entered for worship.

In October 2010 I was followed by a car and was shot at by a passenger in the vehicle. I thought I saw in the car one of the Islamic State of Iraq members whom I knew from the hospital. I was not hit by the gunshot but I lost control of my vehicle and got into a single car accident. The same week, my father was shot at while he was at the liquor store. Fortunately my father was not harmed, but it was frightening for us all. That same month, the Islamic State of Iraq seized a Catholic church in Baghdad and killed 58 people. After that, they announced that all Christians were targets. We realized that as Christians we would never be safe in Iraq. Our family fled Iraq on January 1, 2011...

[RAD version – ...and entered Turkey on tourist visas. We registered with UNHCR and have lived in Turkey since then.]

[ASY version – ...and entered the United States as B-2 visitors.]

I am very afraid to return to Iraq. It is not safe for me or my family. The extremists are not afraid to carry out their threats; many Christians have died at their hands and many more have fled. The violence against Christians continues, and the Iraqi government cannot help us.

**I-589, Application for Asylum
and for Withholding of Removal**

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture. ☐

Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) 7X XXX XX3		2. U.S. Social Security Number (if any)			
3. Complete Last Name Ebai		4. First Name Elisabeth		5. Middle Name	
6. What other names have you used (include maiden name and aliases)? None					
7. Residence in the U.S. (where you physically reside) 123 Oak St				Telephone Number ()	
Street Number and Name				Apt. Number	
City Bethesda		State MD		Zip Code	
8. Mailing Address in the U.S. (if different than the address in No. 7) In Care Of (if applicable):				Telephone Number ()	
Street Number and Name				Apt. Number	
City		State		Zip Code	
9. Gender: <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female		10. Marital Status: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
11. Date of Birth (mm/dd/yyyy) 01/01/1984		12. City and Country of Birth Cameroon			
13. Present Nationality (Citizenship) Cameroon		14. Nationality at Birth Cameroon		15. Race, Ethnic, or Tribal Group Bassa	
16. Religion Christian					
17. Check the box, a through c, that applies: a. <input checked="" type="checkbox"/> I have never been in Immigration Court proceedings. b. <input type="checkbox"/> I am now in Immigration Court proceedings. c. <input type="checkbox"/> I am not now in Immigration Court proceedings, but I have been in the past.					
18. Complete 18 a through c. a. When did you last leave your country? (mmm/dd/yyyy) 01/01/2011 b. What is your current I-94 Number, if any? c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.) Date 01/01/2011 Place Washington, D.C. Status B-2 Date Status Expires: 06/30/2011 Date _____ Place _____ Status _____ Date _____ Place _____ Status _____					
19. What country issued your last passport or travel document? Cameroon		20. Passport # N 1234567 Travel Document #		21. Expiration Date (mm/dd/yyyy) 09/01/2015	
22. What is your native language (include dialect, if applicable)? Bassa		23. Are you fluent in English? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		24. What other languages do you speak fluently?	
For EOIR use only.		Action: For USCIS use only. Decision: Interview Date: _____ Approval Date: _____ Asylum Officer ID#: _____ Denial Date: _____ Referral Date: _____			



Part A: II. Information About Your Spouse and Children**Your spouse**☒ I am not married. (Skip to **Your Children** below.)

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Date of Birth (mm/dd/yyyy)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Maiden Name	
9. Date of Marriage (mm/dd/yyyy)		10. Place of Marriage			11. City and Country of Birth		
12. Nationality (Citizenship)		13. Race, Ethnic, or Tribal Group			14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female		
15. Is this person in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 16 to 24.) <input type="checkbox"/> No (Specify location): _____							
16. Place of last entry into the U.S.		17. Date of last entry into the U.S. (mm/dd/yyyy)		18. I-94 No. (if any)		19. Status when last admitted (Visa type, if any)	
20. What is your spouse's current status?		21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No		23. If previously in the U.S., date of previous arrival (mm/dd/yyyy)	
24. If in the U.S., is your spouse to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							

Your Children. List all of your children, regardless of age, location, or marital status.☒ I do not have any children. (Skip to Part A. III., **Information about your background.**)☐ I have children. Total number of children: _____

(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location): _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No							



Part A, II. Information About Your Spouse and Children (Continued)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card No. (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 No. (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

Part A, III. Information About Your Background

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)

(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

2. Provide the following information about your residences during the past 5 years. List your present address first.

(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Oak St	Bethesda	MD	USA	1/11	present
BP 222	Buea	Southwest Region	Cameroon	9/84	1/11

3. Provide the following information about your education, beginning with the most recent.

(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
University of Buea	University	Buea, Cameroon	9/01	6/06

4. Provide the following information about your employment during the past 5 years. List your present employment first.

(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.

(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Atangu, Miriam	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Father Ebai, Lawrence	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling Ebai, Rita	Buea, Cameroon	<input type="checkbox"/> Deceased Buea, Cameroon
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



Part B: Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- | | |
|--------------------------------------|--|
| <input type="checkbox"/> Race | <input checked="" type="checkbox"/> Political opinion |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

The police arrested me because of my activities with and support of the SCNC. I was beaten and chained up. The government does not want activists like me to have a voice.

- B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

The government headed by President Biya will continue to arrest and torture me due to my involvement with the SCNC and its secessionist cause.



Part B: Information About Your Application (Continued)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☒ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

- 3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No ☒ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I have been a member of SCNC since I was at University. I am still a member.

- B. Do you or your family members continue to participate in any way in these organizations or groups?

☐ No ☒ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I have been a member of SCNC since I was at University. I am still a member.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

The police and government in Cameroon torture political prisoners; some do not come out alive. I would be arrested and tortured if I returned to Cameroon, because I am a known supporter of the SCNC's agenda.



Part C: Additional Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☒ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States? ☐ No ☒ Yes

- B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

I had a transit stop in Brussels for approximately four hours.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No

☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☒ No

☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

☒ No

☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



Part D. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name.

Elisabeth Ebai

Write your name in your native alphabet.

Did your spouse, parent, or child(ren) assist you in completing this application? ☒ No ☐ Yes (If "Yes," list the name and relationship.)

(Name)

(Relationship)

(Name)

(Relationship)

Did someone other than your spouse, parent, or child(ren) prepare this application?

☐ No

☒ Yes (If "Yes," complete Part E.)

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim?

☒ No

☐ Yes

Signature of Applicant (The person in Part A.I.)

[_____]

Sign your name so it all appears within the brackets

Date (mm/dd/yyyy)

Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer	
		Daniel Taku	
Daytime Telephone Number		Address of Preparer: Street Number and Name	
(301) 555-5555		4321 Marina Dr	
Apt. No.	City	State	Zip Code
	Silver Spring	MD	



Part F: To Be Completed at Asylum Interview, if Applicable

NOTE: You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered _____ to _____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of Asylum Officer

Part G: To Be Completed at Removal Hearing, if Applicable

NOTE: You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered _____ to _____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of Immigration Judge



Supplement A, Form I-589

A-Number (If available)	Date
Applicant's Name	Applicant's Signature

List All of Your Children, Regardless of Age or Marital Status
 (NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



Additional Information About Your Claim to Asylum

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

NOTE: Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part _____

Question _____





U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

CHILDREN'S CLAIMS

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / RAIO Combined Training Course**CHILDREN'S CLAIMS****Training Module****MODULE DESCRIPTION:**

This module provides guidelines for adjudicating children's claims. Issues addressed include guidelines for child-sensitive interview techniques and considerations for the legal analysis of claims involving child applicants. While the legal analysis sections specifically address refugee and asylum claims, other sections, including those that address child development and procedural issues, are relevant to claims made by children for other immigration benefits.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing in the field, you (the Officer) will apply adjudicative and procedural guidance in issues that arise in claims made by children, in particular unaccompanied children.

ENABLING PERFORMANCE OBJECTIVES

Examine the development of international law that protects the rights of children and children seeking refugee or asylum status.

Describe procedural considerations when working with child applicants.

Apply child-sensitive questioning and listening techniques that facilitate eliciting information from children.

Describe how persecution must be analyzed when looking at a claim of a child refugee or asylum-seeker.

Describe how nexus must be analyzed when looking at a claim of a child refugee or asylum-seeker.

INSTRUCTIONAL METHODS

Interactive presentation

Discussion

Practical exercises

METHOD(S) OF EVALUATION

Written exam

REQUIRED READING

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paras. 181–188, 213–219, Annex 1.

UNHCR, *Guidelines on International Protection No.8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (December 22, 2009), HCR/GIP/09/08, 28 pp.

UNHCR, *Resettlement Handbook*, Section 5.2, *Children and Adolescents*, Department of International Protection (July 2011), pp. 184-194.

UNHCR, *Children – BID Guidelines Information Sheet* (3 pp.) (June 2008).

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

Brief of American Medical Association, et al., *Roper v. Simmons*, 543 U.S. 551 (2005).

(Canadian Guidelines) Immigration and Refugee Board of Canada, *Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* (Ottawa: 30 Sept. 1996), hereinafter “Canadian Guidelines.”

Carr, Bridgette A., “Eliminating Hobson’s Choice by Incorporating a ‘Best Interests of the Child’ Approach into Immigration Law and Procedure,” *Yale Human Rights and Development Law Journal* 12, Spring 2009, pp.120–159.

Memorandum from Bo Cooper, INS General Counsel, to Doris Meissner, Commissioner, *Elian Gonzalez*, (3 Jan. 2000).

Duncan, Julianne, Best Interest Determination for Refugee Children: An Annotated Bibliography of Law and Practice, United States Conference of Catholic Bishops, 15 October 2008.

Geidd, Jay, "Inside the Teenage Brain," Frontline, PBS, January 2002.

Memorandum from Joseph E. Langlois, INS Asylum Division, to Asylum Office Directors, et al., H.R. 1209 – Child Status Protection Act, (HQIAO 120/12.9) (7 August 2002).

Lustig, Stuart L., MD, MPH, et al., Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.

Lutheran Immigration and Refugee Service (LIRS), Working with Refugee and Immigrant Children: Issues of Culture, Law & Development, June 1998.

National Organization for Victim Assistance, "Children's Reaction to Trauma and Some Coping Strategies for Children," Issues of War Trauma and Working with Refugees: A Compilation of Resources, edited by Susan D. Somach, 56–62, Washington, DC: Center for Applied Linguistics Refugee Service Center, 1995.

Office of Refugee Resettlement, Office of Health and Human Services, Unaccompanied Minors Program.

Perry, Nancy W. and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," Creighton Law Review, 18, 1985, pp. 1369–1426.

UN General Assembly, Convention on the Rights of the Child, G.A. Resolution 44/25, UN GAOR 20 Nov.1989.

UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997).

UNHCR, Refugee Children: Guidelines on Protection and Care (Geneva: 1994).

UNHCR, Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries 2001-2003 (Geneva: July 2004).

Walker, Anne Graffam, "Suggestions for Questioning Children," Working with Refugee and Immigrant Children: Issues of Culture, Law & Development, Lutheran Immigration and Refugee Service, 63–64. Baltimore, MD: LIRS, 1998.

Memorandum from William R. Yates, Associate Director for Operations, USCIS, to Regional Directors, et al., *The Child Status Protection Act – Children of Asylees and Refugees*, (HQOPRD 70/6.1) (17 August 2004).

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
8/21/2014	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/30/2015	Section 8.4, Nexus to a Protected Ground	Modified recommended PSG formulations for FGM and forced marriage	RAIO Training

TABLE OF CONTENTS

1	<u>INTRODUCTION</u>	11
2	<u>INTERNATIONAL GUIDANCE</u>	12
2.1	<u>The Universal Declaration of Human Rights</u>	12
2.2	<u>Convention on the Rights of the Child</u>	13
2.3	<u>The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention)</u>	14
2.4	<u>The United Nations High Commissioner for Refugees (UNHCR)</u>	14
2.4.1	<u>ExCom Conclusions</u>	14
2.4.2	<u>UNHCR Policies and Guidelines</u>	15
3	<u>U.S. LAW</u>	17
3.1	<u>Definition of "Child"</u>	17
3.2	<u>Derivative versus Independent Status</u>	19
4	<u>CHILD DEVELOPMENT</u>	21
4.1	<u>General Considerations</u>	21
4.2	<u>Developmental Stages</u>	22
4.3	<u>Factors that Influence Development</u>	23
4.4	<u>Factors that Accelerate or Stunt Development</u>	23
4.5	<u>Effects of Stress and Violence</u>	24
4.6	<u>Culture and Development</u>	24
4.7	<u>Preconceptions</u>	25
5	<u>PROCEDURAL CONSIDERATIONS</u>	26
5.1	<u>Officers in the RAIO Directorate</u>	26
5.2	<u>Interview Scheduling</u>	26
5.3	<u>USCIS Initial Jurisdiction for Unaccompanied Alien Children's Asylum Cases</u>	26
6	<u>INTERVIEW CONSIDERATIONS</u>	27

6.1	<u>Presence of Trusted Adult at the Interview</u>	27
6.2	<u>Guardianship, Parental Knowledge, and Consent</u>	28
6.3	<u>Conducting a Non-Adversarial Interview</u>	29
6.4	<u>Working with an Interpreter</u>	29
6.5	<u>Building Rapport</u>	30
6.6	<u>"Reading" the Applicant</u>	31
6.7	<u>Explaining How to Respond to Questions</u>	31
6.8	<u>Reassuring the Applicant</u>	32
6.9	<u>Taking Breaks</u>	32
6.10	<u>Concluding the Interview</u>	32
6.11	<u>Child-Sensitive Questioning and Listening Techniques</u>	33
7	<u>CREDIBILITY CONSIDERATIONS</u>	38
7.1	<u>Detail</u>	38
7.2	<u>Demeanor</u>	40
7.3	<u>Evidence</u>	42
8	<u>LEGAL ANALYSIS</u>	43
8.1	<u>Introduction</u>	43
8.2	<u>Persecution</u>	44
8.3	<u>Well-founded Fear of Future Persecution</u>	50
8.4	<u>Nexus to a Protected Ground</u>	52
8.5	<u>Child-Specific Considerations Concerning Bars and Grounds of Inadmissibility</u>	Error! Bookmark not
9	<u>OTHER IMMIGRATION STATUSES AVAILABLE TO CHILDREN</u>	60
10	<u>SUMMARY</u>	60
10.1	<u>International Guidance</u>	60
10.2	<u>Child Development</u>	60
10.3	<u>Procedural Considerations</u>	60
10.4	<u>Interviewing Considerations</u>	61
10.5	<u>Legal Analysis</u>	61

PRACTICAL EXERCISES	63
OTHER MATERIALS	64
SUPPLEMENT A – REFUGEE AFFAIRS DIVISION	65
<u>Required Reading</u>	65
<u>Additional Resources</u>	65
<u>Supplements</u>	65
SUPPLEMENT B – ASYLUM DIVISION	ERROR! BOOKMARK NOT DEFINED.
<u>Required Reading</u>	Error! Bookmark not defined.
<u>Additional Resources</u>	71
<u>Supplements</u>	72
SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION	80
<u>Required Reading</u>	81
<u>Additional Resources</u>	81
<u>Supplements</u>	81

- Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.
- For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

The purpose of this module is to familiarize the student with guidelines for adjudicating children's refugee and asylum claims. The module will cover U.S. law and international guidance that bears on this issue, the procedural adjustments you must make when interviewing children, and the legal issues that must be considered when analyzing cases and making determinations.

The unique vulnerability and circumstances of children prompted USCIS and legacy INS to issue guidance relating to this vulnerable population. On Human Rights Day 1998, INS issued the *Children's Guidelines*, providing guidance on child-sensitive interview procedures and legal analysis of the issues that commonly arise in children's cases.

The *Children's Guidelines* resulted from a collaborative effort of INS and U.S. governmental and non-governmental organizations (NGOs), individuals, and the Office of the United Nations High Commissioner for Refugees (UNHCR). The Women's Commission for Refugee Women and Children was instrumental in the development of the guidance.

Changes in regulations and case law over the years have superseded much of the legal guidance set forth in the *Children's Guidelines*. However, guidance has been developed, and is provided in this module, based on current procedures and legal analysis that incorporate the principles of child-sensitive protection that were previously set forth in the *Children's Guidelines*.

A memorandum issued by RAIO's Asylum Division in 2007 serves as a resource on interviewing procedures for children.¹ It addresses the need to explore guardianship and parental knowledge and consent issues, which can assist in identifying unaccompanied children who may be victims of trafficking or other abuse.

During the last twenty years, the topic of child refugees and asylum seekers has drawn increasing attention from the international community. Human rights violations against children take a number of forms, such as abusive child labor practices, trafficking in children, rape, domestic violence, female genital mutilation, forced marriage, forced prostitution,² and forced recruitment. Psychological harm may be a particularly relevant factor to consider. The effects of harm inflicted against a child's family member may also be a relevant factor to consider.

2 INTERNATIONAL GUIDANCE

As the issue of children as refugees and asylum-seekers has moved only relatively recently into the forefront of immigration law, relevant U.S. case law is somewhat scarce.² In the absence of case law, or when case law does not specifically address an issue, international instruments can provide helpful guidance and context on human rights norms.

The following international instruments and documents contain provisions specifically relating to children.³ They recognize and promote the principle that children's rights are universal human rights.

2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations (U.N.) General Assembly on December 10, 1948.⁴ The UDHR sets forth a collective understanding of the rights that are fundamental to the dignity and development of every human being. Most relevant to your work are Article 14, which provides for the right to apply for asylum, and Article 25(2), which refers to the special care and assistance required for children. The rights contained in the UDHR have been expanded upon in international covenants and elsewhere, including the International Covenant on Civil and Political Rights, to which the United States is a Party.

¹ See Joseph E. Langlois, USCIS Asylum Division, *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 14 August 2007), Section II.

² In addition to the sources cited below, the information in this section of the module derives from section I., Background and International Guidance, of the *Children's Guidelines*.

³ See RAIO modules on International Human Rights Law and Overview of UNHCR and Concepts of International Protection.

⁴ Universal Declaration of Human Rights. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

2.2 Convention on the Rights of the Child

Many of the components of international policy regarding children derive from the U.N. Convention on the Rights of the Child (CRC).⁵ Adopted by the United Nations in November 1989, the CRC codifies standards for the rights of all children.

Article 3(1) of the CRC provides that “the ‘best interests of the child’ should be the primary consideration” in all actions involving children.⁶ The “best interests of the child” principle holds that the state is ultimately responsible for ensuring that the basic needs of children are met and that the fundamental rights of children are protected. The internationally recognized “best interests of the child” principle is a useful measure for determining appropriate interview procedures for children, but it does not play a role in determining substantive eligibility for immigration benefits under the U.S. law. Additionally, under Article 12(1), children’s viewpoints should be considered in an age and maturity-appropriate manner.⁷

Because the United States has signed but not ratified the CRC, its provisions, including those noted above, provide guidance only and are not binding on adjudicators.⁸ However, having signed the CRC, the United States is obliged under international treaty law to refrain from acts that would defeat the object and purpose of the Convention.

On December 23, 2002, the United States ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.⁹ The Optional Protocol calls for States Parties to prohibit and create criminal penalties for the sale of children, child prostitution, and child pornography.

Additionally, the United States ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on January 23, 2003.¹⁰ In violation of current international standards that establish a minimum age for participation in armed conflicts, children under age eighteen are forcibly recruited by state-sanctioned armies or private militias to participate in military combat in some countries. Among other things, the Optional Protocol calls for States Parties to ensure that children under eighteen years of age do not take a direct part in hostilities, sets out safeguards for those under eighteen years of age who are voluntarily recruited into their nation’s armed forces, and prohibits

⁵ Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. G.A.O.R., Nov. 20, 1989.

⁶ CRC, Article 3.

⁷ CRC, Article 12.

⁸ Vienna Convention on the Law of Treaties, Art. 18(a), signed May 23, 1969, entered into force January 27, 1980.

⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

¹⁰ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

non-governmental armed groups from recruiting or using persons under eighteen years of age as soldiers. In 2008, the Child Soldiers Accountability Act became U.S. law, providing criminal and immigration penalties for individuals who recruit or use child soldiers.¹¹

2.3 The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention)

The Hague Adoption Convention establishes internationally agreed upon rules and procedures for adoptions between countries that have a treaty relationship under the Convention. The goal of the Convention is to protect the best interests of children, and also to protect birth parents and adoptive parents involved in intercountry adoptions.

The Hague Adoption Convention applies to all intercountry adoption initiated on or after April 1, 2008, by a U.S. citizen habitually resident in the United States seeking to adopt and bring to the United States a child habitually resident in any Convention country.

You will not see Hague applications or petitions because the USCIS National Benefits Center currently processes all Hague forms (Form I-800A and Form I-800). The U.S. Department of State grants final Form I-800 approval and issues the necessary Hague Adoption or Custody Certificates in the child's country of origin.

2.4 The United Nations High Commissioner for Refugees (UNHCR)

2.4.1 ExCom Conclusions

Over the years, the Executive Committee of the High Commissioner's Program¹² (or "ExCom") has adopted a number of conclusions concerning refugee children. Safeguarding the wellbeing of refugee children has long been a high priority of the UNHCR and the United States.

UNHCR ExCom Conclusion No. 47

In 1987, the Executive Committee issued its first conclusion devoted exclusively to children – Conclusion No. 47.¹³ This Conclusion urged action to address the human rights and needs of children who are refugees, highlighted the particular vulnerability of unaccompanied and disabled refugee children, and highlighted the need for action by UNHCR to protect and assist them. Conclusion No. 47 condemned specific violations of

¹¹ Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008). See Asylum Supplement, Bars to Applying for Asylum, below, for more detail on the CSAA.

¹² For additional information on the Executive Committee, see RAIO module, *UNHCR Overview*.

¹³ UN High Commissioner for Refugees, Conclusion on Refugee Children, 12 Oct. 1987. No. 47 (XXXVIII) - 1987.

basic human rights, including sexual abuse, trafficking of children, acts of piracy, military or armed attacks, forced recruitment, political exploitation, and arbitrary detention. The document also called for national and international action to prevent such violations and assist the victims.

Conclusion No. 47 also emphasized that all action taken on behalf of refugee children must be guided by the principle of the "best interests of the child."¹⁴

UNHCR ExCom Conclusion No. 59

In Conclusion No. 59, issued in 1989, the Executive Committee reaffirmed and expanded upon the need for particular attention to the needs of refugee children, particularly in regards to access to education.¹⁵ It also drew special attention to the needs of unaccompanied minors, emphasizing the need to develop legal methods to protect them from irregular adoption and forced recruitment into armed forces.

UNHCR ExCom Conclusion No. 107

The Executive Committee issued Conclusion No. 107 on Children at Risk in 2007. It recognizes that children should be prioritized in receiving refugee protection and assistance.¹⁶ It also calls for UNHCR, Member States, and others to identify children at heightened risk due to the wider protection environment and individual circumstances, and to work to prevent such heightened risks.

2.4.2 UNHCR Policies and Guidelines

UNHCR has enacted policies and issued several sets of child-related guidelines in recent years.

Policy on Refugee Children

UNHCR's *Policy on Refugee Children*, issued in 1993, points out that children's needs are different from adults' due to their developmental needs, their dependence, including in legal matters, and their vulnerability to harm.¹⁷ Thus, governmental actions relating to children must be "tailored to the different needs and potentials of refugee children," to avoid the tendency to think of refugees as a uniform group.

Refugee Children: Guidelines on Protection and Care

¹⁴ See section on Convention on the Rights of the Child, above.

¹⁵ UNHCR, *Conclusion on Refugee Children*, 13 Oct. 1989. No. 59 (XL), 1989.

¹⁶ UNHCR, *Conclusion on Children at Risk*, 5 Oct. 2007. No. 107 (LVIII), 2007.

¹⁷ UNHCR, *Policy on Refugee Children*, EC/SCP/82 (August 6, 1993).

In 1994 UNHCR issued *Refugee Children: Guidelines on Protection and Care*, incorporating international norms relevant to the protection and care of refugee children.¹⁸ These Guidelines adopt a human rights perspective using the articles in the CRC to set UNHCR's standards. For the survival and development of children, UNHCR endorses a "triangle of rights:" the "best interests" rule, a policy of non-discrimination towards all refugee children, and age-appropriate participation of children in issues affecting their lives.

Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum

In 1997, UNHCR published the *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.¹⁹ The purpose of these Guidelines is threefold:

- to increase awareness of the special needs of unaccompanied children and the rights reflected in the CRC;
- to highlight the importance of a comprehensive approach to child refugee issues; and
- to stimulate internal discussion in each country on how to develop principles and practices that will ensure that the needs of unaccompanied children are met.

The Guidelines emphasize that all children are "entitled to access to asylum procedures, regardless of their age," and that the asylum process should be prioritized and expedited for children's cases. UNHCR recommends that adjudicators take into account "circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability." It also notes that children may face child-specific persecution, such as recruitment of child soldiers, forced labor, trafficking of children for prostitution, and female genital mutilation. Finally, UNHCR recommends that where there is "doubt as to the veracity of the account presented or the nature of the relationship between caregiver and child,...the child should be processed as an unaccompanied child."

UNHCR Guidelines on Determining the Best Interests of the Child

The *Best Interests Determination (BID) Guidelines* set forth the formal process that UNHCR has established to determine the best interests of refugee children confronted with major decisions regarding their care or durable solutions, such as the possibility of voluntary repatriation, local integration, or resettlement.²⁰ UNHCR commits to undertake

¹⁸ UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994).

¹⁹ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997).

²⁰ UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008.

a BID in three contexts: (1) identification of the most durable solution for unaccompanied and separated refugee children; (2) temporary care decisions for unaccompanied and separated refugee children in certain exceptional circumstances; and (3) decisions which may involve separating a child against his or her will from parents.

UNHCR'S Guidelines on International Protection No. 8: Child Asylum Claims

In 2009 UNHCR issued its *Guidelines on International Protection No. 8*, addressing child asylum and refugee claims.²¹ The Guidelines provide substantive and procedural guidance on making determinations on children's claims, highlighting the specific rights and protection needs of children during this process and also addressing the application of the exclusion clauses (bars to protection) to children. Recommending a child-sensitive interpretation of the 1951 Refugee Convention, the Guidelines point out that the definition of a refugee has traditionally been interpreted in light of adult experiences, which has led to incorrect assessments of the refugee and asylum claims of children.

UNHCR's Framework for the Protection of Children

Reflecting the priority it places on safeguarding the wellbeing of children of concern and an evolution in its policy and practice, in 2012 UNHCR published *A Framework for the Protection of Children*.²² It focuses on prevention and response to child abuse, neglect, violence and exploitation, building on UNHCR's policy and guidelines on the protection of children and relevant Executive Committee conclusions.

3 U.S. LAW

3.1 Definition of "Child"

The definition of the term "child," "minor," or "juvenile" for immigration purposes may differ depending on the context in which it is used.

- Under the CRC, eighteen years has been almost universally recognized as the legal age of adulthood.²³ Most laws in the United States recognize eighteen-year-olds as legal adults.²⁴ Under federal immigration law, however, there are a number of different statutory and regulatory provisions that govern specific contexts and set

²¹ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08.

²² UNHCR, *A Framework for the Protection of Children*, 26 June 2012.

²³ CRC, Article 1.

²⁴ Child Welfare Information Gateway, *Determining the Best Interests of the Child: Summary of State Laws*, U.S. Department of Health and Human Services' Administration for Children and Families, Washington, DC, 2005.

out specific definitions and categories of children.

Following are some of the different contexts and definitions:

- The INA defines a “child” as “an unmarried person under twenty-one years of age”²⁵ for purposes of eligibility for most immigration benefits under the INA, including derivative refugee or asylum status. In the case of a derivative, the child would not be the principal applicant, but rather would have derivative status based on a parent’s refugee or asylum claim. *See* Derivative versus Independent Status, below.
 - Refugee and IO officers adjudicate Refugee/Asylee Relative Petitions (Form I-730) for children up to age twenty-one.²⁶
 - An unmarried child of a principal applicant granted asylum may receive a derivative grant of asylum if the child was under twenty-one at the time the application was filed.²⁷
- For purposes of determining admissibility, “juvenile” is a term used in INA section 212 when discussing exceptions to criminal responsibility for persons under eighteen years of age.²⁸
- DHS regulations also use the term “juvenile” to describe an individual under eighteen for purposes of determining detention and release and parental notification.²⁹
- DHS regulations use the term “minor under the age of 14” for the following purposes:
 - A parent or legal guardian may sign for a person who is under fourteen (8 C.F.R. 103.5a(c)).
 - Service of any DHS document shall be made upon the person with whom the minor under fourteen lives, and if possible upon a near relative, guardian, committee, or friend (8 C.F.R. 103.5a(c) and 236.2).
- The Homeland Security Act of 2002³⁰ introduced a new term – “unaccompanied alien child” (or “UAC”) – to define a child who has no lawful immigration status in the United

²⁵ INA § 101(b)(1); INA § 101(c)(1).

²⁶ INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208; Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).

²⁷ *Id.*

²⁸ INA § 212(a)(2)(A)(ii).

²⁹ *See* 8 C.F.R. § 236.3.

³⁰ *Homeland Security Act of 2002*, Section 462, 6 U.S.C. § 279(g)(2).

States, has not attained eighteen years of age, and has no parent or legal guardian in the United States available to provide care and physical custody. This definition is discussed further in the Asylum Supplement. The Asylum Division has initial jurisdiction over the asylum claims filed by UACs, including those who are in immigration court proceedings.³¹

- When adjudicating children's refugee and asylum applications, the following definitions are helpful to know. For the Asylum Division, a "minor principal applicant"³² is a principal applicant who was under eighteen years of age at the time of filing an asylum application. In the refugee context, such applicants are generally referred to as unaccompanied refugee minors (URMs) or Unaccompanied or Separated Children (UASCs).

You will review all refugee and asylum claims for principal applicants under eighteen using this Training Module. However, for purposes of derivative determinations, this Training Module applies to all individuals under the age of twenty-one.

Barring unusual circumstances, under USCIS procedures and policies, children age fourteen and above are able and expected to sign their own applications and other documents. If available, a parent signs on behalf of children younger than fourteen.³³

3.2 Derivative versus Independent Status

Much of this module will focus on children applying independently as principal applicants for refugee or asylum status. Many will be unaccompanied or separated children. As principal applicants, they must establish that they are refugees. However, officers will also adjudicate claims in which a parent is the principal applicant and a child has derivative status.

Under the statute and DHS regulations, the child of a refugee or asylee is usually afforded the same status as his or her parent,³⁴ unless the child is ineligible for protection.³⁵

³¹ See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

³² Although most minor principal applicants are also UACs, some are accompanied by a parent or legal guardian (or have lawful immigration status in the United States) but are filing independently.

³³ 8 C.F.R. § 103.2

³⁴ 8 C.F.R. §§ 207.7 and 208.21(a).

³⁵ For additional information, see RAIO Training modules, *Persecutor Bar*, *Grounds of Inadmissibility*, and *National Security*.

You should follow the guidance covered in this Training Module when interviewing child beneficiaries. While the guidance covered in this Training Module is particularly relevant for children who raise independent claims, the procedural sections of this Training Module are useful for *all* cases involving children and young adults.

Refugee and International Operations Officers may adjudicate Refugee/Asylee Relative Petitions (Form I-730) filed for children outside of the United States who are derivative beneficiaries of refugees or asylees. This topic will be covered separately during the Refugee Division Officer Training Course. Asylum Officers will also adjudicate claims in which a child is included as a derivative applicant on a parent's claim.

While derivative status is statutorily available to children and spouses, there is no statutory or regulatory right of parents to be eligible for derivative status in the refugee and asylum context. The parent applicant must establish eligibility in his or her own right.³⁶

Children Who Turn Twenty-One Years of Age before the Interview

Under the INA, as amended by the Child Status Protection Act of 2002 (CSPA), an unmarried child of a principal applicant may qualify as a beneficiary on a petition or as a derivative on an application if the child was under twenty-one at the time of filing the petition or application.³⁷ Children who turn twenty-one after the date of filing, but before the adjudication are not ineligible for beneficiary or derivative status on that basis.

For refugee and asylum purposes, there is no requirement that the child have been included as a dependent on the principal applicant's application at the time of filing. The child must be included prior to the adjudication.

If, however, the child turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless the petition or application was pending on August 6, 2002.³⁸

Children Who Turn Twenty-One Years of Age before Adjustment

The CSPA also amends INA section 209(b)(3) to allow dependents who are the subjects of pending adjustment petitions who turn twenty-one on or after August 6, 2002, to

³⁶ *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007).

³⁷ INA §§ 201(f); 207(c)(2)(b); 208(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208. See also Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).

³⁸ William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al. (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

continue to be classified as children for adjustment purposes (which avoids the need to file an independent petition).³⁹

As noted above, if an individual turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless an application was pending with then-INS on August 6, 2002. While the Domestic Operations Directorate of USCIS issued revised guidance on the CSPA for family and employment-based petitions, which eliminated the requirement for a pending application on the CSPA effective date, this guidance memo does not apply to applications for children of refugees and asylees.⁴⁰ As a result, a dependent of a refugee or asylee who turned twenty-one years of age and whose principal's adjustment petition was adjudicated prior to the enactment of the CSPA lost his or her ability to adjust as a dependent of the principal applicant. While he or she did not lose the refugee or asylum status already granted, the former derivative does not gain the ability to adjust to legal permanent resident status as a principal applicant. In such situations, a *nunc pro tunc* (retroactive approval) procedure is permitted, although the need for such an adjudication will become increasingly rare as more time passes.

Child Applying as Derivative of One Parent in Refugee and Asylum Claims

If a child seeking refugee or asylum status is with one parent, USCIS does not need a parental release from the absent parent. However, in some circumstances for overseas cases, the Resettlement Support Center does require such a release based on the laws or regulations of the host country. Such a requirement does not affect the USCIS adjudication. See RAD Supplement regarding married children.

4 CHILD DEVELOPMENT

4.1 General Considerations

The needs of a child applicant are best understood if the applicant is regarded as a child first and an applicant second.⁴¹ Child applicants will generally approach the interview and adjudication process from a child's perspective, not as applicants for a legal status before a government official.

³⁹ INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208.

⁴⁰ William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al, (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

See also USCIS Asylum Division, Affirmative Asylum Procedures Manual; "INS Discusses Adjustment of Status Issues For Children of Asylees," 69 Interpreter Releases 847 (1992).

⁴¹ Jacqueline Bhabha and Wendy A. Young, "Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers," 75 Interpreter Releases 757, 760 (1 June 1998). (hereinafter Bhabha and Young)

Most of the information in this section is taken from the Lutheran Immigration and Refugee Service (LIRS) publication, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*.⁴² This information, however, is applicable to any interview with a child.

Children's ages and stages of development affect their ability to apply for refugee and asylum status or other benefit and to articulate their claim and respond effectively in an interview.

4.2 Developmental Stages

Children worldwide develop physical, mental, and emotional capacity in universal stages, although culture and environment affect the outward display of the child's abilities and may cause delays in growth. According to these universal stages:

Children ages five and younger are fully dependent on their caretakers in all realms.

Between ages six and twelve, children begin to gain independent skills and the emotional, mental, and physical capacity to manage some life issues on their own.

At about age twelve, children begin to develop increasing ability to navigate on their own emotionally, physically, and mentally.⁴³

Adverse circumstances may delay a child's development, sometimes permanently. Severe malnutrition or illnesses affect growth if they occur at crucial developmental stages. For example, a child lacking nutrition at certain stages may miss developmental milestones. We may see this effect in stunted growth or other outward physical manifestations.⁴⁴

While general developmental stages have been studied for many years, new techniques that were developed during the 1990's now help researchers understand much about brain development that was poorly understood previously. The National Institute of Mental Health (NIMH) has funded longitudinal brain development studies from early childhood through young adulthood using non-invasive techniques.⁴⁵

⁴² LIRS, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development* (June 1998) hereinafter LIRS.

⁴³ Child Development Institute, "Stages of Social-Emotional Development In Children and Teenagers."

⁴⁴ *Id.*

⁴⁵ National Institute of Mental Health, *Brain Development During Childhood and Adolescence Fact Sheet*, Science Writing, Press & Dissemination Branch, 2011.

A child's ability to participate in an interview will vary based on a number of factors in the child's development.

4.3 Factors that Influence Development

At each stage in development, numerous factors interact to shape the child's personality and abilities.⁴⁶ Factors influencing development are:

- chronological age;
- physical and emotional health;
- physical, psychological, and emotional development;
- societal status and cultural background;
- cognitive processes;
- educational experience;
- language ability; and
- experiential and historical background.

4.4 Factors that Accelerate or Stunt Development

Some children may seem to be much older or much younger than their chronological age. A number of environmental and experiential factors can stunt or accelerate dramatically the development of a child.⁴⁷ They include, but are not limited to:

- chaotic social conditions;
- experience with forms of violence;
- lack of protection and caring by significant adults;
- nutritional deficits;
- physical disabilities; and
- mental disabilities.

⁴⁶ LIRS, pp. 6-7.

⁴⁷ LIRS, p. 7.

4.5 Effects of Stress and Violence

Children who experience stress or emotional disturbances are more severely affected in their ability to reason or to control impulses than children who do not have such experiences.

Children who have been separated from parents and other traditional caretakers, even in non-violent situations, may be so severely traumatized that their mental and emotional development is delayed. When children are exposed to violence and war even while with protective adults, all aspects of their development are affected. If children are unprotected by parents or other competent adults during such situations, they are profoundly affected. Children who witness their parents or other caretakers harmed or killed are themselves deeply harmed. Children who are forced to harm others are also profoundly traumatized.⁴⁸

4.6 Culture and Development

Culture affects the appearance of maturity of children in complex ways. The norms of the group determine the type of education and productive work a child participates in or whether the child remains at home or spends periods with groups of youth. Many other factors determine how various developmental stages are expressed. Additionally, children's development is interrupted by the factors that caused them to flee their homes.⁴⁹

Children may act younger than their age if they are from a culture in which deference and respect to adults is a valued norm. They may, therefore, develop or express independent opinions only after reaching a culturally specified older age.

Example

Among Bhutanese refugee families, even adult children who continue to live with their parents are not expected to form independent political or social opinions but are expected to follow the guidance of their father who speaks for the whole family. When a young man marries and moves out of his father's home, he is expected to begin interacting with other men and offer opinions on community matters.

⁴⁸ Graça Machel, *UN Study on the Impact of Armed Conflict on Children*, UN GAO A/51/306 (3 August 1996); UN Children's Fund (UNICEF), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (April 2009).

⁴⁹ Stuart L. Lustig, MD, MPH, et al., *Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force*, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.

Children may act older than their chronological age if they are the oldest child in a family and have been expected to manage complex household obligations, such as caring for the safety of younger children.

Example

A Congolese refugee girl of fourteen was culturally expected to assume the role of head of family after the death of her parents. She managed to survive and escape with two younger siblings. The younger siblings exhibited age-appropriate development of self-care and independence. The fourteen year old, on the other hand, because of her experience as caretaker, appeared to be a much older teen.

4.7 Preconceptions

Children will bring to the interview a unique set of preconceived notions that could hinder your attempts to elicit information. Such preconceptions may include the ideas that:

- **All governments are corrupt**

The child may be arriving from a country where he or she has already had extensive interaction with or knowledge of a corrupt government.⁵⁰ Such a child may assume that the fraud, abuse of authority, and mistreatment of the citizens he or she witnessed in the country of origin is just as pervasive in the United States.

- **Others still at home will be harmed**

Especially when a child comes from a country in which informants and their family members are harmed, the child may not understand that the U.S. government has no interest in harming, or doing anything to bring about the harm of, his or her relatives still in the country of origin.⁵¹

- **He or she should feel guilty for fleeing**

It is not uncommon for any refugee or asylum applicant to experience "survivor's guilt" for having fled to a country of asylum, especially when family members were left behind.⁵²

- **Others will be privy to the testimony**

⁵⁰ LIRS, p. 35.

⁵¹ LIRS, p. 36.

⁵² LIRS, p. 36.

Many young people do not understand that in the setting of interviews conducted by RAIO officers, confidentiality protections generally prevent USCIS from sharing information with others without the applicant's consent. This misconception is most likely to hinder an interview when an applicant feels shame as a result of his or her mistreatment, most commonly in cases of sexual abuse.

You must earn the trust of the child applicant in order to dispel these preconceptions and put the applicant at ease.⁵³

5 PROCEDURAL CONSIDERATIONS

The majority of children who appear before you do so as a dependent of a parent who has filed an application or petition for an immigration benefit. However, this Training Module provides useful guidance for all individuals under the age of twenty-one and regardless of whether they are derivative or independent applicants.

While this Training Module is particularly relevant for children who raise independent refugee or asylum claims, the procedural sections may be useful for all cases involving children and young adults. Although young people between the ages of eighteen and twenty-one will be interviewed much in the same manner as adults, you should bear in mind that an applicant whose claim is based on events that occurred while under the age of eighteen may exhibit a minor's recollection of the past experiences and events.

5.1 Officers in the RAIO Directorate

All officers in the RAIO Directorate are trained on interviewing children and adjudicating their claims in the event that they are called upon to interview a child. It is in the child's best interests to be interviewed by an official who has specialized training in children's claims. To the extent that personnel resources permit, RAIO should attempt to assign officers with relevant background or experience to interview children.

5.2 Interview Scheduling

RAIO should make every effort to schedule siblings' interviews with the same officer and in the same time period, provided that such cases are identified in advance of the interviews. In cases where siblings are interviewed by different officers, the officers should consult with one another about the claims and, to the extent possible, should be reviewed by the same supervisory officer.

5.3 USCIS Initial Jurisdiction for Unaccompanied Alien Children's Asylum Cases

⁵³ See section 6, *Interview Considerations*.

For asylum procedural considerations, see ASM Supplement – Procedural Considerations.

6 INTERVIEW CONSIDERATIONS

Child applicants may be less forthcoming than adults and may hesitate to talk about past experiences in order not to relive their trauma. RAIO has designed the following procedures with children's behavior and cognitive ability in mind to help you interact more meaningfully with children during an interview.

6.1 Presence of a Trusted Adult at the Interview

It is usually appropriate for a trusted adult to attend an interview with the minor applicant in order to establish the interview conditions most likely to elicit a full story.⁵⁴ A child's lack of experience in talking with government officials can make testifying difficult, particularly when discussing traumatic events. A trusted adult is a support person who may help to bridge the gap between the child's culture and the environment of a USCIS interview. The function of the adult is not to interfere with the interview process or to coach the child during the interview, but to serve as a familiar and trusted source of comfort. As appropriate, you may allow the adult to provide clarification, but you should ensure that those children able to speak for themselves are given an opportunity to present the claim in their own words.

The policy of allowing a trusted adult to participate in this process does not mean to suggest that the trusted adult serve as a substitute for a guardian or legal representative, neither is there a requirement that a trusted adult or legal representative be present at the interview. The child may be accompanied at the interview by both a trusted adult and a legal representative.

When conducting an interview of a child in the presence of an adult, you should assess whether the child is comfortable speaking freely in front of the adult. In order to ascertain the child's level of comfort with the adult, you may initially bring the child into the interview room alone, and ask if the child would like for the accompanying adult to be present. This approach will generally work best with adolescents. Where warranted, you may additionally ask the child at the end of the interview if he or she has anything to add in private. If at any point during the course of the interview you determine that the child is uncomfortable or afraid of the adult, you should continue the interview without that person. Given concerns regarding human trafficking, particularly in children, attention to the nature of the relationship between the child and the adult is particularly important.

⁵⁴ See UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994) p. 102; and RAIO Training Module, *Interviewing - Introduction to the Nonadversarial Interview*, Sec.5.5: "In some interviews the applicant has another person present. In the case of children, this may be a "trusted adult" who participates in order to help the child feel at ease."

As appropriate and with the consent of the child, you are encouraged to interview the trusted adult, if any, in order to confirm his or her relationship to the child, any guardianship arrangement, and the adult's legal authority to speak on behalf of the child.⁵⁵ The adult may also have information about parental knowledge of and consent to the application. The trusted adult may also be able to provide information on the child's claim where the child's age at the time of harm or interview prevents him or her from fully detailing events. Where inconsistencies arise between the applicant's and the adult's testimony, an opportunity must be given to the child to reconcile inconsistencies apparent at the interview. Note that it is not a requirement that a witness or trusted adult be present at the interview.

6.2 Guardianship, Parental Knowledge, and Consent

If a child appears at the interview without a parent or guardian, you should inquire into the location of the child's parents, and whether the parents are aware of the child's whereabouts and that the child has applied for an immigration benefit.⁵⁶

You should elicit information about issues of guardianship and parental knowledge of and consent to the application. Questions of guardianship may be particularly important for unaccompanied minors because whether or not there is a parent or legal guardian informs your decision of whether to categorize the applicant as an unaccompanied minor or unaccompanied alien child (in the asylum context) or unaccompanied refugee minor (in the refugee context). Attention must be paid to the child's capacity to apply as a principal applicant, the parents' knowledge of the child's application, and the identity and trustworthiness of the guardian, if any. Additionally, the information you elicit is useful in identifying any potential conflict of interest and informing policy-making.

Below are questions and issues that you should take into account when conducting an interview with a minor principal applicant. These questions provide a general framework for exploration of issues of guardianship and parental knowledge and consent. Interview notes should reflect the below-requested information. A minor principal applicant's inability to demonstrate a guardianship arrangement or parental knowledge and consent does not foreclose the adjudication or approval of the application. If there is a concern regarding parental notification and confidentiality, or a concern for the child's welfare and/or safety, please contact your division's Headquarters for further guidance.

- With whom is the child living?

⁵⁵ See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

⁵⁶ *Id.*

- Did anyone accompany the child to the interview?
- Is there a guardianship arrangement (for purposes of the unaccompanied minor definition, guardianship refers to a formal – legal/judicial – arrangement)?
- If there is an adult caregiver but not a legal guardian, what arrangements has the adult made to provide for the child?
- Is there one or more living parent?
- Do the parents know that the child is applying for an immigration benefit?

6.3 Conducting a Non-Adversarial Interview

Although all interviews with child applicants are to be conducted in a non-adversarial manner, it is crucial when interviewing children that the tone of the interview allows the child to testify comfortably and promotes a full discussion of the child's past experiences.⁵⁷ Research into child development and particularly brain and cognitive development has shed light on obstacles to children's ability to encode and recall information and best practices that help overcome those obstacles.⁵⁸

In many cases, girls and young women may be more comfortable discussing their experiences with female officers, particularly in cases involving rape, sexual abuse, prostitution, and female genital mutilation.⁵⁹ To the extent that personnel resources permit, offices should have female officers interview such applicants.

6.4 Working with an Interpreter

Interpreters play a critical role in ensuring clear communication between you and the child, and the actions of an interpreter can affect the interview as much as those of an officer.⁶⁰ As in all interviews, you should confirm that the child and the interpreter fully understand each other. You should also confirm that the child understands the role of the interpreter. This is particularly important in cases where the interpreter does not have the child's best interests at heart, such as when there is a possibility that the private

⁵⁷ 8 C.F.R. § 208.9(b).

⁵⁸ For additional information, see *European Asylum Curriculum*, Module 6.1 "Interviewing Children," May 2011 (Unit 3.2 discusses the Dialogical Communication Method); and Michael E. Lamb; et al., "Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol," *Child Abuse & Neglect* 31, no.11-12, Nov.-Dec. 2007, pp. 1201-1231.

⁵⁹ See Phyllis Coven, INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women* (Gender Guidelines), Memorandum, May 26, 1995, p. 5.

⁶⁰ For additional information, see RAO module, *Interviewing - Working with an Interpreter*.

interpreter is part of a trafficking ring. In cases where the child appears to be uncomfortable with the interpreter, or where the interpreter does not appear to be interpreting correctly, you should stop the interview and reschedule with a different interpreter.

The identity of the interpreter is especially significant when children have been victims of sexual violence.⁶¹ In such situations, or when children have suffered abuse within the family, children may be very reluctant to share such information if the interpreter is of the opposite gender or if the interpreter is a parent, relative, or family friend. Every effort should be made to make sure that the child is comfortable testifying through the interpreter.

6.5 Building Rapport

The child may be reluctant to talk to strangers due to embarrassment or past emotional trauma.⁶² You may have to build rapport with the child to elicit the child's claim and to enable the child to recount his or her fears and/or past experiences. Where the child finds you friendly and supportive, the child is likely to speak more openly and honestly.

You must be culturally sensitive to the fact that applicants are testifying in a foreign environment and may have had experiences leading them to distrust persons in authority. A fear of encounters with government officials in countries of origin may carry over to countries of reception.⁶³ This fear may cause some children to be initially timid or unable to fully tell their story.⁶⁴

You may be able to overcome much of a child's timidity or nervousness with a brief rapport-building phase during which time neutral topics are discussed, such as general interests, family, pets, hobbies, and sports. You may wish to ask family members or the attorney about the child's interests before the interview to ease conversation. This rapport-building phase also permits you to assess the child's ability to answer questions.

Once the child appears comfortable, you should make a brief opening statement before beginning the formal interview.⁶⁵ You can explain in very simple terms in the opening statement what will happen during the interview and the roles that you, the applicant,

⁶¹ See Gender Guidelines, p. 5; and RAIO Training module, *Interviewing - Working with an Interpreter*.

⁶² LIRS, p. 45.

⁶³ UNHCR Handbook, para. 198.

⁶⁴ LIRS, p. 38; Nancy W. Perry and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," *Creighton Law Review* (vol. 18, 1985), pp. 1369-1426, reprinted in Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (Charlottesville, Virginia: Lexis, 1997), pp. 584-585 (hereinafter Perry and Teply).

⁶⁵ For an example of an opening statement to be used in interviews of children, see ASM Supplement – Sample Opening Statement for Children.

interpreter, and/or attorney will play. Knowing what to expect will help ease the child applicant's anxiety.⁶⁶

The tone of the opening statement is intended to build trust and to assure the child that you will be asking questions to help you understand his or her claim. The statement gives children permission to tell you when they do not understand a question. Children need to know that it is permissible for them to tell adults when they either do not understand a question or do not know an answer. Children also need to be reassured that, unless the child consents, embarrassing or traumatic events from the past generally will not be shared with others, including family members, friends, or individuals from their home country.⁶⁷

6.6 "Reading" the Applicant

During the interview you must take the initiative to determine whether the child understands the process and the interview questions. You should watch for non-verbal cues, such as puzzled looks, knitted eyebrows, downcast eyes, long pauses, and irrelevant responses. While these behaviors may signal something other than lack of comprehension, they may also signal that a child is confused.⁶⁸ In such circumstances, you should pause, and if no appropriate response is forthcoming, rephrase the question.

Correspondingly, you should expect the child to be attuned to your body language. Children rely on non-verbal cues much more than adults to determine whether they can trust the person.⁶⁹ You should be careful neither to appear judgmental nor to appear to be talking down to the child.

6.7 Explaining How to Respond to Questions

Children in some cultures are taught to listen to adults but not to speak in their presence. Other children may have spent time in school or other environments where providing answers to questions is expected and responding with "I don't know" is discouraged.

If necessary, you may explain to the child how to use the "I don't know" response.⁷⁰

Example

⁶⁶ LIRS, pp. 45-46.

⁶⁷ See 8 C.F.R. § 208.6 on disclosure to third parties.

⁶⁸ LIRS, pp. 46-47.

⁶⁹ *Id.* at 27; *Perry and Teply*, p. 1380.

⁷⁰ *Id.* at 50.

Officer: If I ask you the question, 'How many windows are in this building?' and you don't know the answer to that question, you should say, 'I don't know.' Let's practice that. 'How many windows are in this building?'

Child: I don't know.

This approach helps to ensure that the child understands when to provide an "I don't know" response. This approach could also be used to let the child know that it is also fine to respond "I don't understand" when a question is not clear.

6.8 Reassuring the Applicant

If at any time during the course of the interview the child begins to feel uncomfortable or embarrassed, you should offer verbal reassurances. You may empathize with the child by saying, "I know that it's difficult to talk about this, but it is important for me to hear your story."⁷¹ Additionally, a simple expression of interest (e.g., "I see" or "uh-huh") may be enough for the child to continue.

You may also shift the focus of the questioning to a non-threatening subject until the child regains his or her confidence. Reassurance, empathetic support, carefully framed questions, encouragement, and topic-shifting are crucial techniques for facilitating interviews of children.

- Note, however, that it is important not to interrupt a child in the middle of a narrative response. See General Rules below in section on Child-Sensitive Questioning and Listening Techniques.

6.9 Taking Breaks

You should take the initiative in suggesting a brief recess when necessary. Sometimes a child's way of coping with frustration or emotion is "to shut down during the interview, to fall into silence, or respond with a series of 'I don't know' and 'I don't remember' responses."⁷² Many children may not take the initiative to request a recess if needed. A young child, for example, may stop answering questions or cry rather than interrupt you with a request to go to the bathroom or rest. The responsibility may fall to you to monitor the child's needs.

6.10 Concluding the Interview

⁷¹ Perry and Teply, p. 1381, citing John Rich, MD. *Interviewing Children and Adolescents* (London: MacMillan & Co., 1968), p. 37.

⁷² Symposium: Child Abuse, Psychological Research On Children As Witnesses: Practical Implications Forensic Interviews And Courtroom Testimony, 28 PAC. L.J. 3 (1996), p. 70, (hereinafter Symposium).

As the interview draws to a close, you should return to a discussion of the **neutral topics** with which the interview began. This approach will help to restore the child's sense of security at the conclusion of the interview.⁷³ As with all cases, you should ask the child if he or she has any final questions or anything to add and inform the child of the next steps in the application process.

6.11 Child-Sensitive Questioning and Listening Techniques

Children may not understand questions and statements about their past because their cognitive and conceptual skills are not sufficiently developed. Your questions during the interview should be tailored to the child's age, stage of language development, background, and level of sophistication. A child's mental development and maturity are important considerations when determining whether the child has satisfied his or her burden to establish eligibility for an immigration benefit, including that he or she meets the definition of a refugee.⁷⁴ In order to communicate effectively with a child applicant, you must ensure that both the officer and the child understand one another.

You should take care to evaluate the child's words from the child's point of view. Most children cannot give adult-like accounts of their experiences and memories, and you should be conscientious of age-related or culturally-related reasons for a child's choice of words.

Example

The phrase "staying awake late" may indicate after 10 p.m. or later to you, while the phrase could mean early evening for a child.⁷⁵

Children's perceptions of death can cloud their testimony concerning such matters. Children may not know what happened or may feel betrayed by an adult who has died, and some may not understand the permanence of death.⁷⁶ Even older children may not fully appreciate the finality of death until months or years after the event.

Example

Instead of saying that a relative died or was killed, a child may state that the individual "went away" or "disappeared," implying that the individual may return.

⁷³ UNHCR, *Interviewing Applicants for Refugee Status* (1995), p. 48.

⁷⁴ UNHCR Handbook, para. 214.

⁷⁵ Perry and Teply, p. 1383.

⁷⁶ Perry and Teply, p. 1419, citing R. Kastenbaum. "The Child's Understanding of Death: How Does it Develop?" *Explaining Death to Children* (E. Grollam, ed. 1967), p. 98.

Proper questioning and listening techniques will result in a more thorough interview that allows the case assessment to be more complete and accurate. The following techniques should help you elicit more thorough information.

GENERAL INTERVIEWING AND LISTENING RULES	
You should endeavor to:	
1	<ul style="list-style-type: none"> • Use short, clear, age-appropriate questions.⁷⁷ • Example: "What happened?" as opposed to "What event followed the arrest?"
2	<ul style="list-style-type: none"> • Avoid using long or compound questions.⁷⁸ • Example: "What time of year did it happen?" and "What time of day did it happen?" as opposed to "What time of year and what time of day did it happen?"
3	<ul style="list-style-type: none"> • Use one- or two-syllable words in questions; avoid using three- or four-syllable words.⁷⁹ • Example: "Who was the person?" as opposed to "Identify the individual."
4	<ul style="list-style-type: none"> • Avoid complex verb constructions.⁸⁰ • Example: "Might it have been the case....?"

⁷⁷ Symposium, p. 40.

⁷⁸ Ann Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (Washington, DC: ABA Center on Children and the Law, 1994), pp. 95-98 reprinted in LIRS, p. 63. (hereafter Walker); and Symposium, p. 40.

⁷⁹ Symposium, p. 40 (note that this technique is generally more important when conducting the interview in English without an interpreter).

⁸⁰ Symposium, p. 40.

5	<ul style="list-style-type: none"> Ask the child to define or explain a term or phrase in the question posed in order to check the child's understanding.⁸¹
6	<ul style="list-style-type: none"> Ask the child to define or explain the terms or phrases that he or she uses in answers, and then use those terms. Example: If a child says that his father "disappeared," ask him what he means by "disappeared," and then use that term in questions involving that event.
7	<ul style="list-style-type: none"> Use easy words, not complex ones.⁸² Example: "Show," "tell me about...," or "said" instead of "depict," "describe," or "indicate."
8	<ul style="list-style-type: none"> Tolerate pauses, even if long.⁸³
9	<ul style="list-style-type: none"> Ask the child to describe the concrete and observable, not the hypothetical or abstract.⁸⁴
10	<ul style="list-style-type: none"> Use visualizable, instead of categorical, terms.⁸⁵ Example: Use "gun," not "weapons."
11	<ul style="list-style-type: none"> Avoid using legal terms, such as "persecution."⁸⁶ Example: Ask, "Were you hurt?" instead of "Were you persecuted?" Example: Explain, "Asylum is a way to stay in the United States if

⁸¹ Walker, reprinted in LIRS, p. 63; Symposium, p. 40.

⁸² Walker, reprinted in LIRS, p. 63.

⁸³ Perry and Teply, p. 1380.

⁸⁴ Symposium, p. 40.

⁸⁵ *Id.*

⁸⁶ *Id.*

	there are people who hurt or want to hurt [you] back home and [you are] afraid of returning.” ⁸⁷
12	<ul style="list-style-type: none"> • Avoid using idioms. • Idioms are phrases that mean something other than what the words actually say. Such phrases could be difficult for both the interpreter and the child applicant. • Example: Ask, “Do you understand?” not, “Is this over your head?”
13	<ul style="list-style-type: none"> • Use the active voice instead of the passive when asking a question.⁸⁸ • Example: Ask, “Did the man hit your father?” instead of “Was your father hit by the man?”
14	<ul style="list-style-type: none"> • Avoid front-loading questions.⁸⁹ • Front-loading a question places a number of qualifying phrases before asking the crucial part of the question. • Example: “When you were in the house, on Sunday the third, and the man with the gun entered, did the man say...?”
15	<ul style="list-style-type: none"> • Keep each question simple and separate.⁹⁰ • Example: The question, “Was your mother killed when you were 12?” should be avoided. The question asks the child to confirm that the mother was killed and to confirm his or her age at the time of the event.

⁸⁷ Christopher Nugent and Steven Schulman, “Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children,” 78 No. 39 INTERPRETER RELEASES 1569, 1575 (2001).

⁸⁸ Symposium, p. 40.

⁸⁹ *Id.*

⁹⁰ LIRS, p. 47.

16	<ul style="list-style-type: none"> • Avoid leading questions. • Research reveals that children may be more highly suggestible than adults and are more likely to answer according to what they think the interviewer wants to hear.⁹¹ Leading questions may influence them to respond inaccurately.
17	<ul style="list-style-type: none"> • Use open-ended questions to encourage narrative responses. • Children's spontaneous answers, although typically less detailed than those elicited by specific questioning, can be helpful in understanding the child's background.⁹² Try not to interrupt the child in the middle of a narrative response.
18	<ul style="list-style-type: none"> • Explain any repetition of questions. • Make clear to the child that he or she should not change or embellish earlier answers.⁹³ Explain that you repeat some questions to make sure you understand the story correctly. "Repeated questions are often interpreted (by adults as well as children) to mean that the first answer was regarded as a lie or wasn't the answer that was desired."⁹⁴
19	<ul style="list-style-type: none"> • Never coerce a child into answering a question during the interview.⁹⁵ • Coercion has no place in any USCIS interview. For example, you may never tell children that they cannot leave the interview until they answer your questions.
20	<ul style="list-style-type: none"> • Accept that many children will not be immediately forthcoming about events that have caused great pain.

⁹¹ *Id.* at 26; Perry and Teply, pp. 1393-1396.

⁹² LIRS, p. 47.

⁹³ Walker, reprinted in LIRS, p. 64; Symposium, p. 23.

⁹⁴ Walker, reprinted in LIRS, p. 64.

⁹⁵ Symposium, p. 41.

7 CREDIBILITY CONSIDERATIONS

You must be sensitive to the applicants' cultural and personal experiences irrespective of the applicant's age. This becomes critical when assessing whether testimony is credible.⁹⁶ The task of making an appropriate decision when interviewing children, including making a credibility determination, requires that you be aware of the following issues involving the testimony of children.

7.1 Detail

Children may not know the specific details or circumstances that led to their departure from their home countries. Children may also have limited knowledge of conditions in the home country, as well as their own vulnerability in that country.

For both developmental and cultural reasons, children cannot be expected to present testimony with the same degree of precision as adults.⁹⁷ More probing and creative questions are required.

Example

The child may not know whether any family members belonged to a political party. You should probe further and ask the child whether his or her parents attended any meetings and when the meetings were held. You should also make an inquiry into the location of the meetings, other people who attended the meetings, and whether the people had any problems. The child's knowledge of these matters may support a conclusion regarding the family's political association, despite the fact that the child may not know the details of the association.

Measurements of Time and Distance

Children may try to answer questions regarding measurements of distance or time without the experience to do so with any degree of accuracy. You must make an effort to ascertain the child's quantitative reasoning ability.

Example

You should determine the child's ability to count before asking how many times something happened.⁹⁸

⁹⁶ For additional information, see RAIO modules, *Cross-Cultural Communication and Credibility*.

⁹⁷ *Canadian Guidelines*, p. 8.

⁹⁸ *Symposium*, p. 41.

Even older children may not have mastered many of the concepts relating to conventional systems of measurement for telling time (minutes, hours, calendar dates).

Not only is imprecise time and date recollection a common problem for children owing to their cognitive abilities, it can also be a product of their culture.⁹⁹ The western mind typically measures time linearly, in terms of successive – and precise – named days, months, and years. Many cultures, however, note events not by specific date but by reference to cyclical (rainy season, planting season, etc.) or relational (earthquakes, typhoons, religious celebrations, etc.) events.

Example

In response to the question, “When were you hurt?” it may not be uncommon for a child to state, “During harvest season two seasons ago” or “shortly after the hurricane.” These answers may appear vague and may not conform to linear notions of precise time and named dates, but they may be the best and most honest replies the child can offer.

Even in those cultures where time is measured by a calendar, it may not comport to the Gregorian calendar used in the western world.

Examples

Many Guatemalans still use the Mayan calendar of twenty-day months. In certain Asian cultures, a baby is considered to be “one” on his or her date of birth thereby causing, to the western mind at least, a one-year discrepancy between the child’s age and date of birth.

In many Latin cultures, two weeks is often “15 days” because the first and last days are counted.

Certain Asian cultures count the first day or year, adding one day or year to the time of the event.

“I don’t know” Responses

In certain cultures, “I don’t know” is used when an individual has no absolute knowledge but has an opinion about the truth of the matter in question.

Example

⁹⁹ For additional information, see RAIO module, *Cross-Cultural Communication*.

A child may respond "I don't know" when asked who killed his or her parents, but upon further inquiry may state that everyone in his or her home village believes that it was government forces. You should generally probe further regarding these opinions. The child's awareness of community opinion may provide information about the issue in question even though the child may initially state "I don't know."

7.2 Demeanor

The term "demeanor" refers to how a person handles himself or herself physically – for example, maintaining eye contact, shifts in posture, and hesitations in speech. A child may appear uncooperative for reasons having nothing to do with the reliability of his or her testimony.

Example

Different cultures view expressions of emotion differently. An individual raised in the United States might question the credibility of a child who, without crying or expressing emotion, is able to retell how his or her parents were killed in front of him. It could be, however, that the child was raised in a culture that deems improper any expression of emotion in front of an authority figure. Trauma, discussed below, may also affect demeanor.

Trauma

You should be careful when interpreting certain emotional reactions or psychiatric symptoms as indicators of credibility. Children who have been subjected to extreme abuse may be psychologically traumatized. Lengthy confinement in refugee camps, repeated relocation, or separation from family can also greatly impact the psychological well-being of children. Children who are separated from their families due to war or other violence are placed at even greater psychological risk than those children who remain in the care of parents or relatives.

Any applicant, regardless of age, may suffer trauma that may have a significant impact on the ability of an applicant to present testimony.¹⁰⁰ Symptoms of trauma can include depression, indecisiveness, indifference, poor concentration, avoidance, or disassociation (emotionally separating oneself from an event). A child may appear numb or show emotional passivity when recounting past events of mistreatment. A child may give matter-of-fact recitations of serious instances of mistreatment. Trauma may also cause memory loss or distortion, and may cause applicants to block certain experiences from their minds in order not to relive their horror by retelling what happened. Inappropriate laughter or long pauses before answering can also be a sign of trauma or embarrassment.

¹⁰⁰ For additional information, see RAIO module, *Interviewing Survivors of Torture*.

These symptoms can be mistaken as indicators of fabrication or insincerity, so it is important for you to be aware of how trauma can affect an applicant's behavior.

Age and Developmental Considerations

In reviewing a child's testimony, you should consider the following:

- the child's age and development at the time of the events
- the child's age and development at the time of the retelling
- the child's ability to recall facts and communicate them

Other Considerations

You may encounter gaps or inconsistencies in the child's testimony. The child may be unable to present testimony concerning every fact in support of the claim, not because of a lack of credibility, but owing to age, gender, cultural background, or other circumstances.¹⁰¹ See section on Detail, above.

You should keep the following in mind:

- the impact of the lapse of time between the events and the retelling
- the difficulty for all individuals in remembering events that took place many years earlier; children who may have been very young at the time of an incident will have greater difficulty in recalling such events
- the needs of children with special mental or emotional issues
- the limited knowledge that children may have of the circumstances surrounding events

Example

A child may not know the political views of his or her family, despite the fact that his parents were among the most visible individuals in the opposition party. When asking follow-up questions, you learn that the applicant was seven years old when his parents were assassinated and the relatives who raised him were reluctant to share any information about his parents' activities.

- the role of others in preparing children for interview

All children have been coached to some degree. Some children may have been coached by a human trafficker or an ill-informed adult to tell a particular story, which the child repeats at the interview in order not to anger the adult. The fact that a child begins to tell a fabricated story at the interview should not foreclose further inquiry, and you should

¹⁰¹ For additional information, see RAIO module, *Credibility*; see also Bhabha and Young.

undertake a careful and probing examination of the underlying merits of the child's case.¹⁰² Quite often a child does not intend to deceive when making a fabrication or exaggeration; rather the statement may serve another purpose for the child such as to avoid anticipated punishment, to be obedient to the perceived authority figure (perhaps a legal representative, trusted adult, or you), to please others, or to protect a family member or friend.

7.3 Evidence

In evaluating the evidence submitted to support the application of a child seeking refugee or asylum status, adjudicators should take into account the child's ability to express his or her recollections and fears, and should recognize that it is generally unrealistic to expect a child to testify with the precision expected of an adult. The *UNHCR Handbook* advises that children's testimony should be given a liberal "benefit of the doubt" with respect to evaluating a child's alleged fear of persecution.¹⁰³ In the concurring opinion to *Matter of S-M-J-*, "the benefit of the doubt" principle in asylum adjudications is described thus:

[W]hile the burden of proof is borne by the asylum applicant, our law does not include a presumption that an applicant is unbelievable. If as adjudicators we intentionally or subjectively approach an asylum applicant and presume an individual to be a liar rather than a truth teller, we violate not only our duty to be impartial, but we abrogate the statute and regulations which govern our adjudications.¹⁰⁴

A child, like an adult, may rely solely on credible testimony to meet his or her burden of proof; certain elements of a claim, however, such as easily verifiable facts that are central to the claim, may require corroborating evidence.¹⁰⁵ A child, through his or her advocate or support person, is expected to either produce such documentation or offer a reasonable explanation as to why those documents cannot be obtained. What is reasonable will depend on the child's individual circumstances, including whether or not the child is represented and the circumstances of his or her flight. Additionally, a child who has been in contact with his or her family may have greater access to documentation than a child who has had no contact with family members.

Given the above-noted considerations of issues that may arise in children's cases, all efforts should be made during the interview to present the applicant with adverse information and to give the applicant an opportunity to provide an explanation.

¹⁰² LIRS, p. 51.

¹⁰³ UNHCR Handbook, para. 219.

¹⁰⁴ *Matter of S-M-J-*, 21 I&N Dec. 722, at 739 (BIA 1997) (Rosenberg, L., concurring).

¹⁰⁵ INA § 208(b)(1)(B)(ii); see *Matter of S-M-J-*, 21 I&N Dec. at 725.

Where adverse information is discovered after the interview, the office should consider scheduling a re-interview in order to give the applicant an opportunity to address the issue. It is inappropriate to rely on adverse information that the applicant has not had an opportunity to address.

Given the difficulties associated with evaluating a child's claim, you should carefully review relevant country conditions information.¹⁰⁶ While the onus is on the child, through his or her advocate or support person, to produce relevant evidence, including both testimony and supporting material where reasonable to expect it, you should also supplement the record as necessary to ensure a full analysis of the claim.¹⁰⁷

Apart from the child's testimony, you may consider other evidence where available, including:

- Testimony or affidavits from family members or members of the child's community
- Evidence from medical personnel, teachers, social workers, community workers, child psychologists, and others who have dealt with the child

Example

A report from a child psychologist who has interviewed the child may indicate that the child suffers from post-traumatic stress, a conclusion that could support your determination regarding past or future persecution.

- Documentary evidence of persons similarly situated to the child (or his or her group), physical evidence, and general country conditions information.

8 LEGAL ANALYSIS

8.1 Introduction

This section will focus on the particular legal issues you may encounter when adjudicating the claim of a child who has filed his or her own refugee or asylum application. This section does not create new law or alter existing law, nor does it attempt to address all the legal issues that may arise in adjudicating a child's refugee or asylum claim. Instead, it identifies particular issues relevant to children that you may encounter

¹⁰⁶ For additional information, see RAIO module, *Country Conditions Research; Matter of S-M-J-*, 21 I&N Dec. at 726.

¹⁰⁷ In a 2010 First Circuit case, the diverging views of the majority opinion and the dissenting opinion illustrate how the credibility and persecution determination can be impacted based on whether or not the adjudicator accepts evidence from a myriad of sources in a child's asylum case. *Mejilla-Romero v. Holder*, 600 F.3d 63 (1st Cir. 2010), *vacated and remanded by Mejilla-Romero v. Holder*, 614 F.3d 572 (1st Cir. 2010) (expressly citing to the need for the case to be adjudicated under the INS Children's Guidelines on remand).

and places those issues within the context of U.S. and international law and UNHCR guidance.

Unlike the child who is a derivative applicant under the parent's application, the child who has filed a separate application must provide evidence about his or her own story, frequently without the support of familiar adults. The child may not even fully understand why or how the events leading to the application came about.

In order to be granted protection, the child applicant must establish that he or she meets the definition of a refugee contained in the Immigration and Nationality Act, irrespective of age.¹⁰⁸ The *UNHCR Handbook* equally states, "[t]he same definition of a refugee applies to all individuals, regardless of their age." Consequently, the best interests principle, while useful for procedural and interview considerations, does not replace or change the refugee definition in determining substantive eligibility.

While the burden of proof remains on the child to establish his or her claim for protection, when assessing eligibility, you must consider the effects of the applicant's age, maturity, ability to recall events, potentially limited knowledge of events giving rise to the claim, and potentially limited knowledge of the application process.¹⁰⁹ You should also attempt to gather as much objective evidence as possible to evaluate the child's claim to compensate for cases where the applicant's ability to testify about subjective fear or past events is limited. Given the non-adversarial nature of the adjudication and the special considerations associated with adjudicating a child's claim, a close working relationship with the child's representative and support person may be necessary to ensure that the child's claim is fully explored.

8.2 Persecution

As in all refugee and asylum cases, you must assess whether the harm that the child fears or has suffered is serious enough to constitute "persecution" as that term is understood under the relevant domestic and international law.¹¹⁰

Harm that Rises to the Level of Persecution

Given the "variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary."¹¹¹ The harm a child fears or has suffered may still qualify as persecution despite

¹⁰⁸ INA §§ 101(a)(42)(A); 208(a)(2); *UNHCR Handbook*, para. 213.

¹⁰⁹ See section V.F., Evidence, for more on the child's burden of proof; UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (Geneva: February 1997), p. 10.

¹¹⁰ For additional information, see RAO modules, *Refugee Definition and Past Persecution*.

¹¹¹ *UNHCR Handbook*, para. 52; see also Bhabha and Young, pp. 761-62.

appearing to be relatively less than that necessary for an adult to establish persecution.¹¹² This is because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed.

As in all cases, adjudicators should analyze persecution as objectively serious harm that the applicant experienced or would experience as serious harm. The persecution determination relates to the harm or suffering imposed on an applicant by the persecutor, rather than only to the individual acts taken by the persecutor. In the cases of adults, this distinction is not usually determinative. But it can be important in some children's cases. A child who has very limited ability to remember, understand and recount the discrete actions of the persecutor can still establish that those actions imposed on him objectively serious harm that he experienced as serious harm. (Of course, having established persecution, the applicant must also establish that the persecutor imposed the persecution on the applicant on account of a protected ground, which may require additional evidence about the persecutor's actions, whether in the form of the applicant's testimony or some other type of evidence, such as testimony of others or country conditions.)

In *Mendoza-Pablo v. Holder*, the Court of Appeals for the Ninth Circuit considered the harms suffered by Mendoza-Pablo as a part of his family in assessing whether the events of his childhood constituted persecution and concluded that "the BIA's ruling that Mendoza-Pablo did not suffer past persecution because his exposure to persecution was 'second-hand' reflects an incorrect view of the applicable law."¹¹³ The court noted that case law made it clear that an infant can be the victim of persecution, even in the absence of present recollection of the actions and events that imposed the persecution, citing to *Benjamin v. Holder*, 579 F.3d 970, 972 (9th Cir. 2009) (the harm suffered as a result of enduring genital mutilation as a five-day-old infant constitutes persecution).¹¹⁴

Mendoza-Pablo was born in the mountains several weeks premature, shortly after his pregnant mother fled from Guatemalan government forces that had attacked her ancestral village, burned the village to the ground, and massacred its inhabitants, including several of Mendoza-Pablo's close relatives. The court noted that the specific attack was documented in credible human rights sources as part of a "fierce and largely one-sided civil war with insurgent groups predominantly of Mayan ethnicity."¹¹⁵ The newborn child suffered serious harms as a result. The court declined to isolate the initial acts taken by the persecutors in the applicant's village from their direct consequences for the applicant.

¹¹² See Marina Ajdukovic and Dean Ajdukovic, "Psychological Well-Being of Refugee Children," *Child Abuse and Neglect* 17:6, 843 (1993); Betty Pfefferbaum, "Posttraumatic Stress Disorder in Children: A Review of the Past 10 Years," *J. Am. Acad. Child Adolesc. Psychiatry*, 36:11, at 1504-05.

¹¹³ *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1315 (9th Cir. 2012).

¹¹⁴ *Benjamin v. Holder*, 579 F.3d 970, 972 (9th Cir. 2009).

¹¹⁵ *Mendoza-Pablo*, 667 F.3d at 1310.

Rather it viewed those initial acts as directly imposing a broader set of harms on the applicant (premature birth and early malnourishment with their ongoing health consequences, forced flight and permanent deprivation of home, etc.). These were harms which the persecutors imposed on the applicant and which the applicant did experience, regardless whether he had memory of the initial actions.

In *Jorge-Tzoc v. Gonzales*, the Court of Appeals for the Second Circuit noted, "Jorge-Tzoc was a child at the time of the massacres and thus necessarily dependent on both his family and his community . . . This combination of circumstances [displacement - initially internal, resulting economic hardship, and viewing the bullet-ridden body of his cousin] could well constitute persecution to a small child totally dependent on his family and community."¹¹⁶

Jorge-Tzoc's family and other families were targeted by the Guatemalan army's campaign against Mayans. When he was seven years old, Jorge-Tzoc's sister, her husband, and her mother-in-law were fatally shot by Guatemalan soldiers. While Jorge-Tzoc did not witness any murders, he saw many corpses, including the bullet-ridden body of his cousin lying on the ground. The army's campaign resulted in his father selling their land and the family's relocation to a one-room home in Quiche where they struggled to survive. When the family returned to the village after a year away, they found that the house was full of bullet holes and the family's animals were unrecoverable.

The Seventh Circuit held in *Kholyavskiy v. Mukasey* that the adjudicator should have considered the "cumulative significance" of events to the applicant that occurred when he was between the ages of eight and thirteen.¹¹⁷ The applicant was subjected to regular "discrimination and harassment [that] pervaded his neighborhood" and his school. The harm included being regularly mocked and urinated on by other school children for being Jewish, being forced by his teachers to stand up and identify himself as a Jew on a quarterly basis, and being called slurs and being physically abused in his neighborhood.

Additionally, the Ninth Circuit held in *Hernandez-Ortiz v. Gonzales*, "[A] child's reaction to injuries to his family is different from an adult's. The child is part of the family, the wound to the family is personal, the trauma apt to be lasting...[I]njuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child."¹¹⁸

Hernandez-Ortiz involved two Mayan brothers from Guatemala who fled to Mexico in 1982 at the ages of seven and nine due to the Guatemalan army's arrival in their village,

¹¹⁶ *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006).

¹¹⁷ *Kholyavskiy v. Mukasey*, 540 F.3d 555, 571 (7th Cir. 2008).

¹¹⁸ *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042 (9th Cir. 2007).

the beating of their father by soldiers in front of their mother, and the flight of their brother who was later killed by the army on suspicion of being a guerilla sympathizer.

Similarly, in *Ordonez-Quino v. Holder*, the First Circuit Court of Appeals considered the case of a Mayan applicant from Guatemala who had been internally displaced as a child when his family's home and lands were destroyed. In 1980, when he was about five or six years old, the applicant was injured in a bombing attack by the Guatemalan military, resulting in near-total hearing loss and developmental delays that affected him throughout his life. The Court disagreed with the BIA's conclusion that this "isolated" incident did not rise to the level of persecution.

Citing the decisions in *Jorge-Tzoc* and *Hernandez-Ortiz*, the Court held that the BIA's decision was not supported by substantial evidence. It noted, "there is no indication that the BIA considered the harms Ordonez-Quino suffered throughout this period from his perspective as a child, or that it took the harms his family suffered into account.... This combination of circumstances – bombing attacks, permanent injury, the loss of a home, the razing of lands, and internal displacement lasting years – could certainly support a finding of past persecution for an adult. Such a string of events even more strongly supports a finding of past persecution for a small child, whose formative years were spent in terror and pain."¹¹⁹

In a concurring opinion to *Kahssai v. INS*, Judge Reinhardt of the Ninth Circuit noted that the effects of losing one's family as a child can constitute serious harm. "The fact that she did not suffer physical harm is not determinative of her claim of persecution: there are other equally serious forms of injury that result from persecution. For example, when a young girl loses her father, mother and brother-sees her family effectively destroyed-she plainly suffers severe emotional and developmental injury."¹²⁰

While age should be taken into account in making the persecution determination, not all harm to a child, including physical mistreatment and detention, constitutes persecution. In *Mei Dan Liu v. Ashcroft*, the Seventh Circuit upheld a finding by the BIA that harm Liu experienced at the age of sixteen did not constitute persecution.¹²¹ Liu, a Chinese national, had been forcibly taken to the Village Committee Office and interrogated by police and pressured to confess involvement in Falun Gong. On two occasions, police and guards pulled her hair, causing her to cry, and pushed her to the ground. She was detained for

¹¹⁹ *Ordonez-Quino v. Holder*, No. 13-1215, --- F.3d ---, 2014 WL 3623012 (1st Cir. July 23, 2014).

¹²⁰ *Kahssai v. INS*, 16 F.3d 323, 329 (9th Cir. 1994) (Reinhardt, J., concurring opinion).

¹²¹ *Mei Dan Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004); *Santosa v. Mukasey*, 528 F.3d 88, 92 (1st Cir. 2008) (upholding the BIA's conclusion that Santosa did not establish past persecution in part because he suffered only "isolated bullying" as a child); cf. *Xue Yun Zhang v. Gonzales*, 408 F.3d 1239 (9th Cir. 2005) (suggesting that the hardships suffered by fourteen year old applicant, including economic deprivation resulting from fines against her parents, lack of educational opportunities, and trauma from witnessing her father's forcible removal from the home, could be sufficient to constitute past persecution).

two days. The police reported Liu's arrest to her school and she was expelled. One month later, the police searched Liu's home and questioned her and her mother, pushing her mother to the floor.

In holding that the evidence did not compel a finding that Liu suffered harm rising to the level of persecution, the court stated, "age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution... There may be situations where children should be considered victims of persecution though they have suffered less harm than would be required for an adult. But this is not such a case. Though a minor, Mei Dan was near the age of majority – she was sixteen – at the time the events took place. Whatever slight calibration this may warrant in our analysis is insufficient to transform her experiences with the Chinese authorities from harassment to persecution."

Types of Harm that May Be Imposed on Children

The types of harm that may be imposed on children are varied. In addition to the many forms of persecution adults may suffer, children may be particularly vulnerable to sexual assault, forced marriage, forced prostitution, forced labor, severe abuse within the family, and other forms of human rights violations such as the deprivation of food and medical treatment.¹²² Cultural practices, such as female genital mutilation (FGM), may constitute persecution. When considering whether a cultural practice will amount to persecution, not only must the adjudicator consider whether the harm is objectively serious enough to rise to the level of persecution, but also whether the applicant subjectively experienced or would experience the procedure as serious harm. For example, if an individual applicant welcomed, or would welcome, FGM as an accepted cultural rite, then it is not persecution to that applicant. Existing case law does not definitively address how to determine whether FGM imposed in the past on a young child, who did not have the capacity to welcome or reject the practice, constitutes past persecution. However, since FGM is clearly serious harm objectively, you should consider FGM under such circumstances as persecution unless the evidence establishes that the child did not experience it as serious harm. An adult applicant's testimony about her own subjective experience as a young child, both of the event itself and her later experiences of the direct consequences, should be given significant weight. If, for example, an adult applicant testifies that she underwent FGM as a child but does not consider it to have been serious harm, then it generally would not be considered persecution. Alternatively, an adult applicant's testimony that she considers the FGM she underwent as a child to be serious harm generally would suffice to establish her subjective experience of persecution.

Fundamental rights of children are listed in the CRC. They include the right to be registered with authorities upon birth and acquire a nationality (Art. 7.1), to remain with

¹²² Bhabha and Young, pp. 760-61.

one's family (Art. 9.1), to receive an education (Art. 28), and to be protected from economic exploitation (Art. 32).¹²³ Where such rights are denied, the impact of these harms on the child must be explored in order to determine whether the violations, considered individually or cumulatively, amount to persecution.

Identification of the Persecutor – Private versus Public Actors

Children's claims may often involve forms of harm that have not traditionally been associated with government actors. Harms such as child abuse, forced labor, or criminal exploitation of children are often inflicted by non-state actors. Where a nexus to a protected ground can be established, the applicant must demonstrate both that the private persecutor has the requisite motivation to persecute and that the government is unable or unwilling to protect the child from the alleged persecutor.¹²⁴

The fact that a child did not seek protection in his or her country of origin does not necessarily undermine his or her case. You must explore what, if any, means the child had of seeking protection. Depending on the age and maturity of the child, he or she may be able to contribute some personal knowledge of the government's ability to offer protection, but it is far more likely that you will have to rely on objective evidence of government laws and enforcement. Special attention should be paid to the child's ability to affirmatively seek protection and government efforts to address criminal activities relating to children.¹²⁵

Reasonable explanations for why a child did not seek protection include evidence that:

- The applicant was so young that he or she would not have been able to seek government protection,
- The government has shown itself unable or unwilling to act in similar situations, or
- The applicant would have increased his or her risk by affirmatively

¹²³ Convention on the Rights of the Child.

¹²⁴ See Matter of V-T-S-, 21 I&N Dec. 792 (BIA 1997); Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996); Matter of Villalta, 20 I&N Dec. 142 (BIA 1990); see also RAIO module, *Persecution*.

¹²⁵ See Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding that testimony and country conditions indicated that it would be unproductive and possibly dangerous for a young female applicant to report father's abuse to government); Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006) (holding that reporting not required if applicant can convincingly establish that doing so would have been futile or have subjected him or her to further abuse); see also Ixtlilco-Morales v. Keisler, 507 F.3d 651, 653 (8th Cir. 2007) (agreeing with a BIA finding that the applicant was too young to seek government protection); cf. Castro-Perez v. Gonzales, 409 F.3d 1069, 1072 (9th Cir. 2005) (applicant failed to show that government was unwilling or unable to control the harm).

seeking protection.

8.3 Well-founded Fear of Future Persecution

General Considerations¹²⁶

Child-specific issues also arise in determining whether a child has a well-founded fear of persecution.¹²⁷ A well-founded fear of persecution involves both subjective and objective elements, meaning that an applicant must have a genuine fear of persecution and that fear must be objectively reasonable. For children, however, the balance between subjective fear and objective circumstances may be more difficult for an adjudicator to assess. The *UNHCR Handbook* suggests that children under the age of sixteen may lack the maturity to form a well-founded fear of persecution, thus requiring the adjudicator to give more weight to objective factors.¹²⁸ “Minors under 16 years of age...may have fear and a will of their own, but these may not have the same significance as in the case of an adult.” You must evaluate the ability of a child to provide information “in the light of his [or her] personal, family and cultural background.”¹²⁹

The Sixth Circuit, in *Abay v. Ashcroft*, acknowledged the Children’s Guidelines’ reference to the *UNHCR Handbook* on the subject of a child’s subjective fear. In *Abay*, the Sixth Circuit court overturned an Immigration Judge’s finding that the nine-year-old applicant expressed only a “general ambiguous fear,” noting that young children may be incapable of articulating fear to the same degree as adults.¹³⁰

On the other hand, a child may express a subjective fear without an objective basis. In *Cruz-Diaz v. INS*, the Fourth Circuit noted that the seventeen-year-old petitioner who had entered the United States two years prior had a subjective fear of persecution but had not established an objectively reasonable fear with a nexus to one of the protected grounds.¹³¹

Personal Circumstances

You should examine the circumstances of the parents and other family members, including their situation in the child’s country of origin.¹³²

¹²⁶ For additional information, see RAIO module, *Well-Founded Fear*.

¹²⁷ *Matter of Acosta*, 19 I&N Dec. 211, 224 (BIA 1985); *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987); see also RAIO module, *Well-Founded Fear*.

¹²⁸ *UNHCR Handbook*, para. 215.

¹²⁹ *UNHCR Handbook*, para. 216.

¹³⁰ *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004).

¹³¹ *Cruz-Diaz v. INS*, 86 F.3d 330, 331 (4th Cir. 1996) (per curiam).

¹³² *UNHCR Handbook*, para. 218.

Family as similarly situated

You may be able look to the child's family as individuals similarly situated to the applicant. A well-founded fear of persecution may be supported by mistreatment of a child's family in the home country. The First Circuit Court of Appeals concluded that evidence of mistreatment of one's family is probative of a threat to the applicant.¹³³ Conversely, if the child's family does not relocate and is not harmed, the likelihood of an objectively reasonable fear may be reduced. The failure to relocate may nonetheless be overcome when it is due to a parent's conflict of interest rather than a decreased threat to the child.¹³⁴ Where there appears to be a conflict of interest between the child and the parents, you "will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt."¹³⁵

Family's intentions

If the child was sent abroad by his or her parents or family members, the circumstances of that departure are relevant to the child's refugee or asylum application. "If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution..." that may suggest that the child has such a fear as well.¹³⁶ On the other hand, a family's actions toward a child – abandonment, neglect, or selling a child into slavery – may support a child's fear of persecution at the hands of relatives.

Child's arrival

The circumstances of a child's flight and arrival in a second country may provide clues as to whether the child has a well-founded fear of persecution.¹³⁷ If the child arrives in the company of other refugees who have been found to have a well-founded fear of persecution, this may, depending on the circumstances, help to establish that the child's fear is well-founded.

Internal Relocation

¹³³ *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985); see also *UNHCR Handbook*, para. 43; *Matter of A-E-M-*, 21 I&N Dec. 1157 (BIA 1998).

¹³⁴ *Bhabha and Young*, 764.

¹³⁵ *UNHCR Handbook*, para. 219.

¹³⁶ *UNHCR Handbook*, para. 218.

¹³⁷ See 8 C.F.R. § 208.13(b)(2); *UNHCR Handbook*, para. 217.

It is generally not reasonable to expect a child to internally relocate by himself or herself; however, you should examine whether circumstances show that internal relocation would be reasonable.¹³⁸

8.4 Nexus to a Protected Ground

Regardless of the nature or degree of harm the child fears or has suffered, that harm must be on account of one of the five protected grounds contained in the definition of a refugee. Children, like adults, may raise one or more protected grounds as the basis for a refugee or asylum claim. You must explore all possible grounds for refugee or asylum status and should take into account the age and relative maturity of the child in assessing the child's ability to articulate his or her claims.

This Training Module looks briefly at the protected grounds in general and then turns to an analysis of membership in a particular social group because claims based on this ground are frequently novel and analytically complicated. Similarly, RAIO has addressed membership in a particular social group in a separate Training Module.¹³⁹

Burden of Proof

As with all claims, the burden falls to the applicant to establish the connection between the past or future persecution and one or more of the five protected grounds. Because children may lack, or have limited access to, the necessary documents or other evidence sufficient to support a finding of nexus to one of the protected grounds, you may have to rely on testimony of the child or of others, solely or in combination with other supporting evidence such as country conditions, to establish these elements.

Although the Board has issued several opinions that emphasize an applicant's burden to produce all accessible documents, testimony alone can be sufficient to establish a claim where the applicant credibly testifies that he or she is unable to procure documents.¹⁴⁰ This distinction may be particularly important in analyzing a child's claim, especially if the child has no legal representation.

Inability to Articulate a Nexus to a Protected Ground

¹³⁸ Cf. *Lepe-Guitron v. INS*, 16 F.3d 1021, 1025-1026 (9th Cir. 1994) (finding that petitioner's seven-year period of lawful unrelinquished domicile, for purposes of a discretionary waiver of deportation, began on the date his parents attained permanent resident status, as he was a child at the time; and minor's domicile is the same as that of its parents, since most children are presumed not legally capable of forming the requisite intent to establish their own domicile (citing *Rosario v. INS*, 962 F.2d 220, 224 (2d Cir. 1992))).

¹³⁹ See RAIO Training Modules, *Nexus and the Protected Grounds* and *Nexus – Particular Social Group*.

¹⁴⁰ See *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); INA § 208(b)(1)(B)(ii); 8 C.F.R. § 208.13(a); see also section 5.6, *Evidence*, and RAIO Training Module, *Evidence*.

Analyzing whether a child applicant has established a nexus to a protected ground in a refugee or asylum claim may be particularly difficult because a child may express fear or have experienced harm without understanding the persecutor's intent. A child's incomplete understanding of the situation does not mean that a nexus between the harm and a protected ground does not exist. The applicant's testimony is only one type of evidence. There must be sufficient evidence to support a finding of nexus, but the applicant's inability to testify about nexus will not preclude an officer from determining that nexus is established by other reliable evidence, whether that is the testimony of others, country conditions, or other relevant evidence.

The persecutor may have several motives to harm the applicant, some of which may be unrelated to any protected ground. There is no requirement that the persecutor be motivated *only* by the protected belief or characteristic of the applicant. Moreover, an applicant is not required to establish that the persecutor is motivated solely by a desire to overcome the protected characteristic.¹⁴¹ When the child is unable to identify all relevant motives, a nexus can still be found if the objective circumstances support the child's claim of persecution on account of a protected ground.¹⁴²

No requirement for Punitive Intent

The inherent vulnerability of children often places them at the mercy of adults who may inflict harm without viewing it as such, sometimes to such a degree of severity that it may constitute persecution. The Board of Immigration Appeals has held that a punitive or malignant intent is not required for harm to constitute persecution on the basis of a protected ground.¹⁴³ A persecutor may target the applicant on account of a protected characteristic in the belief that he or she is helping the applicant.

Consequently, it is possible that a child's claimed harm may arise from a culturally accepted practice within his or her community. In such cases, an adjudicator must look

¹⁴¹ *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

¹⁴² INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007); *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996). If you are processing refugee applications overseas, you must determine if a reasonable person would fear that the danger arises on account of one of the five grounds. If you are adjudicating asylum applications under INA § 208, you must determine whether the applicant's possession of one of the five protected grounds is "at least one central reason" motivating the persecutor. See *RAIO Training Module, Nexus and the Protected Grounds* for further discussion. The "one central reason" standard was added to the statute by the REAL ID Act, and applies only to asylum adjudications. The Board has explained, however, that the "one central reason" language should be interpreted consistent with prior Board precedent that allows nexus to be established where the persecutor has mixed motivations. "Having considered the conference report and the language of the REAL ID Act, we find that our standard in mixed motive cases has not been radically altered by the amendments. The prior case law requiring the applicant to present direct or circumstantial evidence of a motive that is protected under the Act still stands." *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214. These are the same cases governing mixed motivation cases in refugee processing, thus the substantive analysis in the two contexts is essentially the same.

¹⁴³ *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

carefully at both the degree of harm and whether any of the reasons for inflicting the harm involve a protected ground.

Inability to Articulate a Political Opinion

When a child claims persecution or a well-founded fear of persecution on the basis of political opinion, the age and maturity of the child must be taken into account. A young child may have difficulty articulating a political opinion. Because the level of children's political activity varies widely among countries, however, you should not assume that age alone prevents a child from holding political opinions for which he or she may have been or will be persecuted. The nexus inquiry is focused on the persecutor's state of mind, not the applicant's. The critical question in a political opinion claim is if the persecutor perceives the applicant as having a political opinion (regardless of whether it is a sincere, strong or well-expressed opinion and even regardless of whether the applicant actually has such an opinion) and if the persecutor targets the applicant on account of that perception.

In *Civil v. INS*, the First Circuit affirmed the Board's holding that the young applicant failed to establish a well-founded fear of persecution based on either political opinion or membership in a social group consisting of "Haitian youth who possess pro-Aristide political views."¹⁴⁴ Although the court found sufficient grounds to affirm the underlying decision, it criticized the Immigration Judge's conclusion that "it is almost inconceivable to believe that the Ton Ton Macoutes could be fearful of the conversations of 15-year-old children," noting that the evidence submitted by the petitioner cast serious doubts on the presumption that youth "are unlikely targets of political violence in Haiti." Similarly, in *Salaam v. INS*, the Ninth Circuit overturned a BIA finding of adverse credibility where the BIA held it was implausible that the petitioner had been vice president of a branch of an opposition movement at the age of eighteen.¹⁴⁵

It may also be possible for a child's claim to be based on imputed political opinion.¹⁴⁶ The adjudicator should carefully review the family history of the child and should explore as much as possible the child's understanding of his or her family's activities to determine whether the child may face persecution based on the imputed political beliefs of family members or some other group with which the child is identified.

Membership in a Particular Social Group

¹⁴⁴ *Civil v. INS*, 140 F.3d 52 (1st Cir. 1998).

¹⁴⁵ *Salaam v. INS*, 229 F.3d 1234 (9th Cir. 2000) (per curiam).

¹⁴⁶ *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996); see *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1076 (9th Cir. 2004) (evidence that every family in a Guatemalan village lost a male member to the guerrillas and that the military raped a woman every eight to fifteen days, based on the mistaken belief that the villagers had voluntarily joined the guerrillas, compelled a finding that the applicant's rape by soldiers was on account of a political opinion imputed to her).

In order to establish eligibility for asylum based on membership in a particular social group, an applicant must establish that the group constitutes a particular social group within the meaning of the refugee definition; that the applicant is a member or is perceived to be a member of that group; and that the persecutor was or will be motivated to target the applicant on account of that membership or perceived membership in the particular social group.¹⁴⁷ The BIA clarified in a 2014 precedent decision that there is a three-prong test for evaluating whether a group constitutes a particular social group:

[A]n applicant . . . seeking relief based on "membership in a particular social group" must establish that the group is

- (1) composed of members who share a common immutable characteristic,
- (2) defined with particularity, and
- (3) socially distinct within the society in question.¹⁴⁸

Issues of social group that are likely to arise in a child's asylum claim include social groups defined by family membership, social groups defined in whole or in part by age, and social groups defined in whole or in part by gender. The question of whether the group with which the child applicant identifies himself or herself can be considered a particular social group for the purpose of asylum eligibility will be analyzed in the same manner as with adults.

Case law on particular social group continues to evolve. It is discussed in more detail in the RAIO Training Module, *Nexus - Membership in a Particular Social Group*, including the subsection on age as a characteristic. Children's cases, however, often involve complex and/or novel particular social group formulations, and the following points are important to keep in mind when analyzing whether a child has established eligibility for protection based on membership in a particular social group.

¹⁴⁷ *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006); *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985). See also Lynden D. Melmed, USCIS Chief Counsel, *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations (Washington, DC: January 12, 2007).

¹⁴⁸ *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). The Board in *M-E-V-G-* renamed the "social visibility" requirement as "social distinction," clarifying that social distinction does not require literal visibility or "outwardly observable characteristics." 26 I&N Dec. at 238. Rather, social distinction involves examining whether "those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it." *Id.* The Board also clarified that social distinction relates to society's, not the persecutor's, perception, though the persecutor's perceptions may be relevant to social distinction. The Board defined particularity as requiring that a group "be defined by characteristics that provide a clear benchmark for determining who falls within the group." *Id.* at 239. Membership in a particular social group can be established through "[e]vidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like." *Id.* at 244.

- Common bases for children's particular social group claims include family membership, gang violence, female genital mutilation, forced marriage, and abuse within the family.
- Other harms faced by children may include trafficking, gender-based violence, rape, forced prostitution, forced recruitment by rebels or para-military, and child exploitation. The appropriate particular social group depends on the facts of the case and may involve the trait of socially recognized lack of effective protection.

Example

A particular social group of "formerly trafficked [nationality]" may be appropriate for certain cases. It is similar to the particular social group of former child soldiers proposed by the Third Circuit in *Lukwago v. Ashcroft*, 329 F.3d 157 (3rd. Cir. 2003), in that group membership is based on a shared past experience. In such cases, in order to avoid circularity, the past experience of trafficking could not qualify the individual for protection (unless, of course, it had been imposed on account of some other protected ground). Instead, harm feared due to the status of having been trafficked could qualify. In terms of evaluating the particular social group for the *Acosta* test, the trait of being formerly trafficked is immutable, and the trait of being a national of a certain country is immutable or fundamental. The group must also have well-defined boundaries, and the assessment would need to include country conditions information indicating that that society distinguishes formerly trafficked individuals from others in society. The nexus analysis would need to be carefully articulated to show that the applicant was or would be harmed on account of the trait of having been trafficked. Whether future harm feared by an applicant on account of this particular social group would rise to the level of persecution would be very fact-dependent. The adjudicator would then need to examine whether the applicant will be targeted on account of his or her status of being formerly trafficked.

Example

While the Third Circuit in *Escobar v. Gonzales*, 417 F.3d 363 (3d. Cir. 2005), found that homeless children who live in the streets in Honduras did not constitute a particular social group in that case, this does not foreclose the possibility of a particular social group involving street children. It would be necessary to examine whether they had faced harm or fear future harm due to their status as street children. As with any particular social group case, it would be necessary to evaluate whether the trait of being a street child is immutable and whether a group of street children is sufficiently discrete and socially distinct. A child's inability to

control whether or not he or she is homeless may be an indication of immutability. Additionally, evidence that street children are targeted for social cleansing by authorities in that country or are subject to specific laws could potentially indicate that the group is discrete and socially distinct.

- Family alone can constitute a particular social group. If a person is targeted because of the family connection, then the particular social group of family is appropriate. This is true even if the original family member on whom the connection is based is not targeted due to a protected ground.¹⁴⁹ The shared familial relationship is the common trait that defines the group. In most societies, the nuclear or immediate family is socially distinct, while in some societies, more extended relationships may also be socially distinct. Possible formulations are "Immediate [or nuclear] family" or "Immediate [or nuclear] family of [X individual]."
- A particular social group for gang recruitment may not succeed where recruitment is conducted in order to fill the ranks of the gang and not on account of a protected ground; youths who resist gang recruitment generally do not constitute a particular social group.¹⁵⁰ Former gang membership also generally does not form the basis of a particular social group,¹⁵¹ as it is generally agreed that the shared characteristic of terrorist, criminal or persecutory activity or association, past or present, **cannot** form

¹⁴⁹ See, e.g., *Aldana-Ramos v. Holder*, --- F.3d ---, No. 13-2022, 2014 WL 2915920 (1st Cir. June 27, 2014).

¹⁵⁰ *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008) (rejecting two proposed particular social groups related to gang recruitment: (1) "persons resistant to gang membership," and (2) "young persons who are perceived to be affiliated with gangs." The finding that gang recruitment does not constitute persecution on account of a protected ground is somewhat analogous to the Supreme Court's holding in *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (a Guatemalan guerrilla group's attempt to recruit the respondent to join their group and the respondent's refusal to do so does not establish a nexus to a protected ground such as political opinion). Neither *S-E-G-* nor *Elias-Zacarias* foreclose the possibility that under different facts, individuals who refuse recruitment or refuse to otherwise cooperate with gangs or guerillas could be members of a particular social group. See *Pirir-Boc v. Holder*, 750 F.3d 1077, 1081 (9th Cir. 2014) (holding that the BIA erred in relying on *S-E-G-* to find that "individuals taking concrete steps to oppose gang membership and gang authority" was not a socially distinct group without conducting an evidence-based inquiry into the facts of the individual case as required under *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)).

¹⁵¹ In asylum cases arising within some circuits, former gang membership may form a particular social group if the former membership is immutable and the group of former gang members is socially distinct. See *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014); *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010); *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009). See also, USCIS Asylum Division Memorandum, *Notification of Ramos v. Holder: Former Gang Membership as a Potential Particular Social Group in the Seventh Circuit* (Mar. 2, 2010). Even where former gang membership may be the basis of a particular social group, you must consider if the applicant is subject to a mandatory bar and whether the applicant merits a favorable exercise of discretion (balancing of factors). For mandatory bars, consider the serious non-political crime bar, as well as the other bars, including terrorist related inadmissibility grounds; also, past gang-related activity may serve as an adverse discretionary factor that is weighed against positive factors.

the basis of a particular social group.¹⁵² Nonetheless, there may be other protected grounds involved in a gang-related case. Always examine whether there are other factors involved in cases where an individual is targeted by gangs, such as political opinion, family connection, LGBT issues, or religion.¹⁵³

- “Females [of the applicant’s tribe or nationality] who are subject to gender-related cultural traditions” may be an appropriate particular social group formulation when the claim is based on FGM. You must assess whether FGM is persecution to an individual applicant, including in cases where FGM is imposed on a young child who does not have the capacity to welcome it as an important rite. As FGM is clearly objectively serious harm, the point of inquiry is the applicant’s perception of it.¹⁵⁴ If the applicant is still a young child who may not have the capacity to form an opinion about FGM, apply standard principles of supplementing the child’s testimony with other evidence, e.g., accompanying adult’s testimony, objective evidence in the form of country conditions reports concerning what the child was or would be subjected to.¹⁵⁵ It is also important to ask whether the applicant fears FGM to a child¹⁵⁶ or

¹⁵² See *Matter of W-G-R-*, 26 I&N Dec. 208, 215 n.5 (BIA 2014); USCIS OCC Memorandum from Lynden Melmed, *Guidance on Matter of C-A-* (Jan. 12, 2007); *Cantarero v. Holder*, 734 F.3d 82, 85-86; *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007).

¹⁵³ A decision that could be useful when assessing gang-related claims is *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010). The applicant organized Health Brigades to travel to rural parts of Colombia and offer volunteer health services. The guerrilla group, FARC, demanded she publicly attribute her Health Brigade work to the FARC; she refused and was attacked. Instead of addressing the potential particular social group (which the dissent did address in a concurring opinion), the court found that the facts made it clear that the FARC imputed an anti-FARC political opinion to her, which led to the increasingly violent nature of their persecution of her. In reaching its decision, the court noted, “in certain cases, ‘the factual circumstances alone may constitute sufficient circumstantial evidence of a persecutor’s . . . motives’.”

¹⁵⁴ In *Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1315 (9th Cir. 2012), the court noted that an infant can be the victim of persecution, even in the absence of present recollection of the events that constituted the persecution, citing to *Benjamin v. Holder*, 579 F.3d 970, 792 (9th Cir. 2009) (enduring genital mutilation as a five-day-old infant constitutes persecution). It is reasonable to consider FGM persecution if the applicant currently says it was serious harm. See *Matter of A-T-*, 25 I&N Dec. 4, 5 (BIA 2009) (“It is difficult to think of a situation, short of a claimant asserting that she did not consider FGM to be persecution, where the type of FGM suffered by the respondent, at any age, would not rise to the level of persecution.”).

¹⁵⁵ In *Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004), the Sixth Circuit overturned an Immigration Judge’s finding that the 9-year-old applicant expressed only a “general ambiguous fear,” noting that young children may be incapable of experiencing fear to the same degree as adults.

¹⁵⁶ *Kone v. Holder*, 596 F.3d 141, 153 (2d Cir. 2010) (remanding a petitioner’s claim for the BIA to consider whether “a mother who was herself a victim of genital mutilation” experiences persecution when her daughter may “suffer the same fate”); *Abay v. Ashcroft*, 368 F.3d 634, 642 (6th Cir. 2004) (recognizing that a petitioner for asylum and withholding of removal can demonstrate direct persecution based on the harm of “being forced to witness the pain and suffering of her daughter” if she were subjected to FGM); *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007). *A-K-* involved a Senegalese father who feared that his two USC daughters would be subjected to FGM. Note that under *A-K-*, there is no nexus unless the parent fears FGM to their child in order to target the parent for the parent’s protected ground. *Matter of A-K-* does not foreclose the possibility of FGM on a family member due to the applicant’s political opinion constituting persecution to the applicant.

whether an applicant fears FGM to another family member due to the applicant's political opinion.¹⁵⁷

- “Females [of the applicant's tribe or nationality] who are subject to gender-related cultural traditions” may also be an appropriate particular social group for forced marriage claims. As arranged marriages are an important tradition in many cultures, the issue is whether an individual subjectively experiences or would experience the marriage as serious harm. The analysis acknowledges that the harm from the forced marriage can continue even after the marriage ceremony.

8.5 Child-Specific Considerations Concerning Bars and Grounds of Inadmissibility

Firm Resettlement

The BIA has long held that a parent's resettlement status is imputed to his or her children.¹⁵⁸ The Ninth Circuit has also looked to “whether the minor's parents have firmly resettled in a foreign country before coming to the United States, and then derivatively attribute[d] the parents' status to the minor.”¹⁵⁹ However, this may no longer be the case, and in interpreting whether a child is firmly resettled, you should apply the BIA's framework for analyzing firm resettlement in its 2011 decision, *Matter of A-G-G-*.¹⁶⁰ In this decision, the BIA announced a new four-step framework for deciding firm resettlement cases that first focuses exclusively on the existence of an offer.¹⁶¹ For this reason, you should not rely on case law issued prior to May 2011 that conflicts with the holding in *Matter of A-G-G-* and does not follow the BIA's new approach. See the RAIO Training Module, *Firm Resettlement*.

Serious Nonpolitical Crime

In all cases where the question arises as to whether there is reason to believe that an applicant has committed a serious nonpolitical crime, an adjudicating officer must consider an applicant's culpability in determining whether the crime is “serious” within the meaning of the INA. Relevant factors would include: (1) whether and to what extent

¹⁵⁷ An applicant may fear FGM to a family member due to the applicant's possession of a protected trait (political opinion or one of the four other grounds). See *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009) (threat of FGM to petitioner's wife in order to harm petitioner, a former Mungiki member, could constitute persecution to petitioner for having left the Mungiki).

¹⁵⁸ 8 C.F.R. § 208.15; *Matter of Ng*, 12 I&N Dec. 411 (BIA 1967) (holding that a minor was firmly resettled in Hong Kong because he was part of a family that resettled in Hong Kong); *Matter of Hung*, 12 I&N Dec. 178 (BIA 1967) (holding that because parents were not firmly resettled in Hong Kong, the minor child also was not firmly resettled there).

¹⁵⁹ *Vang v. INS*, 146 F.3d 1114, 1116 (9th Cir. 1998) (holding that the parents' status is attributed to the minor when determining whether the minor has firmly resettled in another country).

¹⁶⁰ *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

¹⁶¹ *A-G-G-*, 25 I&N Dec. at 501.

the applicant acted under duress; (2) the applicant's intent, with age being a relevant factor; and (3) whether and to what extent the applicant knew they were committing a crime. This analytical approach is consistent with the purposes of the serious nonpolitical crime bar, and with basic principles of criminal and protection law. Age becomes a significant factor when this issue arises in a child's claim, as youth may be a relevant factor when assessing culpability.

For additional information regarding grounds of inadmissibility for refugees and bars to applying for or eligibility for asylum, see Division Supplements. See also RAO Training Module, *Inadmissibilities*, and the Asylum Division Lesson Plan, *Mandatory Bars to Asylum*.

9 OTHER IMMIGRATION STATUSES AVAILABLE TO CHILDREN

For additional information, see ASM Supplement – Other Immigration Statutes Available to Children.

10 SUMMARY

10.1 International Guidance

It is important to look to international law for guidance when binding U.S. case law does not speak to the relevant issue. International instruments such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and several UNHCR Executive Committee Conclusions and UNHCR published policies provide insight and guidance regarding how to handle protection claims from minors.

10.2 Child Development

When interviewing children you must recognize that a child's stage of development can affect the interview – both in tone and content. Children who are in a younger stage of development may not be able to recall facts or analyze issues as well as more mature children or adults. Furthermore, children's perceptions of the world will not conform to those of most adults and could create an obstacle to a smooth interview.

10.3 Procedural Considerations

In order to address the unique situation of child applicants, you must make adjustments to their interviews and interview style to facilitate the process. Procedural adjustments include allowing the child to be interviewed by an officer with relevant experience and scheduling the interviews of family members – especially siblings – as close in time as possible.

Other procedural considerations necessary in children's cases include determining whether or not the minor applicant is unaccompanied, determining a minor's capacity to apply for protection, who may be able to speak on the child's behalf, and evaluating any conflicts between the child and the parents' interests.

10.4 Interviewing Considerations

In order to create a child-friendly atmosphere, you must attempt to build a rapport with the child, "read" the child applicant for any sign of anxiety, and guide the child through the interview process. Questions should be posed with the child's mental development and maturity in mind. Whenever possible, officers must accommodate child applicants who would like a trusted adult to be present during the interview. You should ask questions concerning the child's guardianship and parental consent to and knowledge of the refugee or asylum application. While these questions usually do not affect substantive eligibility, they are nonetheless important for evaluating the child's care and custody situation.

Because children are less likely than adults to be able to articulate their claim and obtain supporting documents, you may be required to consider more sources of information to evaluate the objective merit of the claim. This includes taking testimony from other individuals, looking to documentary evidence of individuals similarly situated to the applicant, and taking into account the amount of information that a child of that age can be expected to know and recall.

Children, as adults, are not required to provide corroborating evidence and may rely solely on testimony when the testimony is credible. However, children cannot be expected to present testimony with the same degree of consistency or coherency as adults, and you must consider children's development levels and emotional states when evaluating their testimony.

10.5 Legal Analysis

The definition of a refugee contained in the INA applies to all individuals regardless of their age. Although children do not enjoy a lessened standard for refugee or asylum eligibility, there are considerations that must be taken into account when analyzing children's claims. First, the harm that a child suffered or fears may rise to the level of persecution even when the same harm claimed by an adult would not be considered persecution. Second, though the child may be able to express a subjective fear of persecution, he or she might not be able to articulate the objective reasons for that fear, such that evidence from other sources must be considered on this point. Third, an examination into the circumstances in which a child finds himself or herself – how he or she arrived in a second country, the location of his or her relatives, or the harm that has befallen his or her parents, for example – may reveal facts that support the child's refugee or asylum claim.

A child's inability to understand all of the circumstances surrounding his or her flight creates difficulty in analyzing the nexus of the harm or feared harm to a protected ground. Officers must pay close attention to the objective facts surrounding the child's claim to determine if there is a nexus regardless of the child's ability to articulate one. Many claims raised by children will be on account of membership in a particular social group. The body of case law that discusses the issue of particular social group applies to children just as it does to adults.

Other legal issues that may involve child-specific considerations include the application of some of the bars to refugee status or asylum, or inadmissibilities for refugee applicants.

PRACTICAL EXERCISES

There are no practical exercises for this module.

OTHER MATERIALS**Sample Opening Statement for Children**

I am glad that you are here today, and that your friend Mr. (Ms.) [name of support person, if any] is here with you. Do you know what we are going to do today? We are going to talk about why you left [name of country of origin], and why you may not want to go back there. As we talk, you and I both have jobs to do. My job is to understand what happened to you. But I need your help. Your job is to help me to understand by telling me as much as you can remember – even the little things.

I will be asking you some questions today. Some questions will be easy for you to answer. But you may not understand other questions. It is okay if you do not understand a question. Just tell me that you do not understand and I will ask the question differently. But please do not guess at an answer or make an answer up.

If you do not know the answer to the question, that is okay too. Just tell me that you don't know the answer. No one can remember everything.

As we talk today, I will write down what we say because what you tell me is important. Do not get nervous about my taking notes. Later, if I forget what we said, I can look it up.

I understand that you may be nervous or scared to tell me about what happened to you. Unless there is some reason it would make you afraid, we will tell your parents about your application if we are able to, but I will not tell anyone else in [name of country of origin] about what you tell me today. Also, none of your friends or other family members will know anything about what you tell me, unless you write a special letter that allows me to share information with them.

Before we start, do you have any questions that you would like to ask me? Or is there anything that you want to tell me? If you think of something while we are talking, let me know. If you have to go to the bathroom or want to stop for a while, also let me know.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. USCIS Refugee Affairs Division, Standard Operating Procedure: Children's Cases (4 January 2011).
2. Memorandum from John W. Cummings, Deputy Director, INS Office of International Affairs, to Overseas District Directors, Guidelines for Children's Refugee Claims, (120/6.4) (30 Jan. 1999).

ADDITIONAL RESOURCES

1. Lummert, Nathalie and Margaret MacDonnell, From Identification to Durable Solutions: Analysis of the Resettlement of Unaccompanied Refugee Minors to the United States and Recommendations for Best Interest Determinations, United States Conference of Catholic Bishops, July 2011.
2. UNHCR, Field Handbook for the Implementation of UNHCR BID Guidelines (2011).
3. Duncan, Julianne, Current Challenges in the Resettlement of Minors Through UNHCR and the Best Interest Determination Process, United States Conference of Catholic Bishops, June 2003.
4. UNHCR, Guidelines on Determining the Best Interests of the Child (2008).

SUPPLEMENTS

RAD Supplement – Married Minors

The Refugee Affairs Division and Department of State have independently issued guidance on how to adjudicate refugee cases involving married children.¹⁶² If

¹⁶² Memorandum from Terry Rusch, Director, Office of Admissions Bureau of Population, Refugees, and Migration, Department of State, to Overseas Processing Entities, Program Announcement 2010-03 Guidance on Processing Married Minors (8 Dec. 2009).

UNHCR refers a case involving married minor, you may find a BID in the file under certain circumstances. If no BID is in the case file and you have concerns about the well-being of the married child, you must consult the team leader and request that a BID be done.

The information in this section is taken from Refugee Affairs Division Guidance and Department of State Program Announcement 2010-03.

The following principles apply when processing married minors¹⁶³ for the U.S. Refugee Admissions Program (USRAP):

1. In general, **a marriage must be legally valid in the place of celebration.** Camp marriages may be accepted in certain circumstances.¹⁶⁴
2. **Married minors who are both under age 18 and are traveling without their parents.** United Nations High Commissioner for Refugees (UNHCR) Best Interest Determinations (BIDs)¹⁶⁵ are required for both children. The children are considered unaccompanied minors and may be placed in foster care.
3. **Married minors who are both under age 18 and at least one set of parents is traveling with the couple.** BIDs are not required. The married couple must have their own case, which should be cross-referenced with the parents' case so that they may be interviewed altogether.
4. **Married couple where one spouse is under age 18 and the other spouse is over age 18.** A BID is generally not needed for the minor, even if he/she is not traveling with the parents. A minor questionnaire should be completed by the RSC for the minor spouse.

An officer may request a BID (for UNHCR P1 or P2 referrals) if there are cases which fall outside the norm and the officer would like a closer examination of what is in the best interests of the child. Ex: a BID could be requested for a 16-year-old

¹⁶³ Minors are under the age of 18.

¹⁶⁴ If a marriage is invalid based on a failure to comply with formal registration requirements, a marriage may still be valid for immigration purposes if the parties were prevented from formal perfection of the marriage due to circumstances relating to their flight from persecution. Examples of circumstances beyond the couple's control and relating to the flight from persecution would include inability to access host country institutions due to refugee camp policies or conditions, discriminatory government policies or practices, and other consequences of the flight from persecution. A couple who has been prevented from formal perfection of the marriage must also show other indicia of a valid marriage. The relevant considerations may include: holding themselves out to be spouses, cohabitation over a period of time, children born to the union, and the color of a marriage ceremony.

¹⁶⁵ BIDs are required for unaccompanied or separated children referred by UNHCR under Priority 1 or Priority 2.

married to a 50-year-old or where there is some suspicion of abuse.

The UNHCR BID Guidelines do not explicitly address the issue of minors who are married. However, in the absence of guidance in the Guidelines, some UNHCR offices have addressed it and have come up with the following position: A formal BID is not required for unaccompanied and separated children who marry before they turn 18 years, and the marriage has been carried out in accordance with national law and Convention on the Rights of the Child (CRC) standards. Such individuals will no longer be considered unaccompanied or separated children. However, to ensure that the marriage has been carried out in accordance with national law and CRC standards, that the child has not been forced into marriage, and that the case is not one of child trafficking, it is recommended that a best interests assessment be conducted prior to determining the recommended durable solution.

RAD Supplement – Standard Operating Procedures for Children's Cases

Since 2003, refugee adjudications have required that a formal Best Interest Determination (BID) be prepared by UNHCR for each child referred to the United States Refugee Program (USRAP) as a principal applicant.¹⁶⁶ The requirement has been formalized in SOPs for Children's Cases adopted in January, 2011.¹⁶⁷ Officers must review the BID to verify that the child's protection needs are being met in the application and adjudication process.

Key Elements of a Valid BID

Was the BID prepared by a qualified child welfare professional?

Was the BID signed by the preparer or full BID panel?

Did the BID include a thorough exploration of the child's past and current family situation?

Did the BID provide information on how long the child has been living with the current caregiver?

Did the BID describe the child's relationship with his or her caregiver, including the physical/health, emotional/psychological and economic situation of the child?

Was a diligent search for family carried out (consistent with child and family safety and

¹⁶⁶ Memorandum from Terry Rusch, Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State, to U.S. Refugee Program Processing Entities, *Program Announcement 2001-01 USRP Policy on Resettling Unaccompanied Refugee Minors (URM's)*, (20 November 2002).

¹⁶⁷ USCIS Refugee Affairs Division, *Standard Operating Procedure: Children's Cases*, (4 January 2011).

country conditions)? ①.

Information To Be Elicited and Recorded in an Interview with a UASC

During the USCIS interview, in addition to the general procedures for conducting a refugee status interview, when interviewing UASCs, Officers should also:

Verify information in BID with child

Determine the capacity of child to have input into her or his claim

Verify parental information to the extent possible. If there is a living parent, the Officer should note the address and phone number (if known) of the child's parent, whether the parent is aware of the child's whereabouts, and whether the parent is aware that the child has applied for refugee status

When interviewing a separated child: ①.

- Determine the validity and bona fides of the child's relationship to the relative, foster parent(s), caregiver(s) or guardian(s)
- Place caregiver(s) under oath
- Note caregiver's name, address, relationship to child, duration of relationship, and whether there is any legal relationship between the two
- Question caregiver as appropriate
- Assess the nature and durability of the relationship between the child and caregiver
- Assess the caregiver's financial ability and commitment to continue to care for the child if resettled together
- Ensure that your interview notes reflect discussion of the above topics
- Ensure that your interview notes reflect that the BID and the RSC minor questionnaire have been seen and reviewed

Information To Be Included in the Refugee Assessment

After the USCIS interview:

Document clearly in the Assessment whether the Officer concurs with the recommendations in the BID. This concurrence should be noted on page 4 of the Assessment in the Justification section.

If the officer does not concur, an explanation of what the officer recommends should be included.

- Example 1: If a separated child is found to be a refugee, but the officer

has concerns about the current guardian, the officer may conclude that "Child is found to be a refugee; however, case should be returned to UNHCR or the referring entity for resolution of the caregiving arrangement prior to final USCIS approval."

- Example 2: Unresolved custody issues may be addressed by noting, for example: "Child's mother is in refugee camp. BID does not address her whereabouts or why child is not with her. Return case to UNHCR for further inquiry."

Officer Responsibility for Child Safety

The officer must note any of the following:

1. A child is living alone.
2. A child is living with an inappropriate guardian.
3. A child is screened off the case and will now be alone.
4. The officer has any other concern about child safety.

These issues should be reported to the SRO or TL. The SRO or TL will report these concerns to the RSC or UNHCR to ensure the child's safety and continued access to U.S. Refugee Admissions Program, as appropriate.

Conflicts between the Child's and Parents' Interests

In a refugee referral, if parent and child are together, UNHCR normally only recommends permanent separation of a child from the parent(s) if severe abuse or neglect is evident. The BID decision does not determine legal custody of the child.

Although the child welfare laws of the host country typically have mechanisms for a legal decision relating to child custody, in most of the countries in which we are interviewing refugees, the country of first asylum declines to intervene in refugee child/parent conflict, even in cases of severe abuse. In such cases, UNHCR generally asks biological parents to sign a release of custody document in cases in which a biological parent's whereabouts are known and it is safe to do so. Cases in which the biological parent refuses to sign the release of custody and the foster caregiver(s) does not have legal custody of the child should be referred to RAD HQ for resolution and may need to be returned to UNHCR for further inquiry into the custody arrangement.

BID Process for Unaccompanied and Separated Refugee Children

In 2003 the U.S. Department of State announced that the United States abides by the "best interest" rule as stated in the Convention on the Rights of the Child.

Furthermore, the United States relies on the formal Best Interest Determination process of UNHCR to determine a course of action for an unaccompanied refugee child being referred to the USRAP for resettlement.¹⁶⁸

USCIS has participated in the Vulnerable Minors Working Group with other government departments and agencies as well as concerned NGO's to determine how best to implement U.S. policy in regard to child adjudications. Procedures issued in January, 2011 provide guidance to refugee officers adjudicating cases of unaccompanied and separated children (UASC).¹⁶⁹ In 2011 RAD adopted procedures for all refugee cases in which a child is the principal applicant. These procedures require you to:

1. Determine that the Best Interest Determination (BID) is in the file and is valid;
2. Verify the information in the BID and decide if you concur with the recommendations;
3. Review the BID for each UASC to ensure that child's safety and interests are being considered; and
4. Use child-sensitive methods when eliciting testimony and adjudicating the claim.

¹⁶⁸ Memorandum from Terry Rusch, Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State, to U.S. Refugee Program Processing Entities, *Program Announcement 2001-01 USRP Policy on Resettling Unaccompanied Refugee Minors (URM's)*, (20 November 2002).

¹⁶⁹ USCIS Refugee Affairs Division, *Standard Operating Procedures: Children's Cases* (4 January 2011).

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997).
2. Matter of A-K-, 24 I&N Dec. 275 (BIA 2007); Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007); Jorge-Tzoc v. Gonzales, 435 F.3d 146 (2d Cir. 2006); Abay v. Ashcroft, 368 F.3d 634 (6th Cir. 2004); Liu v. Ashcroft, 380 F.3d 307 (7th Cir. 2004); Salaam v. INS, 229 F.3d 1234 (9th Cir. 2000); Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000); Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985).
3. Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Staff, Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (HQRAIO 120/12a) (25 March 2009).
4. Memorandum from Ted Kim, Acting Chief, USCIS Asylum Division, to Asylum Office Staff, Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children (HQRAIO 120/12a) (28 May 2013).
5. Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS (HQRAIO 120/9.7) (14 August 2007).
6. Memorandum from Jeff Weiss, Acting Director, INS Office of International Affairs, to Asylum Officers, Immigration Officers, and Headquarters Coordinators (Asylum and Refugees), Guidelines for Children's Asylum Claims, (120/11.6) (10 Dec.1998).

ADDITIONAL RESOURCES

1. American Bar Association, Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States (August 2004), pp. 111

2. Bhabha, Jacqueline and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.*, Harvard University, Cambridge, MA, 2006, pp. 18–23, 108–137, 143–145, 188–191.
3. Bhabha, Jacqueline and Wendy A. Young. “Through a Child’s Eyes: Protecting the Most Vulnerable Asylum Seekers,” Interpreter Releases, Vol. 75, No. 21, 1 June 1998, pp. 757–773.
4. Neal, David L. Chief Immigration Judge, Executive Office for Immigration Review. *Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, Memorandum for All Immigration Judges.* (Washington, DC, 22 May 2007), 11 pages.
5. Nugent, Christopher and Steven Schulman. “Giving Voice To The Vulnerable: On Representing Detained Immigrant and Refugee Children,” Interpreter Releases, Vol. 78, No. 39, 8 October 2001, pp.1569–1591.
6. UNHCR, *Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries, 2001–2003* (Geneva, July 2004), 14 pages.
7. Peters, Jean Koh, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (2nd ed. 2001).
8. Symposium: Child Abuse, Psychological Research on Children as Witnesses: Practical Implications Forensic Interviews and Courtroom Testimony, 28 PAC. L.J. 3 (1996), 92 pages. (NOTE: Myers, J., Saywitz, K., & Goodman, G., [1996] Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony. Pacific Law Journal, 28, 3–90.)

SUPPLEMENTS

ASM Supplement – Procedural Considerations

With the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Congress gave USCIS initial jurisdiction over any asylum application filed by an unaccompanied alien child (UAC), including those in removal proceedings.¹⁷⁰ This law took effect on March 23, 2009. As a result, UACs filing for asylum who previously would have had their case heard by an immigration judge in the first instance now receive an affirmative interview with

¹⁷⁰ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110-457, Dec. 23, 2008. See Joseph E. Langlois, USCIS Asylum Division, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, Memorandum (Mar. 25, 2009).

you. In conducting the interview of a possible UAC in removal proceedings, you should verify that the applicant was a UAC at the time of filing such that USCIS has jurisdiction over the claim.

In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will have already made a determination of UAC status after apprehension, as required for the purpose of placing the individual in the appropriate custodial setting. In such cases, if the status determination by CBP or ICE was still in place on the date the asylum application was filed, you should adopt that determination without another factual inquiry. Unless there was an affirmative act by the Department of Health and Human Services (HHS), ICE, or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, you should adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, you should make an initial determination of UAC status.

Minor Principal and Unaccompanied Minor Fields in RAPS

In August 2007, the Asylum Division incorporated a new mechanism in RAPS to capture data on minor principal applicants, both accompanied and unaccompanied.¹⁷¹ The mechanism allows the Asylum Division to track applicants who are unaccompanied minors and reminds you that modified procedures are in order when handling a minor principal applicant's claim. The ability to gather information on the adjudication of unaccompanied minors' applications assists the Asylum Division in developing or refining policy with regard to these cases.

Definition of Minor Principal, Unaccompanied Minor, and Unaccompanied Alien Child (UAC)

- **Minor Principal**

A minor principal is a principal applicant who is under eighteen years of age at the time of filing an asylum application.

- **Unaccompanied Minor**

For purposes of making a determination in RAPS as to whether the applicant is an unaccompanied minor, an unaccompanied minor is very similar to an

¹⁷¹ Joseph E. Langlois, USCIS Asylum Division, *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, Memorandum (Aug. 14, 2007). See the memo for more details about the commands used in RAPS to capture this data.

unaccompanied alien child (UAC). An unaccompanied minor is a child who is under eighteen years of age and who has no parent or legal guardian in the United States who is available to provide care and physical custody.¹⁷² This definition encompasses separated minors, e.g., those who are separated from their parents or guardians, but who are in the informal care and physical custody of other adults, including family members. Note that a child who entered the United States with a parent or other adult guardian but who subsequently left the parent's or guardian's care would be considered an unaccompanied minor.

For purposes of the unaccompanied minor definition, guardianship refers to a formal (legal/judicial) arrangement. If the parent is deceased and there is no legal guardianship arrangement, the child would be considered unaccompanied.

• **Unaccompanied Alien Child (UAC)**

The Homeland Security Act of 2002 defines aUAC as a person under 18 years of age, who has no lawful immigration status in the United States, and who either has no parent or legal guardian in the United States or has no parent or legal guardian in the United States who is available to provide care and physical custody.¹⁷³ Other than defining a UAC as a person who has no lawful immigration status in the United States, the term "unaccompanied minor" as adopted in the August 2007 Asylum Division memo is the same as the term "unaccompanied alien child (UAC)." The definition of a UAC is important, as USCIS has initial jurisdiction over asylum applications filed by UACs even if the UAC is in removal proceedings.

Submission of Juvenile Cases to HQASM for Quality Assurance Review

Certain asylum claims filed by principal applicants under the age of eighteen or considered an unaccompanied alien child at the time of filing must be submitted to the Headquarters Asylum Division (HQASM) for quality assurance review before

¹⁷² See Section 462 of the Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2) (defining the term "unaccompanied alien child").

¹⁷³ Section 462 of the Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2).

they can be finalized.¹⁷⁴ HQASM review is required of certain cases filed by minor principal applicants in the purely affirmative asylum context or by UAC minor principal applicants with pending removal proceedings who are before USCIS by virtue of the TVPRA's initial jurisdiction provision. Asylum Offices should check the most recent version of the Quality Assurance Referral Sheet for the categories of children's cases that require HQASM review.

Applications from Children without Parental Knowledge or Consent

A Child's Capacity to Apply and Who Speaks for the Child

Statutorily, subject to the filing bars, "[a]ny alien who is physically present in the United States or who arrives in the United States," without regard to immigration status, has the right to apply for asylum.¹⁷⁵ Under certain circumstances, however, children may lack the capacity to assert this right to apply for asylum. In the case of young children who lack the capacity to make immigration decisions, you will need to determine who has the legal authority to speak for the child. Generally, the parent will have the authority to speak for the child, unless (as discussed below) there are conflicts between the parent's and child's interests that prevent this.

There is no age-based restriction to applying for asylum. Where an asylum application is submitted on behalf of a child by someone other than the child's parent or legal guardian, however, USCIS need not "process...applications if they reflect that the purported applicants are so young that they necessarily lack the capacity to understand what they are applying for or, failing that, that the applications do not present an objective basis for ignoring the parents' wishes."¹⁷⁶ In the case involving Elian Gonzalez, an application for asylum was filed on behalf of a six-year-old Cuban boy against the wishes of his father in Cuba. INS determined that the child did not have the capacity to seek asylum on his own behalf, and that it was his father who had authority to speak for him in immigration matters.¹⁷⁷ Important to INS's decision was the finding that Elian was not at risk of

¹⁷⁴ Joseph E. Langlois, Chief, Asylum Division, *Issuance of Revised Quality Assurance Referral Sheet and Instructions on Submission of Certain Claims for Quality Assurance Review*, Memorandum (Feb. 9, 2007); John Lafferty, Chief, Asylum Division, *Changes to Case Categories Requiring Asylum Headquarters Review*, Memorandum (Jan. 27, 2014). See also Ted Kim, Acting Chief, Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by UAC*, Memorandum (May 28, 2013), which explained that in cases in which CBP or ICE has already determined that the applicant is a UAC, Asylum Offices will adopt that determination and take jurisdiction over the case. The memorandum clarified that in those cases, if the UAC status determination was still in place on the date of the initial filing of the asylum application, USCIS would take initial jurisdiction over the case even if there appeared to be evidence that the applicant may have turned 18 as of the date of initial filing; and those cases will still receive HQ-QA review as juveniles.

¹⁷⁵ INA § 208(a)(1); 8 C.F.R. § 103.2(a)(2).

¹⁷⁶ Bo Cooper, INS General Counsel, *Elian Gonzalez*, Memorandum (Jan. 3, 2000).

¹⁷⁷ *Gonzalez v. Reno*, 212 F.3d 1338 (11th Cir. 2000).

persecution or torture, that Elian's father had Elian's best interests in mind, and that the father did not have conflicts of interest that would prevent him from representing the child's best interests in immigration matters. The Eleventh Circuit upheld the INS policy, noting that line-drawing on the basis of age is an adequate approach to determining who may individually file for asylum.

In contrast, older children may have the capacity to assert a claim. In *Polovchak v. Meese*, a Seventh Circuit case involving a twelve-year-old boy's grant of asylum counter to his parents' wishes to return to Russia, the court evaluated the applicant's capacity to assert his individual rights as part of the court's procedural due process balancing test: "At the age of twelve, Walter was presumably near the lower end of an age range in which a minor may be mature enough to assert certain individual rights that equal or override those of his parents; at age seventeen (indeed, on the eve of his eighteenth birthday), Walter is certainly at the high end of such a scale, and the question whether he should have to subordinate his own political commitments to his parents' wishes looks very different. The minor's rights grow more compelling with age, particularly in the factual context of this case."¹⁷⁸ While the court was not evaluating capacity to apply for asylum, its findings on age and capacity to assert individual rights are nonetheless instructive in the asylum context. Although the court acknowledged that a child may have the capacity to assert a claim, it found that the parents had a significant liberty interest in being notified of the claim and given an opportunity to participate

Confidentiality and Notification of Parents

Federal regulations governing asylum adjudications generally do not permit the disclosure to third parties of information contained in or pertaining to an asylum application without the written consent of the applicant.¹⁷⁹ As a general matter, however, we would notify the parent of a claim by a child when the parent does not seem to be the one submitting the claim. Where a child lacks capacity and a parent or legal guardian has the authority to speak for the child, that parent or legal guardian may not in fact be a third party as a legal matter, so that notification of the parent or legal guardian will not implicate the asylum confidentiality provisions in 8 CFR § 208.6.¹⁸⁰ Further, even in cases where a child has capacity to assert a claim, the parent's liberty interest in directing the interests of their child generally requires notification of and an opportunity to participate in the proceedings, unless such notification would pose a serious risk to the child (such as in cases involving

¹⁷⁸ *Polovchak v. Meese*, 774 F.2d 731, 736-37 (7th Cir. 1985); see also 8 C.F.R. § 103.2(a)(2) (providing that a parent or legal guardian may sign an application or petition of a person under the age of fourteen); 8 C.F.R. § 236.3(f) (providing for notice to parent of juvenile's application for relief).

¹⁷⁹ 8 C.F.R. § 208.6.

¹⁸⁰ See *Polovchak*, 774 F.2d at 735 (noting "the fundamental importance of the parents' interest in the residence, nurture and education of a minor child, then twelve or thirteen").

abuse or where the parent is involved in the persecution). Where a child applies for asylum without the parents' knowledge and/or consent, many complex issues are raised, and the Asylum Office should contact HQASM to coordinate in addressing any issues relating to the child's capacity to apply for asylum, potential conflicts between a child's and the parents' interests concerning the asylum application, or notification of the parent.

Affirmative Asylum Process for Unaccompanied Alien Children

In 2008 the TVPRA made USCIS responsible for adjudicating all asylum claims of unaccompanied alien children (UACs). It was recognized that unaccompanied children would benefit from a non-adversarial interview in lieu of the adversarial process of the immigration courts.¹⁸¹ Responsibility for adjudicating their protection claims has moved from the immigration courts to the affirmative asylum system of USCIS.

The TVPRA is discussed in detail in the ADOTC since most of its provisions do not apply to children seeking refugee status outside the United States.

ASM Supplement – Bars to Applying for Asylum

One-Year Filing Deadline

The TVPRA amended the INA to state that the one-year filing deadline does not apply to unaccompanied alien children.¹⁸² As of the TVPRA's effective date of March 23, 2009, when you determine that a minor principal applicant is unaccompanied, you should forego the one-year filing deadline analysis and conclude that the one-year filing deadline does not apply. The one-year filing deadline continues to be applicable for accompanied minor principal applicants (those with a parent or legal guardian) and for adult principal applicants. Additionally, as the unaccompanied alien child definition includes the element that the child may not have lawful immigration status, the one-year filing deadline must still be analyzed for in-status unaccompanied minors.

¹⁸¹ Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Staff, *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*, Memorandum (HQRAIO 120/12a) (Mar. 25, 2009).

¹⁸² See INA § 208(a)(2)(E); TVPRA, P.L. 110-457, § 235(d)(7)(A). For additional information, see Asylum lesson plan, One-Year Filing Deadline.

Accompanied minors and in-status unaccompanied minors may qualify for the extraordinary circumstances exception to the one-year filing deadline based on legal disability.¹⁸³ While unaccompanied minors are specifically listed in the regulations as an example of a category of asylum applicants that is viewed as having a legal disability that constitutes an extraordinary circumstance for the purposes of the one-year filing deadline, the circumstances that may constitute an extraordinary circumstance are not limited to the examples listed in the regulations. The same logic underlying the legal disability ground listed in the regulations is relevant also to accompanied minors: minors, whether accompanied or not, are generally dependent on adults for their care and cannot be expected to navigate adjudicatory systems in the same manner as adults.

As long as an accompanied minor applicant applies for asylum while still a minor (while the legal disability is in effect), the applicant should be found to have filed within a reasonable period of time. Depending on the circumstances of each case, after reaching the age of 18, the applicant may also establish that he or she has filed within a reasonable period of time.

In *Matter of Y-C-*, petitioner, an unaccompanied fifteen-year-old, attempted to file an asylum application with an Immigration Judge five months after being released from over a year in immigration custody.¹⁸⁴ The Immigration Judge refused to accept the application, but the petitioner successfully filed a second application within one year of being released from custody. The BIA found that the petitioner had established extraordinary circumstances because "he did not, through his own action or inaction, intentionally create these circumstances, which were directly related to his failure to meet the filing deadline." Note that this case was decided before the TVPRA's amendment to the INA to exclude unaccompanied minors from the one-year filing deadline took effect.

Safe Third Country

As of March 23, 2009, the provision in the INA that allows an individual to be barred from applying for asylum based on a safe third country agreement cannot be applied to an unaccompanied alien child.¹⁸⁵ The Safe Third Country Agreement between the United States and Canada, currently the only safe third country agreement between the United States and another country, already has an exception for unaccompanied minors. Even if future safe third country agreements are created, INA § 208(a)(2)(E), as created by the TVPRA, does not permit a safe third

¹⁸³ 8 C.F.R. § 208.4(a)(5).

¹⁸⁴ *Matter of Y-C-*, 23 I&N Dec. 286, 288 (BIA 2002).

¹⁸⁵ See INA § 208(a)(2)(E); TVPRA, P.L. 110-457, § 235(d)(7)(A). See also INA § 208(a)(2)(A); Asylum lesson plan, Safe Third Country Threshold Screening.

country agreement to apply to unaccompanied alien children.

Serious Nonpolitical Crime

The Child Soldiers Accountability Act of 2008 (CSAA), which was signed into law and became effective on October 3, 2008, creates both criminal and immigration prohibitions on the recruitment or use of child soldiers.¹⁸⁶ Specifically, the CSAA establishes a ground of inadmissibility at section 212(a)(3)(G) of the INA and a ground of removability at section 237(a)(4)(F) of the INA. These parallel grounds set forth that "[a]ny alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code" is inadmissible and is removable.

The statute also requires that DHS and DOJ promulgate regulations establishing that an alien who is subject to these grounds of inadmissibility or removability "shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime," and is therefore ineligible for asylum pursuant to INA section 208(b)(2)(A)(iii).¹⁸⁷ The regulations are pending publication. In the interim, the Congressional intent in enacting the CSAA, as well as the nature of the serious crime of the use of child soldiers, should be considered in determining whether an applicant is subject to the serious nonpolitical crime bar. It is still an open question whether the statute permits an exemption for children under the age of 15.

ASM Supplement – Other Immigration Statuses Available to Children

Special Immigrant Juvenile Status

Special Immigrant Juvenile (SIJ) status provides legal permanent residency under certain conditions to unmarried children present in the United States who are under twenty-one years of age.¹⁸⁸ First, a juvenile must be declared dependent on a state juvenile court or legally committed to, or placed under the custody of, an agency or department of a state, or an individual or entity appointed by a State or juvenile court, and the juvenile court must find the child's reunification with one or both of

¹⁸⁶ Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008); see also Lori Scialabba and Donald Neufeld, USCIS, *Initial Information Concerning the Child Soldiers Accountability Act, Public Law No. 110-340*, Memorandum to Field Leadership (Dec. 31, 2008); CSAA, sec. 2(b)-(c).

¹⁸⁷ CSAA, sec. 2(d)(1). See also Asylum lesson plan, Mandatory Bars to Asylum and RAIO Training Module, Discretion.

¹⁸⁸ INA § 101(a)(27)(J).

his or her parents not viable "due to abuse, neglect, or abandonment, or a similar basis found under State law" and must determine that "it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence." Second, the Department of Homeland Security must consent to the grant of SIJ status. In cases where the child is in the custody of the Department of Health and Human Services (HHS), the Secretary of HHS must specifically consent to juvenile court jurisdiction to determine the custody status or placement of an alien.

Victims of Trafficking or Criminal Activity

The T visa is available to aliens present in the United States who have been the victims of a severe form of trafficking in persons, who are physically present in the United States on account of such trafficking, and who "would suffer extreme hardship involving unusual and severe harm upon removal."¹⁸⁹ Aliens must comply with governmental requests for assistance in investigation or prosecution of the acts of trafficking, though persons unable to cooperate due to physical or psychological trauma or those under the age of eighteen are exempt from this obligation. After three years of continuous presence from the date of admission as a nonimmigrant, the T visa holder may adjust status.

The U visa is available to aliens who have "suffered substantial physical or mental abuse as a result of having been a victim" of qualifying criminal activity, which violated U.S. law or occurred in the United States.¹⁹⁰ The person must possess information related to the criminal activity and have been helpful or be likely to be helpful in the investigation or prosecution of the criminal activity. Where the person is under sixteen years of age, a parent, guardian, or next friend may possess information and assist in the investigation or prosecution, in the place of the child under sixteen. A U visa holder may adjust status after three years of continuous presence from the date of admission as a nonimmigrant.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

¹⁸⁹ INA § 101(a)(15)(T)(i).

¹⁹⁰ INA § 101(a)(15)(U)(i). See USCIS Adjudicator's Field Manual, chapter 39, for further details.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. Policy Memorandum from the Office of the Director, Guidance for Determining if an Adoption is Valid for Immigration and Nationality Act (INA) Purposes: Updates to Adjudicator's Field Manual (AFM) Chapters 21.4, 21.5, 21.6, 21.10 and 71.1; AFM Update AD12-10 (PM-602-0070) (9 July 2012).
2. Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, concluded at the Hague 29 May 1993, entered into force for the United States April 1, 2008.
3. Memorandum from Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, and Don Neufeld, Acting Associate Director of Domestic Operations, USCIS, to Field Leadership, Intercountry adoption under the Hague Adoption Convention and the USCIS Hague Adoption Convention rule at 8 CFR 204, 213a and 322, (HQDOMO 70/6.1.1-P) (31 October 2008).
4. Memorandum from Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, and Don Neufeld, Acting Associate Director of Domestic Operations, USCIS, to Field Leadership, Acceptance of an I-600A and I-600 after 4/1/2008 for a child habitually resident in a Hague Adoption Convention country – adoptions and grants of custody obtained before April 1, 2008, (14 July 2008).
5. U.S. Department of State's adoption website: www.adoption.state.gov

SUPPLEMENTS

IO Supplement

Adoptions

Most RAIO adjudications involving adoptions are intercountry adoption applications and petitions, reviewed by Overseas Adjudications Officers. A special unit covers this subject during the IOTC. However, their work is described briefly

here. Additionally, Refugee Officers sometimes have to sort out issues related to the validity of a claimed adoption during their adjudications.

Intercountry Adoptions

U.S. citizens adopt children from all over the world. International Operations officers adjudicate intercountry adoption cases filed by prospective adoptive parents (PAPs) residing both within and outside the United States.

In general, two separate intercountry adoption processes exist: 1) Orphan processing under INA § 101(b)(1)(F), and 8 CFR section 204.3, and 2) Hague Adoption Convention processing under INA §101(b)(1)(G), and 8 CFR section 204.300. Therefore, PAPs interested in adopting a child from another country must first decide on the specific country from which they will adopt. The procedures and laws USCIS officers apply in intercountry adoptions depend on whether the Hague Adoption Convention governs the adoption.

International Operations officers only adjudicate applications and petitions related to the Orphan process. The USCIS National Benefits Center in Lee's Summit, Missouri currently processes all Hague-related applications and petitions. In both processes, the USCIS officer will determine the prospective adoptive parents' suitability and eligibility to adopt a child and the child's eligibility to immigrate to the United States.

In addition to the two intercountry adoption processes described above, International Operations officers may also adjudicate Immediate Relative petitions on behalf of adopted children under INA § 101(b)(1)(E).

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

EVIDENCE

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course***EVIDENCE****Training Module****MODULE DESCRIPTION**

This module discusses burden and standards of proof and describes the types of evidence presented in support of petitions and applications for benefits in the RAIO Directorate.

TERMINAL PERFORMANCE OBJECTIVE(S)

You, the officer, will be able to determine whether an applicant establishes eligibility (meets his or her burden of proof) for the requested benefit based on the evidence of record.

ENABLING PERFORMANCE OBJECTIVES

1. Determine the proper standard of proof to apply in determining an applicant's eligibility as a refugee under INA § 101(a)(42).
2. Distinguish the applicant's burden of proof from the standards of proof necessary to establish eligibility as a refugee under INA § 101(a)(42).
3. Evaluate evidence presented in an application for protection under INA § 101(a)(42) for reliability and relevance.
4. Evaluate evidence presented in an application for protection under INA § 101(a)(42) to determine if the applicant has met the appropriate standard of proof.

INSTRUCTIONAL METHODS**METHOD(S) OF EVALUATION****REQUIRED READING**

Division-Specific Required Reading - Refugee Division**Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES****Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

Task/ Skill #	Task Description
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (4)
RI1	Skill in identifying issues of a claim (4)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (3)
DM7	Skill in making legally sufficient decisions (5)
DM9	Skill in making legally sufficient decisions with limited information (5)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
June 6, 2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	MMorales, RAIO Training
August 3, 2015	Throughout document	Reorganization of module, some stylistic edits, updated links	RAIO Training.

TABLE OF CONTENTS

1	INTRODUCTION	8
2	TYPES OF EVIDENCE.....	9
2.1	Testimonial Evidence from the Applicant	10
2.2	Statements by Other Parties	11
2.3	Travel Documents	12
2.4	Identification Documents	13
2.5	Civil Documents Issued by Government Agencies	14
2.6	U.S. Government Records.....	14
2.7	Medical Evidence.....	15
2.8	Country of Origin Information.....	16
2.9	Other Types of Physical Evidence	17
3	BURDEN OF PROOF.....	18
3.1	Burdens of “Persuasion” and “Production”	18
3.2	Establishing Eligibility (the Applicant’s Burden).....	19
3.3	Special Consideration in the RAIO Context	20
3.4	Testimony Alone May Be Enough.....	20
4	STANDARDS OF PROOF	21
4.1	Beyond any Reasonable Doubt.....	24
4.2	Clearly and Beyond Doubt.....	24
4.3	Clear and Convincing Evidence.....	25
4.4	Preponderance of the Evidence	26
4.5	More Likely Than Not	27
4.6	To the Satisfaction of the Adjudicator	26
4.7	Reasonable Possibility	28
4.8	Significant Possibility	28
5	METHODOLOGICAL APPROACH.....	29

6	CONCLUSION.....	30
7	SUMMARY	31
	PRACTICAL EXERCISES.....	33
	OTHER MATERIALS	34
	SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....	35
	Required Reading	35
	Additional Resources.....	35
	Supplements.....	35
	SUPPLEMENT B – ASYLUM DIVISION.....	38
	Required Reading	38
	Additional Resources.....	38
	Supplements.....	38
	SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....	45
	Required Reading	45
	Additional Resources.....	45
	Supplements.....	45

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

Your job as an officer in the RAIO Directorate is to review applications and petitions to determine if the applicant or petitioner is eligible for a benefit under the Immigration and Nationality Act (INA), and to adjudicate his or her case in a neutral, unbiased manner. In every decision you make, you will gather and evaluate different types of evidence, including testimony, documents, and country of origin information (COI). Before you begin any adjudication, you must understand the legal requirements that the applicant or petitioner must meet.

This module provides guidance on evidence that you may see as you adjudicate cases. This module also discusses an applicant's burden of proof and the various standards of proof that apply in adjudicating different applications. Some benefits require specific types of documentary evidence to establish eligibility. For example, if a U.S. citizen (USC) wants to petition for his non-citizen mother so that she may apply for an immigrant visa, he must file a Form I-130, Petition for Alien Relative. In support of the petition, he must provide evidence of his citizenship and his relationship to his mother. To prove that he is a USC, he might submit a naturalization certificate or a passport. To prove his relationship to his mother, he would submit his birth certificate.

On the other hand, some benefits such as refugee and asylum status involve individuals who have fled their countries with little or no documentation.¹ In these cases, an interview is required because often testimony is the only evidence the applicant will have to establish large parts of his or her claim.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Module, *Decision Making*. You will identify the relevant legal requirements of

¹ *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *UNHCR Handbook*, ¶ 74 (reissued, Geneva, Dec. 2011).

the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, assign weight to each piece of evidence, and determine whether the applicant's burden of proof has been satisfied according to the appropriate standard of proof.

2 TYPES OF EVIDENCE

Generally, you must consider any statement, document, or object that an applicant offers as evidence. An applicant may also present witnesses at an interview. Witness testimony is evidence to be considered and weighed along with all the other evidence presented in the case.² See ASM Supplement – Types of Evidence. In addition, any COI materials that you discover in your research and information accessed in any computer databases are also evidence.

In the asylum and refugee context, applicants often face special difficulties presenting evidence. Generally, persecutors do not provide evidence of their persecution or intentions. Additionally, the applicant may have been forced to flee without an opportunity to gather documents, or it may have been dangerous for the applicant to carry certain documents, such as a written threat or identification documents.³

Human rights monitors and reporters may have difficulty documenting abuses in some refugee-producing countries that maintain firm control over the press and do not allow human rights monitors access to the country.

When applicants do provide documents, they may not be able to establish the genuineness of the documents.⁴ If you believe that the documents are genuine, the evidentiary value should not be discounted merely because the documents are not certified or authenticated.

You must consider and evaluate any evidence submitted by the applicant. In order to create a fair and objective process for adjudicating claims, all evidence must be considered using the analytical framework explained in the RAIO Training Module, *Decision Making*. Although you must consider all evidence submitted by the applicant, you do not have to afford all evidence the same weight. You must determine the probative value of each piece of evidence. The circumstances surrounding the evidence and information about the evidence will determine what weight you assign to it. Circumstances that may affect the weight of the evidence include reliability, relevance, content, form, and the nature of the evidence.

² 8 C.F.R. § 208.9(b).

³ See, e.g., *Aguilera-Cota v. INS*, 914 F.2d 1375, 1380 (9th Cir. 1990) (“The last thing a victim may want to do is carry around a threatening note with him.”)

⁴ See *Zavala-Bonilla v. INS*, 730 F.2d 562 (9th Cir. 1984).

Below is a non-exhaustive list of some of the common types of evidence that you might encounter along with some suggestions of ways in which the evidence may be used.

2.1 Testimonial Evidence from the Applicant

The Application Form

The application form supplies basic biographical information about the applicant and provides information about the basis for his or her claim. A review of the application should provide you with an indication of what biographical information may be relevant to the applicant's claim. The form may also contain some information about travel patterns that may be relevant to subsidiary issues such as access to the program in refugee resettlement cases and one-year filing deadline issues in asylum claims. You should read the form carefully to determine what information on the form, beyond the statements of the claim itself, may be relevant. With all applications where there is an interview, you should go over the biographical information with the applicant at the beginning of the interview, making certain that the applicant agrees that the information is correct. This sets a baseline of factual information that you may rely on if inconsistencies or contradictions arise later in the interview.

Oral Testimony

When conducting an interview, you should make certain that you elicit information on all material aspects of the claim. In many refugee and asylum cases, the oral testimony at the interview, along with the information contained in the application form, will be the most critical evidence you will gather and evaluate to make your decision. It is your duty to elicit as much detail as possible during the interview. In fulfilling your duty you will also be making your post-interview decision-making much easier.

Written Statements

In some types of cases, such as asylum or waiver cases, applicants will often submit statements with their application describing their claims. These statements will usually be much more detailed than the information provided on the application form, and you should review them very carefully.

All refugee cases will have a referral statement or form through which the applicant is granted access to the U.S. Refugee Admissions Program (USRAP). For refugee cases referred for resettlement consideration by the United Nations High Commissioner for Refugees (UNHCR), a U.S. Embassy or certain Non-Governmental Organizations (NGOs), the referring entity will provide a Resettlement Referral Form (RRF) outlining the applicant's claim. The Resettlement Support Center (RSC) will also interview all applicants and prepare a statement of the refugee claim which will accompany the Form I-590, Registration for Classification as Refugee. The RRF and RSC statement should be reviewed and considered in light of other information in the record and the applicant's testimony.

You should find those sections of the written statement that contain information that directly relates to the applicant's eligibility and compare them to statements in the application form. The statement is useful in helping to identify the material elements of the applicant's claim about which you will question the applicant during the interview.

The written statement might also contain contradictions or may raise inconsistencies when compared to the applicant's oral testimony. Apparent contradictions or inconsistencies that are material or relevant to the applicant's claim and eligibility should be explored in the interview. When evaluating their impact on credibility you should consider the circumstances under which the statements were prepared, whether they were taken under oath, and any other indicia of reliability.

2.2 Statements by Other Parties

Friends and Family (Oral Testimony)

Sometimes a family member or friend testifies under oath at the applicant's interview. Such oral testimony may be material to the applicant's claim and may be considered corroborative evidence.

Friends and Family (Written Statements)

An application may contain statements written by the applicant's friends or family. Some considerations that you should keep in mind when reviewing such evidence include:

- the type of written statement submitted (e.g., a simple letter, an affidavit, or a sworn statement or declaration made under penalty of perjury);
- how the content of the statement relates to the claim; and
- whether the document was created to support the claim.

In evaluating the content of the statement, you should determine whether the statement was written before or after the applicant started the application process. In the protection context, if the statement was written before the applicant claims to have decided to apply for protection, and the statement contains very specific information about the applicant's claim, you should ask why this information was included in the statement.

Boilerplate statements should be evaluated based on the context in which applicants use them. In some cases boilerplate statements may be used as part of an adverse credibility determination.⁵ See RAIO Training Module, *Credibility*, section on "Similar Claims." If

⁵ See *Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006); *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010).

the applicant submits written statements with nearly identical language, you should closely question the applicant about who prepared the statements and under what circumstances. For example, ask the applicant how the people who signed the statements had knowledge of their content. Point out to the applicant the extreme similarity in the documents, and provide the applicant an opportunity to explain why they are so similar. The applicant's answers may help you determine the statements' evidentiary weight and their impact on the overall credibility determination. Bear in mind, however, that the applicant may not necessarily know how or by whom the written statements were prepared or procured, as the applicant may not have personally obtained the documents.

See RAD Supplement – Testimony by Other Refugee Applicants.

Experts (Written Reports and Affidavits)

Applicants sometimes submit supportive documentation in the form of statements, reports, and affidavits written by outside parties such as subject matter experts, members of academia, and physicians. One common type of such evidence is medical reports, which are addressed below at section 2.7. You should always accept such documentation, but the weight you assign it should be based on a number of factors. Since the statement will usually be based on a claimed expertise of the declarant, the statement should give an adequate explanation of that expertise, which usually constitutes some background information about the declarant. The statement should give an indication of what knowledge the declarant has of the specific facts in the case at hand. It may make some connection between the factual information being provided and the applicant's claim. See ASM Supplement – Statements by Other Parties.

2.3 Travel Documents

Any documentation the applicant presents concerning his or her travel is useful. For example, to the extent that the documents give times and places where the applicant has been, you can establish a chronology that may provide evidence of the applicant's eligibility to apply for asylum or his or her access to the refugee program. The most common types of travel documents that an applicant might present are:

Passports

Possession of a valid national passport creates a *prima facie* presumption that the holder is a national of the country of issuance, unless the passport itself states otherwise. A person holding a passport showing him or her to be a national of the issuing country, but who claims that he or she does not possess that country's nationality, must substantiate his or her claim, for example, by showing that the passport is a so-called 'passport of convenience' (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). Generally, the mere assertion by the holder that the passport was issued as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. It is sometimes possible to obtain information

about the significance of a passport from the issuing authority, but only if confidentiality is not violated. If you are unable to obtain reliable, timely information about whether the passport conveys nationality, you must determine the credibility of the applicant's assertion regarding his or her passport in the context of the entirety of his or her testimony.⁶

In addition to proving nationality, passports may also provide information that helps you establish the applicant's travel patterns and places of residence. You should carefully examine a passport with stamps in it that indicate entries and exits from different countries. Sometimes you may find proof that the applicant was not where he or she claimed a specific event happened, when that event occurred. Passports may also provide some evidence of an applicant's profession, and this may be relevant to his or her claim. Finally, passports from third countries may provide evidence of dual nationality or firm resettlement.

Refugee Travel Documents

Possession of a refugee travel document by an applicant can be proof of identity and nationality and that another state party to the Refugee Convention has recognized that person as a refugee. It may also, however, raise the issue of firm resettlement. Like a passport, a refugee travel document may contain stamps for entry and exit from different countries to which the applicant has traveled and can be used to establish a chronology and determine travel patterns.

Tickets from Transportation Carriers

Tickets from airlines and other common carriers provide evidence that may help to map out travel patterns and timelines that could be relevant to part of the applicant's claim. In the asylum context, tickets may also provide evidence relevant to the applicant's eligibility to apply under the one-year filing deadline.

2.4 Identification Documents

National Identify (ID) Cards

An applicant may submit a national ID card as evidence of his or her identity and nationality. These documents can sometimes provide other useful information that you can use in questioning the applicant. For example, national ID cards usually have an issue date. If an applicant submits a national ID card that has an issue date later than the date on which the applicant claims to have left his or her country, ask the applicant how he or she obtained the document.

⁶ UNHCR Handbook, ¶ 93.

Organizational ID Cards

(student, employment, union, refugee ID, etc.)

These types of documents generally should not be used as evidence of identity.; Rather, they are evidence that the holder has been a member of an organization or has held a particular status (student, refugee, etc.) that may be relevant to the claim. Again, such documents, when examined carefully, may also provide evidence beyond mere membership.

2.5 Civil Documents Issued by Government Agencies

(Police reports, household registrations, birth certificates, death certificates, marriage certificates, records from government hospitals, etc.)

When an applicant submits a document from another country, you should consider carefully what information is contained in the document and its relevance to the applicant's refugee claim or other eligibility criteria.

Example

An applicant submits a police report she received after filing a complaint because she was beaten by an unknown assailant. While the police report is evidence that the applicant was harmed, it is likely that it relates to a number of different elements in the refugee definition, such as whether the applicant suffered past persecution, whether the assault was on account of a protected ground, and whether the government was unwilling or unable to protect her. The police report should prompt you to ask follow-up questions regarding the relevant issues.

2.6

(b)(7)(e)



⁷ See RAIO Training Module, *Fraud*.

As with all documentary evidence, records produced by the U.S. government should be evaluated for their probative value. Records produced by public officials in the regular course of their duties should generally be treated as presumptively reliable.⁸ The purpose for which and circumstances under which government documents were produced, however, should always be considered and may limit their evidentiary value, particularly in relation to a claim for refugee or asylum status.

For example, interviews of applicants by agents of U.S. Customs and Border Patrol at the airport or port of entry or near the U.S. borders are intended to quickly gather basic information necessary for CBP's operations. They are not designed to elicit the often sensitive and complex facts involved in adjudicating a protection claim, and they often take place under circumstances the applicants may experience as rushed or confusing, and in which they may be reluctant to divulge information relevant to adjudication of a protection claim.

Several courts have indicated that adjudicators must carefully examine these statements and exercise caution before relying on them, particularly in order to impeach an applicant's credibility. The Second Circuit Court of Appeals, for example, has listed four factors officers should consider: (1) whether the record of the interview is verbatim or merely summarizes the person's statements; (2) whether the questions asked were designed to elicit details related to the claim and whether the officer asked follow-up questions that would aid in developing the account; (3) whether the applicant was reluctant to reveal information because of prior interrogation or other coercive experiences in his or her home country; and (4) whether answers to the questions suggested the applicant did not understand English or the translation was not reliable. While these factors are not exhaustive, you should consider them when determining how much weight to accord a record produced in such circumstances.⁹

2.7 Medical Evidence

The term "medical evidence" usually refers to a written opinion issued by a medical doctor, a psychiatrist, a psychologist, or other medical expert who produces statements concerning the physical and mental health of an individual. Medical evidence can also be obtained in the form of witness testimony or medical records.

Medical evidence can be presented by the applicant at the time of his or her application. In the asylum context, you may request the applicant to provide it after the interview. It

⁸ *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988); see, e.g., *Munoz-Avila v. Holder*, 718 F.3d 976, 979 (7th Cir. 2013); *Kim v. Holder*, 560 F.3d 833, 836 (8th Cir. 2009); *Felczerek v. INS*, 75 F.3d 112, 116 (2d Cir. 1996).

⁹ *Ramsameachire v. Ashcroft*, 357 F.3d 169, 180 (2d Cir. 2004); see also *Nadmid v. Holder*, 784 F.3d 357, 360 (7th Cir. 2015); *Balogun v. Ashcroft*, 374 F.3d 492, 505 (7th Cir. 2004); *Balasubramaniam v. INS*, 143 F.3d 157, 162 (3d Cir. 1998).

would be rare for such evidence to be available in an overseas refugee context. The most common scenario where such information is available is when applicants are processed in-country as they often have greater access not just to identity documentation but also to police or medical records which may corroborate claimed harm.

These reports can facilitate the work of decision-makers. To be given full weight, a medical evaluation must be written with objectivity and impartiality. Depending on the case, a medical report produced by the applicant may not necessarily resolve inconsistencies and statements that are found to be not credible. In fact, evidence presented in the medical documentation can sometimes undermine a claim or raise concerns about inconsistencies.

You may request medical evidence when you feel it is necessary to the adjudication. The applicant will either have to provide the evidence or give a reasonable explanation why the evidence is not available.¹⁰ If such evidence is produced in the country where the applicant is applying, the applicant may have access to the evidence. Another consideration concerning the reasonableness of the applicant's ability to produce such evidence is the availability of physicians in the area who are qualified to make such an examination and their willingness to do them at no cost. In general, you should request medical evidence only if the applicant has failed to meet his or her burden of proof and additional corroboration is necessary to meet it.

The Istanbul Protocol¹¹ establishes internationally accepted guidelines that govern how best to handle medical investigations of allegations of torture. Although there is no specific requirement that medical evidence follow the Istanbul Protocol, it can serve as a guide for adjudicators as to what constitutes well-documented medical evidence. The more closely the medical evidence meets the standards in the Istanbul Protocol, the easier it is to determine the probative value of the evidence.

When medical evidence is submitted, it will most often be submitted to support a claim of past persecution. If an applicant indicates that he or she sought medical treatment in the United States or his country of first refuge because of torture, he or she should be asked to provide some medical documentation or explain why he or she is unable to provide it.

2.8 Country of Origin Information¹²

Depending on the adjudication, COI is evidence you can use to help determine whether an individual may be eligible for the requested benefit. COI provides objective evidence

¹⁰ *Matter of S-M-J*, 21 I&N Dec. at 725-26.

¹¹ United Nations Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, August 9, 1999.

¹² See RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

against which documentation in the record and the testimony of an interviewee can be viewed and evaluated. In some cases, COI may be sufficient to establish a particular fact that is relevant to the adjudication. It is not necessary for an applicant to testify to every fact that the adjudicator finds. In refugee and asylum adjudications, you **must** evaluate the applicant's claim in light of COI. See ASM Supplement – Country of Origin Information.

2.9 Other Types of Physical Evidence

In some situations, an applicant may offer as evidence an object other than paper documentation, such as a videotape, compact disc (CD), flash drive, website link, book about the history of a conflict, or a bottle of medicine to substantiate a medical condition. In such instances, you should consult with your supervisor about how to best accept the information associated with this type of evidence.

Documentary Evidence—Authentication

In affirmative asylum and refugee processing, **authentication is not necessary**. Documents should be accepted and considered as part of the evidence in the record whether authenticated or not. Bear in mind that under the Federal Rules of Evidence, a document may be authenticated by the “[t]estimony of witness with knowledge.”¹³ For asylum and refugee purposes, a “witness with knowledge” may be the applicant.¹⁴ If the applicant provides a detailed, plausible, and consistent account of how he or she came into possession of the document, you should consider that document authenticated.

Although authentication is not necessary, you may give more weight to a document that is authenticated than a document that is not authenticated—and the method of authentication may affect the weight given the document.¹⁵ When an applicant submits a document that does not appear to be what it purports to be, in order to completely discredit that documentary evidence you must provide sound, cogent reasons for doing so.¹⁶ Otherwise, the document should be evaluated for its evidentiary value.

Courts have held that the means of authentication found in the immigration regulations are not the only means by which documents may be authenticated, and the trier of fact should give the applicant the opportunity to authenticate documents by alternative means,

¹³ Federal Rules of Evidence Rule 901(b)(1), 28 U.S.C.A.

¹⁴ *Zhanling Jiang v. Holder*, 658 F.3d 1118 (9th Cir. 2011)

¹⁵ *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (The method of authentication that the party submitting the evidence utilizes may affect the weight of the evidence, and Immigration Judges “retain broad discretion to accept a document as authentic or not based on the particular factual showing presented), citing *Vatyan v. Mukasey*, 508 F.3d 1179, 1182-83 (9th Cir. 2007))

¹⁶ *Tassi v. Holder*, 660 F.3d 710 (4th Cir. 2011).

found in the Federal Rules of Evidence, if the applicant is unable to authenticate in one of the ways specified in the immigration regulations.¹⁷

3 BURDEN OF PROOF

In all applications for immigration benefits, the applicant bears the burden of proof to establish eligibility for the benefit he or she is seeking.¹⁸ The burden of proof refers to the duty of one party to prove facts that meet the legal standard being applied. An applicant or petitioner for a benefit under the INA must establish (i.e., bears the burden of proof to establish) that he or she meets the requirements for the benefit being sought and is not subject to any bars or other disqualifying factors. This means that the applicant must produce evidence that establishes the facts of the case, and that those facts must meet the relevant legal standard.

Because of the non-adversarial nature of RAIO interviews, while the burden is always on the applicant to establish eligibility, there is a shared aspect of that burden in which you have an equal obligation to help fully develop the record.¹⁹

3.1 Burdens of “Persuasion” and “Production”

The phrase “burden of proof” might be thought of to encompass the concepts of the “burden of persuasion” and the “burden of production.” The burden of persuasion refers to the burden to convince the adjudicator that the evidence supports the facts asserted.

The burden of production entails the obligation to come forward with the evidence at different points in the proceedings.

In overseas refugee adjudications, there is no time at which the burden of proof shifts away from the applicant. There are, however, situations in which it may be required for the officer to produce some evidence. For example, although it is the applicant’s burden to establish that he or she is **not** firmly resettled, the BIA has held that the government bears the initial burden to produce some evidence indicating that an applicant is firmly resettled.²⁰

In asylum adjudications, while the applicant always has the burden of proof to establish eligibility for asylum, there are specific instances when the burden shifts to the government to prove a certain point related to the exercise of discretion when eligibility

¹⁷ *Tassi v. Holder*, 660 F.3d 710, 723 (4th Cir. 2011); *Zhanling Jiang v. Holder* 658 F.3d 1118, 1121 (9th Cir. 2011); *Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 214 n.5(BIA 2010)

¹⁸ INA § 291; *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); *UNHCR Handbook*, ¶ 196.

¹⁹ 8 C.F.R. § 208.9(b); *UNHCR Handbook*, ¶ 196.

²⁰ *Matter of A-G-G-*, 25 I&N Dec. 486, 503 (BIA 2011).

is based on past persecution. However, the burden of persuasion to establish eligibility for asylum never shifts and always remains on the applicant. For further information on burden shifting, see ASM Supplements –Applicant’s Burden and Burden Shifting When Past Persecution Found.

3.2 Establishing Eligibility (the Applicant’s Burden)

The applicant must establish that he or she meets all of the legal elements of the benefit being sought. It is your responsibility to read and understand the provisions in the statute, any corresponding regulations, and any binding case law applicable in each case you adjudicate. See RAD Supplement – Applicant’s Burden and ASM Supplement – Applicant’s Burden, below.

Example for Refugee Processing

To establish eligibility for admission as a refugee under INA § 207(c), the applicant must establish that he or she

- is of special humanitarian concern to the United States
- is a refugee, as defined at INA § 101(a)(42)
- is not firmly resettled
- is admissible as an immigrant
- merits a favorable exercise of discretion

Example for Asylum Adjudications

To establish eligibility for asylum under INA § 208, the applicant must establish that he or she

- is eligible to apply for asylum
- is a refugee within the meaning of § 101(a)(42)(A) of the Act
- is not subject to any mandatory bars to asylum
- merits a favorable exercise of discretion

Example for Adjudication of Orphan Petitions

To establish eligibility for an orphan petition, adoptive parent(s) must establish that

- at least one of the adoptive parent(s) is a U.S. citizen, and
- the adoptive parent(s) will provide proper parental care to the child, and
- the child is an “orphan” as defined in U.S. immigration law, and

- either the child has been adopted abroad, and that each adoptive parent saw the child in person before or during the adoption or the adoptive parent(s) have legal custody of the child for emigration to the United States and adoption after the child arrives.

3.3 Special Consideration in the RAIO Context

The Board of Immigration Appeals (BIA) has recognized that a “cooperative approach” is required in adjudicating asylum requests.²¹ This approach also applies to all RAIO adjudications. The BIA explained that this is because the BIA, immigration judges, and USCIS “all bear the responsibility of ensuring that refugee protection is provided where such protection is warranted by the circumstances of an asylum applicant’s claim.”²²

While the applicant must establish eligibility for the benefit, as part of the cooperative approach you have the duty to elicit sufficient information at the interview. You also have the duty to research COI to properly evaluate whether the applicant is eligible for the benefit he or she applied.²³ The burden is on the applicant to prove his or her claim, but you have a duty to develop the record completely.

3.4 Testimony Alone May Be Enough

A refugee or asylum applicant may establish eligibility with testimony alone.²⁴ If you, as the trier of fact, believe that other evidence is needed to corroborate the otherwise credible testimony of the applicant, you will request the evidence and the applicant must either: 1) provide the evidence or 2) provide a reasonable explanation as to why he or she cannot provide the evidence.²⁵

Burden of proof is different from credibility. For each case you adjudicate, you must make a credibility determination that follows the analytical framework in the RAIO Training Module, *Credibility* before deciding whether the applicant must

²¹ *Matter of S-M-J*, 21 I&N Dec. 722, 724 (BIA 1997).

²² *Id.* at 723.

²³ 8 C.F.R. § 208.9(b); *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); and UNHCR Handbook, ¶ 196. See also RAIO Training Modules, *Interviewing – Eliciting Testimony* and *Researching and Using Country of Origin Information in RAIO Adjudications*.

²⁴ See *Matter of Mogharrabi*, 19 I&N Dec. 239, 245 (BIA 1987); *Shrestha v. Holder*, 590 F.3d 1034 (9th Cir. 2010). Note that in the asylum context, under INA § 208(b)(1)(B)(ii), the applicant’s testimony is only sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts sufficient to demonstrate that an applicant is a refugee.” See also ASM Supplement – Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts” and RAIO Training Module, *Credibility*.

²⁵ See *Matter of S-M-J*, 21 I&N Dec. at 725-26.

provide additional evidence to meet his or her burden of proof. In other words, you cannot determine that an applicant has not met his or her burden of proof without first having done a complete credibility analysis.

In asylum cases, an applicant whose testimony you have found not to be credible (or whose testimony you have found to be unreliable for other reasons²⁶) may, in some circumstances, meet his or her burden of proof by providing other reliable evidence. If you find that the applicant has not provided credible or reliable testimony, you must consider whether non-testimonial evidence in the record is nonetheless sufficient to meet the applicant's burden of proof.²⁷

In both asylum and refugee cases, an applicant's testimony may only be credible in part, but may nonetheless establish his or her eligibility, leading to a "split credibility determination." For example, a refugee may establish eligibility through testimony that, while not credible in regards to past persecution, is credible in regards to the applicant's well-founded fear of persecution or vice versa.²⁸

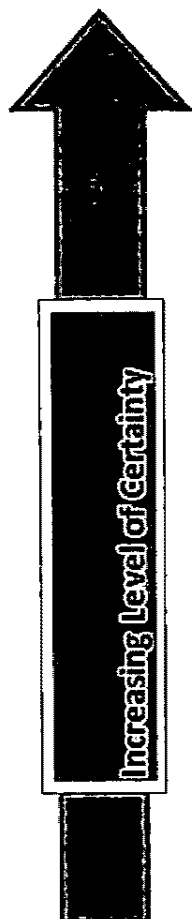
4 STANDARDS OF PROOF

The burden of proof is not the same as the standard of proof. The standard of proof refers to the amount of evidence, or level of proof, required to prove a given fact. There are several different standards of proof that apply during different stages of the adjudication process. *See* chart below.

²⁶ See *Matter of J-R-R-A-*, 26 I&N Dec. 609, 612 (BIA 2015) (noting, in the case of an applicant whose testimony indicated lack of competency, that an applicant's testimony may be found to be unreliable for reasons other than deliberate fabrication and that the adjudicator "should then focus on whether the applicant can meet his burden of proof based on the objective evidence of record and other relevant issues.")

²⁷ *Ilunga v. Holder*, 777 F.3d 199, 213 (4th Cir. 2015).

²⁸ See RAIO Training Module, *Credibility*, Sec. 6, "Split Credibility Finding." See also Refugee Affairs Division (RAD), *Refugee Application Assessment Standard Operating Procedure (SOP)* (Pilot Jun. 21, 2013) p.19.



Standard of Proof		Refugee	Asylum	Int'l Ops
Beyond any reasonable doubt	Very high			I-130 Adam Walsh Act- no risk to beneficiary
Clearly and beyond doubt	Highly probably true	Admissibility		Admissibility
AND Clear and convincing	Firm belief or conviction		Filed within one year	<ul style="list-style-type: none"> Rebut prior fraudulent marriage Citizenship of children born out of wedlock
Preponderance of the evidence	More than 50% chance	<ul style="list-style-type: none"> Meets refugee definition Special humanitarian concern Not firmly resettled Facts supporting eligibility 	<ul style="list-style-type: none"> Meets refugee definition Not subject to any bars Facts supporting eligibility 	Eligibility for benefits sought
AND To the Satisfaction of the adjudicator	Probably true		Exceptions to 1-year rule	
AND More Likely Than Not				
Reasonable possibility	One in ten chance	Well-founded fear	Well-founded fear Reasonable fear	Well-founded fear
Significant possibility	Substantial and realistic possibility	Interdictions at sea	Credible fear	

You must evaluate information according to several standards of proof for different types of applications and sometimes even in the course of the adjudication of a single application. These standards will be discussed in more detail during your division-specific courses.

Example

In asylum and refugee processing, an applicant must prove by a preponderance of the evidence that he or she meets the definition of a refugee: that is, that he or she suffered persecution in the past or that there is a reasonable possibility that he or she will be persecuted in the future. When you decide whether an applicant is a refugee based on a fear of future persecution, you use the “reasonable possibility” standard to determine whether the applicant has a well-founded fear of persecution and the “preponderance of the evidence” standard to determine whether the applicant meets all other elements of the refugee definition and whether the facts supporting the applicant’s eligibility are true. You are using two different standards within one adjudication: “preponderance of the evidence” and “reasonable possibility.”

4.1 Beyond any Reasonable Doubt

In criminal cases, the government is required to prove a defendant’s guilt *beyond a reasonable doubt*. “A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.”²⁹ This standard is used in criminal law and in one situation encountered by RAIO officers: according to the February 8, 2007 policy memo implementing the Adam Walsh Act, where a U.S. citizen filing a petition for an alien relative has been convicted of a specified offense against a minor, he or she must establish that he or she poses “no risk” to the safety and well-being of the beneficiary “beyond any reasonable doubt.”³⁰

4.2 Clearly and Beyond Doubt

The *clearly and beyond doubt* standard is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases, and it is comparable to the “clear and convincing” standard explained below. While the evidence submitted to meet the “clearly and beyond doubt” standard must be “stronger and more persuasive” than the evidence necessary to satisfy the lower

²⁹ O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions* § 12.10 (5th ed. 2000).

³⁰ See also *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014) (holding that the BIA lacks jurisdiction to review the standard of proof applied by USCIS in Adam Walsh Act determinations).

preponderance of evidence standard of proof, the officer must give the applicant “the same fair and reasonable evaluation of his evidence” and must not presume that the applicant’s evidence is “false or contrived.”³¹

An individual approved for refugee status must prove that he or she is “clearly and beyond a doubt entitled to be admitted” at the time that he or she seeks to enter the U.S. as a refugee, as well as when he or she seeks to become a lawful permanent resident one year later.³²

Refugee applicants abroad must establish that they are admissible to the United States as immigrants.³³ When you interview a refugee applicant outside of the United States and adjudicate the Form I-590, you are making an initial determination on that applicant’s eligibility for admission into the United States as a refugee. An immigration officer at the Port of Entry (POE) will reference your determination when deciding whether to admit the individual into the United States as a refugee.³⁴ During their USCIS interview abroad and prior to the determination at the POE, all refugees are applicants for admission who must establish their admissibility “clearly and beyond a doubt.”³⁵ Therefore, you will apply the clearly and beyond doubt standard of proof to the admissibility portion of the refugee status determination.

The “clearly and beyond doubt” standard of proof should not be confused with the “beyond a reasonable doubt” standard used in U.S. criminal courts where the government or prosecutor has the burden of establishing “beyond a reasonable doubt” that the defendant committed the essential elements of the crime of which he or she is accused. The U.S. Supreme Court has said that “we should hesitate to apply [the “beyond a reasonable doubt” standard] too broadly or casually to non-criminal cases.”³⁶

4.3 Clear and Convincing Evidence

³¹ *Matter of Patel*, 19 I&N Dec. 774, 784-85 (BIA 1988) (quoting *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966)).

³² See INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a); 207.2(b); INA § 209(a)(1); *Matter of Jean*, 23 I&N Dec. 373, 381 (AG 2002).

³³ INA § 207(c)(1).

³⁴ 8 C.F.R. §§ 207.2(b); 207.4.

³⁵ INA §§ 291; 235(b)(2)(A); 8 C.F.R. § 207.1(a). See U.S. Immigration and Naturalization Service Memo., *Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing*, p.1 (Nov. 9, 1992) (confirming that at their interviews with U.S. immigration officers abroad, refugees are considered applicants for admission).

³⁶ *Addington v. Texas*, 441 U.S. 418, 425-26 (1979).

The *clear and convincing* standard has been defined as a degree of proof that will produce “a firm belief or conviction as to allegations sought to be established.”³⁷ It is higher than the preponderance standard used in civil cases, but lower than the “beyond a reasonable doubt” standard required in criminal cases.

An applicant for asylum must demonstrate by *clear and convincing evidence* that the application has been filed within one year after the date of the applicant’s arrival in the United States, unless the applicant establishes to the satisfaction of the asylum officer that an exception applies.³⁸

4.4 Preponderance of the Evidence

A fact is established by a *preponderance of the evidence* if the adjudicator finds, upon consideration of all the evidence, that it is more likely than not that the fact is true. In other words, there is more than a 50% chance that the fact is true. This is the standard of proof used in most RAIO adjudications.

Determination of whether a fact has been established “by a preponderance of the evidence” should be based on both the quality and quantity of the evidence presented.

In evaluating whether an applicant had met his or her burden of establishing the facts underlying his or her request for asylum, the BIA has explained, “When considering a quantum of proof, generalized information is insufficient. Specific, detailed, and credible testimony or a combination of detailed testimony and corroborative background evidence is necessary to prove a case for asylum.”³⁹

4.5 To the Satisfaction of the Adjudicator

The *to the satisfaction of the adjudicator* standard has been interpreted to require a showing similar to that of the “preponderance of evidence” standard, requiring an individual to prove an issue “by a preponderance of evidence which is reasonable, substantial and probative,” or “in his favor, just more than an even balance of the evidence.”⁴⁰

³⁷ See *Black’s Law Dictionary* (5th Ed.).

³⁸ INA §§ 208(a)(2)(B)-(D); 8 C.F.R. § 208.4(a)(2)(i)

³⁹ *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

⁴⁰ See *Matter of Barreiros*, 10 I&N Dec. 536, 538 (BIA 1964) (interpreting same standard for rescinding LPR status by establishing that applicant was not eligible for adjustment); *Matter of V-*, 7 I&N Dec. 460, 463 (BIA 1957) (interpreting standard for an alien to establish that a marriage was not contracted for the purpose of evading immigration laws).

An asylum seeker cannot apply for asylum if he or she has previously applied for and been denied asylum by an immigration judge or the BIA, unless the asylum seeker demonstrates to the satisfaction of the Attorney General or the Secretary of Homeland Security changed circumstances that materially affect asylum eligibility. Similarly, an asylum seeker cannot apply for asylum more than one year after the date of arrival in the United States, unless the applicant demonstrates *to the satisfaction of the Attorney General or the Secretary of Homeland Security* changed circumstances that materially affect eligibility, or extraordinary circumstances relating to the delay in filing the application within the required time period.

The standard “to the satisfaction of the adjudicator” places the burden on the applicant to demonstrate that an exception applies. The applicant is not required to establish “beyond a reasonable doubt” or by “clear and convincing evidence” that the standard applies. Rather, this standard has been described in another immigration context as requiring the applicant to demonstrate that the exception applies through “credible evidence sufficiently persuasive to satisfy the Attorney General in the exercise of his reasonable judgment, considering the proof fairly and impartially.”⁴¹

4.6 More Likely Than Not

The *more likely than not* standard is comparable to the “preponderance of the evidence” standard and the equivalent “to the satisfaction of the adjudicator” standard. While the “preponderance of the evidence” standard requires a greater than 50% likelihood that a fact is true, the “more likely than not” standard requires, in the context in which RAIO officers encounter it, a greater than 50% likelihood that a future event will occur.

To establish eligibility for withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations that implement the Convention Against Torture (CAT), the applicant must establish a set of events and/or conditions, substantiated by a preponderance of evidence, showing that he or she *would be* persecuted or tortured in the country of removal. The Supreme Court has held that this means the applicant must establish that it is “more likely than not” (a greater than 50% chance) that he or she would be persecuted or tortured.⁴²

RAIO officers do not adjudicate claims for withholding of removal under INA section 241(b)(3) or protection under the CAT. When conducting credible fear screenings or protection screenings for aliens interdicted at sea, though, refugee and asylum officers determine whether there is a significant possibility that each applicant could establish eligibility for these benefits. Thus, in these processes, officers must decide whether there

⁴¹ See *Matter of Bufalino*, 12 I&N Dec. 277, 282 (BIA 1967) (interpreting the “satisfaction of the Attorney General” standard as applied when adjudicating an exception to deportability for failure to notify the Service of a change of address).

⁴² 8 C.F.R. § 208.16(b)(1); *INS v. Stevic*, 467 U.S. 407, 104 S. Ct. 2489 (1984)

is a significant possibility that the applicant will be able to demonstrate that it is more likely than not that he or she will be persecuted or tortured in his or her home country. To adjudicate these cases, therefore, officers must fully understand both the “significant possibility” standard and the “more likely than not” standard.

4.7 Reasonable Possibility

The *reasonable possibility* standard is lower than the “more likely than not” standard. In both asylum and refugee cases, a “well-founded fear of persecution” is established if there is a “reasonable possibility” that the applicant would be persecuted. While an applicant for refugee or asylum status must always establish his or her eligibility for the benefit (and the facts underlying the claim) by a preponderance of the evidence, one element of the refugee definition requires an applicant to show that the level of certainty that he or she would be persecuted in the future meets the “reasonable possibility” standard. In *Matter of Z-Z-O-*, the Board of Immigration Appeals clarified that an adjudicator’s predictions of what events may occur in the future are findings of fact, whereas whether an applicant has established an objectively reasonable fear of persecution based on these facts is a legal determination.⁴³

The U.S. Supreme Court decision in *Cardoza-Fonseca* emphasized that “[o]ne can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.” The Court, in dicta, went on to cite favorably a leading authority:

Let us ... presume that it is known that in the applicant's country of origin every tenth adult male person is either put to death or sent to some remote labor camp.... In such a case it would be *only too apparent* that anyone who has managed to escape from the country in question will have ‘well-founded fear of being persecuted’ upon his eventual return.⁴⁴

You should consider whether a preponderance of the evidence shows that a reasonable person in the applicant’s circumstances would fear persecution.

4.8 Significant Possibility

Neither the statute nor the immigration regulations define a *significant possibility*, and the standard is not discussed in immigration case law. RAIO officers apply this standard in the context of credible fear determinations done in expedited removal cases and interdictions at sea. A credible fear of persecution or torture is defined as a “significant

⁴³ *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-591 (BIA 2015).

⁴⁴ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440, 107 S. Ct. 1207, 1213, 1217 (1987)(emphasis added); citing A. Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).

possibility” that the applicant could establish eligibility for asylum or for withholding of removal or deferral of removal under the Convention Against Torture.⁴⁵

The legislative history behind the adoption of the “significant possibility” standard in these contexts indicates that the standard “is intended to be a low screening standard for admission into the usual full asylum [or overseas refugee] process.”⁴⁶ On the other hand, a claim that has “no possibility of success,” or only a “minimal or mere possibility of success,” would not meet the “significant possibility” standard.

While a mere possibility of success is insufficient to meet the credible fear standard, the “significant possibility of success” standard does not require the applicant to demonstrate that the chances of success are more likely than not.⁴⁷ An applicant will be able to show a significant possibility that he or she could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture if the evidence indicates that there is a substantial and realistic possibility of success on the merits. As such, the standard used in credible fear determinations is necessarily lower than that used in asylum or reasonable fear adjudications. For additional information about the requirements for credible fear determinations, see Asylum Training module: *Credible Fear*.

5 METHODOLOGICAL APPROACH

Gather the Evidence

You will need to gather relevant evidence having bearing on the adjudication. This requires that you conduct required background and security checks and carefully review the file, including the application, any written statement(s) by the applicant or witnesses, and any documents submitted by the applicant. Depending on the adjudication, COI may also be important evidence that you will need to gather.

Another way of gathering evidence is by interviewing the applicant and any witnesses; this is required in certain adjudications including refugee and asylum adjudications. At an interview, in addition to the testimonial evidence, the applicant may offer additional documentary or COI evidence. You must accept all evidence that is offered. How to gather testimonial evidence is discussed in the RAIO interviewing modules, in particular *Interviewing – Eliciting Testimony*.

Determine Materiality

⁴⁵ INA § 235(b)(1)(B)(v); 8 CFR § 208.30.

⁴⁶ See 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch).

⁴⁷ 142 Cong. Rec. H11071-02 (Sept. 25, 1996) (statement of Rep. Hyde) (noting that the credible fear standard was “redrafted in the conference document to address fully concerns that the ‘more probable than not’ language in the original House version was too restrictive”).

You must first determine whether the evidence is material, i.e., whether it would influence the outcome of the eligibility determination because it relates to a required legal element. The elements of eligibility are discussed in the legal modules for each benefit. For example, in refugee and asylum cases, each piece of evidence that you use in determining eligibility should relate in some way to the applicant's eligibility for the benefit sought. This could be evidence that is offered as proof of some element of the refugee definition such as well-founded fear or nexus. It could also be evidence that a bar does or does not apply to an applicant.

Evaluate the Quality of the Material Evidence

Once you have determined that evidence is material, you must then determine the quality of that evidence.

The quality of each type of evidence is measured in a different way.

- Testimonial evidence: You must decide whether the testimony is credible, and assess its persuasiveness and probative value. This topic is covered in the RAIO Training Module, *Credibility*.
- Documentary evidence: You must determine the probative value of each piece of evidence. In deciding how much weight to afford evidence, you must consider the reliability, relevance, content, form, and nature of each piece of evidence. This topic is covered in the RAIO Training Module, *Decision Making* as well as during discussions regarding fraud and fraudulent documents.
- COI evidence: You must decide whether the information comes from a reputable source that can be independently corroborated. This topic is covered in the RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

Once you have gathered and evaluated the evidence, you should be ready to apply the law to the facts and make a decision. This topic is covered in the RAIO Training Module, *Decision Making*.

6 CONCLUSION

Your role as a RAIO officer is to gather and evaluate the evidence of record, applying the appropriate burdens and standards of proof based on the claim before you.

In each of your adjudications, you will follow the methodological approach set forth in the RAIO Training Module, *Decision Making*. You will identify the relevant legal requirements of the adjudication, gather all necessary evidence, evaluate the quality of each piece of evidence, and assign weight to each piece of evidence.

7 SUMMARY

Evidence

Generally, any statement, document, or object that an applicant offers you **must** be considered as evidence. In addition, any COI materials that you discover in your research and any information accessed in relevant computer databases are also evidence.

Common forms of evidence you may encounter in adjudicating claims include:

- Testimonial evidence, including the applicant's testimony during the interview and the testimony of any witnesses he or she may bring to the interview
- Statements by other parties, including affidavits and letters submitted by family, friends, associates, or outside experts
- Travel documents such as passports and refugee travel documents; these also include tickets and receipts from transportation carriers
- Identity documents, which can include government-issued documents such as a national ID card or driver's license, as well as ID cards issued by other entities, such as an employment or school ID, and membership cards for any type of organization (you must distinguish between those identity documents that may be used to prove identity and those that merely establish the applicant's association with the issuing entity)
- Civil documents issued by government agencies, such as birth certificates, marriage certificates, police records, and death certificates
- U.S. Government records, which include the applicant's A-file, among other documents, as well as records stored in any Government database
- Medical evidence, which may include a statement or an affidavit from a physician who has examined the applicant to corroborate a claim of torture, or may be a regularly kept record from a doctor or hospital indicating that the applicant was a patient or received treatment

Burden of Proof

While the applicant bears the burden of persuading you that he or she is eligible for the benefit that he or she seeks, you, as the trier of fact, have an affirmative duty to elicit information regarding the claim.

Standard of Proof

The standard of proof specifies how convincing or probative the evidence must be to meet the burden of proof. The preponderance of the evidence is the most common

standard you will apply in adjudications. The applicant must always establish the facts of his or her case by a preponderance of the evidence; that is, that what he or she is asserting as fact is more likely than not true. The preponderance of the evidence standard will apply unless a different standard is specified in the statute.

Other standards that may apply are:

- “Clear and convincing” standard: used in determining whether an asylum application has been filed within the one-year filing deadline
- “Clearly and beyond doubt” standard: used when determining whether a refugee is admissible
- “To the satisfaction of the adjudicator” standard: used when an applicant is subject to the bar to applying for asylum because he or she has been previously denied by an Immigration Judge or because he or she did not file within the one-year filing deadline; used to establish exceptions to those prohibitions
- “Reasonable possibility” standard: used to determine whether an applicant has a well-founded fear of future persecution and in reasonable fear determinations
- “Significant possibility” standard: used in credible fear determinations and protection screenings for applicants interdicted at sea

Structured Approach to Evidence

First, you must carefully gather the relevant evidence having bearing on the adjudication. Once you have all the evidence, you must determine whether each piece of evidence is material to the applicant’s claim and, if so, to which element of the applicant’s claim it relates. A piece of evidence may be relevant to more than one element of the claim. Finally, you must evaluate the quality of each piece of evidence and assign weight to it before making your decision.

PRACTICAL EXERCISES

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

RAD Supplement

Applicant's Burden

In the refugee context, the burden is on the applicant to establish eligibility by showing: that he or she (1) meets the definition of a refugee at INA § 101(a)(42); (2) has access to the U.S. Refugee Admissions Program by being a member of a group designated to be of special humanitarian concern to the United States under INA § 207 ; (3) is not firmly resettled in another country; (4) is admissible as an immigrant under the INA, and (5) merits refugee status as a matter of discretion. The refugee definition excludes those who ordered, incited, assisted, or otherwise participated in the persecution of others.

Because refugee applicants seek admission to the United States, INA § 207(c)(1) requires that they establish their admissibility. INA § 207(c)(3) specifies certain grounds of inadmissibility which do not apply to refugees and other grounds that may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The regulations governing overseas refugee adjudications do not explicitly list "mandatory" grounds for denial as is the case in the asylum regulations. Rather, the statute and regulations specify grounds of eligibility, which, if not met will result in

denial. In other words, cases will be denied where the applicants fail to establish that they have access to the USRAP (because they are not within a group designated to be of special humanitarian concern to the U.S.), have been firmly resettled, do not meet the refugee definition by, for example, having assisted or otherwise participated in the persecution of others, and/or are inadmissible.

In the overseas refugee processing context, applicants are generally not expected to provide evidence beyond testimony. Keep in mind that in many refugee interview settings, the refugees are in camps, set apart from the population of the host country and have limited access to resources. Even when they are integrated into the host population, their precarious status and lack of personal resources may make it very difficult for them to access documents from their home country. However, there may be refugee applicants from countries where corroborating documentation may be routinely available, and thus could be required by the adjudicator. In such cases, the evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Refugee Affairs Division HQ will advise its officers when corroborating documentation should be expected of particular refugee applicant populations, and will provide additional guidance about the consideration of documentary evidence during Pre-Departure Briefings prior to each circuit ride.

RAD Supplement

Testimony by Other Refugee Applicants

In some cases there will be family members who have applied for refugee resettlement separately from the applicant, or other individuals who have applied for refugee status based on circumstances that are the same as or significantly similar to those of the applicant. Depending on the circumstances of each case, sometimes the statements made in another claim may be used as evidence in the claim before you. For example, in cases where a child is the principal applicant, the testimony of guardians, family members or other individuals with a close relationship to the child may be considered in the adjudication of the child's claim when the child is too young to articulate, e.g., a nexus to a protected ground. *See generally* RAIO Training Module, *Children's Claims*. The record and testimony of other family members on the same or cross-referenced cases may also be considered when, for example, establishing family relationships material to an applicant's access to USRAP. However, a credibility confrontation based on inconsistencies between family members' testimony could violate confidentiality and place the family members at risk of harm. *See* RAIO Training Module,

Credibility, section 3.1.2 Consistency.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

1. Cianciarulo, Marisa Silenzi. "Terrorism and Asylum Seekers: Why the REAL ID Act Is a False Promise", 43 Harv. J. on Legis. 101, at 13 (Winter, 2006).

SUPPLEMENTS

ASM Supplement

Applicant's Burden

In the asylum context, the burden is on the applicant to establish the following affirmative grounds of eligibility: that he or she (1) is eligible to apply for asylum, (2) is a refugee within the meaning of INA § 101(a)(42)(A), and (3) merits asylum as a matter of discretion.⁴⁸

After an applicant has established eligibility for protection based on the refugee definition, his or her burden of proof is satisfied unless there is evidence that a mandatory ground for denial applies. If the evidence indicates that a mandatory ground for denial of asylum applies, *only then does* the applicant have the burden of "proving by a preponderance of the evidence that he or she did not so act."⁴⁹

⁴⁸ INA § 208(a)(2); (b)(1)(B)(i); (b)(2)(A)

⁴⁹ 8 C.F.R. § 208.13(c); see 8 C.F.R. § 1240.8(d).

ASM Supplement

Must Weigh All Evidence

"In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record."⁵⁰

Thus, an applicant's testimony may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. "Other evidence of record" may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is but a component of burden of proof, and not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant's burden of proof that he or she is eligible for protection and merits a favorable exercise of discretion.

If you "determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence."⁵¹

You have the authority to question any witnesses presented by the applicant.⁵²

ASM Supplement

Must Meet the Refugee Definition⁵³

The burden of proof is on the applicant to establish that he or she is a refugee within the meaning of INA § 101(a)(42)(A) and that discretion should be exercised favorably to grant asylum or refugee status.

In order to meet his or her burden, the applicant must present evidence that goes to each element of the refugee definition. The applicant must present evidence to

⁵⁰ INA § 208(b)(1)(B)(ii). See also *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

⁵¹ INA § 208(b)(1)(B)(ii).

⁵² 8 C.F.R. § 208.9(b).

⁵³ For a more detailed discussion on this topic, see RAIO Training Module, *Refugee Definition*.

establish that he or she is

- Outside his or her country of nationality or any country in which he or she last habitually resided
- Is unable or unwilling to return to that country
- Is unable or unwilling to avail himself or herself of the protection of that country
- Because of persecution or a well-founded fear of persecution
- On account of race, religion, nationality, membership in a particular social group, or political opinion

The applicant must also present evidence establishing that he or she is eligible to apply for asylum.

In order to establish that the persecutor's motivation for persecuting the applicant falls within the scope of the refugee definition, "the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant."⁵⁴

In evaluating nexus, asylum officers should take care to use the "at least one central reason" language in their assessments.

In addition to meeting the refugee definition, and eligibility to apply, the applicant must establish that he or she merits asylum as a matter of discretion and is not subject to any mandatory bars.

ASM Supplement

Past Persecution⁵⁵

If the applicant establishes that he or she suffered past persecution on account of a protected ground, the applicant has met the burden of establishing that he or she is a refugee.

One of the differences between the refugee definition found in the INA and the

⁵⁴ INA §208(b)(1)(B)(i).

⁵⁵ For a more detailed discussion of this topic, see RAIO Module, *Definition of Persecution, and Eligibility Based on Past Persecution*.

definition in the United Nations Convention and Protocol relating to the Status of Refugees is that the INA definition defines a refugee as someone who either has experienced past persecution on account of a protected ground, or fears persecution in the future.

Well-Founded Fear

If the applicant has not established past persecution on account of a protected characteristic, he or she must establish a well-founded fear of future persecution on account of a protected characteristic to meet his or her burden of establishing that he or she is a refugee. This burden includes establishing that it would not be reasonable to expect the applicant to relocate within the country of feared persecution to avoid future persecution.

Burden Shifting When Past Persecution Found

While the burden of proof resides with the applicant to establish eligibility for asylum or refugee status, the regulations provide for two circumstances in the exercise of discretion whether to grant asylum claims in which the burden shifts to USCIS. 8 CFR § 208.13(b) calls for a discretionary referral or denial when:

... an alien [is] found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

The burden of proof shifts to USCIS (you, the adjudicator) to show that either condition exists to rebut the presumption of a well-founded fear of future persecution that arises when the applicant establishes past persecution. The applicant has no further burden of proof unless you are able to prove at least one of the two conditions by a preponderance of the evidence.

If you have shown that the applicant has no risk of future persecution, the burden of proof then shifts back to the applicant to demonstrate that he or she should be granted asylum in the exercise of discretion:

- owing to compelling reasons for being unable or unwilling to return

to the country arising out of the severity of the past persecution; or

- because there is a reasonable possibility that the applicant would suffer other serious harm upon removal to that country.⁵⁶

For more information on the burden shift see RAIO Training Modules, *Discretion and Definition of Persecution, and Eligibility Based on Past Persecution*.

Mandatory Bars

If the evidence indicates that a ground for mandatory denial of asylum (or “mandatory bar to asylum”) or refugee status may apply, then the applicant must establish by a preponderance of the evidence that the ground for mandatory denial does not apply.

Evidence indicative of a possible bar may be produced either by the applicant or by USCIS, but once such evidence is part of the record, the applicant bears the burden of proof to establish that the bar does not apply.

Example

After conducting an interview the officer found that Xavier was a refugee because he had suffered persecution during the Rwandan genocide. However, the A-file contains evidence that Xavier was subsequently accused by the Truth and Reconciliation Commission of participating in genocidal acts. Xavier would have to show, by a preponderance of the evidence⁵⁷, that he did not commit those acts.

ASM Supplement

Testimony Can Meet Burden if “Credible, Persuasive, and Refers to Specific Facts”

According to the INA, the applicant’s testimony may be sufficient to sustain the applicant’s burden of proof if it is “credible, persuasive, and refers to specific facts.”⁵⁸ To give effect to the plain meaning of the statute and each of the terms therein, an applicant’s testimony must satisfy all three prongs of the “credible, persuasive, and ... specific” test in order to establish his or her burden of proof

⁵⁶ 8 C.F.R. § 208.13(b)(1)

⁵⁷ See section above, Standards of Proof.

⁵⁸ INA § 208(b)(1)(B)(ii).

without corroboration.

Section 208(b)(1)(B)(iii) of the INA addresses the “credible” prong of this test. See RAIO Module, *Credibility* and the ASM Supplements to that Module.

The terms “persuasive” and “specific facts” must have independent meaning above and beyond the first term “credibility.” “Specific facts” are distinct from statements of belief. When assessing the probative value of an applicant’s testimony, the trier of fact must distinguish between fact and opinion testimony and determine how much weight to assign to each of the two forms of testimony.

“In determining whether the applicant has met [his or her] burden, the trier of fact may weigh the credible testimony along with other evidence of record.”⁵⁹

Thus, an applicant may be credible, but nonetheless fail to satisfy his or her burden to establish the required elements of eligibility. “Other evidence of record” may demonstrate that the applicant, for example, does not have a well-founded fear of persecution because of improved country conditions or the existence of a reasonable internal relocation alternative.

These provisions, as well as the structure of INA § 208(b) as amended by the REAL ID Act, further clarify that credibility is only a component of burden of proof, not the end of the analysis. Thus, testimony that is generally deemed credible may nonetheless fail to satisfy an applicant’s burden of proof that he or she is eligible for protection (i.e., has established that he or she suffered past persecution or has a well-founded fear of persecution on account of a protected ground) and merits a favorable exercise of discretion.

If you “determine that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”⁶⁰

ASM Supplement

Statements by Other Parties - Testimony by other applicants for protection in their own cases

Testimony of Other Asylum Applicants: Because of the confidentiality regulation at 8 C.F.R. 208.6, the testimony given by one asylum applicant in support of his or her claim cannot readily be considered in evaluating the request for asylum of

⁵⁹ INA § 208(b)(1)(B)(ii). See also *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

⁶⁰ INA § 208(b)(1)(B)(ii)

another asylum applicant. This limitation extends to the testimony of family members, even if the testimony may be conflicting. However, the testimony of an asylum applicant appearing as a witness for another asylum applicant would be evidence to consider. There are certain exceptions in the confidentiality regulation that you may want to explore with a supervisory asylum officer. If questions arise in such cases, the supervisory asylum officer should contact Headquarters.

ASM Supplement

Country of Origin Information (COI)

You must conduct research and consider available COI. In addition to information submitted by the applicant, you may consider information obtained from: the Department of State, the RAIO Research Unit, international organizations, private voluntary agencies, academic institutions, and any other credible source, which may include reputable newspapers and magazines. 8 C.F.R. § 208.12. For considerations regarding the reliability of sources, see RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

IO Supplement

There are no IO Supplements



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

RESEARCHING AND USING COUNTRY OF ORIGIN INFORMATION IN RAIO ADJUDICATIONS

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course*

**RESEARCHING AND USING COUNTRY OF ORIGIN
INFORMATION IN RAIO ADJUDICATIONS**

Training Module

MODULE DESCRIPTION:

This module provides guidelines on the use of Country of Origin Information (COI) in adjudicating immigration benefits, petitions, protection determinations, and other immigration-related requests. Through demonstrations and computer-based practical exercises, you will gain experience in conducting COI research on the Intranet and Internet for use in adjudications.

TERMINAL PERFORMANCE OBJECTIVE(S)

You, the officer, will be able to research relevant country of origin information in order to prepare for, interview (where applicable), and adjudicate requests for asylum (including Credible Fear and Reasonable Fear), refugee status, requests for review (RFR), and other non-protection adjudications in the RAIO directorate.

ENABLING PERFORMANCE OBJECTIVES

1. Identify the importance of country of origin information in adjudicating requests for asylum, refugee status, and other immigration benefits.
2. Cite to multiple relevant sources of country of origin information.
3. Assess reliability of country of origin sources that are relevant to the adjudication.
4. Explain when it is necessary to cite country of origin information to support a decision.
5. Identify when country of origin information is material to the claim.

INSTRUCTIONAL METHODS

- Interactive Presentation

- Discussion
- Computer-based Practical Exercises

METHOD(S) OF EVALUATION

- Practical exercise
- Multiple choice exam

REQUIRED READING

1. *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000)

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

- 1.
- 2.

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR2	Knowledge of the relevant international human rights conventions related to refugees (2)
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR4	Knowledge of the relevant sections of 8 Code of Federal Regulations (CFR) (4)
ILR5	Knowledge of international human rights laws and principles (2)

ILR6	Knowledge of U.S. case law that impacts RAIO (3)
IRK2	Knowledge of the sources of relevant country conditions information (4)
IRK12	Knowledge of techniques and methodology for conducting research (4)
IRK13	Knowledge of internal and external resources for conducting research (4)
TIS2	Knowledge of the ECN/RAIO Virtual Library (4)
TIS5	Knowledge of Westlaw legal research resource (2)
TIS8	Knowledge of other Internet-based research databases and resources (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
T2	Skill in accessing and navigating ECN/RAIO VL (4)
T3	Skill in accessing and navigating USCIS and other government databases (3)
T4	Skill in accessing and navigating Internet-based research databases and resources (3)
DM1	Skill in applying relevant country conditions information to the claim (5)
DM6	Skill in determining materiality of facts, information and issues (5)
TPM5	Skill in managing resources (4)
TPM6	Skill in organizing case and research materials (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
05/10/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	LGollub, RAIO Training
11/23/2015	Throughout document	Fixed links, typos	RAIO Training

Table of Contents

1	INTRODUCTION	9
2	IMPORTANCE OF COUNTRY OF ORIGIN INFORMATION.....	10
2.1	COI Helps You Elicit Relevant Information and Form Reasoned Decisions	10
2.2	COI Helps Promote Consistency	11
3	ROLE OF COUNTRY OF ORIGIN INFORMATION IN THE REFUGEE AND ASYLUM PROCESS	11
3.1	Pre-Interview Preparation	11
3.2	Eliciting Testimony at the Interview.....	11
3.2.1	Does the Interviewee Meet the Refugee Definition?.....	11
3.2.2	Is the Interviewee Credible?	12
3.2.3	Is the Interviewee Possibly Subject to a Bar or Ground of Inadmissibility?.....	13
3.3	Using COI Research in Decision-Making.....	14
3.3.1	Country Reports May Match a Claim in Detail.....	15
3.3.2	Country Reports May Corroborate the Broad Outlines of the Claim, but Not the Specific Details	16
3.3.3	Country Reports Directly Contradict or Refute the Claim	16
3.3.4	COI neither Corroborates nor Refutes the Claim	18
3.3.5	Interviewee Presents Unfamiliar COI.....	18
3.4	Citations	19
4	SOURCES OF INFORMATION	19
4.1	RAIO	19
4.2	Public Sources.....	21
4.2.1	Multiple Sources.....	21
4.2.2	Current and Historical Reports.....	21
4.3	Reputable Sources for Internet Research	22
5	RESEARCH METHODS.....	23
5.1	Assessing Source Reliability.....	23
5.2	Evaluating the Reliability of Unfamiliar Sources	23
5.2.1	Agendas	23
5.2.2	Print and Broadcast Media	24
5.2.3	Considerations for Unfamiliar Sources	24

5.3	Research Tips	25
5.3.1	Become Familiar with the Types of Information Available	25
5.3.2	Focus Your Research	26
5.4	Know When to Stop	26
5.4.1	Save and Reuse Your Previous Research Efforts	26
6	CONCLUSION	27
7	SUMMARY	27
7.1	Importance of Country of Origin Information	27
7.2	Role of Country of Origin Information in the Refugee/Asylum Interview Process	27
7.3	Sources of Information	28
7.4	Research Methods	28
	PRACTICAL EXERCISES	29
	OTHER MATERIALS	32
	SUPPLEMENT A – REFUGEE AFFAIRS DIVISION	33
	Required Reading	33
	Additional Resources	33
	Supplements	33
	SUPPLEMENT B – ASYLUM DIVISION	37
	Required Reading	37
	Additional Resources	37
	Supplements	37
	SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION	42
	Required Reading	42
	Additional Resources	42
	Supplements	42

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

Country of Origin Information (COI) plays a fundamental role in the adjudication of immigration benefits, petitions, protection determinations, and other immigration related requests. Such benefits include, but are not limited to: applications for asylum or refugee status, requests for review (RFR's), intercountry adoptions, waivers of inadmissibility and humanitarian parole requests. COI provides objective evidence against which documentation in the record and the testimony of an interviewee can be viewed and evaluated. You can also use COI as part of a framework to help identify whether an individual may be eligible for the requested benefit.

The importance of COI is emphasized in the INA at § 207(f), which specifically provides for the training of U.S. officials adjudicating refugee cases, and by regulation at 8 C.F.R. § 208.1(b) *Training of asylum officers*. [RAD Supplement – Introduction; ASM Supplement – Introduction]

The purpose of this module is to provide guidance on the role of COI in RAIO adjudications, namely:

1. How to properly conduct country of origin research
2. How to use COI to prepare for and conduct an interview
3. How relevant COI may be used when determining eligibility

Most of the language, examples and resources contained in this lesson plan are largely protection-centric, as COI research is primarily conducted and relevant in the asylum and refugee context. However, please note that there are circumstances within the RAIO directorate where COI is used in other contexts such as in adjudication of I-601 Waivers of Inadmissibility, Humanitarian Parole requests and

Intercountry Adoptions as well as other IO form types on a case-by-case basis. For example, officers in the Humanitarian Affairs Branch (HAB) may occasionally use COI to confirm or supplement information provided in a humanitarian parole application that the applicant is unable to receive adequate medical care for his or her medical condition in the country of origin. Additionally, in intercountry adoptions requests, the overseas adjudications officer may research COI to verify the types of civil documents available in a particular country such as birth, marriage, divorce certificates, adoption decrees, and police or prison records. The scope of the research and the manner in which it is used in the adjudication may be different from the asylum or refugee context, but the research tools and methods are similar if not the same. The information provided in Sections 4 and 5 of this lesson plan are applicable to COI in all RAIO adjudications.

Additional information on COI for the specific adjudications referenced above is provided in the IO supplement and will also be provided in division specific training for the International Operations Division.

2 IMPORTANCE OF COUNTRY OF ORIGIN INFORMATION

2.1 COI Helps You Elicit Relevant Information and Form Reasoned Decisions

In almost all types of RAIO interviews, COI is essential to properly:

1. Ask questions to fully develop the interviewee's claim.

Equipped with an understanding of COI, you can better identify the most relevant parts of an interviewee's story, and ask specific, informed questions to develop the appropriate parts of the interviewee's testimony. This is especially true when a confused or inarticulate interviewee has difficulty describing his or her claim. In such situations, COI provides you with a frame of reference that enables you to form pertinent questions relevant to the interviewee's claim.

2. Evaluate the objective or factual basis of the claim and eligibility.

Proper use of COI provides a context for analyzing eligibility during the adjudication. For example, COI may be used to evaluate claims of past persecution and enable you to assess more fully the risk of harm to the interviewee if he or she were to return to his or her own country of origin. Additionally, COI helps you identify interviewees who may be subject to a ground of inadmissibility or the persecutor bar. In the asylum context, country of origin information can help you determine whether an exception to the one-year filing deadline may exist.

3. Assess credibility.

COI helps you ask appropriately probing questions to evaluate credibility. For example, COI may prevent you from erroneously finding an interviewee not credible because the interviewee's experiences are foreign to your own experience of how people and governments behave. Familiarity with COI can also help you uncover fraudulent claims.

2.2 COI Helps Promote Consistency

The use of reliable COI promotes consistency in decision-making not only for you, but across USCIS. Basing decisions on reliable, publicly available information promotes accountability and fairness, and prevents arbitrary decision-making. This enables you to further support your analysis and decision. Additionally, proper use of COI helps the decision withstand public scrutiny and/or appeal of an adverse determination.

3 ROLE OF COUNTRY OF ORIGIN INFORMATION IN THE REFUGEE AND ASYLUM PROCESS

It is imperative to consult COI routinely, even when you believe that you are familiar with the current situation in a country. Conditions in many countries are often volatile and subject to rapid change.

3.1 Pre-Interview Preparation

Prior to an interview, review the file to determine the basis of the claim. The resources available for doing pre-interview preparation and research differ depending on whether you are interviewing at a USCIS office, or another location such as a detention center or an overseas processing site. [RAD Supplement – Pre-Interview Preparation; ASM Supplement – Pre-Interview Preparation]

There are many excellent sources of COI readily available, from DHS intranet sources such as RAIO Research Unit products (papers, query responses, News Summaries, RAIO Research Unit Databases, COI on the RAIO Virtual Library, DHS Library, and others), to materials available on the public Internet. The RAIO Research Unit and other sources of COI are discussed later in this module.

3.2 Eliciting Testimony at the Interview

To ask informed questions during the interview, you must be familiar with conditions in the interviewee's country of origin, or if stateless, his or her last habitual residence. You should consider COI to help substantiate each part of your analysis. [RAD Supplement – Eliciting Testimony at the Interview]

3.2.1 Does the Interviewee Meet the Refugee Definition?

COI can help you to elicit testimony pertinent to the interviewee's eligibility. For example, COI helps you identify groups at risk.

Example

The father of an interviewee from country X "disappeared." Soon after, the interviewee's family began receiving anonymous threats, so they fled their country. When you question the interviewee as to whether his father belonged to any groups or organizations, you learn that the father was an active member of a union. Although the interviewee does not fully understand why his father's union membership is relevant to his claim, your knowledge of "groups at risk" in the interviewee's country leads you to properly elicit details from the interviewee about his father's union membership.

COI will also help you evaluate incidents of past harm. If the interviewee fled his or her country as a result of events that are or have been widely reported in the media or by human rights groups, you will have an objective basis to assess the interviewee's claims of past harm.

To evaluate an interviewee's fear of persecution in the future, you must determine whether the interviewee's fears of future harm are well-founded. COI will help you evaluate whether there is a reasonable possibility that the harm feared by the interviewee could actually occur. COI provides an objective basis to make this assessment.

Therefore, knowledge of the legal refugee standard must be supplemented with COI to interview properly and to adjudicate a request for asylum or refugee status fairly, in an informed, objective, and consistent manner.

COI will also help you evaluate whether there is a pattern or practice of persecution directed against members of a particular group to which the interviewee may belong or a group whose situation is similar to his or her own. If the interviewee has not suffered past persecution, but fears persecution in the future by a non-governmental actor, then COI will help you determine whether the persecution that the interviewee fears exists throughout the interviewee's country of origin. If you determine that a non-governmental actor is not capable of persecuting the interviewee on a countrywide basis, keep in mind that COI must be combined with an evaluation of the interviewee's personal circumstances to make a complete evaluation of whether it would be reasonable for an interviewee to relocate to avoid harm. (See RAIO Training module, *Well-Founded Fear*, for additional guidance.)

3.2.2 Is the Interviewee Credible?

Often an interviewee has no documentation or witnesses to corroborate a request for an immigration benefit. Country of origin information provides a context for asking relevant questions and evaluating the interviewee's credibility. The more knowledgeable you are about the interviewee's country and any group to which the interviewee claims to belong,

the better you will be able to formulate questions to probe the interviewee's credibility, where appropriate.

Informed questioning may expose inconsistencies and falsehoods in the interviewee's claim. Informed questioning may also help re-establish credibility when something appears inconsistent or implausible at first impression.

Example

An interviewee claims to have suffered persecution because of his active participation in a political party in 2009. Because you know through COI research that national elections were held in the interviewee's country in 2009, you know to elicit information about the interviewee's participation in the elections (e.g., whom he supported, whom he opposed, the names of opposition parties, etc.). You can then check this information for consistency with country reports regarding the election.

You must use caution, however, in evaluating an interviewee's lack of knowledge regarding events or organizations in his or her country. There are varying degrees of membership in parties or organizations, as well as varying levels of communication within organizations. For example, an interviewee may be unaware of the clandestine activities of part of his organization due to a high level of secrecy within the organization. Additionally, the interviewee may be from a rural area that news does not easily reach, and the interviewee's viewpoint may be extremely localized. An interviewee's gender, lack of education, or low socioeconomic status may also play a role in the type of country of origin knowledge the individual has or can reasonably be expected to have.

In conducting research based on the information provided by the interviewee, you may discover that the information available generally corroborates the information given by the interviewee, or, in some instances, may directly contradict the information given by the interviewee. This can be used in the credibility determination. (See RAIO Training module, *Credibility* for additional guidance.)

3.2.3 Is the Interviewee Possibly Subject to a Bar or Ground of Inadmissibility?

COI is critical in eliciting testimony about potential bars or grounds of inadmissibility. The interviewee's activities may implicate certain grounds of inadmissibility, such as national security, terrorist activity, criminal activity, torture, trafficking, genocide, and particularly severe violations of religious freedom. The interviewee may also be barred from eligibility for having been a persecutor, if you find that the interviewee ordered, incited, assisted, or otherwise participated in the persecution of others. (See RAIO Training modules, *Persecutor Bar* and *Grounds of Inadmissibility*, for additional guidance.)

Examples

- Through COI, you have learned that many students at an interviewee's former university were informants who caused other students to be arrested and tortured. You should elicit information to determine whether the interviewee participated in or assisted in the persecution of others.
- If you know that the military unit to which an interviewee belonged engaged in persecution of others, that knowledge will make you more effective in eliciting the information necessary to determine whether the interviewee is barred as a persecutor.
- If you know that the opposition group to which an interviewee belonged sometimes engaged in terrorist activities, you will be more effective in eliciting the information necessary to determine whether a terrorism-related ground of inadmissibility applies.
- If there is a question as to whether an interviewee may have been firmly resettled, country of origin research will be helpful in learning about the rights conferred by a particular status granted to an individual and whether those rights are honored in practice. This information will provide an objective basis for you to evaluate whether the interviewee has been firmly resettled. (See RAIO Training module, Firm Resettlement, for additional guidance.)
- You should allow the interviewee to explain conditions, events, groups, or other pertinent information with which you are unfamiliar. You should remain open to the possibility that the interviewee is providing information not available elsewhere. This should not be a substitute, however, for conducting COI research before and, when necessary, after the interview. Use the information provided by the interviewee to help direct your research.

3.3 Using COI Research in Decision-Making

During the interview, COI can help guide you in eliciting testimony relevant to an interviewee's eligibility for the requested benefit. After you complete the interview, you must evaluate the testimony provided by the interviewee in light of COI.

When making a decision, COI may play a critical role in evaluating:

- credibility
- claim of past persecution or fear of future persecution (including evaluating the objective basis for fear, e.g. reasonable possibility)
- nexus to a protected ground
- involvement in acts of persecution

- possible firm resettlement in another country
- availability of internal relocation
- bars and/or grounds of inadmissibility

COI may or may not be relevant to a given case in the following ways:

- Country reports may match in detail
- Country reports may corroborate the broad outlines of the claim but not specific details
- Country reports may contradict or refute the claim directly

3.3.1 Country Reports May Match a Claim in Detail

It is unusual for COI to corroborate specifically the details of a claim, even a valid claim. Still, this does happen occasionally, in both valid and fraudulent claims.

Example

An interviewee claims he was founder and editor of an independent daily newspaper in his country. His application includes claims that his paper was the most influential publication in his country, but its critical reporting landed him and his staff in trouble with the government on numerous occasions. His testimony details several arrests of the interviewee, his wife, and other staff members, as well as numerous closings of the paper by the government. The interviewee testifies that the office was eventually burned to the ground and he and his wife were exiled to another country, where they founded another national daily paper. After a military coup in the second country, he and his wife were deported because of their paper's reporting on the military junta that took power.

In the example above, COI reports corroborated the specific detail of the interviewee's claim, including the interviewee's name, the name of the newspaper that the interviewee had founded, and the events he detailed. Therefore, in this instance, the country reports matched the interviewee's claim in detail.

An interviewee's claim may be a very carefully crafted fraudulent account, or a genuine claim. Either way, you must test credibility and establish the interviewee's identity. The above claim would initially appear to be valid; now you must complete the analysis in light of the interviewee's testimony. For example, did the interviewee adequately relate other information that was material to the claim? Was he consistent and detailed about his role as editor and publisher of a daily paper, his experiences in exile, and his own arrests? In addition, because of the prominence of such a figure, it is logical to expect to find some information about him on an Internet search. An Internet search is not always

possible, depending on the resources available at a given interview site, but if you are able to conduct Internet research, does the information available from reliable sources corroborate his story? See Section 4.3 *Reputable Sources for Internet Research* below for additional guidance on conducting Internet research.

3.3.2 Country Reports May Corroborate the Broad Outlines of the Claim, but Not the Specific Details

In most cases, available COI will *generally* corroborate an interviewee's claim, but information on the specific details of the interviewee's claim will not be readily available. COI that generally corroborates an interviewee's claim lends credence to the interviewee's story. If the interviewee's own testimony is plausible, detailed, internally consistent, and corroborated in its broad outlines by COI, further corroboration of specific details is not necessary.

Examples

A Guatemalan interviewee describes how his remote village is the target of an attack by a local Civil Patrol chief. Because the UN monitoring mission has never visited the area, there are no reports of trouble in the region; however country reports generally indicate that members of the Civil Patrol have carried out human rights abuses against political opponents and others. Additional questioning allows the interviewee to give a credible account of a situation in a region previously unmentioned in human rights or news reports - an account that conforms to a pattern of abuses reported in other areas.

Country of origin information indicates that female genital mutilation (FGM)/female genital cutting (FGC) is widespread in a particular country, but more prevalent in the north. An interviewee claims that FGM/FGC is practiced by her ethnic group, which is from the south. Unless, after further research, you uncover specific reports indicating that the interviewee's southern ethnic group does not practice FGM/FGC, you should accept that COI corroborates the interviewee's claim.

3.3.3 Country Reports Directly Contradict or Refute the Claim

When you rely upon COI directly to refute an interviewee's claim, you should use at least two reliable sources.

Credibility

If COI directly contradicts or refutes the interviewee's claim, the interviewee may not be credible.

Example

The interviewee claimed to have been an active member of a political party since 2001. Multiple country reports establish that the political party **was not** formed until 2005. Because country reports directly contradict the interviewee's claim, her claim that she was an active member of that party is not credible.

Caveat

The interviewee should always be given an opportunity to address this type of discrepancy since there may be a good explanation for the contradiction – for example, the party may have been formed in 2005 by the merger of several pre-existing parties, to one of which the interviewee belonged. (See RAIO Training module, *Credibility*, for additional guidance.)

Objective fear

If country reports specifically refute an interviewee's claim that he or she is at risk of persecution, then the fear of future harm may not be reasonable, even if the facts the interviewee related are credible. For asylum adjudications you should explain in the decision that country of origin information does not support the interviewee's claim. In such cases, you should cite two or more reliable country of origin reports when explaining that the interviewee failed to establish a well-founded fear. For refugee adjudications, a specific citation is not required (unless the denial is based solely on COI), but it is encouraged when the report is at hand.

Example

An interviewee fears that, as a member of an opposition party, she is at risk of persecution. However, reliable COI indicates that opposition party members freely express their opinions and are a strong force in the government, and indicates that there have been no reports of threats, arrests, or harassment of opposition leaders for many years.

You must be careful to distinguish between country reports that *generally fail to support* a claim and country reports that *specifically refute* a claim.

Country of origin reports do **NOT** refute a claim when:

- Sources do not address the interviewee's situation
- Sources mention some groups at risk (not including the interviewee's) but do not state specifically that only those groups are at risk
- Sources are not relevant to the interviewee's situation in the time frame of the interviewee's past experiences

In *Galina v. INS*¹, the Seventh Circuit was highly critical of the BIA for its overreliance and misapplication of COI, which did not specifically refute an asylum-seeker's claim.

3.3.4 COI neither Corroborates nor Refutes the Claim

The fact that COI mentions **some** events or human rights abuses directed against **some** groups, but does not mention **particular** events or human rights abuses directed against a **particular** group does not mean that the events or abuses did not occur. Sometimes COI focuses on major problems or particular groups in a country, to the exclusion of others. For example, a report may group together several small minorities by making statements such as "other minorities also experience difficulties." In such cases, it is difficult to determine which minorities are having difficulties.

The weight to be accorded a lack of corroboration in COI reporting depends on the particular case. In some cases, the lack of corroboration may not be given much weight, because the claim is very case-specific and the interviewee comes from a country in which it is difficult for human rights monitors to access information.

The lack of corroboration may be given greater weight if the interviewee fears persecution in a country in which reliable human rights information is easily accessed and the interviewee's claim is based on facts that an officer would reasonably expect to be reported, given the broad range of reporting available about a particular country.

A case may arise in which the interviewee alleges the occurrence of events that you would reasonably expect to be able to find in reports. In such cases, the lack of corroborating reports may cast doubt on the credibility of the claim. However, a lack of corroboration should generally not form the sole basis for a negative credibility determination.

3.3.5 Interviewee Presents Unfamiliar COI

You may be the first to hear about human rights abuses or other developments in a country. In many countries, reporters and human rights monitors may be impeded from gathering up-to-date information or may practice self-censorship. Human rights monitors, if there are any, may be paying attention to areas in which violations are more widespread.

Examples

In 1976, shortly after the Indonesian invasion of East Timor, six Australian journalists disappeared. Between 1976 and 1991 there was virtually no on-the-

¹ *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000).

ground reporting of the human rights situation in East Timor because it was deemed too dangerous for reporters or human rights monitors. What information was available came exclusively from refugees fleeing the country.

In Myanmar (Burma) there are many parts of the country where outsiders, including journalists and human rights monitors, are not allowed.

When an interviewee presents information that is unfamiliar to you, you should elicit as much detail as possible about the circumstances surrounding the events described and evaluate this for consistency with the general information that is available about the interviewee's country.

Testimony by an interviewee, even if it presents events unfamiliar to you, may still be found credible if the interviewee's testimony is detailed, consistent, and generally plausible in light of COI. If you have serious doubts about credibility based on lack of available country of origin information, you should discuss the issue with your supervisor, who may in turn contact the RAIO Research Unit for further assistance.

3.4 Citations

In the asylum context, COI must be cited in the written decision *if it is relied upon in making the decision*. [ASM Supplement - Citations] In the refugee context, COI must be cited if it is the sole basis for a denial. In the IO context, when adjudicating Requests for Review, COI should be cited to the extent possible when explaining the basis of your decision.

4 SOURCES OF INFORMATION

4.1 RAIO

The RAIO Research Unit

The mission of the RAIO Research Unit is to provide officers at RAIO with credible and objective information on human rights and COI to support the timely adjudication of interviewees' claims. In addition, as the primary research body of DHS on human rights-related matters, the Research Unit assists other components of USCIS and DHS with research needs in related areas.

To address criticism and concerns that officers were relying on their own subjective concepts of COI in refugee-producing countries, or on reports motivated by foreign policy considerations, regulations were promulgated in 1990 that required the Director of International Affairs to maintain a human rights documentation center. Pursuant to 8 C.F.R. § 208.1(b), the Resource Information Center (RIC), now referred to as the Research Unit, was founded. The Research Unit gathers and makes available COI from a wide variety of governmental and non-governmental sources, including print and broadcast media, academic journals, human rights monitoring agencies, and refugee

advocacy groups. The Research Unit provides information independent of other government agencies to ensure that foreign policy considerations and other non-objective considerations do not play a role in the adjudication of asylum requests. The Research Unit also regularly liaises with COI units in other countries through country information sharing and participation in the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC). The Research Unit provides this information to RAIO staff via the RAIO Research Unit ECN page.

The Research Unit's workload is divided into geographic regions. Currently, there are six geographic regions, each assigned a dedicated researcher. The Research Unit's researchers are responsible for the following:

- Collecting information about their region from a wide variety of sources
- Disseminating information to the field through training, papers, query responses, and other sources
- Helping to coordinate field trainings on COI and research techniques

The Research Unit serves as a resource to field office staff, providing technical assistance, information dissemination, and responses to questions where COI may be difficult to obtain. For questions involving legal issues, the Research Unit coordinates with the Law Library of Congress (LLOC) Foreign Law Specialists who provide foreign and legislative information services upon request. LLOC responses are posted on the RAIO Research Unit ECN and made available to the field.

In addition to compiling and disseminating research, the Research Unit also liaises with RAIO field offices to train staff on conducting research on country of origin and human rights information, and organizes speaker series of subject matter experts.

When specific COI is needed that cannot be found through the recommended search methods, the Research Unit can be contacted to conduct additional research. Queries for information can be submitted to the Research Unit through RAIOResearch@uscis.dhs.gov.

Specific procedures for contacting the Research Unit may vary among the Divisions, and you should follow the appropriate procedure for your specific office. In general, individual officers do not contact the Research Unit directly. In most instances, an officer should first bring any requests for assistance or information to his or her supervisor, who would then contact the Research Unit, if necessary. [RAD Supplement – RAIO Research Unit], [ASM Supplement – RAIO Research Unit]

The RAIO Library

The RAIO Library, maintained by RAIO Library Services under the RAIO Performance Optimization branch, in coordination with RAIO Research, provides the following resources for RAIO adjudicators:

- The electronic RAIO Library (EOS) is a full text-searchable repository of reference documents and research databases available to RAIO staff worldwide.
- RAIO's physical library houses more than 100 serials and other publications. In addition to hard copies of many reports that are also commonly available on the Internet, the library contains older human rights reports (early 1990s and before) that are not posted on the Internet, academic journals that are accessed on the Internet, and book-length publications on various countries and topics. The RAIO Library is located at 20 Massachusetts Ave. NW, 6th Floor, Washington, DC.

4.2 Public Sources

Country of origin information is available from many public sources on the Internet. Generally, you will consult publicly available sources to obtain COI. You should use only public sources, as opposed to sensitive or classified information, when citing COI. Sources include:

- Government reports (e.g., U.S. Department of State, UK Immigration and Nationality Directorate, Danish Immigration Service, etc.)
- Intergovernmental reports (e.g., International Organization for Migration)
- Media reports
- Academic journals
- Non-governmental sources, such as:
 - Refugee advocacy groups
 - Human rights monitoring groups
 - Humanitarian aid agencies
 - Election monitoring groups

4.2.1 Multiple Sources

All COI should be viewed critically and corroborated by multiple sources whenever possible. You should be aware of what a preponderance of the reporting reflects about a certain region or event before drawing conclusions from a single source.

4.2.2 Current and Historical Reports

In addition to knowledge of current conditions in the countries that refugee interviewees are from, in many instances you will also need information regarding historical events in order to evaluate a claim properly. An interviewee may present evidence of past events that should be examined in light of both current and historical reporting.

When evaluating claims involving very recent events, you must conduct research using the most current information available, especially when conditions are deteriorating in a country. Conditions in a country of origin rarely improve markedly overnight, but they can deteriorate rapidly. However, if you are seeking to corroborate a specific historical incident, you may need to consult earlier sources -- those from the appropriate time period -- to find the information that you need. Overall, it is important to ensure that the research you conduct for interviews is both current and historically relevant to the issues presented.

4.3 Reputable Sources for Internet Research

Some websites specialize in collecting COI or human rights reports from a variety of sources. In addition to the RAIO Library, the sites are excellent places to start your research.

- **Refworld** is the United Nations High Commissioner for Refugees (UNHCR) catalog of country of origin information.
- **ECOI** is the European Country of Origin Information Network, a collection of materials with a focus on information for asylum and refugee status determinations.

There are other country of origin research collections available online. Some are maintained by universities, like the University of Minnesota and the University of Connecticut, and others are privately managed. Whenever you use information from an online collection, you should use only materials that clearly identify the original author and/or publisher.

Other websites publish their own independently researched, primary source materials. These sources can often provide the most accurate accounts of conditions in a particular country.

- **The U.S. Department of State (DOS)** publishes a variety of reports. Though mostly known for its annual Human Rights Reports, the DOS also releases annual reports on religious freedom, general country background information, fact sheets, visa reciprocity, and document availability. The DOS releases periodic topical reports and oversees the Humanitarian Information Unit (HIU) that drafts reports, maps, and statistics about humanitarian crises all over the world. [IO Supplement - Reputable Sources for Internet Research]

- **Human Rights Watch (HRW)** is a leading human rights organization with representatives worldwide. It regularly publishes reports on violations of international human rights.
- **Amnesty International (AI)** is another prominent human rights organization that releases annual and periodic reports with reliable COI.
- **International Crisis Group (ICG)** is a non-governmental organization (NGO) that reports on conflicts and country of origin information around the world.
- **IHS Jane's** is a subscriber-based intelligence service that produces original reports on foreign governments and NGOs. It is accessible through computers on the DHS network.

There are many other organizations that publish reports detailing conditions in foreign countries, or on specific regions or topics. Some have established international reputations for providing reliable information. All organizations and reports should be evaluated independently for reliability. Links to reliable foreign government Internet sources, such as the Danish Immigration Service and the UK Border Agency, can be found in the RAIO Research Unit's Encyclopedia of Internet Resources on the ECN.

Newspapers, periodicals, and online publications can also serve as source material for COI. Most well-known news organizations have standards to ensure accuracy, and publish retractions when mistakes are made. However, you should distinguish between objective news reporting and opinion pieces, as discussed below in Assessing Source Reliability.

5 RESEARCH METHODS

5.1 Assessing Source Reliability

Any source of information is only as useful as it is reliable. A source of information that distorts facts to promote an agenda or routinely makes factual errors should not be relied upon. If a source generally bases its reporting on the facts as agreed upon by a majority of observers, it gains credibility.

Materials supplied by the RAIO Research Unit may be presumed reliable. All other sources should be evaluated carefully.

5.2 Evaluating the Reliability of Unfamiliar Sources

There are many issues that should be considered to determine the reliability of an unfamiliar source.

5.2.1 Agendas

You should consider the agenda of a source when evaluating the facts reported by that source. That a source may have a perspective or bias does not mean that it should be assumed to be factually wrong.

Example

The New York-based Committee to Protect Journalists has an agenda to protect journalists, but it is this agenda that motivates the organization to compile a detailed list of journalists who have been attacked and imprisoned.

You should look behind the rhetoric and political objectives that influence an organization's effort in order to distinguish between what the organization's agenda is and whether it makes a good-faith effort to present facts in a credible manner.

5.2.2 Print and Broadcast Media

COI obtained from media sources should be reviewed with caution, and you should be aware of the potential for distortion of truth by the media due to censorship, manipulation, and lack of expertise.

- Censorship and manipulation – The media in refugee-producing countries and some countries of first asylum that may be experiencing domestic problems, may be inhibited and cautious due to local censorship and to the local media's practice of portraying the government favorably. The squelching of local media coverage of human rights abuses is common in countries where such issues are prevalent. Similarly, manipulation of the media to further political agendas is common in many refugee-producing countries.
- Lack of expertise – It may be difficult to determine whether the underlying facts of a story are accurate because journalists are often unfamiliar with local law, human rights law, and/or the history or political details of certain conflicts. Journalists may fail to look beyond what was presented to them, and often do not have the time or resources to verify all of the information they receive. Therefore, they may misrepresent an issue out of ignorance.

5.2.3 Considerations for Unfamiliar Sources

- Is the information generally consistent with other reporting, or can it be otherwise corroborated?
- Does the author employ a research methodology that can be judged? Are quotes cited in context of the entire document from which they are pulled? How close was the author in time and place to the events described?

- Is the tone of the report balanced or does it sound angry or vindictive? While it is important to consider the tone of the report, remember also to look past the rhetoric and try to determine the facts.
- Is there any information available about the group that prepared the report and does such information indicate any bias on the part of the group?
- If the source is an NGO, what is its philosophy?
- If the source is an intergovernmental or quasi-governmental organization, what is its mandate?
- If the source is a newspaper or magazine, what is its political bent?
- If the source is a government source, what is the government's record in the area of human and civil rights? Can its information be corroborated? Does freedom of the press exist? What, if any, foreign policy considerations may be at play that might influence the reporting on a particular country or region?
- If you are evaluating an unfamiliar website, consider the following:
 - What does the URL tell you about the site?
 - Who is the author/publisher of the site?
 - How current is the information on the site?
 - Does the bias of the author/publisher affect the usefulness of the information?
 - Are there other websites/sources that corroborate the information presented?

5.3 Research Tips

There are many useful techniques to follow to make the country of origin research process as effective and efficient as possible.

5.3.1 Become Familiar with the Types of Information Available

Due to time constraints, it is imperative that you become familiar with the wide array of sources that are available and how these sources can be used most efficiently. It is also important that you know which sources to consult in different situations. You should know when it is best to consult the Internet, the Intranet, your office library, or the RAIO Research Unit. [ASM Supplement – Become Familiar with the Types of Information Available]

- Use electronic resources to the greatest extent possible because key terms can be searched easily.
- Use search engines to locate information on the Internet.

- Use the Research Unit's Encyclopedia of Online Resources on the ECN to determine which Internet sites are the most relevant to the type of research you are doing.
- Check the Research Products Collection section of the RAIO Research Unit ECN page for relevant postings on the country and topic being researched.
- Consult specialized databases available on the Internet. Information on these databases will not show up in the results from normal search engines. For example, Westlaw is a specialized database that can be searched for news and journal articles that often cannot be found easily on the Internet. There are other specialized databases that you have access to that may be useful, such as Open Source Center (OSC) and IHS Jane's.
- Other specialized databases are maintained by the Research Unit. These databases include the El Rescate Database covering El Salvador, the Guatemalan Military Database, and other country-specific databases.
- The RAIO Research Unit ECN page also contains the RAIO Research Unit's News Summary Bulletins and other articles and reports that are archived from the Internet. These articles and reports pertain specifically to conditions in the country of origin that may impact adjudications.

5.3.2 Focus Your Research

You should keep in mind what specific COI is needed to enable you to make a decision on the case. You should not spend valuable time reading information that is unrelated to the interviewee's claim. This may best be accomplished by first searching key terms on the Internet or other electronic sources of COI. When searching within an electronic document, be sure to use the "find" (Ctrl+F) function to locate the relevant text quickly in the document. It may also be appropriate to consult the Research Unit when you have encountered too much information and cannot synthesize it for your particular needs. The Research Unit can provide assistance in analyzing and clarifying the information gathered.

5.4 Know When to Stop

At minimum, you must have a general understanding of current conditions in the interviewee's country to make a reasoned decision. However, COI will rarely be the only basis for a decision. When a decision is not based primarily or solely on COI, you should conduct sufficient research to establish the general context of the interviewee's claim and to ensure that your knowledge of conditions in the country is up-to-date.

5.4.1 Save and Reuse Your Previous Research Efforts

Once you have conducted useful research, you should take a few minutes to organize and store your research so that it can be reused in the future if applicable. This can be done by

bookmarking websites (if able), and/or by creating electronic country folders to store research; however, in relying on archived COI, you must update this resource periodically, as needed.

6 CONCLUSION

Knowing how to research COI and when to apply it is important in all stages of the interviewing and decision-making process. Familiarize yourself with the resources available to you. If the COI is from an unfamiliar online site, make sure to assess the source for reliability. Country of origin information provides you with objective evidence to assess an interviewee's application for an immigration benefit. The more background country information you have, the better prepared you will be to elicit testimony and to make decisions.

7 SUMMARY

7.1 Importance of Country of Origin Information

Knowledge of the legal standards of each immigration benefit which you are responsible for adjudicating must be complemented with knowledge of relevant COI in order to adjudicate fairly, in an informed, objective, and consistent manner.

Knowledge of COI is essential to your being able to:

- Elicit relevant information at an interview
- Evaluate whether an interviewee's claim has an objective, factual basis
- Assess the credibility of the interviewee
- Determine overall eligibility fairly

7.2 Role of Country of Origin Information in the Refugee/Asylum Interview Process

It is imperative that you routinely consult COI, even when you believe you are familiar with the current situation in a country. Conditions in refugee-producing countries often are volatile and subject to frequent change.

It is the testimony provided by the interviewee at the interview that you must evaluate in light of COI in order to determine an interviewee's:

1. Credibility
2. Claim of past persecution or fear of future persecution
3. Involvement in acts of persecution

4. Possible firm resettlement in another country
5. Admissibility

7.3 Sources of Information

- The RAIO Research Unit
- The RAIO Library
- Online collections and databases
- Publicly available sources on the Internet

7.4 Research Methods

When conducting country of origin research, it is important to consult a variety of sources to gain as comprehensive an understanding of the country as possible. You should be aware of what a preponderance of the reporting says about a certain area before drawing conclusions about conditions in that area from a single source.

1. Consider the agenda, mandate, or political leaning of a source.
2. Can information provided by a source be corroborated by other reputable sources?
3. If using a media source, consider the political bent (pro-government, opposition), the possibility for manipulation, and the expertise of the reporter.
4. If you are evaluating an unfamiliar website, consider the following:
 - What does the URL tell you about the site?
 - Who is the author/publisher of the site?
 - How current is the information on the site?
 - Does the bias of the author/publisher affect the usefulness of the information?
 - Are there other websites/sources that corroborate the information presented?

PRACTICAL EXERCISES**Practical Exercise # 1**

- **Title:** Country of Origin Research for Refugee Processing
- **Student Materials:** Computer Lab with Internet and Intranet Access

doing targeted country of origin research in preparation for upcoming circuit ride

Please research the following on the country of nationality that you will be interviewing for your upcoming circuit ride:

- Thailand Circuit Ride:
- Burmese interviewees, mostly ethnic Karen and Karenni and Burmese Muslims
- Malaysia Circuit Ride:
- Burmese interviewees, mostly ethnic Chin
- Nepal Circuit Ride:
- Bhutanese interviewees of Nepali ethnicity
- Turkey and Jordan Circuit Ride:
- Iraqi interviewees of Christian, Shia Muslim, and Sunni Muslim religions, employees or associates of USG and its allies

Among the members of your circuit ride group, divide up the following topics for research and 5 – 10 minute presentation to the class:

1. What kinds of individuals have been persecuted in the interviewee's country of origin?
2. On what grounds have they been persecuted in the country of origin?
3. What is the ethnic breakdown in the country of origin?
4. What is the religious breakdown in the country of origin?
5. Identify 2 significant events that have taken place in the country of origin within the past 2 decades (for example: military campaigns, elections, protests, intrastate conflicts, etc.).
6. What kinds of human rights violations and abuses take place against the

interviewee population in their country of origin?

7. Who are the persecutors in the country of origin?
8. What countries border the country of origin?
9. What potential "terrorist organizations" (as defined in INA 212(a)(3)(B)(vi)) exist in the country of origin or among the specific refugee population to be interviewed?
10. What is the ability of the government to protect refugee interviewee in country of origin/persecution?
11. Obtain geography/Maps of country of origin that clarify where abuses or groups at risk are located
12. Collect Information on characteristics particular to the ethnic or religious group, such as location, language, dress, history
13. Collect information on potential "persecutors" in the country of origin o

Conduct research on the status of these interviewees in the country you will be interviewing them in.

Practical Exercise #2

There are no student materials for Practical Exercise #2.

Practical Exercise #3

There are no student materials for Practical Exercise #3.

Practical Exercise #4

- **Title:** Case Study
- **Student Materials:** Computer Lab with Internet and Intranet Access

Fact pattern:

Interviewee states that she was a math teacher at a rural school in Colombia. Although she has never been especially involved in trade union activities, her close friend – a teacher at the same school – was. Her friend was kidnapped and killed recently by one of the two militant groups fighting in her area, the FARC or the United Self-Defense Forces of Colombia. She is afraid that she will be similarly targeted.

Conducting a quick 10-minute internet search using keywords such as “Colombia” “trade union” “kidnapping” “FARC” and “United Self-Defense Forces of Colombia” you were able to find COI.

How would you utilize this information in the asylum interview to elicit information material to this interviewee’s claim?

1. List lines of inquiry that you would use in the interview.
2. Suppose that, when you asked the interviewee which group she believes kidnapped her friend and colleague, she replied that (based on what she heard) she believes that it was a left-wing, communist group known as the “United Self-Defense Forces of Colombia”. What would be your initial reaction to this response in terms of evaluating interviewee’s credibility? What follow-up questions would you need to ask to determine whether your initial reaction was appropriate? ○

Practical Exercise #5

After you read *Galina v. INS*, 213 F.3d 955 (7th Cir. 2000), consider what kind of COI reports would have properly supported the BIA’s decision.

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

None

SUPPLEMENTS**RAD Supplement – 1 Introduction**

The importance of country of origin information is emphasized in the INA at section 207(f).

INA § 207: Annual admission of refugees and admission of emergency situation refugees.

(f) Training

(1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.

(2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

RAD Supplement – 3.1 Pre-Interview Preparation

Circuit Ride and Interview Preparation

It is imperative that you routinely conduct country of origin research in preparation for every circuit ride. You may be interviewing interviewees of the same nationality, or interviewees of numerous nationalities at a particular refugee processing location. It is your responsibility to maintain up-to-date knowledge about the country or countries of origin. Having a manageable collection of country reports available for reference will be useful while on circuit ride.

To gather the most useful collection of country reports for a circuit ride, select reports that provide information on the conditions in the interviewee's country of origin around the time of the interviewee's flight from his or her country as well as information on current conditions in the interviewee's country of origin. When refugee interviewee documentation can be accessed in the WRAPS database in advance of a circuit ride, you may ascertain the nature of the refugee claims presented for interview and more effectively focus your research on the most relevant country of origin information. You should learn as much as possible about ethnic groups, religions, political organizations, elections, demonstrations, attacks, locations, timing of events, etc. that are presented in the claims of the refugee interviewees to focus country of origin research prior to the circuit ride.

When the nature of the refugee claims is not known in advance, it is best to bring along reports that are as comprehensive as possible and address the situation of groups at risk in a country. A glossary of political parties and a timeline of events for countries is often a useful reference to have on hand.

RAD Supplement – 3.2 Eliciting Testimony at the Interview

Generally, in refugee processing situations, you are interviewing many interviewees from the same country of origin. Often interviewees at a given processing location may have similar types of refugee claims either because they fled the same area within their home country or because they face similar situations of danger. In such situations, draw on your knowledge of COI gained during pre-departure preparation to evaluate these claims, rather than researching each individual case. However, if you encounter a claim that is unfamiliar or unusual in light of known COI, then additional research will likely be necessary.

RAD Supplement – 4.1 RAIO Research Unit**Country of Origin Research in Washington, DC**

You will be conducting most of your country of origin research while in Washington, DC at the Refugee Affairs Division office. While in Washington, DC, you will be able to access WRAPS records of refugee interviewees scheduled for an upcoming circuit ride. You should ascertain the nature of the persecution claims from the WRAPS database and focus your research on the ethnic groups, religious groups, and political groups that are presented in the claims. Previously adjudicated cases from certain regions and populations may also help you anticipate the types of claims and issues you might encounter. While knowledge of current conditions in a country is always helpful in evaluating refugee claims, country of origin research should also focus on the time frame of the events that caused interviewees to flee when they did.

Maps, glossaries, timelines of events, and comprehensive reports are ideal country of origin resources to take with you on a refugee detail. Searching the Internet is the most common method for you to access COI. However, many resources are not accessible online. The RAIO Knowledge Management Center contains hardcopy reports and lengthier historic and background publications that may be useful.

RAD has also recently developed Adjudicative Aids for the populations most commonly encountered. The adjudicative aids serve as a great starting point for conducting research because they identify the key issues, red flags, and historical events associated with each population. Research on the issues highlighted in the adjudicative aids will help you elicit testimony and assess credibility because you will have more objective knowledge to weigh against the claims of the interviewee.

You will receive a Pre-Departure Training (PDT) prior to each circuit ride. A portion of the PDT addresses general information about the populations that will be interviewed and the issues that often arise during interviews (e.g. grounds of inadmissibility that seem to be common, armed groups known to be associated with a certain population, etc.).

The PDTs often provide country of origin material to the interviewers, either electronically on CDs or as hard copies. However, the PDT is not meant to replace individual research. Dedicate individual time to conduct research. You may discover that the issues are numerous and complex and some sources like human rights reports may take a significant amount of time to review. The COI sources discussed and distributed during PDT should also be available on the Refugee L:\ drive.

Country of Origin Research while on Detail

Generally speaking, there will be limited time and opportunity to conduct country of origin research while overseas. It is good practice to take country reports with you to reference while on detail. Most worksites have very limited access to the Internet, and often the only opportunity to do Internet research while on a refugee detail will be in the hotel or at a nearby Internet café. At times, however, a novel

issue will arise in a case that will require extra research. All such cases should be discussed with one's team leader and each issue may be handled in a variety of ways: you could be permitted time to do the necessary research; the Team Leader could do the research for the case since he or she generally has more readily available access to the Internet; a query could be sent to the appropriate desk officer at RAD HQ; the Desk Officer could in turn pass these requests on to other members of the RAD Policy and Regional Operations (PRO) Branch, to the RAIO Research Unit, or to outside subject matter experts – for example, DoD – and so on.

As throughout the course of a trip you perform more interviews with the same or similar populations, certain issues may come up repeatedly or you may become aware of particular gaps in your knowledge about country-specific issues that surface regularly in testimony. Thus, you may benefit from conducting additional research on particular issues at intervals throughout the course of a trip, if time permits.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

None

SUPPLEMENTS

ASM Supplement – 1 Introduction

8 C.F.R. §208.1(b):

The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, torture of persons in other countries, and other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

ASM Supplement – 3.1 Pre-Interview Preparation

When conducting an interview in a USCIS office with ready-access to Intranet and Internet sources

In preparation for conducting an asylum interview you should review the general government structure, basic political situation, and human rights conditions in the country from which the interviewee fled, or his or her country of last habitual residence. This can be done in a reasonable amount of time by referring to resources available on your desktop computer through the Intranet and the Internet,

as well as an in-house library. Materials gathered and prepared by the RAIO Research Unit, available through the Intranet and in each office's library, can assist in providing the necessary background information. You should develop and maintain an in-depth familiarity with the wide variety of sources so that you can consult the most relevant source in the short time available for pre-interview research.

You should keep in mind that there are some useful sources that may be found only in the local office library. Maintaining a familiarity with the contents of the local office library can enhance your range of useful sources.

If you are unfamiliar with a group to which the interviewee belongs, a word search on the Internet using a reliable search engine, such as Google, or the United Nations High Commissioner for Refugees' Refworld, or of Intranet sources, such as the RAIO Library, may provide basic information that will enable you to ask informed questions at the interview. Bear in mind, however, that information found on the Internet should be evaluated carefully for reliability. Information found on the Internet or via other electronic sources, such as the Intranet or databases, may be out-of-date. In addition, neither the Internet nor other electronic resources can contain information about every group in the world. The fact that a group is not found in the sources consulted does not mean that the group does not exist.

When conducting off-site interviews:

Prior to any circuit ride, you should review files or anticipated claims, when possible, to determine whether they contain claims involving a country or group with which you are unfamiliar. Because many off-site interview locations (such as detention facilities) will not be conducive to conducting country of origin research, you should prepare for these interviews while still in the Asylum Office, where information is accessible. It may be useful to conduct a search of electronic sources for events or groups relating to the claims, print the pertinent pages, and bring them along for the off-site interview. Copies of the annual reports on specific countries done by various human rights and government organizations can be accessed electronically and printed to take to an off-site interview.

ASM Supplement – 3.4 Citations

When you rely upon COI directly to refute an interviewee's claim, you must cite at least two reliable sources.

One-Year filing Deadline

Regardless of the filing date of an application, Asylum Officers are to give all applicants an asylum interview. This includes pre-interview familiarization with general country conditions and post-interview research of specific country conditions relevant to the applicant's situation, where applicable. See also Affirmative Asylum Procedures Manual (AAPM), Section III.P.2. b., November 2007.

When an applicant has established an exception to the one-year filing deadline, Asylum Officers must include a brief analysis of the one-year filing deadline issue in the assessment to grant or refer. The analysis should include the changed and/or extraordinary circumstances established and a finding that the applicant filed within a reasonable time given the circumstances. If the exception(s) established are based on country conditions, country reports must be cited.

The AAPM further instructs that other than for specified exceptions, "an assessment to refer based on the one-year filing deadline must reflect that the officer reviewed country conditions to confirm that there has been no change that materially affects the applicant's eligibility for asylum. When country conditions are relevant to the applicant's asylum eligibility, the assessment must contain at least two country conditions citations to support a finding that the applicant has not established an exception based on changed circumstances. The time period covered by the citations is determined on a case-by-case basis, but generally must cover the period beginning 24 months preceding the filing date, and ending on the date of the decision. It is preferable that the two citations be from different sources; however they may be from the same issuing organization or agency if another source cannot be found. These guidelines have been developed as a minimum safeguard to document that, where required, country conditions have been examined for changed circumstances before an application is referred. Certain cases may require a broader review of country conditions or citations to more than two sources." See AAPM Section III. P.2.c.ii.b, Country Conditions Citations.

Previous Denial of Asylum by EOIR

In cases involving a previous denial of asylum by EOIR, where the established changed circumstances relate to country conditions, the Asylum Officer must cite to country conditions reports to support the finding. See AAPM, Section III.P.3.f.i.

See Also, Memorandum dated January 4, 2002: *Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*, issued by Joe Langlois, Director, Asylum Division.

b. Summarize.

It is not necessary to quote extensively from country of origin reports. A summary

of the relevant information relied upon may suffice.

Example

Reliable reports indicate that the Egyptian government arrested, detained, and abused Internet bloggers. See: United States Department of State (U.S. DOS). 11 Mar 2008. "Egypt: Country Reports on Human Rights Practices – 2007," Bureau of Democracy, Human Rights, and Labor; <http://www.state.gov/g/drl/rls/hrrpt/2007/100594.htm>, (Accessed 14 Mar 2008).

Note: When using sources in electronic form, where cutting and pasting is available it may be quicker to pick an appropriate selection and quote it directly.

Be accurate and complete

The summary must accurately reflect the source quoted. Never use material selectively, take material out of context, distort the overall message of the source, or claim that the source says something that it does not say.

Example

A State Department report states that religious freedom is guaranteed by the constitution of country X. The report further states that in practice, violence against Jehovah's Witnesses is common and that the government does not punish perpetrators of such violence. It would be incorrect to make the following statements:

"According to the State Department, religious freedom is guaranteed under the laws of X. [cite]; therefore, it is not reasonable for the interviewee to fear she will be persecuted because she is a Jehovah's Witness."

Ensure that information is current or chronologically-relevant

Information relied upon should be current or chronologically-relevant to the events relayed by the interviewee. When citing to an annual human rights report, refer to the latest available edition, unless an earlier version is needed to corroborate past persecution or a specific historical incident.

ASM Supplement – 5.3.1 Become Familiar with the Types of Information Available

- Consult your office's library for hard copy reports when information is needed to verify events that occurred prior to the mid-1990s, as these reports are often

not archived on the Internet.

- Consult the RAIO Research Unit, when you are unable to find information on the Internet or in your local library and the information is necessary to arrive at a decision on a case.

ASM Supplement - 4.1 RAIO Research Unit

The following guidance on contacting the Research Unit is taken from The Asylum Affirmative Procedures Manual, Section II. M. 2, The Country of Origin (COI) Research Section, (p. 38), Revised November 2007:

AOs should discuss with their SAOs the submission of queries to the COI Research Section, as case processing may be delayed in order to complete the research. In addition, AOs should copy their QA/Ts on the submission of queries to the COI Research Section so that QA/Ts are aware of research needs and questions in the office. Queries are best sent by email to RAIOresearch@dhs.uscis.gov. The Asylum Office is responsible for developing a system to distribute to staff COI queries and responses. In addition, the COI Research Section will publish all query responses on the AVL. Access to certain query responses may be limited to certain user groups if the query response contains sensitive information.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

None

SUPPLEMENTS

IO Supplement – 4.4 Reputable Sources for Internet Research

When adjudicating intercountry adoptions, you should become familiar with the U.S. Department of State's intercountry adoption site located at adoption.state.gov. Managed by the Office of Children's Issues (CI) as part of the Bureau of Consular affairs at the Department of State, the website provides up-to-date information about a country's adoption process, eligibility requirements, adoption statistics, alerts and warnings and more. The USCIS adoption website also contains country updates related to petition processing in certain countries – see www.uscis.gov/adoption and select the Country Information tab.

For intercountry adoptions and other IO form types where applicants are required to submit civil documents in support of their applications, the Department of State Reciprocity Tables found [here](#) are very useful. Each country specific page provides detailed information about the government-recognized and authorized entities or agencies within that country for obtaining civic documents such as birth, marriage, divorce certificates, adoption decrees, police, or prison records. The information details the availability of each document, and how and where it can be obtained in that particular country.

Student Name: Click here to enter text.

RAIO CT Decision Making Exercise		
Elements of the law	Material Facts	Evidence
Outside any country of such person's nationality, or, in the case of a person having no nationality, is outside any country in which such person last habitually resided	Click here to enter text.	Click here to enter text.
unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country	Click here to enter text.	Click here to enter text.
because of persecution or a well-founded fear of persecution	Click here to enter text.	Click here to enter text.
on account of race, religion, nationality, membership in a particular social group, or political opinion	Click here to enter text.	Click here to enter text.



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

DECISION MAKING

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course*

DECISION MAKING

Training Module

MODULE DESCRIPTION

This module describes the general factual, legal and analytical considerations involved in constructing legally sufficient decisions.

TERMINAL PERFORMANCE OBJECTIVE(S)

Given the field situation in which you have a request to adjudicate, you will be able to identify the relevant legal elements and apply them to relevant evidence to construct legally sufficient determinations and decisions.

ENABLING PERFORMANCE OBJECTIVES

1. Identify general writing and style techniques, including USCIS Plain Language principles that improve comprehensibility.
2. Explain the purposes of legal analysis.
3. Distinguish proper from improper factors in legal decision making.
4. Distinguish relevant from irrelevant facts and issues in decision making. Explain the different components of legal decision making.
5. Construct a legally sufficient argument to support a determination or conclusion.

INSTRUCTIONAL METHODS

- Interactive presentation
- Practical exercises

METHOD(S) OF EVALUATION

- Written Examination
- Practical Exercise Exam

REQUIRED READING

- 1.
- 2.

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. Divine, Robert C., Acting Deputy Director, U.S. Citizenship and Immigration Services, Memorandum to Office of Domestic Operations; Office of Refugee, Asylum, and International Operations; and Office of National Security and Records Verification, *Legal and Discretionary Analysis for Adjudication* (May 3, 2006)
2. Administrative Procedure Act, 5 U.S.C. § 557(c)
3. 8 C.F.R. §§ 208.9, 208.19
4. 8 C.F.R. § 207.7(g)
5. Yule Kim, Legislative Attorney, American Law Division, Statutory Interpretation: General Principles and Recent Trends, CRS Report for Congress, (August 31, 2008) available at <http://www.fas.org/sgp/crs/misc/97-589.pdf>.
6. M.H. Sam Jacobson, *Legal Analysis and Communication* (2009).
7. Templin, Benjamin A., LawNerds.com, *Part 2: Learn the Secret to Legal Reasoning* (2003), <http://www.lawnerds.com/guide/irac.html>.

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

SOURCE:

Task/ Skill #	Task Description

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
02/06/2013	Entire Lesson Plan	Lesson Plan published	RAIO Training
05/10/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	LGollub, RAIO Training
11/23/2015	Throughout document	Corrected links and minor typos	RAIO Training

TABLE OF CONTENTS

1	INTRODUCTION	9
2	GENERAL CONSIDERATIONS	9
2.1	Definition of Analysis and Legal Analysis	9
2.2	Every Adjudication Involves Legal Analysis	10
2.3	Case-by-Case Basis	10
2.4	Appropriate Considerations	10
2.5	Inappropriate Considerations	10
2.6	Quality and Quantity	11
2.7	The Purpose of Legal Analysis	12
3	THE LEGAL DECISION MAKING PROCESS.....	12
3.1	Begin by Knowing the Law to Be Applied.....	13
3.2	Break the Law into its Elements	14
3.2.1	A Legal “Test” to Be Met.....	14
3.2.2	A Set of “Factors” for Consideration	15
3.2.3	An Analytical “Framework” to be Followed.....	16
3.3	Identify the Evidence in the Claim.....	18
3.4	Evaluate the Evidence to Determine the Facts.....	19
3.5	Apply (the Elements of) the Law to the Facts to Explain your Decision	19
3.5.1	Include the Material Facts, an Explanation, and a Conclusion	19
3.5.2	Not All Untrue Statements Lead to a Denial	20
3.5.3	IRAC – A Useful Tool to Organize your Analysis	21
3.6	Benefit of the Doubt.....	Error! Bookmark not defined.
4	WRITING STYLE	25
4.1	Make Your Written Decision Readable	25
4.1.1	Be Focused	26
4.1.2	Include Objective Analysis, Not Personal Opinions, Assumptions, or Speculation	26
4.1.3	Use an Explanatory Tone	26
4.2	Use Language that Reflects the Appropriate Legal Standard	26

4.3 Use Citations Only Where the Source Was Relied Upon in Making a Decision	27
4.3.1 Citing Case Law	27
4.3.2 Citing Country of Origin Information	27
5 CONCLUSION.....	28
6 SUMMARY	28
6.1 General Considerations	28
6.2 The Legal Decision Making Process.....	29
6.3 Writing Style	30
PRACTICAL EXERCISES.....	31
OTHER MATERIALS	32
IRAC – A Useful Tool to Organize your Analysis	Error! Bookmark not defined.
SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....	35
Required Reading	35
Additional Resources.....	35
Supplements.....	35
SUPPLEMENT B – ASYLUM DIVISION.....	39
Required Reading	39
Additional Resources.....	39
Supplements.....	39
SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....	42
Required Reading	42
Additional Resources.....	42
Supplements.....	42

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

As an officer in the RAIO Directorate, you will make different types of eligibility decisions. Your decisions must be made and communicated in a legally sound, professional, and comprehensible manner. For this reason, you should become familiar with the processes used in legal decision making. Even where your decisions will not result in a written explanation of eligibility, following these processes will assist you in preserving clarity and quality in the adjudication process.

This module provides an overview of the analytical processes for making eligibility determinations. The module does not provide the legal criteria for making such determinations. Instead, the RAIO Training Modules and the division-specific training materials constitute primary field guidance for all officers who make legal eligibility decisions for the RAIO Directorate.

2 GENERAL CONSIDERATIONS

Each decision you will make involves the life of an individual. Although you may be under time constraints to complete a decision, each decision you make is an important one and cannot be made lightly. You have a duty to be a neutral, unbiased adjudicator and to give adequate and appropriate consideration to every decision you make.

2.1 Definition of Analysis and Legal Analysis

Dictionaries have several definitions of "analysis," all of which involve the breaking down of a complex whole into separate parts for study.

Legal analysis breaks down a determination that an applicant does or does not qualify for a benefit requested into short explanations and conclusions that reveal how you

reached this determination. Legal analysis makes clear to others the rationale behind your determination.

2.2 Every Adjudication Involves Legal Analysis

Legal analysis confirms what facts a petitioner or applicant (USCIS “customers”) must establish in order to prove eligibility under the law, and then assesses whether those facts have been established. Sometimes you will adjudicate benefits that do not call for a written explanation of your analysis; however, you should still engage in a careful legal analysis in every case in order to accurately determine each customer’s eligibility for the benefit requested.

You have a duty to follow the law as it is set forth by statute, regulation, policy guidance, precedent decisions, and the USCIS Office of Chief Counsel. You cannot develop your own standards on the basis of what you think the law should be.

2.3 Case-by-Case Basis

There are no “magic formulas” to determine whether or not an applicant is eligible for an immigration benefit. Although many claims are similar, they are never identical, and each applicant is unique. Therefore, each request must be evaluated on its own merits.

You should be mindful of the facts of each particular case without allowing previous cases to unduly influence your decision-making. For example, when adjudicating asylum or refugee claims, the fact that one applicant has suffered severe persecution should not prevent you from finding that another applicant, who suffered less severe harm, also suffered persecution. Likewise, a parole applicant who demonstrates a particularly compelling urgent humanitarian need for parole should not prevent you from finding urgent humanitarian need in less compelling cases. Each case must be analyzed on its own facts.

Although each of your decisions must be made on a case-by-case basis, you should strive for consistency in applying the law from one case to another.

2.4 Appropriate Considerations

When making a decision, you must consider all relevant evidence and give that evidence the appropriate weight due to it.¹ What is relevant, however, will depend on what benefit the applicant is requesting and what the applicable law indicates he or she must establish in order to prove eligibility for that benefit. [ASM Supplement]

2.5 Inappropriate Considerations

¹ See RAIO Training Module, *Evidence*.

- Similarities or differences with other cases
- Foreign policy considerations:
 - That the applicant is from a country whose government the United States supports or with which it has favorable relations
 - That the United States government agrees or disagrees with the political or ideological beliefs of the individual
- Your personal opinions and beliefs
 - That you may disagree with the applicant's political ideology
 - That you may not have the same religious beliefs, sexual orientation, or cultural norms
 - Preconceived notions that applicants from a particular country are or are not truthful
 - Personal experience from living or traveling in an applicant's country

(This can help you form lines of questioning, but does not substitute for objective country of origin information)
- Reports on the incidence of fraud by applicants of the same nationality

You will receive information and briefings on fraud and the use of fraudulent documents. This can provide very useful information you can use when interviewing an applicant and reviewing evidence. You should be careful, however, not to raise the standard of proof for an applicant based on incidences of reported fraud for that nationality.

2.6 Quality and Quantity

Both quality and quantity are priorities in decision making for the RAIO Directorate. You may sometimes find it difficult to balance these priorities when under time constraints. For example, when doing protection work, you may be unable to research every unfamiliar detail of an applicant's claim, ask every question you might like to ask during an interview, or read all available country of origin reports. You will be required to work within designated timeframes, however, as delays can have negative repercussions for the immigration process, as well as for applicants and their families. It is therefore imperative that you train yourself to identify and focus on the critical legal and factual issues. Doing so will enable you to know when to stop—that is, to know when you have gathered enough evidence to render a decision. This is only part

of the picture, however. You must also become skilled at making well-reasoned, legally sufficient decisions supported by the evidence you have gathered.

2.7 The Purpose of Legal Analysis

Legal analysis promotes and ensures timeliness and quality in the decision making process in the following ways:

Ensures that Decisions Are Based on Appropriate Factors and the Correct Application of the Law

The process of explaining a decision encourages you to examine the facts and applicable legal standards and discourages you from jumping to conclusions or relying on “gut feelings.” This process safeguards applicants with genuine claims while prevents others from erroneously being granted relief.

Allows for Review that Enhances Quality

Written legal analysis conveys to the reviewer -- most often your supervisor or someone from quality assurance locally or at headquarters -- the reasons behind your decision. This allows the reviewer to determine if you properly applied the law in your decision and ensures you make consistent and quality decisions.

Adds Transparency to the Decision-Making Process

Written decisions serve to inform USCIS “customers” about the adjudication of their case. Whether part of a written decision or encompassed in a properly completed adjudication form, the rationale for your decision should be set forth so that the customer and any reviewer (such as your supervisor, headquarters, the Administrative Appeals Office (AAO), the Board of Immigration Appeals (BIA), Immigration Judges (IJs), and the federal courts) can understand the rationale for the decision.²

Provides a Meaningful Opportunity to Respond

Clear legal analysis can also explain to the applicant why you intend to deny or have denied the applicant’s request for relief. The applicant is then in a much better position to formulate a relevant response or rebuttal that specifically addresses the shortcomings or concerns you have identified. If the applicant understands the reason(s) behind your decision, the applicant can address your specific concerns, rather than merely reiterating the facts already presented, hoping to cover all bases.

3 THE LEGAL DECISION MAKING PROCESS

When determining eligibility for a benefit:

² See RAIO Training Module, *Evidence*.

- Know the law to be applied
- Break the law into its elements
- Identify the evidence in the claim
- Evaluate the evidence to determine the facts
- Apply (the elements of) the law to the facts to explain your decision

3.1 Begin by Knowing the Law to Be Applied

Before adjudicating, you must understand the law involved. Start by reviewing the relevant statute, regulation, policy guidance, and/or precedent decisions to identify the law that you will be applying. If you are using a template or shell, be sure that it is current.

Mandatory vs. Permissive Language

- Mandatory Language: Shall, Must, Required, And
- Permissive Language: May, Either, Or

Seemingly little words can mean a lot, such as those shown above. Their presence can affect how and when the law is to be applied. As in everyday English, the use of the conjunctive “and” in a list ordinarily means that all of the requirements listed must be satisfied, while use of the disjunctive “or” means that only one of the requirements listed need be satisfied. The use of “shall” and “may” also mirrors common usage; ordinarily “shall” is construed as mandatory, and “may” as permissive. These words should also be read in their broader statutory context, in order to determine whether the overall legal directive itself is mandatory or permissive.

The example below illustrates the use of mandatory and permissive terms in the definition of the “disappearance of both parents” under 8 C.F.R. 204.3(b) for orphan cases:

1. both parents have unaccountably or inexplicably passed out of the child's life;
2. [both parents'] whereabouts are unknown;
3. there is no reasonable hope of [both parents'] reappearance; and
4. there has been a reasonable effort to locate [both parents] as determined by a competent authority in accordance with the laws of the foreign-sending country.

The placement of “or” in element 1 indicates that either basis for the parents’ passing from the child’s life will satisfy this particular element (i.e., the parents’

passing can be unaccounted for *or* inexplicable). The placement of “*and*” after element 4 makes it clear that all four of the elements must be present in order to satisfy the legal requirements and establish the “*disappearance of both parents.*”

3.2 Break the Law into its Elements

Next, break up the law into its individual elements. The law you apply may follow one of three basic formulas:

1. a legal “test” to be met
2. a set of “factors” to be considered
3. an analytical “framework” to be followed

Keep in mind that these formulas are not mutually exclusive. In fact, it is not uncommon for a particular law to consist of several elements (and even sub-elements), each containing one or more of these formulas. That is, a law may be made up of several elements, and each element could contain a test, a set of factors, or an analytical framework.

3.2.1 A Legal “Test” to Be Met

The law you apply may indicate that all of the enumerated elements must be satisfied, or it may indicate that the existence of one, or some, of them will suffice.

Example

The Immigration and Nationality Act (INA) defines “stepchild” as an unmarried person under 21 years of age, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.³

Required elements of the test to be met:

- unmarried person
- under 21 years of age
- a marriage creating the status of stepchild for this person has occurred
- person had not reached the age of 18 years at the time of such marriage

Example

You are adjudicating a Form I-600 Petition to Classify Orphan as an Immediate Relative (“orphan petition”) pursuant to INA § 101(b)(1)(F). An

³ INA §§ 101(b); 101(b)(1)(B).

issue in the case before you is whether the child beneficiary is **an orphan** due to the disappearance of his parents.

The Code of Federal Regulations at 8 C.F.R. § 204.3(b) defines “disappearance of both parents” as follows:

Disappearance of both parents means that both parents **have** unaccountably or inexplicably passed out of the child's **life**, their whereabouts are unknown, there is no reasonable hope of **their** reappearance, and there has been a reasonable effort to **locate** them as determined by a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(b) Broken into its Essential Elements:

- Both parents have unaccountably or inexplicably passed out of the child's life;
- [both parents'] Whereabouts are unknown;
- There is no reasonable hope of [both parents'] reappearance; and
- There has been a reasonable effort to locate [both parents] as determined by a competent authority in accordance with the laws of the foreign-sending country.

3.2.2 A Set of “Factors” for Consideration

Alternatively, the law may identify a number of factors to weigh or consider when making a particular legal determination. The law may specify that some factors should be given more weight than others, or that each factor is to be evaluated equally. Either way, you must indicate which (if any) factors exist in the case. Often, the law requires you to engage in a “balancing test” or to consider the “totality of the circumstances.”

Example

Courts have identified various factors for consideration when evaluating whether past threats made against an asylum or refugee applicant constitute persecution. These factors include:

- Does the persecutor have the means to harm?
- Has the persecutor attempted to act on the threat?
- Is the nature of the threat itself indicative of its seriousness?

- Has the persecutor harmed or attempted to harm the applicant in other ways?
- Has the persecutor attacked, harassed, or threatened the applicant's family?
- Has the persecutor executed threats issued to others similarly situated to the applicant?
- Did the applicant suffer emotional or psychological harm as a result of the threat(s)? ⁴

3.2.3 Following An Analytical "Framework"

The law may also provide a systematic, step-by-step approach that you must follow when analyzing a particular legal issue. To make a proper determination, your legal analysis should reflect that you engaged in each of the steps outlined and did so in the order indicated.

Example

Matter of A-G-G⁵ provides a four-step framework that must be followed in order to properly determine whether an asylum applicant is firmly resettled.⁶ This analytical framework consists of the following:

- **Step One:** Your burden to present *prima facie* evidence of an offer of permanent resettlement
- **Step Two:** If there is *prima facie* evidence, it is the applicant's burden to rebut such evidence
- **Step Three:** You weigh the totality of the evidence and make a determination whether the evidence of an offer of firm resettlement has been rebutted
- **Step Four:** If you find the applicant was firmly resettled, the burden shifts to the applicant to show an exception applies.

A law is typically comprised of several elements, with each element having one or more sub-elements. Each of these, in turn, may involve a test, a set of factors, or an analytical framework. This may sound complex, but your objective is a simple one.

⁴ See RAIO Training Module, *Definition of Persecution and Eligibility Based on Past Persecution*.

⁵ Matter of A-G-G, 25 I&N Dec. 486 (BIA 2011).

⁶ See RAIO Training Module, *Firm Resettlement*.

You need to understand the law you are dealing with, so you can effectively break it into elements and apply those elements to the facts of the case before you. The following example should help clarify this point.

Example

Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987), laid out a four-part test for determining well-founded fear in protection cases. To establish a well-founded fear of future persecution, an applicant must establish all of the following elements.⁷

- Possession (or imputed possession of a protected characteristic)
- Awareness (the persecutor is aware or could become aware the applicant possesses the characteristic)
- Capability (the persecutor has the capability of punishing the applicant)
- Inclination (the persecutor has the inclination to punish the applicant)

Here, we have an overall “test” to be met in order to establish the existence of a well-founded fear. This test involving Possession, Awareness, Capability, and Inclination is sometimes referred to as “PACI.”

The first element of the PACI test is possession. “Possession” consists of sub-elements that an applicant must establish. These include that:

- he or she possesses or is believed to possess a characteristic
- the persecutor seeks to overcome that characteristic, [and]
- the characteristic falls within one of the protected grounds listed in the refugee definition (i.e., race, religion, nationality, membership in a particular social group, or political opinion)

Thus, the element of “possession” involves an additional three-part “test” to be met. Notably, when analyzing the characteristic at issue, further elements comprising the characteristic will likely need to be analyzed (e.g., establishing the existence of a particular social group and the applicant’s membership therein may well involve a combination of test(s), factors and/or an analytical “framework.”)

The third PACI element, “Capability” requires that an applicant establish that the persecutor has the capability to persecute him because he possesses (or is believed to

⁷ See RAIO Training Module, *Well-Founded Fear*.

possess) a protected characteristic. Some factors identified as appropriate for consideration in evaluating capability include:

- whether the persecutor is a governmental entity and, if so, the extent of the government's power or authority;
- whether the persecutor is a non-governmental entity, and if so, the extent to which the government is able or willing to control it; and
- the extent to which the persecutor has the ability to enforce his or her will throughout the country

And while the four-part PACI test is not a strict "framework" in that the sequence of its steps are not rigidly defined, it is often used like one in practice because going through the elements in the order given is both logical and efficient.

3.3 Identify the Evidence in the Claim

When adjudicating an application, you may encounter different types of evidence including oral and written testimony and documents.⁸ Before engaging in the analysis, review the evidence in the record and, if necessary, conduct country of origin information research or other research to identify the material facts of the case.

Material facts are those facts that directly relate to one or more of the required legal elements to be analyzed. They have a direct bearing on the outcome of the decision.⁹

Relevant evidence means evidence having a tendency to make the existence of a material fact more or less probable than it would be without the evidence.¹⁰ If the presented evidence does not help to establish or refute a material fact, that evidence is irrelevant. You should not rely on irrelevant evidence in constructing your analysis.

All material facts must be considered in your analysis of whether the legal elements have been met. You may never ignore a material fact simply because it makes reaching a decision more difficult or fails to support your opinion about the applicant or his or her eligibility. Similarly, any factual conclusions you draw must be supported by the evidence (or the absence of evidence) in the record. Conclusions that rely on speculative, unsupported, equivocal, or irrelevant evidence should not be part of your analysis.

Example

Which of the following are *material facts* relating to the "disappearance of both parents," as defined at 8 C.F.R. § 204.3(b)?

⁸ See RAIO Training module, *Evidence*.

⁹ See Federal Rules of Evidence, Rule 401; see also "Notes of Advisory Committee on Proposed Rules."

¹⁰ Federal Rules of Evidence, Rule 401; see also RAIO Training Module, *Evidence*, section on Types of Evidence.

1. The child's mother is in a refugee camp.
2. No one attempted to locate the child's parents.
3. Records indicate that 18 months ago the child entered the United States without inspection and subsequently returned to the foreign-sending country.¹¹

3.4 Evaluate the Evidence to Determine the Facts¹²

After identifying the evidence, evaluate it to determine the facts of the claim. You must determine whether any testimony in support of the claim is credible and you must determine whether any documentary evidence is authentic or reliable.

3.5 Apply (the Elements of) the Law to the Facts to Explain your Decision

After breaking down the law into specific elements and identifying the material facts to be considered, you are ready to apply the law to the facts and make a decision in the case.

Your analysis should not simply repeat the material facts. Rather, it should incorporate and connect them to the required legal elements.

Compare each individual piece of evidence that is linked to the same material fact. Weighing the different pieces of evidence against each other is a delicate task. You have to determine how pieces of evidence relate to each other. Do they support each other or are they contradictory? Then determine whether enough material facts are supported by evidence to meet the standard of proof for each element of eligibility.

3.5.1 Include the Material Facts, an Explanation, and a Conclusion

Your overall analysis will contain both explanatory statements and conclusions addressing each of the required legal elements. The explanatory statements will include the relevant facts and how the law applies to those facts. Taken together, these will lead to a final determination as to eligibility for the benefit sought.

Examples of complete legal analysis

Because the applicant was able to live safely in his country for several years without further incident, he failed to establish that the authorities have the inclination to carry out their threats. Therefore, his fear of future persecution is

¹¹ 1-material—a parent's whereabouts are not unknown; 2- material—no reasonable effort to locate parents has been made; 3-without more, this is not material—as it is not relevant to a legal element in 8 C.F.R. § 204.3(b) defining "disappearance of both parents." However, testimony or other evidence might indicate that child was with a parent in the U.S.

¹² See RAIO Training modules: *Evidence*; *Credibility*; *Researching and Using Country of Origin Information in RAIO Adjudications*; and *Fraud*.

not well-founded. (*material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution*)

- The fact that the applicant safely relocated to another part of the country for nearly four years indicates that the guerrillas do not have the inclination or capability to carry out their will on a nation-wide basis. Because the applicant can avoid persecution through relocation and the evidence demonstrates that it is reasonable to expect her to do so, her fear of future persecution is not well-founded. (*material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution*)

Examples of incomplete legal analysis

- The applicant was able to live safely in his country for several years after he was threatened. Therefore, the applicant is not eligible for asylum. (*statement of fact and final determination; no analysis*)
- The applicant failed to establish that his fear is well-founded. (*conclusion only*)
- The applicant can avoid persecution within her country. (*conclusion only*)
- The applicant safely relocated to another part of her country. Therefore, she is not eligible for asylum. (*statement of fact, final determination of eligibility; no analysis*)

Being able to determine what to include and what not to include in your decision is important. Include in your decision all of the material facts necessary to come to a conclusion. Do not include facts that are irrelevant to the claim. The reviewer should not be left wondering how you came to your conclusion, or wondering why you included unnecessary facts.

3.5.2 Not All Untrue Statements Lead to a Denial

The fact that an applicant has made untrue statements during an interview raises questions about the veracity of the claim and should be considered. However, not all untrue statements lead to a denial or referral of the application. The untrue statements must be evaluated in light of the totality of the circumstances and all the relevant factors in the case.¹³

Example

A Salvadoran citizen told an INS enforcement officer that he was Mexican. When the applicant applied for asylum, he asserted that he was Salvadoran. The Court of Appeals for the Ninth Circuit found that the immigration judge (IJ) erred in

¹³ See RAIO Training module, *Credibility*.

finding that the misrepresentation made the applicant ineligible for asylum. The misrepresentation supported the claim for asylum eligibility, because the applicant's misrepresentation to the enforcement officer whom he feared might deport him was consistent with the applicant's testimony that he feared deportation to El Salvador.¹⁴

Although you should not overly analyze inconsequential evidence that has been submitted, a brief reference to such evidence in your written decision may, in some cases, be useful. Including a brief explanation helps the applicant understand why his submitted evidence was insufficient.

3.5.3 IRAC – A Useful Tool to Organize your Analysis¹⁵

The “IRAC” method is a simple and objective means of organizing your legal analysis in a clear and logical way. In mathematical terms, it is similar to a formula. IRAC has four basic parts:

- Issue
- Rule
- Analysis
- Conclusion

It can be used to organize individual paragraphs or an entire decision. Many USCIS decision templates are based on IRAC.

What is an ISSUE?

An issue is the legal question presented by the case that must be resolved for a decision to be reached. For example, in a denial, it will be the legal reason that the case is being denied. The issue will arise from the material facts of the case. There can be more than one issue in a case. There will always be a rule to support each issue.

Examples

- CASE A: You are adjudicating a Form I-130 *Petition for Alien Relative*:

ISSUE: Can a Form I-130 *Petition for Alien Relative* filed by a lawful permanent resident (LPR) grandparent for a foreign-born granddaughter be approved?

- CASE B: You are adjudicating an application for protection from persecution (i.e., an asylum application or application for refugee status):

¹⁴ *Turcios v. INS*, 821 F.2d 1396, 1400-1401 (9th Cir. 1987).

¹⁵ See RAIO Training module, *Reading and Using Case Law*

ISSUE: Can past threats, without actual or attempted bodily harm, be sufficiently serious as to constitute past persecution?

What is a RULE?

A rule is the applicable law. A rule can come from a statute, regulation, precedent decision, case law, policy memorandum, or other legal authority.

Examples

- **CASE A - RULE:** A relative of U.S. citizen (USC) or Legal Permanent Resident (LPR)¹⁶ may be the beneficiary of a Form I-130 Petition for Alien Relative provided she is among the classes of eligible alien relatives enumerated in INA §§ 201(b), 203(a). These provisions identify eligible alien relatives to include:
 - “*immediate family members*,” defined as:
 - the spouse, parent, or child (including adopted orphans) of a U.S. citizen
 - “*family-based preference petition - principal beneficiaries*,” defined as:
 - sons and daughters of USCs;
 - spouses, children, and unmarried sons and daughters of LPRs, and
 - brothers and sisters of USCs;

OR

 - “*family-based preference petition - derivative beneficiaries*,” defined as:
 - dependents (spouse and child(ren)) of principal beneficiaries.
- **CASE B - RULE:** You should evaluate the entire scope of harm experienced by the applicant to determine if he or she was persecuted. U.S. federal courts have identified the following factors for consideration in determining whether past threats are sufficient to constitute persecution:¹⁷
 - The nature and seriousness of the threat(s);
 - whether the persecutor
 - attempted to act on the threat;

¹⁶ The petitioner in this example was neither a refugee nor asylee, thus, INA §§ 207(c)(2), 208(b)(3) can not apply.

¹⁷ See RAIO Training Module, *Definition of Persecution and Eligibility Based on Past Persecution*.

- attempted to harm the applicant in other ways;
- attacked, harassed or threatened the applicant's family;
- executed threats issued to others similarly situated to the applicant; and
- whether the applicant suffered emotional or psychological harm as a result of the threat(s)

What is ANALYSIS?

Analysis is the application of the rules to the facts. The analysis should include a discussion of the material facts in the record of proceeding and explain how they demonstrate that the issue has been favorably or unfavorably resolved. Analysis is what explains "why," and shows "how" you reached a given conclusion.

Examples

- **CASE A - FACTS:** The petitioner is a lawful permanent resident (LPR) grandparent seeking to petition for her foreign-born granddaughter. The petitioner has presented documentation of the petitioner's LPR status and the claimed relationship. The child has always resided with her married parents in the country of origin; there is no claim of adoption.

ANALYSIS: There is no provision under the INA providing for an LPR grandparent to petition for his/her foreign-born grandchild. See INA §§ 201(b), 203(a), 101. Grandchildren of LPRs are not among those listed as "immediate family members," nor are they eligible to receive an immigrant visa as either a primary or derivative beneficiary. Furthermore, there is no indication that the grandparent here has adopted the child in question.

- **CASE B - FACTS:** The applicant has credibly testified that anti-government insurgents controlled much of the countryside near his home. For several years, he volunteered with the local community watch group. Some watch members, including the applicant, reported suspected insurgent activities to regional government officials. The applicant made three such reports, the last of which dealt with the location of an insurgent training camp. Weeks afterward, friends warned the applicant that known insurgents had been asking about him. A month later, insurgents left a letter outside the applicant's home indicating that they knew he was a government supporter and advising him to shut his mouth. The letter also contained a picture of a skull, which the applicant understood to be a death threat. Applicant asserts that several people (one, a watch leader) who received similar letters were later killed. Applicant received two more letters over the next three months: one left on his doorstep, and another tied to a rock thrown through the window of his workplace. The last letter (tied to the rock) warned that the applicant would "not live to report

[them] again.” Upon receiving this letter, the applicant quit his job and went into hiding. He left for the United States two weeks later.

ANALYSIS: The applicant received increasingly serious death threats over a period of several months. The threats escalated both in their nature and in the seriousness of the threat made. For example, the initial letters advised applicant to be quiet and only implied physical harm (i.e., a skull image), while the last letter explicitly threatened applicant with assassination. Also, the initial threatening notes were left at the applicant’s home, while the last was delivered to applicant at his work place using violent means that damaged property associated with the applicant. In addition, the insurgents executed comparable threats made against others similarly situated to the applicant. This is evidenced by the fact that others -- including at least one person from applicant’s community watch group -- were killed after receiving similar threatening letters from the insurgents.

What is a CONCLUSION?

A conclusion states the results from the application of the rule to the case facts. It should not introduce new ideas to the decision, but rather should briefly summarize the legal answer to the question posed by the issue in the case.

A conclusion will always elicit the question, “why?” And the “why” should always be explained in your analysis.

Examples

- **CASE A – CONCLUSION:** The Form I-130 Petition for Alien Relative must be denied as a matter of law.
- **CASE B – CONCLUSION:** The threats that the applicant experienced are sufficiently serious as to constitute past persecution.

IRAC can be especially helpful in cases involving multiple issues. In such cases, you should “stack the issues,” dealing with each in turn, so that your analysis is clear and no issue is overlooked. Normally, you should begin with the strongest or most important issue, and conclude with the weakest. This is especially important in denials, where an applicant may seek further review or appeal.

In the absence of a template, a decision with multiple issues generally follows the following structure:

- Introduction and Procedural History
- Case Facts
- Law

- Issue #1 (presented in IRAC format)
- Issue #2 (presented in IRAC format)
- Burden of Proof
- Disposition / Conclusion

4 WRITING STYLE

4.1 Make Your Written Decision Readable

Individuals who read your decisions should be able to understand them the first time they read them. You have a duty to communicate clearly. Your decisions should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are not only sound principles of writing, these principles are part of U.S. law through the Plain Writing Act of 2010.¹⁸

Some written decisions are intended for the applicant (e.g., asylum or orphan Notice of Intent to Deny), while others are intended for administrative reviewers who are familiar with the legal standards and terms you use as an officer. Applicants usually have little understanding of the complexities of the law. You must therefore take care when preparing decision documents that will be provided to the applicant. Be sure that the explanations within your legal analysis effectively communicate your ideas using words the applicant will understand.

Example

It may be sufficient to state in an asylum assessment, “the applicant failed to establish a nexus between the feared harm and a protected ground.” The reviewer of an assessment will know what you mean by “protected ground.” An asylum applicant may have quite a different notion of those two words (picture a piece of land with an armed guard).

In a Notice of Intent to Deny (NOID), it would be better to state, “you failed to make a connection between the harm you fear and a protected characteristic in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).”

You should also avoid using certain legal terminology (“legalese”), such as Latin terms that would be difficult for a lay person to understand.

Example

¹⁸ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (Oct. 13, 2010). For further guidance on plain language principles, see USCIS’s Plain Language Guide (May 2011).

“Because the applicant failed to establish a well-founded fear of future persecution, *a fortiori*, the applicant failed to establish eligibility for withholding of removal.”

This is better stated using plain language, such as: “Because the applicant failed to establish a well-founded fear of future persecution, he necessarily failed to meet the higher standard of proof required to establish eligibility for withholding of removal.”

4.1.1 Be Focused

Your explanation should not be long and detailed, but rather short and to the point. Avoid repetition. Discuss only facts that have a direct bearing on the case at hand.

4.1.2 Include Objective Analysis, Not Personal Opinions, Assumptions, or Speculation

Your analysis should contain only evidence presented by the applicant, including any relevant statements made by the applicant and other witnesses, and information from reliable sources. Your analysis should be free of your personal opinions, assumptions, or speculations about the applicant or his or her claim.

4.1.3 Use an Explanatory Tone

The purpose of the analysis is to inform, not to argue a point or persuade an adversary. Your analysis should be explanatory, not argumentative in tone.

Examples

- (*Argumentative*) The fact that the applicant safely relocated to another city in his country where he lived and worked for two years before coming to the United States clearly shows, without a doubt, that it is reasonable for him to relocate within his home country. Therefore, it is manifestly contrary to law to find that the applicant has a well-founded fear of future persecution.
- (*Explanatory*) Because the applicant was able to relocate safely within his country for two years prior to coming to the United States, he has not established a well-founded fear of persecution.

4.2 Use Language that Reflects the Appropriate Legal Standard

Take care to choose words that accurately reflect the law being applied; some words used in common dialogue may have specific legal connotations that may alter the legal meaning of the text.

Examples

- The word “would” reflects a particular standard of proof in a legal context. It implies a probability that an event will occur (which is the standard of proof for withholding of removal). Compare the following two statements:

“The applicant failed to establish that she would be persecuted if she returned to her country.”

“The applicant failed to establish that there is a reasonable possibility of persecution if she returned to her country.”
- The words “persecution” and “torture” are terms of art, in that they have specific legal meanings. You should not indicate that the harm an applicant suffered is persecution or torture, unless you have concluded that the harm actually meets the legal definition of those terms.

4.3 Use Citations Only Where the Source Was Relied Upon in Making a Decision

4.3.1 Citing Case Law

Some RAIO Directorate determinations generally do not contain references to specific precedent decisions. A precedent decision should be cited only if you rely on that decision in formulating a legal conclusion within your decision.

4.3.2 Citing Country of Origin Information¹⁹

If you rely on a particular country of origin information report in reaching a conclusion in your legal analysis, then that information or report should be cited.

Example

The applicant claimed to have been threatened because he campaigned and voted for the Freedom Party candidate, Mr. Jones, for President in the 2008 elections. However, country conditions information reports establish that the candidate for the Freedom Party in the 2008 Presidential elections was Ms. Smith.

There should be a citation to the report noted in the above example. The best practice is that the citation should be complete, containing the name of the source, the author, the date and place of publication, the appropriate page numbers, and the URL, if accessed on the Internet. In overseas refugee processing, the citation is only necessary if the country of origin information is the sole basis for a denial and the citation form may be less formal, but should still be complete enough so that the source can easily be checked by a supervisor.

¹⁹ See RAIO Training module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

You should not rely on anecdotal or other unofficial country conditions information in your written decisions.

5 CONCLUSION

Your adjudication decisions must be made, and where applicable communicated, in a legally sound, professional, and understandable way. Knowing and using proper legal analysis in your decision making will help ensure this goal. Even where a decision does not result in a written explanation of eligibility, adherence to the principles outlined in this module will help you to make quality adjudications that are legally sufficient and clearly communicated. Consistently well-reasoned decisions that rely on appropriate and permissible considerations bolster confidence in, and the integrity of, the RAIO Directorate and the U.S. immigration process.

6 SUMMARY

6.1 General Considerations

Each decision you make is important, as it involves someone's life. You should make decisions in a neutral, unbiased manner according to the law. Using legal analysis, the breaking down of a complex whole into separate parts for study, helps ensure that you give each decision due consideration.

Legal analysis breaks down an eligibility determination into short explanations and conclusions that make clear to others how you reached your final determination. Whether or not you write your decision, you must still engage in careful legal analysis in every case to determine accurately each applicant's eligibility for the benefit.

You must consider the particular facts of each case, and not be unduly influenced by your previous cases. Your duty as an officer is to be neutral and unbiased, and you should strive for consistency in your application of the law from one case to another.

You must apply the law as it is set forth by statute and interpreted by regulation, precedent decisions, and policy guidance. You should consider all relevant evidence and give that evidence the weight due to it. You cannot develop new standards based on what you think the law should be. Nor should your personal opinions and beliefs enter into your decision-making. Other inappropriate considerations include foreign policy concerns, the state of relations (favorable or unfavorable) between the U.S. Government and an applicant's home country, and generalized reports on fraud within the applicant's nationality (although such reports can assist in determining lines of questioning during the interview).

At times, you may find it difficult to balance quality with quantity while under time constraints to complete your cases. For this reason, it is particularly important that you

train yourself to focus on the critical legal and factual issues and to become skilled at making well-reasoned, supportable decisions.

Legal analysis promotes and ensures timeliness and quality by focusing on appropriate factors and the correct application of the law. It allows for review and transparency, and provides a meaningful opportunity, where applicable, for the applicant to respond.

6.2 The Legal Decision Making Process

When determining eligibility for a benefit: know the law you are applying, break the law into its elements, identify the evidence in the claim, evaluate the evidence to determine the facts, and apply the law to the facts to explain your decision.

Start your decision making by reviewing the relevant statute, regulation, case, or policy guidance. If you are using a template or shell, make sure that it is current. Determine whether the language in the law is mandatory or permissive and break the law into its elements. The law may follow one of three basic formulas: a legal “test,” a set of “factors” to consider, or an analytical framework to be followed. A law typically consists of several elements, with each element having one or more sub-elements. Each of these in turn may involve a test, set of factors, or an analytical framework. This may sound complex, but your objective is simple: to understand the law.

Next identify the evidence in the claim. In adjudicating an application for a benefit, you may encounter oral testimony, written testimony, and documentary evidence. Before engaging in legal analysis, review the evidence in the record and, if necessary, conduct country of origin research to identify and evaluate the relevant and material facts in the case. You must consider *all* material facts, *i.e.*, those related to the required legal elements, in your decision. You cannot ignore a material fact, nor may you rely on speculative, unsupported, equivocal, or irrelevant evidence in your legal analysis.

Lastly, apply the law to the facts to explain your decision. Compare each individual piece of evidence that is linked to the same material fact. Weighing the different pieces of evidence against each other is a delicate task. Determine if the pieces of evidence support each other or if they are contradictory. Then determine whether enough material facts are supported by evidence to meet the standard of proof. Your overall analysis will contain reference to material facts, explanatory statements, and conclusions. Taken together, these will lead to a final determination on the applicant’s eligibility for the benefit.

The IRAC method is a simple, objective means of organizing your legal analysis in a clear and logical way. It can be used to organize a paragraph or your entire decision. IRAC has four basic parts:

- Issue – the legal question presented
- Rule – the applicable law
- Analysis – the application of law to facts
- Conclusion – the results of the application of law to facts

6.3 Writing Style

Your decisions should be understood the first time they are read. They should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are sound writing principles which ensure compliance with the Plain Writing Act of 2010.

Your decision should be short and to the point. Your analysis should only contain references to the evidence of record and country information from reliable sources.

Use an explanatory tone. The purpose of your analysis and decision is to inform, not to argue a point or persuade an adversary. Choose words that accurately reflect the law and legal standard you are applying. Whenever possible, use plain language rather than legal jargon or “legalese.” Choose language the reader will understand.

RAIO Directorate decisions generally do not contain references to precedent case law; however, if you rely on a specific precedent case in formulating your decision, you should cite it. You should similarly cite country of origin information if it is from a reliable source and you rely on it to reach a conclusion within your legal analysis.

PRACTICAL EXERCISES

OTHER MATERIALS**Other Materials - 1****Adjudicator's Field Manual****General Adjudication Procedures**

The following steps generally apply to all cases processed by the adjudications unit within a service center or local office (including all naturalization and nationality applications). Depending upon local procedures, these steps may be handled by a single adjudicator, or they may be broken down according to task with various tasks being handled by different employees.

...

(e) The Burden of Proof.

The burden of proof in establishing eligibility for an immigration benefit always falls solely on the petitioner or applicant. USCIS need not prove ineligibility.

...

(f) Inspection of Evidence.

The adjudicator can give a petitioner or applicant an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denying any application or petition based on such evidence, USCIS routinely issues a notice of intent to deny (NOID) letter, explaining the nature of the adverse information. The applicant or petitioner may choose to respond in writing or may ask to inspect the record of proceedings prior to submission of a rebuttal.

A NOID must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond may result in a denial. The maximum time to submit a response to a NOID is 30 days. There are no extensions of time beyond the 30 day limit. 8 CFR 103.2(b)(8), (16).

...

(g) Decision: Approval.

If a case is ready for approval, the adjudicator must stamp the action block with his or her approval stamp and approved "security" ink. In some cases, the officer's signature is also required.

Depending upon local procedures, a work sheet for clerical action may be completed, or the adjudicator may update the CLAIMS system to initiate generation of an approval notice to the applicant or petitioner and the attorney of record, if any.

...

(h) Decision: Denial.

If a case is to be denied, the adjudicator must so note the action block and prepare the written denial notice. Denials may consist mainly of "boilerplate" paragraphs explaining the legal basis for the adverse decision or they may be entirely original. [I]n all cases, the specific facts of the individual case must be explained in the decision. If a denial is based on precedent decisions, those decisions should be properly cited in the body of the denial notice.

...

10.7 Preparing Denial Orders

(a) General. This paragraph provides basic guidelines to use when preparing a decision to deny an application or petition for a benefit under the Immigration and Nationality Act, or to certify a decision to either the AAO or the BIA.

For many applications and petitions, standardized forms exist, or "canned" paragraphs have been prepared, for assistance in preparing a formal decision. For many other applications and petitions, an individual formal order must be prepared. When using standard forms and "canned" paragraphs, make sure that the language of the form or paragraph is appropriate for the situation involved. It is all too easy to get into the habit of trying to make the situation fit the language of the canned decision. ...

... [omitted: table of standard forms]

Office letterhead may be used for denial notices for application types not specified above.

(b) Elements of a Formal Decision. Use simple language which can be understood by the applicant. Although immigration law can involve complicated legal principles, the decision should be written in clear, simple English so the applicant or petitioner can understand it. Avoid Latin terms and other "legalese" language.

A formal decision should contain five elements, each of which may be one or more paragraphs in length:

- (1) An introduction which describes the benefit being sought
- (2) A description of the criteria which the applicant or petitioner must meet in order to obtain the benefit being sought. This criteria should explain both the statutory requirements and (where appropriate) the discretionary standards and precedents.
- (3) A description of the evidence in the case in question. This includes both the documentation submitted by the applicant or petitioner, and the other evidence which is contained in the case file. If the applicant or petitioner cannot reasonably be presumed to be already aware of the evidence, he or she must be given an opportunity to rebut the evidence before a decision is made. [8 CFR103.2(b)(16)(i)]
- (4) A discussion of how the evidence in the case fails to meet the criteria for obtaining the benefit. In many cases, there may be more than one reason for the denial, in which case normally all should be discussed. In some cases, however, when the statutory basis for the denial is clear and incontrovertible, a discussion of discretionary issues may be unnecessary.
- (5) A conclusion that informs the applicant or petitioner of the decision to deny and of the reason(s) for it....

...

[omitted: Notes, appeals forms for inclusion, and Signatory Authority]

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

USCIS Refugee Affairs Division, *Refugee Application Assessment Standard Operating Procedure (SOP)*, Pilot 11 January 2012

SUPPLEMENTS

RAD Supplement

Refugee Application Assessment Standard Operating Procedure (SOP) [Pilot 01-11-2012]

I. BACKGROUND

The Refugee Application Assessment is a document used to record the refugee application (I-590) adjudication. This tool enables you to confirm the applicant's biographical information, relate the facts obtained during the interview, explain the case analysis, and record your decision. While it has evolved over the years, and different worksheets were developed in various locations, the Refugee Application Assessment becomes the record upon which you base your decisions. The document introduced in this SOP is the most recent version of the worksheet developed by the Refugee Affairs Division, and should be used throughout the world where the worldwide standard is used for refugee adjudications.

II. PURPOSES

The Refugee Application Assessment has three main purposes:

A. Working Aid. The Refugee Application Assessment is a working aid. It is structured to assist you in conducting a complete and accurate adjudication, and has been organized in a manner that is logical to the interview process, both in the

order of the questioning and the order of the analysis.

B. Record. The Refugee Application Assessment is an internal record of the interview and decision-making event. Usually, this document is the only record describing the refugee interview, and it must enable the reader to have a reasonable understanding of what transpired during the dialogue and of your analysis. This document is one of the most important items of record when adjudicating Requests for Review.

C. Evaluation Tool. The Refugee Application Assessment acts as a tool for evaluating your performance. This document provides the supervisor with a record of your performance, so that he or she is able to determine the quality of the adjudicator's work product and address any deficiencies that he or she may discover.

III. GOVERNING PRINCIPLES

There are five important governing principles for the proper use of the Refugee Application Assessment:

A. Completeness. You must complete all applicable portions of the Assessment. There are important legal and policy reasons for each item on the Assessment, and although some items may seem unimportant in a particular field environment, they are necessary for the review of your work. Furthermore, an incomplete form could lead a reviewer to conclude that you failed to address the item or were equivocal on the issue. An incomplete Assessment indicates an incomplete adjudication.

B. Legibility. You must complete the Assessment in a legible manner. If the Assessment is not legible, it is of little or no value to the reviewing supervisor. An illegible Assessment results in an incomplete record of the adjudication, and if the decision is under challenge, the case could require a new interview.

It is understood that refugee cases must be processed within a short amount of time; however, they are some of the most expensive immigration benefits cases to process. If a decision is challenged and the Assessment is undecipherable or incomplete, the case may require a new interview resulting in a significant increase in the cost of the case.

C. Professionalism. You must report the case in a professional manner. The case record should not contain any personal opinions or matters that have no bearing on the adjudication of the case. The Assessment should be prepared in a business-like tone. Inasmuch as this document could be open to examination by numerous persons both within and outside USCIS, particular care should be taken to ensure that your reporting reflects the highest standards of performance.

D. Legal Sufficiency. You are bound by your oath to uphold the laws of the United States. Consequently, you must apply the law as it is set forth by statute and

interpreted by regulation and applicable case precedent. You have no authority to develop your own refugee standards or approve or deny an applicant for classification as a refugee other than as INA Section 207(c) dictates. To do so would violate the instructions and policies of the agency. The Assessment should document a sound legal decision.

E. Consistency in decision-making. There are no “magic formulas” to determine eligibility for refugee status. Although many claims are similar, they are never identical, and each refugee applicant is unique. Therefore, each request must be evaluated on its own merit. You should be mindful to focus on the facts of each particular case without allowing previous cases to unduly influence the decision-making. For example, the fact that one applicant has suffered severe persecution should not prevent a finding that another applicant, who suffered less severe harm, also suffered persecution. Although each decision must be made on a case-by-case basis, you should strive for consistency in application of the law from one case to another.

...

C. Section III - APPLICANT'S CLAIM

The purpose of this section is to determine if the *applicant's testimony*, if credible, would establish that he or she is a statutory refugee as defined in INA Section 101(a)(42).

[omitted: excerpt of Form I-590 – III. INA §101(A)(42)—APPLICANT'S CLAIM]

The adjudicator should pay particular attention to the instructions that correspond to each question. For example, section III.B.3 states, “If no, explain below.” If the answer to the question was “Yes,” you are not bound to offer any explanation to that question, but may if you believe it is necessary.

In order to establish that an applicant qualifies as a refugee pursuant to INA §101(a)(42), you must select all of the “Yes” options in either Part III-A/Past Persecution or Part III-B/Well Founded Fear of Future Persecution. If you select at least one “No” option in *both* of these sections, the applicant cannot be a refugee pursuant to INA §101(a)(42). Finally, even if you select all of the “Yes” options in Part III-A/Past Persecution, you must elicit applicant testimony regarding well-founded fear and complete Part III-B/Well Founded Fear of Future Persecution.

Note: It is possible to have all “Yes” answers checked and ultimately to decide that an applicant is not a refugee pursuant to INA §101(a)(42) because he or she was found not credible and/or barred as a persecutor.

...

D. Section IV – BARS AND INADMISSIBILITIES

The purpose of this section is to consider the various issues that would bar an applicant from being considered a refugee and/or render the applicant inadmissible to the United States. Bars and grounds of inadmissibility should be considered for every applicant on the case, not just the principal applicant. If the persecutor bar or a ground of inadmissibility applies to one of the applicants other than the principal, this should be noted in the explanation space provided.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 22: *Decision Writing Part I: Overview & Components, Focusing on the 1st Three Components*, 21 June 2004, available at: http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57757/Decision_Writing_Part_1_Overview_and_Components_31aug10.doc
2. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 23: *Decision Writing Part II: Legal Analysis*, 9 January 2006, available at: http://raiovl.uscis.dhs.gov/docushare/dsweb/Get/Document-57758/Decision_Writing_Part_2_Legal_Analysis_31aug10.doc

SUPPLEMENTS

ASM Supplement

Factors that Asylum Officers May Consider

The determination of whether an individual is eligible for asylum is usually a complex decision that involves consideration of a variety of factors. Factors that may be involved in making the decision are listed below.

Credibility - Evaluation of credibility may require:

- identification of inconsistencies and consideration of explanations for them
- awareness of trauma related symptoms and their potential effect on testimony
- assessment of the applicant's ability to communicate in a second-language

and of potential misunderstandings due to interpretation

- consideration of inter-cultural issues
- evaluation of testimony as it compares to known country conditions
- evaluation of the amount of detail an individual in the applicant's situation reasonably can be expected to provide

Country conditions - An understanding of country conditions may require an evaluation of several aspects of the situation in the country involved, especially when information is sparse or reports are conflicting. Some of the necessary information regarding the applicant's country includes:

- human rights abuses
- structure of the government and roles of the military and/or security forces
- identity of guerrilla forces, separatist groups, and terrorist organizations, and their activities and alliances
- structure and agendas of political organizations or parties
- laws and application of laws
- recent political events

U.S. asylum law - Application of asylum law requires knowledge and understanding of the following:

- statute and regulations
- precedent decisions and their interpretations
- general counsel opinions
- Asylum Division guidance

International human rights law - Application of international human rights law requires knowledge of the human rights protected by international treaties and customary international law, as well as an understanding of the relationship between international law and U.S. law.

ASM Supplement

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. International Operations Division Decision Worksheets and decision notice templates are found in the Case and Activities Management for International Operations (CAMINO) and in the various International Operations form-specific Standard Operating Procedures.
- 2.

SUPPLEMENTS

IO Supplement

None

Decision Making Practical Exercise

When determining eligibility for a benefit:

1. Know the law to be applied
2. Break the law into its elements
3. Identify the evidence in the claim
4. Evaluate the evidence to determine the facts
5. Apply (the elements of) the law to the facts to explain your decision¹

The attached file contains information from an application for asylum, under INA section 208. The information provided includes specific statements made by the applicant during the interview as well as a packet of documentary evidence submitted by the applicant. For purposes of determining eligibility for the benefit, the applicant must show that she meets the definition of refugee found at INA §101(a)(42). That is step one.

In this exercise you are to complete steps three and four above, using the provided form.

The form already gives you step one and step two. The law to be applied is the refugee definition found at INA 101(a)(42), and the specific elements of the refugee definition are provide in the first column on the form.

Complete the form by identifying what facts have been asserted by the applicant and determine whether or not each fact is related to one or more of the elements you have identified. List the facts in the column to the right of the elements of the refugee definition so that they correspond to the element that they relate to. Facts may correspond to more than element of the law.

Next, identify what evidence is available to help you evaluate the facts. List all discreet pieces of evidence in the column to the right of the facts in the row that corresponds to the facts that it would tend to prove or disprove.

In identifying the facts and the evidence please refer to the discussion of “material facts” and “relevant evidence” found in the lesson plan at page 18. When you identify a “material fact” the table should indicate which element(s) of the law it applies to. When you identify a relevant piece of evidence the table should indicate which “material fact”(s) it applies to.

You do not have to evaluate the evidence to determine the proven facts at this time.

EXAMPLE:

Applicant from Nepal provided a Nepalese passport, written statement, and a hospital record describing his injuries from having been beaten. The applicant's written statement and testimony state that while growing up Maoists would come to his village and would take over the homes of the villagers, including his family home. The Maoists

¹ See *RAIO Combined Training Course Lesson Module*, Decision Making – pages 12 – 13

would usually stay overnight and sleep wherever they found space inside. During this time the Maoists often tried to convince him to join them. As he grew older, they began to threaten him because he did not join them, telling him that "you have to support the party, and if you don't it will be bad for you." He was never actually told what would happen to him, but was told to "think about what will happen." He knew others who did not support the Maoists had been kidnapped and harmed. When he was old enough to earn money, the Maoists demanded payments from him. Fearing that they would carry out their implicit threats, he paid them four times, over four years. He was not physically harmed until he attended an anti-Maoist political gathering in Kathmandu, after which he was attacked and beaten by Maoists. As a result of the beating he was hospitalized for 5 days. After this he fled Nepal.

Element	Fact	Evidence
because of persecution or a well-founded fear of persecution	<ul style="list-style-type: none"> • Applicant was verbally threatened by Maoists (material) • Applicant was beaten by Maoists (material) • Applicant was hospitalized for treatment of his injuries (material) 	<ul style="list-style-type: none"> • Written statement • Testimony • Medical Documentation

For the purposes of the exercise below, the applicant's testimony has been split up into specific statements numbered 1 – 14. When indicating applicant's testimony as evidence of a fact, please specify which statement or statements are applicable to which facts (for example, Testimony #2 to refer to testimony about the applicant's parents). Specific facts may be established by more than one specific statement and specific statements may support multiple facts.

Use the Decision Making Exercise form found [here](#). When you have completed the table please save it and upload it to your drop box, naming "[your last name] decision making exercise". Please make certain that you add your name to the document in the appropriate space too.

Decision Making Exercise – Iraq

The applicant made the following statements at the interview:

1. I am 48 years old, married, and have three children. My family and I are natives and citizens of Iraq. I am Chaldean Catholic, a minority in Iraq that is suffering from widespread persecution. I am afraid of being harmed, kidnapped, tortured, and/or killed if I return to Iraq on account of the threats and the attempts on my life by terrorists and Muslim fundamentalists opposed to my work as a computer and internet service provider. I am also afraid of being targeted solely on account of my Christianity. Terror groups and Muslim extremists have been attacking, kidnapping, threatening, and killing Iraqi Christians throughout the entire country. They have bombed Christian churches in Baghdad and Mosul on several occasions. Until now, the government has been unable to prevent such incidents or punish their perpetrators. The Iraqi security forces cannot adequately defend themselves or their offices throughout the country, let alone defend Iraq's citizens. As a Chaldean Christian, attending church service every Sunday is a central part of my life. I cannot practice my religion without going to church. For example, I cannot partake in the important Sacrament of confession or communion.
2. Both my parents are Iraqi citizens and Chaldean Catholics. I attended primary school in Alqosh, after which my father was transferred to Baghdad to act as a principal at a high school. Thus, I completed my high school education in Baghdad. After high school, I attended the University of Technology, graduating with a bachelor of science in mechanical engineering in 1980.
3. After graduation, I was called to compulsorily military service. I worked as a laboratory technician in the Military Technical College in Baghdad for total three years in separate periods between 1980-1984. I never took part in battle or war. During my time in the military, I received a couple of degrees, a High Grade Diploma in Mechanical Engineering (similar to a master's degree) and a master's degree in sciences from the University of Technology.
4. After my military service ended in 1984, I applied for a job to the Scientific Research Council, in the Ministry of Science and Technology, and was accepted as a researcher at the Astronomy Research Center. I would continue working there until 1992, when I was accepted to the Ph.D. program in Mechanical Engineering. I earned my degree in 1998 and returned to my job and became head of the mechanical department at the Astronomy Research Center.
5. As head of the mechanical department at the Astronomy Research Center, I was making only \$400 a month, which was not enough to provide a good livelihood for my family. So I decided to start a business with my brother and we opened up a computer and internet service

business. It was located in the same building where we both lived. My brother ran the business in the morning and I helped him in the evening and on the weekends.

6. In 1990 I married my wife, also a Chaldean Catholic, and we have first child in 1991. Our second child was born in 1994, and our third and last child was born in 1997.
7. My wife has a Bachelor's of Science in Agriculture Engineering; however, she never worked in her field and chose to stay home and take care of the children. She did, however, volunteer her time to teach Catechism and the Chaldean language at the Parish Church from 1993 until August 1, 2004 under the supervision of the priest, the secretary of Chaldean Patriarchate of Babylon. During the summer holidays, she also taught computer courses at the Church.
8. On August 1, 2004, several churches in Baghdad and Mosul were bombed, killing many Christians. At the time, my family and I had just returned home from mass at Parish Church. The mass at our church ended a little earlier than the other Churches. Luckily, our church was not targeted in those attacks. The bombings were a shock to our Christian community. We stopped attending church service after that because we were afraid. It was difficult for my family and me to miss church services as we were all raised Catholics and were very attached to the Church. My wife had been teaching Catechism and the Chaldean language at the Church since 1993 and my son had been an altar boy since 2000. In addition, by not going to church, my family and I could no longer attend confession or partake in communion and receive the Eucharist, activities which could only take place inside the church in the presence of a priest. Both of these practices are central to our religious faith and are obligations prescribed by our Church. In addition, the Ten Commandments obligate believers to keep holy the Lord's Day, which means that we have to go to church on Sunday.
9. Sometime in May of 2006, our business received a threatening letter that stated that those who worked with the internet were American collaborators and that this was our last warning to stop our internet service. The letter was signed by the Islamic Army in Iraq. I was the one to first read the letter because it was delivered on a weekend and on the weekends I was the one to open up the office. I immediately called some of my friends who owned internet cafés, one of which was located across the street from me, and they told me that they too had received the same exact threatening letter. I immediately closed the shop down for the day, afraid that something is going to happen to our business. Later that month, three internet cafés in Baghdad were bombed, one of which was about half a mile away from my business.
10. On June 3, 2006, I remember it was a Saturday, a bomb exploded in front of our building, which was both our residence and business. I was in the office at the time and my family was upstairs in the apartment. The explosion shattered the windows of our apartment and office, and the shrapnel damaged the inside of the apartment and the office. The lights and electricity went off

immediately. I then ran back into the building and up to the apartment. My family was horrified; at the time of the explosion, my daughter Mariam was using the computer, which was located by the street window. The shattered glass cut her on the arms and forehead. Mariam was in a state of shock and was screaming and weeping. After a while, we calmed her down, and eventually the police came to the building. I gave them a report of what I saw and I told them that I believe that I was the target of the attack because of the threatening letter I received and because of the bombing of the three internet cafés that had received the same threat as me and my brother.

11. After this incident, my brother and I permanently closed down the business. My brother left the country two days after this incident and traveled to Amman, Jordan. I too began to think of leaving the country.
12. Several weeks later my daughter answered a phone call from an anonymous caller who asked to speak with the father of the house. When she asked who he was, he replied, "I am from the Mehdi Army and we will wipe you from the face of the earth." Afraid, my daughter hung up the phone. I was on my way home from my regular work when this happened. As soon as I got home, my wife told me what had happened. They were in a state of panic and acting hysterically. I tried to calm everyone down and told the family that we will leave Baghdad and go to Mosul where my wife's parents were living.
13. I took the family to Mosul and stayed with them until September 1, 2006, when I returned to Baghdad to apply for a visa. When I returned to Baghdad from Mosul, I stayed with my sister Manahal because I was afraid of returning to my apartment.
14. I left Iraq on September 21, 2006, with my family. We flew to the United States.

The following documentary evidence was also submitted

Baptismal Certificate

Chaldean Diocese of Alqosh

St. George's Parish Church

Alqosh (Mosul) Iraq

Alqash 17-11-1993

CERTIFICATE OF BIRTH, BAPTISM AND CONFIRMATION

This certifies that [REDACTED] child of

and [REDACTED], born [REDACTED] Algeza, Mosul, Iraq, can
the 7-19-1958 and [REDACTED] and confirmed on

80-744701-9-58

According to the Rite of the Roman Catholic Children's Church

and as appears from the Depositions of the witnesses.

The Best in Charge

RAW-11 OR MIN-59 NA

[illegible]

42/77/7543

Certificate of Iraqi Nationality



Volume No. 181999/1975

Certificate No. : 354939
Date : 30/12/1975

Photo
Affixed
Sealed

Certificate of Iraqi Nationality

Based on the ascertainment of acquiring by
(Arabic) [redacted]

Whose Photo is affixed above, the Iraqi
Nationality according to article (4/A)
of the law of Iraqi Nationality, he/she has
been granted this certificate.

-Sgd.-
Director of Nationality

(TRANSLATION)

- 1- Place & Date of Birth of Certificate Bearer
Ninevah/1958
- 2- Previous Nationality
Iraqi
- 3- Religion
Christian
- 4- Identifying Marks
None
- 5- Father's Full Name
[redacted]
- 6- His Birth Place
Ninevah
- 7- Mother's Full Name
[redacted]
- 8- Her Birth Place
Ninevah
- 9- Former Nationality of the Father & His Present
Nationality
Iraqi
- 10- Former Nationality of the Mother & Her Present
Nationality
Iraqi

Remarks (to be written in Red Ink)

Signature of Certificate Bearer (Imprint)
Left hand finger print.

(625 Pills Rev. Stamp)

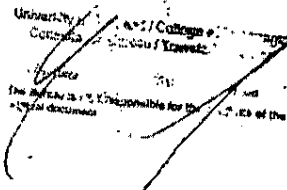
TRANSLATED BY

Date: 21 AUG 2004
WATHIQ A. HINDO

Sworn Translator

NADIR Bureau for Translation
Masbah Road Baghdad Iraq Tel: 7198399

ترجم القانوني
عضو جمعية المترجمين القانونيين
خبر ترجمة مكتب لدى وزارة العدل
رقم الهوية ٨١ / ٤ / ٤
المترجم: مكتب نادر للترجمة - سوق وجوان
المسبح - بغداد



NADIR BUREAU
CERTIFIED LEGAL TRANSLATORS - Tel: 7198399 - FAX: 7182831 - P.O.Box: 12716 - 19264 - E-mail: whindo@suruklink.net

Marriage Certificate

In the name of Allah the beneficent the merciful

Form No (2)
File Number: 27/Marriage/90
Document Number [REDACTED]
Date 10-16-1990

Republic of Iraq
Ministry of Justice
Civil Affairs Court – Alrusafa Branch

“Reformation of the legal system supports the march of the revolution to achieve a society of unity, freedom, and socialism”

Marriage Covenant

I the judge of the Civil Affairs Court – Alrusafa Branch
Mr. Mohammed Jamal Al Dine Mohammed recorded the following:

Mr. [REDACTED] and Miss [REDACTED] were both in attendance and proved they are free from diseases based on the attached two medical reports. After verifying their identification and their consent the marriage covenant was established based on a dowry advance () and received ().

Based on that the covenant was established and recorded on 10-16-1990

Signature of First Judge
Mohammed Jamal Al Dine Mohammed

Civil Status Identification

	Husband	Wife
Certification of Iraqi	[REDACTED] on 12/30/1975	[REDACTED] on 7/25/1984
Nationality		

Letter of Recommendation

To whom it may concern
Sub: Recommendation

I know Dr. [REDACTED] for more than 23 years from the period between 1983 till now. He occupies head of [REDACTED] at the *Ministry of Science and Technology*.

Dr. [REDACTED] is responsible for the research programs in [REDACTED] and especially the [REDACTED] part. He is a practical engineer, respect his work, sincere to his job, highly responsible manager, ambitious and hard working person. I wish to him going well and success.

20.09.2006
Asad

Dr. [REDACTED]

General Manger Deputy

[REDACTED]
Ministry of Science and Technology

20 /09/2006',

[REDACTED]

Non-Conviction Certificate

بسم الله الرحمن الرحيم

جمهورية العراق
مديرية تحقيق الأمانة الجنائية
مكتب طبع الأصابع
Republic of Iraq
C-I-D

الرقم: ٨١٤٥
التاريخ: ٢٥/١١/٢٠٠٤

No. [Redacted]
Date: 25/11/2004

شهادة عدم المحكومية
NON-CONVICTION CERTIFICATE

[Redacted]

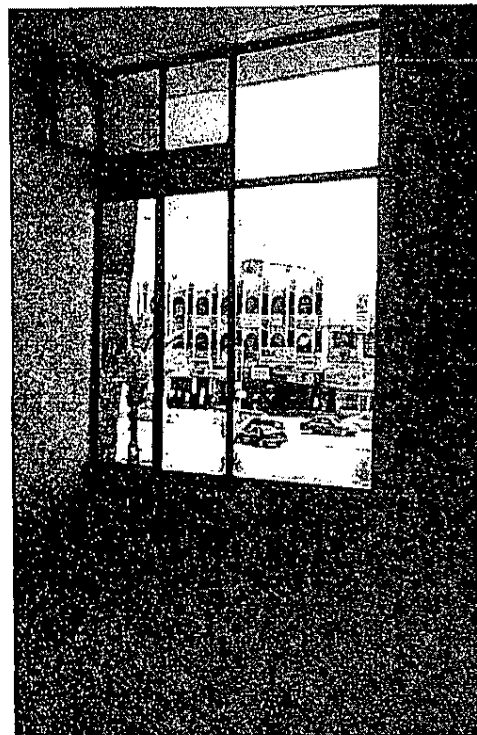
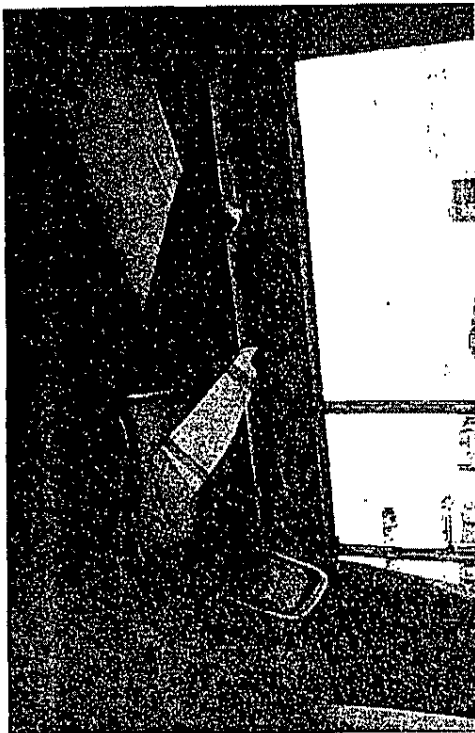
This is to certify that
whose photo is affixed above
has not been convicted for
any Crime in Iraq

نصلي على ان قيسان ماضي عود
المثبته صورته اعلاه لم يخدم اشد
بأية جريمة جنائية في العراق

العبد الحقوقي
منتم سعيد عبد القادر
مديرية تحقيق الأمانة الجنائية
Director of criminal
Identification Department

عبد الحميد

Photos from Bombing



48



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

DISCRETION

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course***DISCRETION****Training Module****MODULE DESCRIPTION**

This module provides guidelines for adjudicating immigration benefits or other immigration-related requests that are subject to the discretion of the Department of Homeland Security (DHS). The module addresses the basis for determining when discretion is warranted and for performing the legal analysis of claims that involve discretion.

TERMINAL PERFORMANCE OBJECTIVE(S)

Given a petition or application that requires a discretionary determination, you will be able to weigh discretionary factors properly and articulate your exercise of discretion in a written decision when appropriate.

ENABLING PERFORMANCE OBJECTIVES

1. Explain what adjudicative discretion is.
2. Identify the different circumstances that will require an officer to exercise discretion in an adjudication.
3. Apply the positive and negative factors properly in making a decision on a given case.
4. Explain the reasoning for an exercise of discretion.

INSTRUCTIONAL METHODS

- Interactive presentation
- Discussion
- Practical exercises

METHOD(S) OF EVALUATION

Written exam

Practical exercise exam

REQUIRED READING

1. Divine, Robert C., Acting Director, USCIS. Legal and Discretionary Analysis for Adjudication, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006)
2. Matter of Pula, 19 I&N Dec. 467 (BIA 1987)
3. Matter of Marin, 16 I&N Dec. 581 (BIA 1978)

ADDITIONAL RESOURCES

Kanstroom, Daniel, Surrounding the Hole in the Doughnut: Discretion and Deference in U.S. Immigration Law, *Tulane Law Review*, Volume 7, Number 3, p. 703 (February 1997).

Critical Tasks

Task/ Skill #	Task Description
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)
DM7	Skill in making legally sufficient decisions (5)
DM10	Skill in developing a logical argument to support a determination or conclusion (5)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/23/2015	Throughout document	Corrected links and minor typos	RAIO Training

TABLE OF CONTENTS

1	INTRODUCTION	8
1.1	Decisions That Are Mandatory	8
1.2	Decisions that are made in the Exercise of Discretion.....	8
1.2.1	Nonexclusive List of USCIS Case Types in which Discretion is Exercised.....	8
2	OVERVIEW OF DISCRETION.....	9
2.1	Definition	9
2.2	Two Types of Discretion.....	10
2.2.1	Adjudicative Discretion.....	10
2.2.2	Prosecutorial Discretion	11
2.2.3	The Difference between Prosecutorial Discretion and Adjudicative Discretion.....	12
2.3	Who Exercises Discretion?	12
2.4	Limits on Discretion.....	13
2.4.1	Eligibility Threshold.....	13
2.4.2	Lack of Negative Factors.....	14
3	APPLYING DISCRETION	14
3.1	Three-Step Process.....	14
3.1.1	Finding the Facts	15
3.1.2	Applying the Law	16
3.1.3	Balancing any Negative Discretionary Factors against Positive Factors before Making a Decision.....	16
3.1.4	Totality of the Circumstances.....	16
3.2	Identifying the Factors That May Be Considered in the Exercise of Discretion	18
3.2.1	Favorable Factors That May Be Considered	18
3.2.2	Negative Factors That May Be Considered.....	19
3.3	Weighing Positive and Negative Factors	19
3.3.1	Factors Material to Eligibility Are Given the Most Weight.....	19
4	DISCRETION IN DECISION WRITING.....	20
4.1	Positive Exercise of Discretion	20

4.2 Negative Exercise of Discretion.....	21
5 CONCLUSION.....	21
6 SUMMARY.....	21
6.1 Discretion Definition.....	21
6.2 Limitations on Discretion.....	22
6.3 Applying Discretion.....	22
6.4 Totality of the Circumstances	22
6.5 Discretion in Decision Writing	22
PRACTICAL EXERCISES.....	24
OTHER MATERIALS	25
SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....	26
Required Reading	26
Additional Resources.....	26
Supplements.....	26
SUPPLEMENT B – ASYLUM DIVISION.....	28
Required Reading	28
Additional Resources.....	28
Supplements.....	28
SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....	31
Required Reading	31
Additional Resources.....	31
Supplements.....	31

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

Some decisions made by USCIS are mandatory once facts meeting the applicable standard have been established. Other decisions are made in the exercise of discretion after the officer finds facts that establish eligibility.

1.1 Decisions That Are Mandatory

Mandatory decisions involve no discretion, only an inquiry into whether the facts of the case meet the relevant standard. The adjudicator is concerned only with the evidence that establishes eligibility; once the applicant has met his or her burden of proof, the analysis ends. An example of a benefit that is conferred once the applicant establishes eligibility is the approval of Form I-130, Petition for Alien Relative.¹

1.2 Decisions that are made in the Exercise of Discretion

Although the applicant may have met the burden of proof by showing that he or she is statutorily eligible, statutory eligibility depends on the exercise of discretion. Eligible applicants may be denied a benefit through an officer's exercise of discretion.

1.2.1 Nonexclusive List of USCIS Case Types in which Discretion is Exercised

- Adjustment of status under Immigration and Nationality Act (INA) §§ 245 and 209(b) (with limited exceptions such as NACARA § 202 and Haitian Refugee

¹ USCIS officers must approve the I-130 Petition for Alien Relative when the qualifying relationship between the petitioner and the alien beneficiary and the individuals' identities have been established. The approved I-130 permits the beneficiary to apply for an immigrant visa from the Department of State. The consular officer then exercises discretion in determining whether to issue the visa. If the I-130 is being adjudicated under INA §245, in the U.S. concurrently with an I-485 application to adjust status, the grant of the I-485 by the USCIS officer would be discretionary.

Immigration Fairness Act (HRIFA)) and creation of record under section 249 (registry)

- Employment authorization (with limited exceptions, such as for asylum applicants)
- Waivers of various inadmissibility grounds and advance permission to return to the U.S., INA §§ 211, 212 and 213
- Extension of nonimmigrant stay and change of nonimmigrant status, INA § 248
- Advance parole and reentry permits, INA §§ 212(d)(5)(A) and 223
- Waiver of labor certification requirement “in the national interest”, INA § 203(b)(2)(B)
- Revocation of visa petitions, INA § 205
- Waiver of joint filing requirement to remove conditions on permanent residence, INA § 216(b)(4)
- Fiancé(e) petitions, INA § 214(d)
- Special Rule Cancellation of Removal for Battered Spouses and Children, INA § 240A(b)(2)(D)
- Furnishing of information otherwise protected by the legalization confidentiality provisions, INA § 245A(c)(5)(C)²
- Refugee status, INA § 207
- Asylum, INA § 208

This lesson covers what discretion is, and how it is exercised. As an adjudicator you may have the authority to deny a benefit in the exercise of discretion, but that is not license to deny a benefit for just any reason. As this lesson will explain, there are serious limits on exercising your discretion in making a decision on an application.

2 OVERVIEW OF DISCRETION

2.1 Definition

As a practical matter, in the immigration context, the Board of Immigration Appeals (BIA) has described discretion as a balancing of “the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether ... relief appears in the best interests of this country.”³

² See Devine, Robert C., Acting Director, USCIS. *Legal and Discretionary Analysis for Adjudication*, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006).

³ *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978).

Discussion

For our purposes, a simple definition of discretion is the “[a]bility or power to decide responsibly.”⁴ Alternatively, discretion can be defined as, “freedom or authority to make judgments and to act as one sees fit.”⁵ Of the two, the second definition is probably what “discretion” is more commonly understood to mean; however, the law imposes restrictions on the exercise of discretion by an adjudicator, which makes the first definition more accurate for our purposes. While discretion gives the adjudicator some freedom in the way in which he or she decides a particular case after eligibility has been established, that freedom is always constrained by legal restrictions. It is the restrictions that define scope of the adjudicator’s power of discretion.

The concept of discretion is not simple, as it implies certain limitations, without explaining just what those limitations are. One commentator has described discretion thus: “like the hole in a doughnut, [it] does not exist except as an area left open by a surrounding belt of restriction.”⁶ The rules as to how to exercise discretion are scarce, but there are many restrictions that have been imposed by the courts in order to ensure that the official exercising discretion does not abuse that power. Discretion is defined in a negative manner, by what is impermissible rather than by what is permissible. In addition, in some instances, regulations or policy guidance may elucidate what factors should be considered in discretion.

2.2 Two Types of Discretion

There are two broad types of discretion that may be exercised in the context of immigration law: prosecutorial (or enforcement) discretion and adjudicative discretion. The scope of discretion is defined by what type of discretionary decision is being made. For the purposes of your work with RAIO, you will be involved in exercising adjudicative discretion, but it is important to know about prosecutorial discretion to help you understand the limitations that are placed on you in your exercise of adjudicative discretion.

2.2.1 Adjudicative Discretion

Adjudicative discretion involves the affirmative decision of whether to exercise discretion favorably or not under the standards and procedures provided by statute, regulation, or policy that establish an applicant’s eligibility for the benefit and guide the exercise of discretion. Adjudicative discretion has been referred to as “merit-deciding

⁴ *The American Heritage Dictionary of the English Language*, Fourth Edition Houghton Mifflin Company (2000), available at: <http://www.thefreedictionary.com/discretion> (last visited November 23, 2015).

⁵ *Collins English Dictionary – Complete and Unabridged*, HarperCollins Publishers 2003, available at <http://www.thefreedictionary.com/discretion> (last visited November 23, 2015).

⁶ Ronald M. Dworkin, *Is Law a System of Rules?*, in *The Philosophy of Law* 52 (R.M. Dworkin ed., 1977).

discretion.”⁷ The exercise of discretion is specifically provided in statute for certain benefits. Some mandatory benefits may have a discretionary component, while other types of adjudicative actions may have no discretionary component. In the case of a waiver-of-inadmissibility application, a favorable exercise of discretion on that application, absent any other negative factors, may lead to a mandatory positive decision on the underlying application.

Example

The beneficiary of an I-730 Refugee/Asylee Relative Petition is seeking to join his spouse, who has been resettled in the United States as a refugee. He has an approved I-730, but you find that he had been living in the United States without documentation prior to their marriage and his wife’s resettlement as a refugee and is therefore inadmissible and not eligible for derivative status. He may submit an I-602 Application by Refugee for Waiver of Grounds of Excludability in order to cure that defect in eligibility. Your decision to grant the waiver is discretionary, but once you grant the waiver, the I-730 benefit must be granted.

In general, absent any negative factors, discretionary decisions should be to grant once the applicant has met the requirements of the application or petition.⁸ A formal exercise of discretion to deny, rather than to grant, may be appropriate when the applicant has met the requirements of the application or petition, but negative factors have been found in the course of the adjudication and outweigh the positive factors.

However, adjudicative discretion does not allow an adjudicator to grant an immigration benefit in cases where the individual is not otherwise eligible for that benefit. [IO Supplement – Common Forms Requiring Adjudicative Discretion]

2.2.2 Prosecutorial Discretion

Prosecutorial discretion is a decision to enforce—or not enforce—the law against someone made by an agency charged with enforcing the law. The term “prosecutorial” can be deceptive, because the scope of decisions covered by this doctrine includes the decision of whether to arrest a suspected violator and the decision of whether to file a charging document against someone. Prosecutorial discretion is not an invitation to violate or ignore the law. Rather, it is a means to use the agency resources in a way that best accomplishes our mission of administering and enforcing the immigration laws of the United States.

Most prosecutorial discretion is exercised by enforcement agencies such as ICE and CBP in the context of their enforcement function (*i.e.*, removal proceedings). Prosecutorial

⁷ *INS v. Doherty*, 502 U.S. 314 (1992).

⁸ *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

discretion may be exercised at different points in the removal process, from the decision of who to detain or release on bond; to issue, or rescind a detainer, or a Notice to Appear (NTA); a decision to join in a motion for relief or benefit; or even to enforce an order of removal.⁹

One example of prosecutorial discretion exercised by some USCIS officers involves the issuance of an NTA, the document that puts an individual into removal proceedings after the denial of a petition or application. In certain situations officers have the authority to exercise their discretion and not issue an NTA, despite the applicant's lack of immigration status. In RAIO, only Asylum Officers issue NTAs. This, however, is not a discretionary action by the Asylum Division. Under current regulations,¹⁰ if an applicant is out of status and asylum is not granted, Asylum Officers do not issue denials, but must refer the case to the immigration court.

2.2.3 The Difference between Prosecutorial Discretion and Adjudicative Discretion

As noted earlier, officers have no adjudicative discretion to grant a claim that does not meet eligibility requirements. By contrast, prosecutorial discretion may be exercised before any legal finding and therefore may be exercised in cases of individuals who would be ineligible for any other form of relief.

2.3 Who Exercises Discretion?

Each time you render a decision on an application in a situation where the benefit is discretionary, you are doing so in the exercise of discretion. This is not an exercise of your own personal discretion; rather, you are exercising discretion as an official of the U.S. Government.

In the Immigration and Nationality Act (INA), Congress has expressly granted discretion to the Secretary of the Department of Homeland Security in deciding when to grant some benefits. For example, the INA contains provisions such as: "Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee..."¹¹ Most of the time the grant of discretion is explicit in the statute;¹² in other instances it is implied, based on the language of the statute.

⁹ See, e.g., Jeh Johnson, Secretary of Homeland Security, Memo, "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants," (November 20, 2014).

¹⁰ 8 C.F.R. § 208.14(c).

¹¹ INA § 207(c)(1).

¹² See, e.g., INA § 209(b) (The Secretary of Homeland Security or the Attorney General, **in the Secretary's or the Attorney General's discretion** and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—...).

When Congress enacts a law and allows discretion in the enforcement of that law, it usually grants discretion to the head of the agency tasked with enforcing that law. When you exercise discretion in adjudicating an application for a benefit, you are exercising discretion on behalf of the Secretary of Homeland Security. The Secretary's discretionary power is delegated to you, the adjudicator, through DHS and USCIS.

In many cases, such as the waiver provisions in INA § 212, the statute still reads that is the Attorney General's discretion. In most instances, the statute has not been changed since the creation of the DHS and the transfer of many functions from the Department of Justice to DHS. If USCIS has adjudicative authority over the benefit, the statute should be read as conferring the power to exercise discretion on the Secretary of Homeland Security.¹³

The Secretary or the Director may, by regulation, or directive, set how you exercise your discretion in specific instances. For example, in the particular instance of asylum adjudications, regulations provide that when the applicant has met the refugee definition through a showing of past persecution, you must consider whether there is still a well-founded fear of persecution in the future. If you can show, by a preponderance of the evidence, that there is no well-founded fear, the regulations require you to exercise discretion to deny or refer the claim, unless the applicant shows compelling reasons arising from severe past persecution for being unwilling to return or shows that he or she would face other serious harm upon return.¹⁴

2.4 Limits on Discretion

Some clear limitations on the exercise of discretion must be kept in mind at all times, and are described in the following subsections.

2.4.1 Eligibility Threshold

There is never discretion to grant a benefit or relief in a case where the applicant has not met the eligibility requirements for the benefit or relief sought. As a legal matter, it is permissible to deny an application as a matter of discretion, without determining whether the person is actually eligible for the benefit.¹⁵ As a matter of policy, however, you should generally make a specific determination of statutory eligibility before addressing the exercise of discretion. If an application is denied as an exercise of discretion, and your decision is overturned, the record necessary for making a decision on eligibility for

¹³ 6 U.S.C. § 275.

¹⁴ 8 C.F.R. § 208.13(b)(1)(i). NOTE: This is a different standard than the used in adjudicating refugee claims. For refugee claims an applicant need establish either past persecution or well-founded future fear. See INA 101(a)(42)(A) and (B).

¹⁵ *INS v. Abudu*, 485 U.S. 94, 105 (1988); *INS v. Bagamasbad*, 429 U.S. 24, 26 (1976).

the benefit will be incomplete if the adjudicator did not establish eligibility prior to the discretionary analysis. Ideally, if you deny the petition or application, the **denial notice** will include a determination on both (1) statutory eligibility grounds and (2) discretionary grounds.

In the case of refugee admissions, to be eligible for refugee resettlement, the applicant must first establish that he or she has access to the U.S. Refugee Admissions Program (USRAP), meets the refugee definition, is not firmly resettled and is otherwise admissible to the United States. Most grounds of inadmissibility may be waived for refugee applicants—drug trafficking and certain security and related grounds are the only exceptions¹⁶—but you cannot consider the waiver request until the applicant has first established that he or she has access to the USRAP, is not firmly resettled and meets the definition of refugee. Your decision on the waiver application itself is an exercise of discretion.

2.4.2 Lack of Negative Factors

Absent any negative factors, you will always exercise discretion positively. The fact that an applicant is eligible for a particular benefit is, by itself, a strong positive factor in the weighing process. If there are no negative factors to weigh against that positive factor, denial of the benefit would be an abuse of discretion. This general rule does not apply to waiver adjudications, since the waiver process is predicated on the existence of at least one negative factor.¹⁷

Discretion gives the adjudicator authority to deny a benefit or a form of relief even when the applicant is eligible according to the law, but that power cannot be exercised arbitrarily or capriciously. When you use discretion to deny a claim, you must explain your reasons clearly and cogently.

3 APPLYING DISCRETION

As an adjudicator you have an obligation to evaluate any application that comes before you, but, in the course of your adjudication, you may become aware of negative factors. Discretion is the power that allows you to make a decision to deny the benefit when the applicant is eligible for the benefit, but for other reasons it would not be appropriate to exercise discretion favorably. Discretion is the authority you exercise when weighing any negative factors against the positive factors before you make the final decision on the application.

3.1 Three-Step Process

¹⁶ See INA § 207(c)(3).

¹⁷ *Matter of Marin*, 16 I&N Dec. 581, 586-87 (BIA 1978).

Generally, the process you follow in rendering a decision on an application, when that application is discretionary, is:

- Find the facts
- Apply the law
- Balance any negative factors against positive factors before making a decision.

The third step is the exercise of discretion.¹⁸ Each of the steps has a role in determining what constitutes a reasonable exercise of discretion.

3.1.1 Finding the Facts

Finding the facts is a matter of gathering and assessing evidence. While the focus of fact-finding should be to obtain evidence that will help establish eligibility, you should also elicit information concerning the applicant's background such as family ties that they might have in the United States, any serious medical conditions, or other connections that they have in the community. Part of the reason for eliciting information on the applicant's background is to aid in the exercise of discretion, should it become necessary after eligibility is established. The fact that your discretion has become an issue will generally presuppose some negative factors have emerged in the course of processing the claim, you will need to have some idea of what equities the applicant has in order to properly weigh the factors.

In removal proceedings in immigration court the applicant has an affirmative duty to present evidence showing that a favorable exercise of discretion is warranted for any form of relief where discretion is a factor.¹⁹ In adjudications outside the immigration court, however, there is no such requirement; therefore it is important for you to explore this issue during the interview.

For example, in cases involving possible provision of material support to terrorist groups, where an exemption might be possible, your fact-finding during the interview will be crucial in determining whether an exemption is available and whether to grant the exemption in the exercise of discretion. The testimonial evidence that you elicit during an interview will often be the only evidence upon which to determine "whether the duress exemption is warranted under the totality of the circumstances."²⁰ Your follow-up

¹⁸ Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry*. Baton Rouge: Louisiana State University Press, 1969

¹⁹ INA §240(c)(4)(A)(ii).

²⁰ Scharfen, Jonathan, Deputy Director, USCIS. *Processing the Discretionary Exemption to the Inadmissibility Ground for Providing Material Support to Certain Terrorist Organizations*, Memorandum to Associate Directors; Chief, Office of Administrative Appeals Chief Counsel, (Washington, DC: 24 May 2007) at p. 7.

questions during the interview must focus on the nature and the circumstances of the applicant's interactions with the suspected terrorist group.²¹

If there appear to be any negative factors present, you should always ask the applicant directly why he or she feels that he or she deserves to have discretion exercised favorably.

3.1.2 Applying the Law

The legal analysis of eligibility may also affect the discretionary determination in your adjudication. If, for example, an applicant for a benefit has been convicted of a crime, it may raise the possibility that the applicant may be inadmissible or, in the case of an asylum applicant, that the applicant is subject to a mandatory bar of asylum for having committed a particularly serious crime.²² In adjudications where admissibility is an issue, the determination whether a particular crime is an aggravated felony will determine whether a waiver is available to the applicant. In some cases the question of whether a particular crime is an aggravated felony will be easily decided; in others it will require a close legal analysis.

3.1.3 Balancing any Negative Discretionary Factors against Positive Factors before Making a Decision

The act of exercising discretion involves balancing any negative factors against positive factors before making a decision. Discretion always consists of a weighing of positive and negative factors. In the immigration context, the goal is generally to "balance the adverse factors evidencing an alien's undesirability as a resident of the United States with the social and humane considerations presented" in support of the alien's residence in the United States²³. Since most of the benefits conferred by RAIO are based on humanitarian concepts such as family unity and protection from harm, an interviewee's eligibility for a benefit is always the main positive factor under consideration. The analysis of the negative factors should focus on what effect the alien's presence in the United States will have on the general welfare of the community. [RAD Supplement – Balancing Positive and Negative Factors] [Asylum Supplement – Balancing Positive and Negative Factors]

3.1.4 Totality of the Circumstances

It is important, when weighing the positive and negative factors, that you do not consider the various factors individually, in isolation from one another.²⁴ When you consider each

²¹ *Id.*

²² See INA § 208(b)(2)(A)(ii).

²³ *Matter of Marin*, 16 I&N Dec. 581, 586-87 (BIA 1978).

²⁴ *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

factor individually, without considering how all the factors relate to each other, it becomes difficult to weigh the positive and negative factors properly.

Example

The BIA found that while the applicant's circumvention of orderly refugee procedures can be a serious adverse factor in considering an asylum application, "...it should not be considered in such a way that the practical effect is to deny relief in virtually all cases. This factor is only one of a number of factors which should be balanced in exercising discretion, and the weight accorded to this factor may vary depending on the facts of a particular case."²⁵ The BIA went on explain some of the factors that may influence how much weight should be given to the circumvention of orderly refugee procedures:

"Instead of focusing only on the circumvention of orderly refugee procedures, the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution should be examined in determining whether a favorable exercise of discretion is warranted.

Among those factors which should be considered are whether the alien passed through any other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States.

In addition, the length of time the alien remained in a third country, and his living conditions, safety, and potential for long-term residency there are also relevant. For example, an alien who is forced to remain in hiding to elude persecutors, or who faces imminent deportation back to the country where he fears persecution, may not have found a safe haven even though he has escaped to another country.

Further, whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum here rather than elsewhere is another factor to consider. In this regard, the extent of the alien's ties to any other countries where he does not fear persecution should also be examined.

Moreover, if the alien engaged in fraud to circumvent orderly refugee procedures, the seriousness of the fraud should be considered. The use of fraudulent documents to escape the country of persecution itself is not a

²⁵ *Id.*

significant adverse factor while, at the other extreme, entry under the assumed identity of a United States citizen with a United States passport, which was fraudulently obtained by the alien from the United States Government, is very serious fraud.” - *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987).

It is clear that all the factors listed by the BIA are interrelated, and it would be difficult to consider any of those factors in isolation from the others and then assign the proper weight to each factor. You must consider all factors together and determine not just whether a particular factor is positive or negative, but how it affects the other factors under consideration. In some cases, one factor will directly cancel out another. A finding that an applicant's safety was in question may directly explain his/her circumvention of orderly refugee procedures. In other cases, a particular positive factor may just act to balance out a particular negative factor. An applicant's having relatives in the U.S. may explain why he or she did not attempt to take advantage of orderly refugee procedures in a third country as he or she passed through on the way to the United States.

3.2 Identifying the Factors That May Be Considered in the Exercise of Discretion

Anything about an applicant's background is potentially a factor to be considered in exercising discretion. However, you must be able to articulate and explain how the factor should be weighed in a particular case. Any facts related to the applicant's conduct, character, family relations in the United States, other ties to the United States, or any other humanitarian concerns are proper factors to consider in the exercise of discretion. Applicants' conduct can include how they entered the United States and what they have done since their arrival—such as employment, schooling, or any evidence of criminal activity. Employment history, schooling, and criminal activity may also be relevant factors to consider. It is important to know what family members the applicant may have living in the United States and the immigration status of those family members. Other ties to the United States may include owning real estate or a business. Other humanitarian concerns may include health issues. For example, if an applicant or a family member has a serious illness, can that applicant or family member obtain adequate treatment if removed?

3.2.1 Favorable Factors That May Be Considered

Courts have listed a number of factors that may be considered as favorable or positive factors in the exercise of discretion. There can be no exhaustive list of factors, since almost anything about a person's background can be considered. It is important to remember that the applicant's eligibility for the benefit being sought may be the first and strongest positive factor that you should consider. This is especially true in protection cases in which “discretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-

founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors.”²⁶ Other favorable factors that the BIA has identified include:

[S]uch factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if deportation occurs, service in this country’s Armed Forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of a genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent’s good character (e.g., affidavits from family, friends, and responsible community representatives).²⁷

3.2.2 Negative Factors That May Be Considered

Like the positive factors, it is impossible to list all of the possible negative factors that you may consider in exercise of discretion. Court decisions have referred to a number of factors that they have considered as negative in the exercise of discretion. As a general rule, any information that raises the possibility that an inadmissibility applies, or, in the case of asylum applications, a bar to asylum might apply, might constitute a negative discretionary factor even if it is determined that the inadmissibility or bar does not apply. You should consider carefully any indication that the applicant might pose a threat to public safety or national security. Any criminal conviction is always a negative factor that will weigh heavily against an applicant. Other negative factors that the BIA has looked at in waiver cases include:

[T]he nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent’s bad character or undesirability as a permanent resident of this country.²⁸

3.3 Weighing Positive and Negative Factors

Having established which factors are relevant to your exercise of discretion, the next step is to determine how to weigh them. Some factors are always going to be more important than other factors.

3.3.1 Factors Material to Eligibility Are Given the Most Weight

²⁶ *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

²⁷ *Matter of Marin*, 16 I&N Dec. 581, 584-585 (BIA 1978).

²⁸ *Id.* at 585.

Any factor that is material to the applicant's eligibility for the benefit being sought generally should be given the most weight. The applicant's eligibility for the benefit is, by itself, a factor arguing for the benefit to be granted in the exercise of discretion. If there are no negative factors present, then in most instances, eligibility is **all** that is needed to exercise your discretion to grant a benefit.

However, as an exception to the general rule in the case of asylum, there is regulation that restricts the factors you may look at in a specific circumstance, without regard to underlying eligibility. While an applicant may establish eligibility based on past persecution alone, if you find, by a preponderance of the evidence, that the applicant has no well-founded fear of persecution in the future, regulations instruct you to exercise your discretion negatively to refer the application even when there do not appear to be any negative factors.²⁹ This instruction arises from the fact that the underlying protection basis for the benefit no longer exists. The same regulation also lists two positive factors that may outweigh the lack of future risk to the applicant. Discretion may still be exercised to grant asylum in the absence of well-founded fear if the past persecution suffered by the applicant was so severe that it would not be humane to return the applicant to the country of persecution.³⁰ You may also grant in the absence of well-founded fear if you find that the applicant would suffer some other serious harm, not related to the past persecution.³¹ Both of the factors that would outweigh the lack of well-founded fear are related to the humanitarian goals of the benefit being sought, but only a grant based on severity of past harm is directly related to the underlying eligibility.

Another exception to the general rule would be an I-601 waiver for the 3 and 10 year bars on re-entry for an alien who was unlawfully present and triggered the bars. For waiver of that ground of inadmissibility, the statute specifies that the only positive factor to be considered is extreme hardship to the qualifying relative even though that might not be directly relevant to the underlying benefit (issuance of an immigrant visa).³²

4 DISCRETION IN DECISION WRITING

4.1 Positive Exercise of Discretion

Generally, a positive exercise of discretion does not require a detailed analysis or explanation in the written decision. If no adverse factors at all are present, a simple statement is sufficient, saying that the applicant is eligible, that there are no adverse factors, and that therefore the applicant is granted the benefit in the exercise of discretion.

²⁹ 8 C.F.R. § 208.13(b)(1)(i) (Discretionary referral or denial).

³⁰ 8 C.F.R. § 208.13(b)(1)(iii)(A).

³¹ 8 C.F.R. § 208.13(b)(1)(iii)(B); see *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

³² INA §212(a)(9)(B)(v).

You should discuss cases that are less clear cut, particularly those involving criminality or national security issues, with supervisors, who may raise the issue with USCIS counsel; if you do not address the issue in the decision, the file should contain some record of your deliberations. According to USCIS guidance on such cases, “[t]he adjudicator should annotate the file to clearly reflect the favorable factors and consultations that supported the approval in close or complex cases.”³³

Whether addressing the discretionary issues in the written decision or by making an annotation in the file, you should state the rationale for your decision in a clear manner so that it is easily understandable to anyone reviewing the file.

4.2 Negative Exercise of Discretion

The written decision must contain a complete analysis of the factors considered in exercising discretion, with a specific and cogent explanation of why you exercised discretion negatively. Your decision will be reviewed, and it is imperative that those who review your decision are able to understand exactly how you reached it.

Negative factors must never be applied in a blanket fashion. Your decision must address negative factors on an individualized basis, applying the totality of the circumstances to the specific facts of the case. The decision should specify both the positive and negative factors that you identified and considered in coming to your decision and should explain how you weighed the different factors.

5 CONCLUSION

Understanding when and how to exercise discretion in your adjudications is important for all officers within the RAIO Directorate. Not all of the adjudications that you make require an exercise of discretion, but when a decision is discretionary it is essential that you understand how to identify the positive and negative factors you must consider and how to weigh those factors. When discretion is called for in your decision making, a careful application of the principles underlying discretion will help ensure that your decision will be legally sufficient and appropriate.

6 SUMMARY

6.1 Discretion Definition

³³ Devine, Robert C., Acting Director, USCIS. *Legal and Discretionary Analysis for Adjudication*, Memorandum to Office of Domestic Operations, Office of Refugee, Asylum, and International Operations, and Office of National Security and Records Verification (Washington, DC: 03 May 2006).

As a practical matter, in the immigration context, the BIA has described discretion as a balancing of “the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether ... relief appears in the best interests of this country.”³⁴ Congress has provided the Secretary of Homeland Security discretion in making many decisions; the Secretary’s authority to exercise discretion in many instances has been delegated to you, as an officer in USCIS.

6.2 Limitations on Discretion

There is no discretion to grant a claim where eligibility has not been established. If the applicant is eligible, however, you may then consider discretionary factors. Absent any identifiable negative factors you will grant the benefit.

6.3 Applying Discretion

- Find the facts
- Apply the law
- Balance any negative factors against positive factors before making a decision.

The third step is the exercise of discretion.

6.4 Totality of the Circumstances

In considering what factors you may consider in exercising discretion, you must be able to articulate clearly a relationship between a factor and the desirability of having the applicant living in the United States. Remember that the humanitarian concerns present in a particular case should always be considered. If the applicant is eligible for the benefit it should be granted absent any negative factors. When weighing the positive and negative factors you must always consider the totality of the circumstances and not weigh factors in isolation.

6.5 Discretion in Decision Writing

If you are exercising your discretion to grant a benefit, and there are no negative factors present, there is usually no need for further analysis. The fact that the applicant has established eligibility and there are no adverse factors is sufficient to justify the decision to grant a benefit. If you are exercising your discretion to deny a benefit, you must provide a complete analysis of your reasoning, specifying the positive and negative factors you considered, so that others reviewing your decision can clearly understand

³⁴ *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978).

how you reached it. Negative factors should not be applied in a blanket fashion, but always individualized to particular circumstances of the applicant.

PRACTICAL EXERCISES

There are no student materials for practical exercises.

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

None

SUPPLEMENTS**RAD Supplement – Balancing Positive and Negative Factors**

One of the most common applications of discretion you will be called upon to make is the adjudication of form I-602, Application by Refugee for Waiver of Grounds of Excludability. Refugee Officers may be called upon to adjudicate I-602 Waivers in the course of their normal duties adjudicating I-590 applications (Classification as a Refugee). Authority for International Operations Officers to adjudicate I-602 Waivers is delegated in the regulations.³⁵ The following is an explanation of the factors you should consider in adjudicating I-602 Waivers.

- First you should make certain that the person filing the application is a refugee. The applicant may be classified as a refugee following an interview by a qualified officer from USCIS, or the applicant may be the immediate relative of a refugee who is entitled to derivative status. In addition to having been classified as a refugee, the applicant must be subject to at least one ground of inadmissibility.
- After the eligibility of the applicant to file form I-602 is established, you must consider the specific sections of 212(a) that apply, keeping in mind that sections 212(a)(4), 212(a)(5), and 212(a)(7)(A) do not apply to refugees pursuant to section 207(c)(3). Also remember that

³⁵ 8 CFR § 207.3(a).

inadmissibility under sections 212(a)(2)(C), 212(a)(3)(A), (B), (C), and (E) is not eligible for a waiver.³⁶

- In considering the application for a waiver you must weigh the positive and negative factors presented. In adjudicating a discretionary waiver application under § 207(c) of the INA, the humanitarian, family unity, or public interest considerations must be balanced against the seriousness of the offense that rendered the applicant inadmissible.
- In making this determination, the officer should recognize that the applicant, if the principal refugee, has established past or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor.
- If an applicant is inadmissible under section 212(a)(2) of the Act because he or she committed a crime involving moral turpitude, the officer should not grant a waiver under section 207(c) of the INA except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an applicant clearly demonstrates that denying refugee status would result in exceptional and extremely unusual hardship. In considering whether the seriousness of the applicant's crime you may look to the definition of "aggravated felony" in the Act.³⁷ If the conviction seems to fit the definition of an aggravated felony, you should assume that it was a serious crime. If the crime does not meet the definition of aggravated felony, another factor you may consider in making the determination of whether the applicant was convicted of a serious crime is whether the type and circumstances of the crime indicate that the alien will be a danger to the community. In making such a determination you should consider:
 - the nature of the conviction
 - the sentence imposed
 - the circumstances and underlying facts of the conviction
- Positive factors to be considered in exercising discretion might include:
 - Likelihood of well-founded fear
 - Family unity
 - Medical needs of the applicant or family members

³⁶ INA § 207(c)(3).

³⁷ INA § 101(a)(43).

- Risk of *refoulment* by the country of first asylum

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

None

SUPPLEMENTS

ASM Supplement – Balancing Positive and Negative Factors

The most common situation in which you, as an Asylum Officer, will exercise discretion to deny an asylum claim, and a situation that does not require HQ review, involves those cases where eligibility is established by past persecution alone and it is determined that there is an absence of well-founded fear. The regulations provide clear guidance of how you should proceed.³⁸ This is an explanation of how you should apply that guidance:

1. The applicant has presented evidence that establishes that he meets the requirements of the refugee definition by virtue of having suffered past persecution. The applicant, having proven that he or she suffered persecution in the past has no further burden of proof in establishing eligibility and enjoys a presumption that their fear of persecution in the future is well-founded.
2. You must next consider whether there is evidence that rebuts the presumption of a well founded fear of persecution in the future.³⁹

³⁸ 8 C.F.R. § 208.13(b)(1).

³⁹ 8 C.F.R. § 208.13(b)(1)(i).

3. First you consider any changed circumstances, having to do with the conditions in the country of persecution, or the applicant's personal situation, that would remove a reasonable possibility of future persecution.⁴⁰
4. Next, you look to see if the applicant can reasonably relocate within his/her country of persecution and thereby avoid any future persecution.⁴¹
5. If you find that either of those conditions exists, the presumption that the applicant has a well-founded fear of persecution may be rebutted.
6. It is your burden of proof, in rebutting the presumption of well-founded fear that the applicant enjoys, to show by a preponderance of the evidence that the applicant would face no risk of persecution in the future.⁴²
7. If you, the officer, are able to show, by a preponderance of the evidence, that the applicant no longer has a well-founded fear of persecution in the future, except in two very narrow circumstances detailed below, you are required to exercise your discretion to deny or refer the application. The basis of this regulation is the fact that the humanitarian concern that underlies the benefit no longer exists. The applicant is no longer in need of protection from persecution. In these cases the lack of risk of persecution is treated as a negative discretionary factor by the regulations.
8. The regulations also require that you consider two possible positive countervailing factors to the discretionary denial/referral of a claim based on past persecution with no well-founded fear. These two countervailing positive factors would allow for a grant of asylum in the absence of well-founded fear.
9. One countervailing factor is if the applicant presents evidence that indicates that there are compelling reasons for being unwilling or unable to return to the country of origin arising out of the severity of the past persecution, you may grant asylum.⁴³ While the humanitarian concerns that the benefit is meant to address no longer exist, there are other humanitarian concerns to consider as positive factors in weighing discretion.
10. Another countervailing factor is if the applicant presents evidence that he or she

⁴⁰ 8 C.F.R. § 208.13(b)(1)(i)(A).

⁴¹ 8 C.F.R. § 208.13(b)(1)(i)(B).

⁴² 8 C.F.R. § 208.13(b)(1)(ii).

⁴³ 8 C.F.R. § 208.13(b)(1)(iii)(A); see also *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

would suffer some other serious harm if returned. While the other serious harm must rise to the level of persecution, no nexus to a protected ground is required.⁴⁴ If so, you may grant asylum in the absence of a well-founded fear of persecution.⁴⁵ Once again, risk to the applicant is the main positive factor to be considered in the exercise of discretion.

Officers should go through these steps in any case where the applicant is only able to establish eligibility through past persecution.

Remember, in order to rebut the presumption that the applicant has a well-founded fear of persecution after the applicant has established that he or she has suffered persecution in the past, the officer must be able to meet the preponderance of the evidence standard in showing that the applicant no longer has a well-founded fear of persecution. Before proceeding with a discretionary denial/referral based on a lack of well-founded fear in the future, the officer must also consider whether there are compelling reasons for the applicant being unwilling or unable to return to the country of origin arising out of the severity of the past persecution, or whether the applicant would suffer some other serious harm if returned.

⁴⁴ *Matter of L-S-*, 25 I&N Dec. 704, 714 (BIA 2012).

⁴⁵ 8 C.F.R. § 208.13(b)(1)(iii)(B); see also *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION****ADDITIONAL RESOURCES**

None

SUPPLEMENTS**IO Supplement – Common Forms Requiring Adjudicative Discretion**

Officers within the International Operations Division will exercise discretion during the adjudication of a variety of immigration benefit requests. Some of the most common requests involving discretion include:

- Form I-601, Application for Grounds of Inadmissibility
- Form I-730, Refugee/Asylee Relative Petition
- Form I-602, Application by Refugee for Waiver of Grounds of Excludability

Additional training on discretion will be provided during the International Operations Division Training Course (IODTC).

QUIZ for Children's Claims Distance Training (ANSWER KEY)

1. When assessing a claim by a child, the definition of a refugee is modified to take into account the vulnerability of children and the best interests principle.
 - a. True
 - b. False

b. False. The definition applies to all individuals regardless of age, and "best interests of child" does not replace definition in determining eligibility. Procedures should always reflect best interests.
2. Officers should acquire as much objective evidence as possible to compensate for cases where a child's subjective fear or accounting of past events is limited.
 - a. True
 - b. False

a. True.
3. Country of origin information does not play as significant a role in the determination of eligibility for a child as it does for an adult.
 - a. True
 - b. False

b. False. See statement #2.
4. A good interviewing technique for children is to interrupt the child's narrative whenever the officer needs more details about an issue that the child has raised that is relevant to the claim.
 - a. True
 - b. False

b. False. Allow a narrative without interruption.
5. During the interview a caretaker may be present to provide the child with moral support and testify about the child's circumstances even when the child does not want the caretaker to be present.
 - a. True
 - b. False

b. False. This may be an indication of abuse, trafficking, or another problem.

6. There are circumstances when harm that rises to the level of persecution for a child may not rise to the level of persecution for an adult.
- a. True
 - b. False
- a. True.
7. A family's intentions in sending a child abroad are not relevant to a determination of whether the child has a well-founded fear of persecution.
- a. True
 - b. False
- b. False.
8. The child's testimony alone may be sufficient to establish his or her claim.
- a. True
 - b. False
- a. True, as it is for all applicants.
9. If an applicant was under the age of eighteen at the time she was subjected to an arranged marriage, that marriage constitutes persecution.
- a. True
 - b. False
- b. False. An arranged marriage, which may be a cultural norm and not perceived as harm, is different from a forced marriage, which would be considered harm. The officer still has to examine whether the applicant, especially if now an adult, perceives it as serious harm; if still a child, supplement record with other testimony & COI.
10. When assessing the applicant's credibility, it is important to take into account that an applicant who is under the age of eighteen is not expected to provide the level of detail that is expected of an adult.
- a. True
 - b. False
- a. True. The minor may not know or remember details, depending on age, trauma, maturity or other developmental issue.

Quiz for Credibility

1. In *Matter of Kasinga*, the following circumstances particular to the applicant could have been relevant to a credibility determination. Which did not figure into the Board's credibility determination?
 - a. The applicant's age at the time of persecution
 - b. **The applicant's level of education**
 - c. The fact that the applicant was detained for a prolonged period by INS
 - d. The applicant's relationship with her Aunt.

b. – **The applicant's level of education. This could be a factor, but the Board did not list it as one of the factors it considered in *Kasinga*.**

2. Which is **NOT** a factor upon which an adverse credibility determination may be based without other credibility issues being present?
 - a. Lack of Detail
 - b. Implausibility
 - c. **Demeanor**
 - d. A Material Inconsistency

c. – **In the refugee context, demeanor is generally not considered in credible determinations. In the asylum context, demeanor can be considered in a credibility determination, but an adverse determination cannot be based on demeanor alone without other factors being present.**

3. Inconsistencies between an applicant's testimony and the testimony of a witness for the applicant is an example of an external inconsistency.
 - a. True
 - b. **False**

b. **False - External consistency relates to country of origin information (COI), known facts, and other pieces of evidence provided by the applicant or ascertained by you in the course of your investigation.**

4. According to the analytical framework for credibility determinations, after you have determined that there is a credibility concern, and determined that it is material, you should –
 - a. **Ask the applicant if there is an explanation for the credibility flaw**

- b. Determine if there is a reasonable explanation for the credibility flaw
- c. Accuse the applicant of lying
- d. **Bring the issue to the applicant's attention**

d. – This is the third step in the analytical framework. Answers a and b are not correct because they follow d, just as d follows the steps given in the body of the question.

- 5. Lack of media reporting, or other COI corroborating events described by an applicant always indicates that the applicant is not credible.

- a. True
- b. **False**

b. – There are many reasons why even events that seem significant may not be reported.

- 6. Considerations of other relevant factors such as demeanor, candor, and responsiveness, in addition to consistency, detail, and plausibility, are limited to asylum adjudications only.

- a. True
- b. **False**

a. – True. Other relevant factors are part of the changes made to INA section 208 by the REAL ID Act, and do not apply to INA section 207.

- 7. Which of the following attempts to inform an applicant of a credibility concern would be unacceptable:
 - a. "How is it possible that...?"
 - b. "Why can't you tell me more about...?"
 - c. **"According to human rights reports I have read, your account of events is entirely wrong."**
 - d. "Your I-589 says X, now you are telling me Y..."

c – Officers should never be accusatory.

- 8. In order for an applicant's explanation of a credibility concern to be considered reasonable, it should:
 - a. meet the reasonable possibility standard
 - b. be supported by corroborating evidence
 - c. **plausible, detailed, and consistent**
 - d. be to the satisfaction of the adjudicator

c. – plausible, detailed and consistent – Every aspect of the applicant's testimony, including explanations of potential credibility issues, should be evaluated for plausibility, detail, and consistency.

9. When you are basing your credibility analysis on a generalization, such as *falsus in uno falsus in omnibus* (False in one thing, false in all things), a good tool for testing the validity of the generalization is:

- a. temporarily setting your decision aside
- b. engaging in parallel universe thinking
- c. using methodological doubting and believing
- d. using "except when/especially when"

d. – Except when/especially when is the tool used for testing generalizations.

10. In interviewing an Egyptian national applicant whose claim is based on his Coptic Christian faith, you find numerous discrepancies between dates given in his written application and the dates he gives you in the interview. What would be a reasonable explanation for those discrepancies?

- a. Coptic Christians use a different calendar from the Gregorian Calendar
- b. The applicant does not speak English and his application was written by an interpreter who was not familiar with the Coptic calendar
- c. The applicant's memory for dates is faulty
- d. All of the above

d. – All of the above

Quiz for Evidence

1. The first step in the Methodological Approach to Evidence is to:

- a. **gather relevant evidence**
- b. determine whether the evidence is material
- c. determine the quality of that evidence.
- d. ask the applicant what evidence they plan to submit

a – Gather relevant evidence is the first step in the methodological approach outlined in the lesson plan.

2. While the burden of proof is always on the applicant to prove eligibility, a part of that burden is shared by the adjudicator. The shared burden of proof refers to _____, but the _____ always remains on the applicant.

- a. the burden of providing evidence / the obligation to always be truthful
- b. the burden of doing COI research / burden of persuading the adjudicator
- c. **the burden of producing evidence / burden of persuading the adjudicator**
- d. the burden of producing evidence / burden of proving that the evidence is material

c - While the applicant must establish eligibility for the benefit, as part of the cooperative approach you have the duty to elicit sufficient information at the interview. You also have the duty to research COI to properly evaluate whether the applicant is eligible for the benefit he or she applied. The burden is on the applicant to prove his or her claim, but you have a duty to fully develop the record.

3. In both overseas refugee processing and asylum the applicant has the burden of proving that he or she:

- a. is of humanitarian concern to the US
- b. is not barred from applying for the benefit he or she is seeking
- c. is not subject to any inadmissibilities
- d. **meets the definition of refugee found at INA § 101(a)(42)**

d – All refugees and asylees must meet the definition of refugee. Humanitarian concern only applies in refugee resettlement, only asylum is subject to specific bars to applying, and only refugee resettlement is concerned with inadmissibilities.

4. The burden of proof refers to the responsibility to provide evidence to prove a fact and the standard of proof refers to the quantum of evidence necessary.

- a. **True**

b. False

5. RAIO officers apply different standards of proof in different parts of their adjudications. The highest level of certainty required by refugee and asylum officers, respectively, is:

- a. Preponderance of the evidence, and To the satisfaction of the adjudicator
- b. **Clearly and beyond doubt, and Clear and convincing**
- c. Beyond a reasonable doubt
- d. Reasonable possibility

b – Clearly and beyond doubt is the highest level of proof required for refugee officers, while clear and convincing is the highest level of proof required for asylum officers.

6. While an applicant may establish a well-founded fear by a showing of a reasonable possibility that he would suffer persecution on account of a protected ground, each fact supporting that conclusion must be proven by the higher preponderance of the evidence standard.

- a. **True**
- b. False

a – True. In this context, you are using two different standards within one adjudication: a preponderance of the evidence and a reasonable possibility.

7. An applicant's possession of a valid national passport is always proof that the applicant is a national of the country of issuance.

- a. True
- b. **False**

b – False. Nationality may be proved by the possession of a valid national passport. Possession of such a passport creates a *prima facie* presumption that the holder is a national of the country of issuance, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim

8. An applicant submits a police report made after she has reported an attempted rape. The police report:

- a. is evidence that the applicant was assaulted and might support a finding of past persecution

- b. may be evidence concerning the issue of whether the government was **unwilling** or unable to protect the applicant
- c. may be evidence that the applicant was persecuted on account of a protected characteristic
- d. All of the above

d – The police report will always be evidence of an assault and, depending on other factors, may also provide evidence going to the issue of willing and able to protect and may provide evidence that the applicant possesses a protected characteristic.

9. Documentary evidence that an applicant submits may be authenticated by the applicant's own credible testimony.

- a. **True**
- b. False

a – If the applicant is able to testify to sufficient facts, in a credible manner, that may be sufficient to authenticate the document.

10. The "significant possibility" standard of proof is defined by:

- a. case law
- b. the statute
- c. the regulations
- d. **none of the above**

d – Neither the statute nor the immigration regulations define the "significant possibility" standard of proof, and the standard is not discussed in immigration case law. The legislative history indicates that the standard "is intended to be a low screening standard for admission into the usual full asylum [or overseas refugee] process

QUIZ for Firm Resettlement Distance Training (Answer Key)

1. If an applicant is considered firmly resettled in a country, he or she must have received or have been offered the right to stay in that country indefinitely.
 - a. True
 - b. False

a. True. Status must be permanent. LP Sec 4.3.
2. The applicant fled persecution in Sudan and was granted asylum in Sweden. You have direct evidence (the applicant's permanent residence card) that he was granted permanent status in Sweden. The card is proof that the applicant was firmly resettled in Sweden.
 - a. True
 - b. False

b. False. The card is direct evidence that the applicant was firmly resettled, but the applicant has the opportunity to rebut the evidence.
3. If you find that the applicant was firmly resettled in Sweden, he is barred from asylum in the United States.
 - a. True
 - b. False

a. True. An applicant who is unable to rebut evidence that he is firmly resettled may nonetheless show that he falls within an exception within the A-G-G- framework, but according to the regulations, an applicant who establishes an exception is not firmly resettled.
4. To determine whether an applicant has been firmly resettled, if you have direct evidence (such as a permanent residence card) of an offer of firm resettlement, the next step for you is to consider indirect evidence of firm resettlement.
 - a. True
 - b. False

b. False. The next step is that the applicant has the opportunity to rebut the evidence. You consider indirect evidence of firm resettlement only if there is no direct evidence.
5. Applicants who receive an offer of permanent status from a third country are not subject to the firm resettlement bar to asylum or refugee status if the following is true:
 - a. They never entered the third country
 - b. They were not refugees when they received the offer
 - c. They meet an exception to the bar

- d. Any of the above
6. Applicants who been offered permanent status in a third country may nevertheless be granted refugee status or asylum in the United States if they were subjected to restrictive conditions in the third country, such as government policies restricting the right to work, travel, or own property.
- a. True
 - b. False
- a. True. LP Sec. 5. An applicant in this situation is eligible for an exception to the firm resettlement bar.
7. Spouses and children of refugees/asylees who are derivatives of the principal applicant are barred from refugee status and asylum if they have been firmly resettled in a third country.
- a. True
 - b. False
- b. False. LP Sec 6.3.2. The firm resettlement bar does not apply to them.
8. Firm resettlement is a mandatory statutory bar to both refugee resettlement and asylum.
- a. True
 - b. False
- a. True.
9. The four-step analysis of the firm resettlement bar (consideration of prima facie evidence by officer; rebuttal by applicant; consideration of totality of evidence; consideration of exception) was established by:
- a. Statute
 - b. Regulation
 - c. Circuit Court case law
 - d. BIA case law
- d. *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011)
10. The applicant is unable to return to a third country where he was firmly resettled. The firm resettlement bar may still apply.
- a. True
 - b. False
- a. True. LP Sec. 4.3.1. If the applicant had the ability to stay permanently but allowed a travel document to expire, for example, the bar may still apply.

Quiz for Gender Related Claims (*Answer Key*)

1. Gender related claims only concern female applicants.

- A) True
- B) False

B- False – “...it is important to note that the forms of gender-based persecution described in this lesson can, and often are, inflicted on both females *and* males.” *Introduction to Gender lesson*

2. The human rights of all individuals are guaranteed within international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There was, however, a need for special instruments addressing the rights of women because:

- A) the more general international instruments fail to specify gender as a protected characteristic
- B) the other instruments specifically exclude gender as a factor
- C) **those instruments have not always provided sufficient protection to women due to discriminatory interpretations and applications**
- D) the other instruments were enacted before the women's rights movement

C – taken from page 12 in the lesson plan under, International and National Guidelines Relating to Women and Children

3. The most severe form of Female Genital Mutilation is:

- A) Excision
- B) Concatenation
- C) **Infibulation**
- D) Circumcision

C – Infibulation (see page 19 of lesson, Types of FGM)

4. The lesson on Gender Related Claims and various international instruments protecting women have altered the legal criteria used to evaluate an asylum or refugee claim that is gender-based.

- A) True
- B) False

B – False, the lesson plan, in the legal analysis section, states that nothing in the lesson provides guidance that expands on the statutory definition of refugee

5. In evaluating whether internal relocation is reasonable all of the following are important considerations, EXCEPT:

- A) significant restraints on a woman's right to travel
- B) the applicant comes from a country where women are still economically dependent on men
- C) the applicant's husband does not want to relocate**
- D) in the applicant's country a woman living outside the protection of her father, spouse, or clan may be vulnerable to attack and/or damaging social stigma

C – The husband's wishes are not a consideration. The other three choices are specifically mentioned in the lesson. The husband's preferences, without more, would not be a reason for not seeking to relocate internally. For that matter, the woman's preference, without more, would not be sufficient either.

6. Because of the stigma attached to rape, it is unusual for a woman to have documentary evidence, such as medical or police reports, documenting the rape.

- A) True
- B) False

A- True It may be unreasonable to expect a woman from a refugee-producing country to have documentation of sexual violence she suffered. Because of strong cultural stigma attached to rape, "women survivors of sexual violence often are reluctant to seek medical assistance or to file police reports, because they do not want it known that they were raped."

7. What factor that would affect a female applicant's ability to provide detailed testimony is NOT related to gender?

- A) Social constraints may limit access to information
- B) Gender roles
- C) Education level
- D) Faulty memory**

D – Faulty memory is a human factor and is not specific to gender.

8. All gender based claims fall under the particular social group protected ground.

- A) True
- B) False**

B- B – False, in some instances gender may be a factor in political opinion and religious claims

RAIO CT Distance Training Quiz

INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION

1. IRFA is solely concerned with providing diplomatic and foreign policy mechanisms for the United States to directly address issues of religious freedom and religious persecution and promote religious freedom throughout the world.

- a. True
- b. False**

The answer is false because there was a dual purpose to IRFA: one purpose is described in this question; the other purpose was to address perceived deficiencies in executive agencies in dealing with religious issues around the world. (See LP page 11)

2. IRFA deals with Refugee and Asylum issues

- a. throughout the statute
- b. in title III
- c. in title V
- d. in title VI**

Title VI contains the sections dealing with refugees and asylum, which includes: Section 601 which mandates Asylum Officers, Immigration Judges, and Refugee and Consular Officers use the DOS Annual Report on Religious Freedom and other country of origin information when analyzing claims for asylum or refugee status on account of religion. Section 602 which reforms the refugee adjudication process in several ways one of which is mandating that refugee adjudicators receive the same training as asylum officers. Section 603 which reforms the asylum process in several ways including mandating special training for asylum officers doing APSO. (See LP page 12)

3. UNHCR Guidelines have identified several elements that may apply to religious claims. Those elements are (choose all that apply):

- a. Identity**
- b. Belief**
- c. Preference
- d. Way of life**

UNHCR Guidelines identify Belief, Identity, and Way of life as possible elements of a religious based claim. (See LP page 17)

4. By statute any US official adjudicating a refugee or asylum claim based on religion must consult country conditions in:

- a. The US Commission on International Religious Freedom Annual report
- b. The Department of State Country Reports on Human Rights Practices
- c. **The Department of State International Religious Freedom Report**
- d. All of above

Section 601 of IRFA mandates that the DOS International Religious Freedom Report must be consulted in any claim based on religion. (See LP page 12)

5. In determining credibility, adjudicators may inquire into a claimant's religious beliefs to determine if those beliefs are

- a. Valid
- b. Truthful
- c. Reasonable
- d. **Sincere**

Adjudicators should never question the validity, truthfulness, or reasonableness of a claimant's religious beliefs, but for credibility purposes the adjudicator may explore the sincerity of the claimant's beliefs. (See LP page 18)

6. Which international document was **NOT** referenced by Congress in finding that freedom of religious belief and practice is a universal human right?

- a. Universal Declaration of Human Rights
- b. International Covenant on Civil and Political Rights
- c. **The Mayflower Compact**
- d. The United Nations Charter

The Mayflower Compact does not concern freedom of religious belief or practice. (See LP pages 22 – 24)

7. If an individual is prosecuted based on a violation of a religiously based code of conduct and/or dress, such prosecution will always constitute persecution based on religion.

- a. True
- b. **False**

Prosecution for violation of dress and conduct rules for women in Iran did not amount to persecution on account of religion, where the applicant presented no evidence that the persecutors were aware of her religious beliefs, and she made no showing of disproportionately severe punishment, or pretextual

prosecution – Fisher v. INS, 79 F.3d 955, 961-62 (9th Cir. 1996) (en banc). (See LP page 34)

8. Under the Lautenberg Amendment the following applicant would NOT have a reduced evidentiary burden in establishing eligibility under the refugee definition:

- a. An ethnic Russian Baptist who is a citizen of Armenia, seeking resettlement in the US as a refugee
- b. An Iranian Chaldean Christian who fled to Istanbul and is seeking resettlement in the US as a refugee
- c. **An Iranian Baha'i applying for asylum upon arrival at JFK Airport in NYC**
- d. A Jewish citizen of Azerbaijan, in Moscow, seeking resettlement in the US as a refugee

Choice "c" is correct because Lautenberg only applies to processing under section 207 of the INA and the Iranian would be applying under section 208. (See LP page 31)

9. If an applicant belongs to a particular faith and is persecuted by members of his own faith, this is sufficient evidence that the persecution was not on account of the applicant's religion.

- a. True
- b. **False**

Individuals can be persecuted by members of their own faith because they are viewed as insufficiently devout, or are thought to have violated some religious tenant or norm. That is still persecution on account of their religion. (See LP page 37)

10. Which is currently **NOT** a country of particular concern, as designated by the President of the United States?

- a. Saudi Arabia
- b. Iran
- c. **Afghanistan**
- d. Uzbekistan

C. Afghanistan – current as of January 5, 2014.

QUIZ for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex Refugee and Asylum Claims
(LGBTI) Distance Training (ANSWER KEY)

1. Sexual orientation is

- a. an individual's internal sense of being male, female, or something else.
- b. the emotional, physical, and romantic attraction a person feels towards another person.
- c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
- d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.
- e. Answer: b - the emotional, physical, and romantic attraction a person feels towards another person. See page 12 of the lesson plan for further details.

2. Claims relating to sexual orientation and gender identity are primarily recognized under membership in a particular social group (PSG) but may overlap with other grounds.

- a. True
- b. False

Answer: a - true. See page 14 of the lesson plan for further details.

3. "Coming out" means

- a) when a person begins to explore one's LGBT status
- b) accepting oneself as LGBT
- c) telling other people that one is LGBT
- d) all of the above

Answer: d - all of the above.

4. Although the Board of Immigration Appeals (BIA) has only published one precedent decision involving the issue of sexual orientation, which of the following individuals might be eligible for asylum or refugee status on account of his or her membership in a particular social group?

- a. A lesbian from Russia
- b. A transgender female from Mexico
- c. An "effeminate" man from Nigeria who is thought to be gay but is not
- d. A man from Guinea who tests positive for HIV, regardless of his sexual orientation
- e. All of the above

Answer: e - all of the above. See page 15 of the lesson plan for further details.

5. Gender identity is

- a. an individual's internal sense of being male, female, or something else.
- b. the emotional, physical, and romantic attraction a person feels towards another person.
- c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
- d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

Answer: a - an individual's internal sense of being male, female, or something else. See page 12 of the lesson plan for further details.

6. A lesbian who has no physical or emotional attraction to men and is forced to marry a man may experience this as persecution.

- a. True
- b. False

Answer: a - true. See page 23 of the lesson plan for further details.

7. A male applicant from Saudi Arabia left his country of origin to pursue educational opportunities. He "came out" as gay after arrival in the country of asylum or first asylum. This applicant is ineligible for refugee or asylum status because he did not suffer past harm in Saudi Arabia.

- a. True
- b. False

Answer: b - false. The applicant may be eligible if he can demonstrate a well-founded fear of future persecution as a *refugee sur place*. See page 26 of the lesson plan for further details.

8. Gender expression is

- a. an individual's internal sense of being male, female, or something else.
- b. the emotional, physical, and romantic attraction a person feels towards another person.
- c. how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics.
- d. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

Answer: c - how a person expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics. See page 13 of the lesson plan for further details.

9. Which of the following is not an appropriate question to ask a male applicant whose claim is based on sexual orientation?

- a. Have you ever been in a relationship?

- b. When did you first realize you were gay?
- c. Did you know other gay people in your home country?
- d. What kind of specific sexual practices did you engage in?
- e. Did you tell anyone in your home country that you were gay?

Answer: d - the applicant's specific sexual practices are not relevant to the claim for asylum or refugee status. Therefore, asking questions about "what he or she does in bed" is never appropriate. See page 34 of the lesson plan for further details.

10. Transgender is

- a. used to mean men who are attracted to men.
- b. used to mean men or women who are attracted to the opposite sex.
- c. a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.
- d. a condition in which an individual is born with a reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit typical definitions of male or female.

Answer: c - a term used for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth. See page 13 of the lesson plan for further details.

RAIO Distance Training
Nexus Quiz (ANSWER KEY)

1. The definition of a refugee includes the provision that persecution or feared persecution must be on account of a protected ground; these grounds are:
 - a. Race, religion, nationality, membership in a particular social group, and nexus
 - b. Race, ethnicity, nationality, and religion
 - c. Membership in a particular social group, race, religion, nationality, and political opinion
 - d. Race, religion, nationality, and political opinion

c. In slightly unusual order.
2. If an applicant has established that he and other members of his religious community were denied entry to their church on multiple occasions by police, the applicant has established a nexus to a protected ground.
 - a. True
 - b. False

b. False. The applicant would need to establish that the police denied entry because of the applicant's religion, rather than, e.g., for safety or public order.
3. To meet the definition of a refugee, an applicant must establish that the persecutor's sole motivation to harm him or her is on account of one of the protected grounds.
 - a. True
 - b. False

b. False. A persecutor may have mixed motives.
4. To establish nexus to a protected ground, an applicant must establish the persecutor's exact motive in harming him or her.
 - a. True
 - b. False

b. False. The applicant is not required to establish the "exact motive"; an officer may make reasonable inferences based on the applicant's testimony and all the evidence in the record.
5. If an opposition group raises funds for its operations by forcing only its political opponents to give money, the harm (extortion) may be on account of a protected ground.

- a. True
 - b. False
- a. True. P. 41, LP. This is an example of mixed motives – raise money but persecute on account of political opinion.
6. In assessing the persecutor's motivation to harm the applicant, it is more important to look at the persecutor's characteristics than to look at the beliefs and characteristics of the applicant.
- a. True
 - b. False
- b. False. The persecutor must be motivated to persecute because the applicant possesses, or is imputed to possess, a protected belief or trait.
7. Harmful treatment cannot be considered persecution unless it was intended to punish or harm the applicant.
- a. True
 - b. False
- b. False. For example, see *Pitcherskaia v. INS* – authorities detained & beat applicant to "cure" her of her sexual orientation.
8. If a law prohibits all religious groups from meeting on Fridays, but only Muslims meet on Fridays, harm inflicted by this law could be considered to be on account of religion.
- a. True
 - b. False
- a. True. P. 16, LP. Law of general applicability but not neutral in intent.
9. An applicant who has been subjected to forced sterilization is considered to have been persecuted on account of political opinion.
- a. True
 - b. False
- a. True. P. 43, LP, per INA as amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996; considered opposition to coercive population control.
10. Harm inflicted by authorities on an applicant who refused to serve in the military cannot be considered persecution on account of a protected ground.

- a. True
 - b. False
- b. False. P. 37, LP. Depends on facts. Disproportionate punishment (not the normal punishment) may be evidence of a protected ground; if military commits internationally condemned acts, punishment for refusal to commit such acts could be persecution.

RAIO Distance Training
Persecution Quiz - Answer Key

Question 1:

The four elements of the definition of persecution are: a) severity of harm, b) motivation (on account of a protected ground), c) the actor, either government or nongovernment, and:

- 1) Discrimination
- 2) Physical injury
- 3) Location

See, Section 3.1 – General Elements

Only harm suffered in the country of nationality or, if stateless, the country of last habitual residence, may be considered in a finding of past persecution, for the purpose of establishing eligibility.

Question 2:

UNHCR's Handbook explains a threat to life or _____ is always persecution.

- 1) Limb
- 2) Freedom
- 3) Family

See, Section 3.2.4 – Guidance from UNHCR Handbook

Question 3:

According to UNHCR and the BIA, acts that do not amount to persecution when considered separately, may amount to persecution when considered:

- 1) Cumulatively
- 2) Consecutively
- 3) Concurrently

See, Section 3.2.4 – Guidance from UNHCR Handbook

Question 4:

Discrimination and harassment, if inflicted on account of a protected ground:

- 1) Never amount to persecution
- 2) May amount to persecution depending on the cumulative severity of the harm
- 3) Always amount to persecution

See, Section 3.4 – Discrimination and Harassment

Question 5:

Torture, if inflicted on account of a protected ground:

- 1) Never amounts to persecution
- 2) Sometimes amounts to persecution
- 3) Always amounts to persecution

See, Section 3.3 – Human Rights Violations

Torture always rises to the level of persecution. Keep in mind, however, that for purposes of asylum or refugee status, as opposed to protection under the Convention Against Torture, torture must be inflicted on account of one of the five protected grounds.

Question 6:

Economic harm, if inflicted on account of a protected ground:

- 1) Never amounts to persecution
- 2) Sometimes amounts to persecution
- 3) Always amounts to persecution

See, Section 3.6 – Economic Harm

Question 7:

Psychological harm alone may amount to persecution.

- 1) True
- 2) False

See, Section 3.7.1 – Psychological Harm Alone May Be Sufficient to Constitute Persecution

Question 8:

Severe mental harm alone may amount to torture.

- 1) True
- 2) False

See, Section 3.7.2 – Under The Convention Against Torture, Severe Mental Harm Alone May Be Sufficient to Constitute Torture

Question 9:

If the persecutor is a non-government actor, the government must be:

- 1) Unable to control the non-government actor
- 2) Unwilling to control the non-government actor
- 3) Both 1 and 2
- 4) Either 1 or 2

See, generally, Section 4.2 - Entity the Government Is Unable or Unwilling to Control. Bear in mind that the use of the disjunctive "or" means that either condition will suffice, you don't need both to be true.

Question 10:

Past persecution may be a basis for asylum and refugee status, even if the applicant no longer has a well founded fear.

- 1) True
- 2) False

See, Section 2 – Past Persecution

In the refugee context, an applicant who has been persecuted in the past is eligible for refugee status. In the asylum context, there may be instances where an applicant, having been found eligible based on past persecution, might not be granted asylum as an exercise of discretion as per regulations. The discretionary denial/referral does not mean that the applicant does not meet the refugee definition and hasn't established refugee status under the law. And there are instances, under the regulations, where even if found to no longer have a well-founded fear, the applicant would be granted.

RAIO Distance Training
Persecutor Bar Quiz (ANSWER KEY)

1. For the persecutor bar to apply, it is not necessary that there be a nexus between the act and a protected ground, as long as the harm rose to the level of persecution.
 - a. True
 - b. False
 - b. False.**
2. A red flag alerting you that the persecutor bar may be an issue will most likely come in the form of the following type of evidence:
 - a. The applicant's own testimony.
 - b. An affidavit from the victim attesting to the persecution.
 - c. All of the above.
 - d. None of the above.
 - a. The applicant's own testimony.**
3. If there is evidence in the record that the applicant was in a location during a time period when persecution was being committed, you:
 - a. should ask follow up questions, but do not alert the applicant of your concern.
 - b. shall deny the application, unless the applicant admits that he knew about the persecution.
 - c. can presume that the applicant is subject to the persecutor bar if he or she denies involvement.
 - d. must ask the applicant about what he or she was doing at the time the persecution was occurring.
 - d. must ask the applicant about what he or she was doing at the time the persecution was occurring.**
4. If you are struggling about whether to apply the persecutor bar, use this analysis:
Bad Place + Bad Time = Bad Person.
 - a. True
 - b. False
 - b. False**
5. For the persecutor bar to apply, the applicant must have known that the persecution was occurring.
 - a. True
 - b. False
 - a. True**
6. The main rationale behind the persecutor bar is to deny refugee or asylum status to those who:
 - a. persecuted others.
 - b. served during wartime.
 - c. pose a national security threat.
 - d. were employed by entities that committed persecution.

- a. **persecuted others.**
7. Which of the following scenarios would most likely **NOT** result in the application of the persecutor bar. The applicant:
- a. translated during the beating of the suspected political dissident.
 - b. was an inactive, but dues paying, member of the Ba'ath party during the Saddam regime.
 - c. used her radio program to urge the Hutu population to, but did not herself, **kill** ethnic Tutsis.
 - d. ordered soldiers to, but did not himself, roundup Jews for transport to Nazi concentration camps.
 - b. **was an inactive, but dues paying, member of the Ba'ath party during the Saddam regime.**
8. Although the persecutor bar may sometimes overlap with the ground of inadmissibility related to material support to terrorist organizations, it is best is to keep the two separate in **your** mind.
- a. True
 - b. False
 - a. **True**
9. If an applicant was involved in persecuting others but was forced to act against his or her will, you must question the applicant about the duress factors and follow your division's guidance about which cases to put on hold.
- a. True
 - b. False
 - a. **True**
10. For the persecutor bar to apply, it is not necessary that the harm rose to the level of persecution, as long as there was persecutory intent.
- a. True
 - b. False
 - b. **False.**

QUIZ for Particular Social Group (PSG) Distance Training (Answer Key; updated 9/11/13)

1. The conclusion as to whether or not a group meets the definition of a Particular Social Group (PSG) must be based on precedent decisions analyzing identical facts on which the decision-maker can rely.
 - a. True
 - b. False

b. False. The decision-maker should consider any precedent decisions, but in each case, the facts must be analyzed to assess whether the PSG is defined by an immutable or fundamental characteristic, socially distinct, and sufficiently particular. LP Sec 2.
2. If an applicant is imputed to be a member of a PSG but does not actually possess the shared trait, it is not relevant to determine whether the trait is fundamental to his or her identity.
 - a. True
 - b. False

a. True. When determining whether the group is a PSG, you must still assess whether the trait is fundamental from an objective point of view, e.g., whether human rights norms suggest the characteristic is fundamental. LP Sec 2.1.1.
3. According to the BIA, social groups based on wealth may never qualify as PSGs.
 - a. True
 - b. False

b. False. While most courts considering conditions in most societies have indicated that a PSG may not be based on wealth alone, the BIA has indicated that depending on the social context and other factors in the definition of the group, some PSGs may be defined, at least in part, by the wealth or class of their members. See *Matter of A-M-E- & J-G-U*, 24 I&N Dec. 69, 74 (BIA 2007). LP Sec 2.1.2.
4. A group defined as "Salvadoran former gang members" may not meet the definition of a PSG because:
 - a. The characteristic of being a former gang member is not fundamental to an individual's identity.
 - b. The number of former gang members in the society in question is not known.
 - c. A shared characteristic of criminal association generally cannot form the basis of a PSG.
 - d. Only current gang members are socially distinct.

c. Re other options: Because the characteristic is unchangeable it does not have to be fundamental; the number of individuals in a protected group is not relevant; society may differentiate both former and current gang members from other members of society. LP Sec. 2.1.3. Note for AOs that this group may be a valid PSG in some circuits.

5. A group of only a few individuals may be a valid PSG.
- a. True
 - b. False
- a. True. No size limitations. LP Sec 2.1.4
6. To comprise a valid PSG, group members must be similar in all or many aspects.
- a. True
 - b. False
- b. False. There is no requirement for cohesiveness or homogeneity; they must share the characteristics that form the basis of the PSG. LP Sec 2.1.4.
7. The BIA or federal courts have found the following group(s) to constitute a valid PSG:
- a. Somali clan members
 - b. Educated landowning class
 - c. Witnesses who testify against gang members
 - d. All of the above
- d. See LP Sec. 4; specifically: for option a) *Matter of H-*, BIA, LP Sec.4.2; b) Educated landowning class in Colombia targeted by FARC, *Tapiero de Orejuela v. Gonzales*, 7th Cir, LP Sec.4.8; c) *Henriquez-Rivas v. Holder*, 9th Cir, LP Sec.4.14
8. Unlike the other four protected grounds (race, religion, nationality, and political opinion), officers do not need to determine nexus (whether persecution is on account of a protected ground) after an applicant has established that he or she is a member of a PSG.
- a. True
 - b. False
- b. False. Officers must always determine whether or not persecution is "on account of" one or more of the five protected grounds in the refugee definition. LP Introduction & Conclusion.
9. Former or current military service is an immutable or fundamental characteristic that may form the basis for a PSG.
- a. True
 - b. False
- a. True. Former service is unchangeable; current service may be fundamental to an individual's identity. The applicant would also have to demonstrate that the purported PSG has a distinct, recognizable identity in the society. LP Sec 4.11.

10. Country of origin information, including the applicant's individual circumstances, has little or no relevance to the determination of what constitutes a PSG.

- a. True
- b. False

b. False. LP Sec. 2.1.4. For example, it is not possible to assess whether the group is socially distinct unless an officer investigates whether a particular society distinguishes between group members and other members of society.

QUIZ for Refugee Definition Distance Training (Answer Key)

1. Applicants for asylum or refugee status must satisfy the definition of refugee under the Immigration and Nationality Act (INA); however, there is one part of the refugee definition that may NOT apply to all applicants. Choose the statement below that may NOT apply to all.
 - a. Refugees must be outside their country of nationality or habitual residence.
 - b. Refugees must have suffered persecution or have a well-founded fear of persecution.
 - c. Persecution must be on account of race, religion, nationality, membership in a particular social group, or political opinion.
 - d. Persons who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion are excluded from the definition of refugee.
 - a. Refugees may be processed in-country; the other statements apply to all applicants for asylum or refugee status. See INA 101(a)(42)(B). LP Sec 2.1.
2. The internationally accepted definition of a refugee, set forth in the 1951 Convention relating to the Status of Refugees and amended in its 1967 Protocol, was derived from the U.S. refugee definition.
 - a. True
 - b. False
 - b. False. The reverse is true. The INA incorporated the 1951 Convention definition as amended by the 1967 Protocol. LP Sec 2.2.
3. Under the INA, a refugee must establish either past persecution or a well-founded fear of persecution.
 - a. True
 - b. False
 - a. True, unlike the 1951 Convention definition. LP Sec 2.2.1.
4. One of the differences between the U.S. refugee definition and the 1951 Convention definition is that the INA has a specific provision in the definition dealing with coercive population control.
 - a. True
 - b. False
 - a. True. LP sec 2.2.2
5. The first part of the refugee definition requires that a refugee be "outside any country of such person's nationality." In this context, the term "nationality" refers to:
 - a. Citizenship.

- b. The status applicable to a person who owes permanent allegiance to a state.
 - c. The status conferred by a state and recognized by other states if it is supported by a genuine link between the individual and the conferring state.
 - d. All of the above.
- d. There are various definitions of "nationality" in this context. As a protected ground – the term is not the same as above, but instead refers to ethnic, linguistic, or racial groups. LP Sec 3.1.

6. Possession of a passport establishes nationality.

- a. True
- b. False

b. False. It creates a presumption of nationality, unless the passport states otherwise, and the presumption may be rebutted. It may be a "passport of convenience" – for travel; it may have been bought or obtained through misrepresentation. LP Sec 3.2.1.

7. If an applicant is unable to establish his or her nationality,

- a. The applicant is ineligible for asylum or refugee status.
- b. The officer should determine asylum or refugee status based on the country of the applicant's last habitual residence.
- c. The officer is not able to analyze whether the applicant has a well-founded fear.
- d. All of the above

b. There is no requirement to establish nationality to be eligible for asylum or refugee status. LP Sec. 3.2.2.

8. A dual citizen must establish persecution or a well-founded fear of persecution in both countries of nationality to be eligible for asylum or refugee status.

- a. True
- b. False

a. True. LP Sec. 3.3.1.

9. An applicant's residence in a third country after fleeing his or her country of nationality makes that applicant a national or citizen of the third country.

- a. True
- b. False

b. False. The applicant may or may not be firmly resettled, but that is a separate issue. Residency does not equate to citizenship. LP Sec 3.3.3.

10. A refugee or asylum applicant must establish that he or she is both unable and unwilling to return to a country of persecution or feared persecution.

- a. True
- b. False

b. False. An applicant does not need to establish both. LP Sec. 5.

RAIO Distance Training
Well-Founded Fear Quiz (ANSWER KEY)

1. An applicant must establish that there is a reasonable possibility of future persecution, i.e., that a reasonable person in the applicant's circumstances would fear persecution upon return to his or her country of origin. The reasonable possibility standard is:
 - a. less generous than a "more likely than not" standard.
 - b. more generous than a "more likely than not" standard.
 - c. All of the above.
 - d. None of the above.
 - b. more generous than a "more likely than not" standard.**
2. A genuine, subjective fear of persecution must be the only motivation for seeking refugee or asylum status.
 - a. True
 - b. False
 - b. False**
3. The applicant was threatened while in her home country, but the manner in which she was threatened did not rise to the level of persecution. In order to establish eligibility based on a well-founded fear of persecution, the evidence must show that:
 - a. the threat is serious.
 - b. there is a reasonable possibility the threat will be carried out.
 - c. All of the above.
 - d. None of the above.
 - c. All of the above.**
4. There was a significant lapse of time between the occurrence of events and the applicant's flight. Which of the following would most likely **not** be a factor to consider in your well-founded fear analysis? The:
 - a. reason for the delay.
 - b. applicant's activities during that time.
 - c. mode of transportation used to escape.
 - d. amount of time the applicant remained in the home country.
 - c. mode of transportation used to escape.**
5. The elements of the *Mogharrabi* test are:
 - a. Panic, apprehension, concern, fear.
 - b. Possession, alertness, capability, fear.
 - c. Panic, awareness, capacity, inclination.
 - d. Possession, awareness, capability, inclination.
 - d. Possession, awareness, capability, inclination.**

6. A refugee sur place is someone:
- in an overcrowded refugee camp.
 - who is unable to stray from his current location.
 - who no longer fears returning to her country of origin.
 - who left his country and became a refugee at a later date.
 - who left his country and became a refugee at a later date.**
7. There is no past persecution in the case you are considering. The applicant may still establish he or she is a refugee based on a well-founded fear of future persecution.
- True
 - False
 - True.**
8. Under *Mogharrabi*, the applicant must establish that the reason for the persecution was or will be because of:
- race, religion, nationality, marital status, or political opinion.
 - race, religion, nationality, sexual orientation, or political opinion.
 - race, religion, gender, membership in a particular social group, or political opinion.
 - race, religion, nationality, membership in a particular social group, or political opinion.
 - race, religion, nationality, membership in a particular social group, or political opinion.**
9. An applicant returned to the country of feared persecution before her interview with you. You must:
- deny the case, as the fact that the applicant returned means she does not have a genuine fear.
 - approve the case, as she would not be asking for asylum or refugee status if she didn't have a good explanation for the return.
 - ask the applicant why she returned and what happened to her upon her return and, based on her responses determine the reasonableness of her claimed fear.
 - ask the applicant why she returned and what happened to her upon her return and, based on her responses, determine the reasonableness of her claimed fear.**
10. Your applicant claims that she received an anonymous threat of harm. She will not be able to establish a well-founded fear of persecution unless she can identify the alleged persecutor.
- True
 - False
 - False**



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course*

INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION

Training Module

MODULE DESCRIPTION:

This module introduces you to the International Religious Freedom Act (IRFA) and the responsibilities that the Act creates for adjudicating protection claims. The training you receive will also be useful in adjudicating immigration benefits, petitions, and other immigration-related requests. Through reading and discussing country conditions information, you will increase your awareness of religious freedom issues around the world. Through discussion and practical exercises, you will learn how to conduct an interview and adjudicate a claim with a religious freedom issue.

TERMINAL PERFORMANCE OBJECTIVE(S)

Given a request for protection (an asylum or refugee application, or a reasonable fear or credible fear screening¹) with a religious freedom issue, you will apply IRFA and case law.

ENABLING LEARNING OBJECTIVES

1. Summarize the IRFA requirements for RAIO officers.
2. Explain the statutory and regulatory requirements for consideration of protection claims and benefits requests involving religious freedom and religious persecution.
3. Summarize legal rulings that must be followed or that provide guidance when making decisions based on religious freedom or religious persecution.
4. Distinguish between appropriate and inappropriate interview questions involving religious freedom issues

¹ Reasonable fear and credible fear screenings are processes in which an Asylum Pre-screening Officer determines if an applicant, who is subject to expedited removal, re-instatement of removal, or administrative removal, and who expresses a fear or concern of being removed, has a credible or reasonable fear of persecution or torture.

5. Explain the broad interpretation of “religion” as a protected ground under IRFA and the refugee definition.

INSTRUCTIONAL METHODS

- Lecture
- Discussion
- Practical exercises

METHOD(S) OF EVALUATION

Written test

REQUIRED READING

1. U.S. Department of State, International Religious Freedom Report for 2013 (July 28, 2014), Executive Summary.
2. Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000).
3. Sarhan v. Holder, 658 F.3d 649 (7th Cir. 2011).

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. U.S. Department of State, International Religious Freedom Reports.
2. U.S. Commission on International Religious Freedom, Annual Reports.
3. International Religious Freedom Act of 1998, P.L. 105-292, 112 Stat. 2787 (Oct. 27, 1998).
4. UNHCR, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (28 April 2004).

5. Lawyers Committee for Human Rights. Testing the Faithful: Religion and Asylum Summary Results of Survey. A Briefing Paper Prepared for the Roundtable on Religion-based Persecution Claims (New York: November 2002).

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
IRL7	Knowledge of International Religious Freedom Act (3)
IRL14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
ILR22	Knowledge of criteria for establishing credibility (4)
ITK6	Knowledge of principles of cross-cultural communications (e.g., obstacles, sensitivity, techniques for communication) (4)
OK11	Knowledge of Department functions and responsibilities, as they relate to RAIO (2)
RI1	Skill in identifying issues of claim (4)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI4	Skill in integrating information and materials from multiple sources (4)
IR3	Skill in responding to cultural behavior in an appropriate way (e.g., respectful, accepting of cultural differences) (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM4	Skill in determining applicant's credibility (5)
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)
ITS3	Skill in framing interview questions and requests for information (4)
ITS6	Skill in conducting non-adversarial interviews
C3	Skill in tailoring communications to diverse audiences (3)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
1/28/15	Throughout document	Fixed links and citations; added new case law; deleted references to 2011-2012 COI materials	RAIO Trng

Table of Contents

1	INTRODUCTION	10
2	OVERVIEW OF IRFA	10
2.1	Title I – Department of State (DOS) Activities	11
2.2	Title II – Commission on International Religious Freedom	11
2.3	Title III – National Security Council (NSC)	11
2.4	Title IV – Presidential Actions.....	12
2.5	Title V – Promotion of Religious Freedom.....	12
2.6	Title VI – Refugee, Asylum, and Consular Matters.....	12
2.7	Title VII – Miscellaneous Provisions.....	12
3	REFUGEE, ASYLUM, AND CONSULAR MATTERS UNDER IRFA.....	12
3.1	Section 601 -Use of Annual Report	12
3.2	Section 602 - Reform of Refugee Policy	13
3.3	Section 603 - Reform of Asylum Policy	13
3.4	Section 604 - Inadmissibility of Foreign Government Officials who Have Engaged in Particularly Serious Violations of Religious Freedom.....	14
3.5	Section 605 - Studies on the Effect of Expedited Removal Provisions on Asylum Claims .	14
4	THE NATURE OF RELIGION	16
4.1	Identifying Religious Beliefs and Practices	16
4.2	Credibility Considerations in Religious Persecution Cases	18
4.2.1	Refrain from Judging the Validity of a Belief System	19
5	RIGHT TO RELIGIOUS FREEDOM	22
5.1	United Nations Charter	22
5.2	Universal Declaration of Human Rights.....	22
5.3	International Covenant on Civil and Political Rights	22
5.4	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.....	23
5.5	Other International Instruments	25

6	VIOLATIONS OF RELIGIOUS FREEDOM ACCORDING TO IRFA.....	25
6.1	Particularly Severe Violations of Religious Freedom.....	25
6.2	Violations of Religious Freedom	26
7	RELIGIOUS PERSECUTION	27
7.1	Persecution Generally	27
7.2	Religious Persecution.....	28
7.3	Agents of Persecution	30
7.4	No Requirement to Conceal Religious Beliefs	30
7.5	Religious Discrimination	31
7.6	Reduced Evidentiary Burden: Lautenberg-Specter Cases in the Refugee Program	32
7.7	Membership in a Religious Community	33
7.8	Issues with “on Account of” in Religious Persecution Cases	33
7.8.1	Conversion.....	34
7.8.2	Prosecution v. Persecution	34
7.8.3	Refusal to Comply with or Alleged Flouting of Religious Norms.....	37
7.8.4	Mixed Motives	38
7.9	Persecution by Members of Applicant’s Religion	39
8	RESOURCE MATERIALS.....	39
8.1	Countries of Particular Concern.....	39
8.2	The US Department of State Annual Report on International Religious Freedom.....	39
8.3	U.S. Commission on International Religious Freedom Reports	40
8.4	Comments on the DOS Annual Report on International Religious Freedom.....	40
9	SUMMARY	41
9.1	Overview of IRFA.....	41
9.2	Title VI of IRFA.....	41
9.3	The Nature of Religion.....	41
9.4	Right to Religious Freedom	42
9.5	Violations of Religious Freedom	42
9.6	Religious Persecution – General Considerations	42
9.7	Resource Materials.....	43

PRACTICAL EXERCISES.....	44
OTHER MATERIALS	45
SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....	46
Required Reading	46
Additional Resources.....	46
Supplements.....	46
SUPPLEMENT B – ASYLUM DIVISION.....	47
Required Reading	47
Additional Resources.....	47
Supplements.....	48
SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....	50
Required Reading	50
Additional Resources.....	50
Supplements.....	50

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

The purpose of this module is to introduce you to the International Religious Freedom Act (IRFA) and the proper way to analyze protection claims involving religious freedom issues with the goal of ensuring that religious freedom is respected during the course of interviews and throughout the adjudication process.

Sections 2 and 3 of this module provide an overview of IRFA and a detailed analysis of Title VI, the section of IRFA that is most relevant to you. Sections 4, 5, 6, and 7 of this module discuss the nature of religion and violations of religious freedom, and explore the issues that you should consider when interviewing, analyzing and adjudicating a protection claim or benefit request where religion may be a factor. Finally, Section 8 of this module lists resources you may find useful when deciding claims based on religious freedom.

2 OVERVIEW OF IRFA

In 1998, Congress adopted the International Religious Freedom Act (IRFA) in response to growing concerns about the persecution of various religious groups throughout the world. IRFA was signed into law on October 27, 1998.

While IRFA specifically noted Congressional concern for Christians in the Sudan and China, Tibetan Buddhists and Baha'is in Iran, Congress recognized the importance of protecting religious freedom throughout the world. In its findings, Congress cited, among other reasons, the following as a basis for adopting the Act:

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established a law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its

birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.²

IRFA seeks to address two different though equally important issues. First, IRFA addresses the issues of religious freedom and religious persecution directly, including a series of diplomatic and foreign policy provisions designed to enhance the ability of the United States to promote religious freedom around the globe. Second, IRFA addresses perceived problems within the Department of State (DOS), the Department of Justice (DOJ), and the former Immigration and Naturalization Service (INS) that may lead to diminished attention to the problems of religious persecution. These latter provisions now apply to the relevant components of the Department of Homeland Security (DHS).

IRFA is divided into seven titles. For this training, Title VI is the most important and will be the focus of this lesson. It is helpful, however, to briefly review the scope of the entire law. The following are the highlights of the provisions in each Title of IRFA. You should read the entire law for a complete understanding of all its provisions.

2.1 Title I – Department of State (DOS) Activities

- Establishes within DOS an Office on International Religious Freedom and an Ambassador-at-Large for International Religious Freedom
- Requires DOS to provide specific training and outreach to Foreign Service Officers, including instruction on internationally recognized human rights and religious freedoms
- Requires DOS to set up a website for religious freedom and to maintain country-by-country lists of prisoners of conscience
- Requires DOS to publish various papers on religious freedom and an annual report that documents religious persecution throughout the world³

2.2 Title II – Commission on International Religious Freedom

- Creates a Commission on International Religious Freedom (USCIRF) comprised of nine members from outside the U.S. Government, to monitor religious freedom in other countries, and to advise the U.S. Government on how best to promote religious freedom

2.3 Title III – National Security Council (NSC)

- Creates an NSC Special Advisor to the President on International Religious Freedom

² 22 U.S.C. § 6401(a)(1) (1999).

³ The annual report may be found on the DOS website for international religious freedom

- Special Advisor serves as a resource for executive branch officials and makes policy recommendations

2.4 Title IV – Presidential Actions

- Provides the President with the power to sanction violators of religious freedom
- Requires the President to designate “countr[ies] of particular concern for religious freedom” if the countries have engaged in or tolerated certain violations of religious freedom⁴

2.5 Title V – Promotion of Religious Freedom

- Requires the United States to promote religious freedom through broadcasts, international exchanges, and foreign service awards

2.6 Title VI – Refugee, Asylum, and Consular Matters

This Title is discussed in detail below in Refugee, Asylum, and Consular Matters under IRFA.⁵

2.7 Title VII – Miscellaneous Provisions

These provisions note that it is the “sense of Congress that transnational corporations operating overseas” should adopt codes of conduct that encourage respect of employees’ religious beliefs and practices.

3 REFUGEE, ASYLUM, AND CONSULAR MATTERS UNDER IRFA

Title VI contains five sections, which you must know in order to adjudicate refugee and asylum claims. A description of each section follows.

3.1 Section 601 -Use of Annual Report

This section specifically mandates Asylum Officers, Immigration Judges, and Refugee and Consular Officers use the DOS Annual Report on Religious Freedom and other country of origin information when analyzing claims for asylum or refugee status on account of religion.⁶

⁴ The President has delegated this authority to the Secretary of State and the countries of particular concern are found on the DOS [website](#).

⁵ 22 U.S.C. §§ 6471-6474 (1999). You should read Title VI for the complete provisions in each section. These are just the highlights.

⁶ Publication of the annual report is a requirement under Title I.

Furthermore, this section specifically prohibits the denial of a refugee or asylum claim solely because the conditions of religious persecution as stated by an applicant do not appear in the DOS annual report.⁷ [ASM Supplement – Use of DOS Annual Report].

3.2 Section 602 - Reform of Refugee Policy

This section⁸ contains four important components:

1. Mandates training for Refugee Adjudicators that is the same as Asylum Adjudicators' training and that includes country conditions information and information on religious persecution.
2. Mandates training for Consular Officers on refugee law and adjudication, and religious persecution.
3. Requires DOS and DHS to jointly create guidelines to ensure that interpreters and other foreign personnel who come into contact with refugee applicants do not show improper bias on account of an individual's religion, race, nationality, membership in a particular social group, or political opinion.
4. Requires greater scrutiny of the manner in which refugee cases are screened and prepared and interviews are conducted to ensure that the files contain information that is unbiased and accurate.

3.3 Section 603 - Reform of Asylum Policy

This section⁹ contains three important components:

1. Requires DOS and DHS to jointly create guidelines to ensure that individuals possibly biased against a person's race, religion, nationality, membership in a particular social group, or political opinion are not permitted to act as interpreters between aliens and Inspection or Asylum Officers. This includes interpreters and employees of airlines owned by governments known for persecutory actions.
2. Requires Asylum Officers and any Immigration Officers working in the expedited removal¹⁰ context to receive training on "the nature of religious persecution abroad, including country-specific conditions, instruction on the internationally recognized

⁷ See also *Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164 (11th Cir. 2014) (holding that State Department reports cannot be found to undercut evidence presented by an applicant simply because they fail to comment on the facts of an individual application).

⁸ 22 U.S.C. § 6472 (1999).

⁹ 22 U.S.C. § 6473 (1999).

¹⁰ Persons who are in expedited removal proceedings and express a fear or concern of being removed to the country DHS has designated for removal, must be referred to an Asylum Pre-screening Officer for a credible fear determination.

right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country in the treatment of various religious practices and believers.”¹¹

3. Under Section 602, all training mandated for Asylum Officers, must also be provided to officials adjudicating refugee cases.¹²

3.4 Section 604 - Inadmissibility of Foreign Government Officials who Have Engaged in Particularly Serious Violations of Religious Freedom

This section¹³ creates a new ground of inadmissibility to prevent religious persecutors from entering the United States. This ground, codified in Section 212(a)(2)(G) of the INA, 8 U.S.C. § 1182(a)(2)(G), and later amended by the Intelligence Reform Act of 2004, makes inadmissible any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section three of IRFA. This inadmissibility ground also includes the spouse and children of any such individual. The inadmissibility ground applies only to aliens seeking admission on or after October 27, 1998, the date of the enactment of IRFA.

In 1999, INS issued a policy memorandum on how to process applications for admission from individuals who may fall within this section of the INA.¹⁴

3.5 Section 605 - Studies on the Effect of Expedited Removal Provisions on Asylum Claims

The U.S. Commission on International Religious Freedom has the ability to request from the Attorney General a study by the Comptroller General on certain aspects of the expedited removal process.¹⁵

- On September 1, 2000, the General Accounting Office (GAO)¹⁶ released a report on the expedited removal process as required under IRFA; however, it did not

¹¹ IRFA also requires that immigration judges receive training on religious persecution.

¹² 22 U.S.C. 6472(a).

¹³ Intelligence Reform and Terrorism Prevention Act of 2004 § 7119, PL 108-458, 118 Stat. 3638 (2004) (removing a restriction that the particularly severe violations of religious freedom must have taken place within the 24-month period prior to the inadmissibility determination).

¹⁴ For specific instructions, see Michael A. Pearson, INS Office of Field Operations, Amendment to the Immigration and Nationality Act adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p. Note that if these individuals are in the United States, they are not necessarily precluded from applying for asylum, withholding of removal, or protection under the Convention Against Torture.

¹⁵ 22 U.S.C. § 6474 (1999).

specifically address the issue of how the agency handles the religious-based claims of individuals in the expedited removal process. The GAO report found that the agency was generally in compliance with its expedited removal procedures at selected ports of entry and in compliance with the credible fear process at selected asylum offices.

- The U.S. Commission on International Religious Freedom commissioned a study on asylum seekers in expedited removal, and issued its Report in February 2005. The study sought to answer the following four questions:
 1. Are immigration officers, exercising expedited removal authority, improperly encouraging asylum seekers to withdraw applications for admission?
 2. Are immigration officers, exercising expedited removal authority, incorrectly failing to refer asylum seekers for a credible fear interview?
 3. Are immigration officers, exercising expedited removal authority, incorrectly removing asylum seekers to countries where they may face persecution?
 4. Are immigration officers, exercising expedited removal authority, detaining asylum seekers improperly or under inappropriate conditions?

Based on the problems identified in the study, the Report proposed five recommendations to DHS to ensure that asylum seekers are protected under the expedited removal process.¹⁷ The recommendations were:

- Creating an office authorized to address cross cutting issues related to asylum and expedited removal – in response, DHS created a new position of Special Advisor for Refugee and Asylum Affairs in 2006 and appointed Igor Timofeyev to serve.
- Allowing asylum officers to grant asylum at the credible fear stage – in response, after careful consideration DHS rejected this recommendation due to resource constraints and the potential for a negative impact on some asylum-seekers.
- Establishing asylum detention standards – in response, ICE issued a directive in 2007 to its field components designed to ensure transparency, consistency, and quality in parole decisions.
- Facilitating legal assistance to asylum-seekers – in response DHS cited to its collaboration with DOJ on Legal Orientation Programs for detained individuals and

¹⁶ General Accounting Office. *ILLEGAL ALIENS: Opportunities Exist to Improve the Expedited Removal Process*. GAO/GGD-00-176 (Washington, DC: 1 September 2000) 107p. This agency was renamed the Government Accountability Office in 2004.

¹⁷ U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (Washington, DC: 8 Feb. 2005). The USCIRF Report is available on the USCIRF website. Note that the Congress authorized the Commission to examine how expedited removal was affecting asylum seekers, regardless of whether the claim was based on religion, race, nationality, membership in a particular social group, or political opinion.

to its partnerships with NGOs, notably the Capital Area Immigrants' Rights Coalition.

- Implementing quality assurance procedures to ensure asylum-seekers are not turned away in error – in response, DHS implemented robust quality assurance procedures.

For more on DHS's response, *see* Stewart Baker letter to U.S. Commission on International Religious Freedom (Nov. 28, 2008).

4 THE NATURE OF RELIGION

4.1 Identifying Religious Beliefs and Practices

Religion is explicitly listed as one of the five protected characteristics in the refugee definition, and religion has been broadly understood to include freedom of thought and conscience.¹⁸ In IRFA, Congress invoked the understanding of religion found in international instruments, such as the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, and found that freedom of religious belief and practice is a universal human right and fundamental freedom.¹⁹ Defining "religion" to include an individual's thought, conscience, and belief requires for a broad interpretation of this protected ground in the asylum and refugee adjudications.

Familiar and Unfamiliar Religions

Religion, as a protected ground, is not limited to familiar, or widely accepted religious beliefs and practices. For purposes of establishing asylum and refugee eligibility, persecution suffered or feared on account of a belief system with which you may not be familiar may be considered persecution "on account of religion." IRFA refers to religious freedom without defining what makes a particular practice or belief a religion, or placing any particular religious group in a position of privilege over any other. While many applicants base their claim to refugee or asylum status on their inclusion in a faith group that is recognizable to the adjudicator (e.g. Hindus, Christians, or Muslims), other individuals may seek protection based upon unfamiliar religious beliefs and practices.²⁰

The mere fact that an individual's faith or faith group is not familiar to an adjudicator, or that a particular practice or belief appears to be unusual, does not mean that the particular faith group or set of practices and beliefs are not "religious." "Popularity, as well as verity, are inappropriate criteria."²¹ Neither courts nor adjudicators may inquire into the

¹⁸ *Zhang v. Ashcroft*, 388 F.3d 713, 720 (9th Cir. 2004) (per curiam) (citing Paragraph 71 of the UNHCR Handbook).

¹⁹ 22 U.S.C. § 6401(a)(1) - (3) (1999).

²⁰ *See* UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees. HCR/GIP/04/06, 28 April 2004, Section II.

²¹ *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977)

truth, validity, or reasonableness of a claimant's religious beliefs. Therefore, your role is not to determine whether a belief system may be considered a "religion," but to determine whether the applicant has suffered or might suffer persecution on account of those beliefs.²²

Denial of Religion

The protected ground of religion also covers an individual's failure or refusal to observe a religion. An individual may also face persecution on account of religion, even if he or she denies that his or her belief, identity or way of life constitutes a "religion."²³

Inability to Practice a Religion

The definition of religion and religious freedom necessarily includes the ability to worship and to otherwise practice one's religion. Courts have held that "it is virtually the definition of religious persecution that the votaries of a religion are forbidden to practice it."²⁴ The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) states that the fundamental right to religious freedom includes "the freedom of a person to . . . manifest it in public or private, in teaching, practice, worship and observance."²⁵

UNHCR Guidance on Religion-Based Claims

A useful way to consider this protected ground is to consider the elements UNHCR has identified for claims based on "religion." UNHCR notes that such claims may involve one or more of the following elements:²⁶

- religion as a belief (including non-belief)
- religion as identity
- religion as a way of life

²² For example, in the First Amendment context, "a religious belief can appear to every other member of the human race as preposterous, yet merit the protections of the Bill of Rights." *Stevens v. Berger*, 428 F. Supp. at 899; see also *Najafi v. INS*, 104 F.3d 943, 949 (7th Cir. 1997) (stating that "determination of a religious faith by a tribunal is fraught with complexity as true belief is not readily justiciable"); *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981).

²³ See *UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, para. 9. See *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (per curiam) (holding that Falun Gong practitioner faced persecution on account of his spiritual and religious beliefs, even though Falun Gong does not consider itself a religion).

²⁴ *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

²⁵ See *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (2011), ¶ 71.

²⁶ See *UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (2004), at para. 5.

Belief

According to UNHCR, a person's "beliefs" may be theistic, non-theistic, and atheistic. They also include a person's convictions or values about "divine," "ultimate reality," or "spiritual destiny." Because of his or her beliefs, a person may be considered a heretic, apostate or a pagan by members of the same religious group.²⁷

Identity

A religious persecution claim may also be based on the applicant's ancestry, nationality, ethnicity, traditions and rituals and less on the applicant's actual theological beliefs.²⁸ Persecutors may target religious groups that are different from theirs because they view such groups as a threat to their own identity.

Way of Life

Religion, for some individuals, may also be a "way of life" characterized by a manner of dress, observance of religious practices and holidays, dietary restrictions, and other requirements. Such practices may be at the core of the religion for the applicant.

Resources

The following sources are useful reference tools for understanding different faith groups around the world:

- CIA World Factbook: [Religions](#)
- Bowker, John (ed.), *The Oxford Dictionary of World Religions*
- Crim, Keith (ed.), *The Perennial Dictionary of World Religions*
- Eederman's Handbook to World Religions
- Hinnells, J.R. (ed.), *Penguin Dictionary of Religions*
- Smith, J.Z., *The Harper Collins Dictionary of Religion*

4.2 Credibility Considerations in Religious Persecution Cases

Credibility determinations can be particularly complex in religious persecution cases. You may need to judge the sincerity of the applicant's claimed religious beliefs, but you cannot judge the validity of the belief system itself. Additionally, you may have certain assumptions or biases about religious issues, which must be put aside in order to render a legally sufficient and unbiased credibility determination. The following considerations should be taken into account:

²⁷ *Id.* at para. 6.

²⁸ *Id.* at para. 7.

4.2.1 Refrain from Judging the Validity of a Belief System

You should not question the validity of a belief, even if the belief appears to be strange, illogical, or absurd.

Distinguish between the Sincerity of Belief and the Validity of Belief

You may evaluate whether a belief is sincerely held. In doing so, you should not make disrespectful or disparaging remarks about the belief or about the applicant's adoption of such a belief. If you suspect that an individual adopted a belief system solely for the purposes of trying to obtain asylum or refugee status, you must still evaluate whether the applicant's belief is sincerely held. In your questioning, you may elicit testimony about the sincerity of the belief, but you may not question whether the belief system itself has merit or has merit in comparison to other religions.

Refrain from Judging Credibility based on Knowledge of Religious Tenets

An individual's lack of knowledge of religious tenets does not necessarily mean the individual does not hold the belief or religious identity in question. Just as no individual's personal religious experience could be summed up in the history of his or her church, the words of a few prayers, or a description of his or her place of worship, a religious identity cannot be verified solely on a test of religious tenets.²⁹

Furthermore, any inquiry into the applicant's knowledge of the tenets of his or her religion must take into account "individual circumstances, particularly since knowledge of a religion may vary considerably depending on the individual's social, economic or educational background and/or his or her age or sex."³⁰ In *Ren v. Holder*, for example, the

²⁹ See *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005) ("many deeply religious people know very little about the origins, doctrines, or even observances of their faith"); *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006) (reversing an adverse credibility finding based solely on the applicant's lack of detailed knowledge of Christian doctrine where the IJ failed to consider the applicant's self-identification as a religious adherent, his religious activities, and that other Indonesians perceived him to be Christian); *Cosa v. Mukasey*, 543 F.3d 1066, 1069-1070 (9th Cir. 2008) (vacated IJ decision, in part because IJ incorrectly faulted applicant for her inability to explain relationship between Millenism and similar religions, and set up Bible quiz and academic trivia contest); see also David Landau, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, Guidance on Religious Persecution Claims Relating to Unregistered Religious Groups, Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), section VI.

³⁰ U.N. High Commissioner for Refugees, Religion-Based Refugee Claims Under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees, paras. 28 and 30, U.N. Doc. HCR/GIP/04/06 (Apr. 28, 2004). See also *Yan v. Gonzales*, 438 F.3d 1249, 1252 (10th Cir. 2006) (reversing an adverse credibility finding that relied on the applicant's incorrect responses to a "a mini-catechism" test and failed to consider the applicant's personal experiences with Christianity and his personal circumstances including: "his very personalized notion" of certain doctrinal elements of Christianity, high school level education, that the applicant had only converted to Christianity 5 years earlier, and that the applicant's lack of knowledge regarding when he celebrated Easter could result from the fact that the holiday is celebrated on different days each year.); *Matter of J-Y-C-*, 24 I&N Dec. 260, 265 (BIA 2007) (finding that a Chinese applicant who claimed to be Christian could reasonably have been expected to identify the Bible during an airport interview since the applicant later

Ninth Circuit rejected an adverse credibility determination based, in part, on the applicant's inability to recite The Lord's Prayer.³¹ The court held that questioning an applicant on his knowledge of religious doctrine to determine if he is a true believer is "not an appropriate method for determining eligibility for asylum."³²

1. Recognize that religions are practiced differently around the world

Location, time period, and culture will produce variations in religious beliefs or practices.³³ Religious practices may vary from country to country and even within countries.

Example

An officer familiar with the practices of a Protestant church finds unbelievable an applicant's claim that he was baptized in an indoor baptismal font rather than in a natural body of water, as the officer believes is the church custom. However, the applicant lives in a near-Arctic climate in which the temperature of the bodies of water never rises above 45 degrees and baptisms are, therefore, not conducted in natural bodies of water.

2. Recognize that suppression of a religious group affects practice

Many persons who fear harm on account of religion have been forced to practice their faith in secret or not allowed to practice their faith at all. Sometimes these groups have been without a formal leader or religious texts and have simply passed on traditions from one generation to the next. Absent formal religious education, such individuals may not be able to discuss church history or the theological significance of particular practices. Additionally, underground or illegal religious institutions may not adhere to all formal practices of the faith for lack of training, worship or gathering space, materials, or for other reasons.³⁴

testified before the IJ that his experiences with Christianity before coming to the US and while in China included having been given a Bible by a friend who also told him to read it.)

³¹ *Ren v. Holder*, 648 F.3d 1079, 1088 (9th Cir. 2011).

³² *Id.*

³³ ³³ U.N. High Commissioner for Refugees, Religion-Based Refugee Claims Under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees (2004), para. 28. Note, however, that "[g]reater knowledge may be expected . . . of individuals asserting they are religious leaders or who have undergone substantial religious instruction." *Id.* at para. 32. See *Mezvrishvili v. U.S. Att'y Gen.*, 467 F.3d 1292, 1295-1297 (11th Cir. 2006) (finding error where an IJ held that the applicant did not demonstrate sufficient knowledge of his religion given that the applicant had been a Jehovah's Witness for only four years and did not represent that he had undertaken active study of the religion for those four years).

³⁴ See *Huang v. Gonzales*, 403 F.3d 945, 949 (7th Cir. 2005) (rejecting IJ's adverse credibility finding because, among other things, the IJ failed to consider that members of an illegal underground Chinese Catholic church might have to deviate from formal practices); see also *Jiang v. Gonzales*, 485 F.3d 992, 994-995 (7th Cir. 2007) (noting that the IJ had "an exaggerated notion of how much people in China actually should know about Christianity." The court compared the IJ's finding that the applicant could not have been persecuted for being a Christian because he

Example

A 35 year-old woman claiming to be Ukrainian Catholic cannot describe how she would receive the Eucharist. This could be explained by the fact that in her rural town there were very few families who were Catholic and they had not had a priest since 1925.

3. Recognize your personal perceptions of a religion may not be accurate

You are not expected to be a theological scholar. Good research on a particular religion, and how it is practiced in a particular region, is crucial to conduct a thorough interview. Even if you are familiar with a religion through personal study or experience, you must be careful when questioning applicants and making credibility determinations.³⁵ You must not make assumptions, but should instead attempt to verify the applicant's statements with country of origin information.

This is particularly important when the claimant is a member of the same faith group as you. You may be tempted to rely on your personal experiences in the faith to evaluate the testimony of the applicant. It is unlikely, however, that applicants for asylum or refugee status will practice their religion as it is practiced in the United States.

4. Do not judge sincerity based on the applicant's manner of religious practice

You should not assume that the applicant's religious beliefs are not sincere based solely on the manner in which the applicant engaged in religious worship or the applicant's attendance at religious services. Religious practices can vary from country to country, community to community, and even person to person. You may notice, if you practice a religion, that the way you practice it may be different than other members of your family. How a religion is practiced may not be indicative of religious sincerity.³⁶ For example, attendance or lack of attendance at religious services may be affected by numerous factors, such as the availability of places for religious observance, personal circumstances that may inhibit or prevent religious attendance, fear of serious harm when attending religious services, or personal preferences. The frequency of or lack of attendance at religious services may not be indicative of religious sincerity.

Religious Beliefs Can Be Imputed to an Applicant

could not interpret a Biblical passage to a finding that an individual is not "a baseball devotee because he can't explain the intricacies of the balk rule.").

³⁵ *Cosa v. Mukasey*, 543 F.3d 1066, 1069 (9th Cir. 2008) (reversing adverse credibility finding because IJ wrongly relied on speculation and conjecture regarding how Millenists dress and behave to fault the applicant's dress and demeanor, and used personal opinion to find that it was "preposterous" that applicant was baptized after only a short period of association with the religion).

³⁶ See, e.g., *Singh v. Holder*, 720 F.3d 635, 643-644 (7th Cir. 2013) (finding "inappropriate" behavior of IJ who doubted that applicant was Sikh because the applicant did not follow all tenets of Sikhism listed in a Wikipedia entry and noting that "Rather than seeking a verbatim recitation of an encyclopedia article, IJs should listen to a petitioner's personal explanation of religious beliefs...Orthodoxy is no substitute for sincerity.")

An applicant's knowledge of her religion, or the depth of her beliefs, may **not be relevant** if she faces persecution on account of beliefs a persecutor perceives her to hold. An adjudicator must look at the totality of the applicant's circumstances, and **country conditions** information, when assessing whether an applicant has been or **would be** persecuted on account of an imputed religious belief.³⁷ For example, in *Bastanipour v. INS*, the court found that "[w]hether Bastanipour believes the tenets of Christianity in his heart of hearts or . . . is acting opportunistically (though at great risk to himself) in the hope of staving off deportation would not, we imagine, matter to an Iranian religious judge."³⁸

5 RIGHT TO RELIGIOUS FREEDOM

In Section 2 of IRFA, Congress acknowledged that freedom of religious belief and practice is a universal human right and a fundamental freedom articulated in numerous international instruments. A review of these international instruments is **important** background information, given IRFA's training requirements for Refugee and Asylum Officers, which includes instruction on the internationally recognized right to freedom of religion. Some of the relevant provisions in the listed international instruments are below.³⁹

5.1 United Nations Charter

Article 1 of the *United Nations Charter* provides that one of the purposes of the United Nations is to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."⁴⁰

5.2 Universal Declaration of Human Rights

Article 18 of the *Universal Declaration of Human Rights* states that "[e]veryone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance." The text of this Article is quoted in IRFA.⁴¹

5.3 International Covenant on Civil and Political Rights

³⁷ For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

³⁸ *Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992).

³⁹ 22 U.S.C. § 6401(a)(2) (1999).

⁴⁰ *Charter of the United Nations*. (San Francisco: 26 June 1945).

⁴¹ *Universal Declaration of Human Rights*. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

Article 18 of the *International Covenant on Civil and Political Rights*⁴² provides that:

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

5.4 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* reaffirms the provisions in Article 18 of the *International Covenant on Civil and Political Rights*.⁴³

Religious Discrimination and Intolerance

Article 2 addresses issues of discrimination based on religion or other beliefs and defines religious discrimination and intolerance as follows:

1. No one shall be subject to discrimination by any State, institution, or group of persons on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Parents' Right to Choose Religion

Article 5 addresses the rights of parents to choose the belief or religion in which they desire their children to be raised and the rights of children to have access to education in that belief.

⁴² *International Covenant on Civil and Political Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec. 16, 1966. The text of Article 18(1) is quoted in IRFA.

⁴³ *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. G.A. Res. 36/55, UN GAOR, Nov. 25, 1981.

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child serving as the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of others to practice a religion or belief, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care of either of his parents or legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes regarding the religion or belief in which they would have wished their child to be raised, the best interests of the child serving as the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

Freedom of Thought, Conscience, Religion, or Belief

Article 6 states that the right to freedom of thought, conscience, religion, or belief shall include, among others, the following:

1. To worship or assemble in connection with a religion or a belief, and to establish and maintain places for these purposes
2. To establish and maintain appropriate charitable or humanitarian institutions
3. To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief
4. To write, issue and disseminate relevant publications in these areas
5. To teach a religion or belief in places suitable for these purposes
6. To solicit and receive voluntary financial and other contributions from individuals and institutions

7. To train, appoint, elect or designate by succession appropriate leaders **called** for by the requirements and standards of any religion or belief
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief
9. To establish and maintain communications with individuals and **communities** in matters of religion and belief at the national and international levels

5.5 Other International Instruments

Other international instruments that promote the right to religious freedom include the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter of Human and People's Rights, the American Convention on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe (the "Helsinki Accords").

6 VIOLATIONS OF RELIGIOUS FREEDOM ACCORDING TO IRFA

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a *non-exclusive* list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom."⁴⁴ The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

The codification of this categorical framework, however, does not mandate a particular result in an individual case. As discussed below in the Religious Persecution section, these violations may or may not constitute persecution, depending upon whether the harm the applicant experienced or fears is sufficiently serious to amount to persecution.

This categorical framework also gives the President a vehicle for identifying and sanctioning violations of religious freedom in other countries.⁴⁵

These categories generally reflect the rights enshrined in the international instruments discussed above, and compose the framework used to determine if countries will be designated as "countries of particular concern for religious freedom."⁴⁶

6.1 Particularly Severe Violations of Religious Freedom

⁴⁴ See 22 U.S.C. §§ 6204 (11) and (13).

⁴⁵ See section on Religious Freedoms, above.

⁴⁶ 22 U.S.C. § 6441.

Particularly severe violations are systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment
- Prolonged detention without charges
- Causing the disappearance of persons by the abduction or clandestine detention of those persons
- Other flagrant denial of the right to life, liberty, or the security of person

6.2 Violations of Religious Freedom

Violations of religious freedom are violations of the internationally recognized right to freedom of religion and religious belief and practice, including violations such as:

Arbitrary prohibitions on, restrictions of, or punishment for:

- Assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements
- Speaking freely about one's religious beliefs
- Changing one's religious beliefs and affiliation
- Possession and distribution of religious literature, including Bibles
- Raising one's children in the religious teachings and practices of one's choice

Example

The government of China requires that unofficial house churches register with the government. Those that refuse to register, on either theological or political grounds, are subject to intimidation, extortion, harassment, detention, and closure of their churches. See 2011 USCIRF Annual Report, "China."

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of an onerous financial penalty
- Forced labor
- Forced mass resettlement
- Imprisonment

- Forced religious conversion⁴⁷
- Beating
- Torture
- Mutilation
- Rape
- Enslavement
- Murder
- Execution

IRFA also identifies

“state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of ‘religious police[,]’ severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, . . . prohibitions against publishing, distributing, or possessing religious literature and materials,” forcing religious believers to meet secretly, and targeting religious leaders by national security forces and hostile mobs, as additional forms of religious freedom violations.⁴⁸

7 RELIGIOUS PERSECUTION

7.1 Persecution Generally

A variety of harms, ranging from physical abuse to mental suffering may rise to the level of persecution. In certain cases, severe forms of discrimination may constitute persecution.⁴⁹ The difference between persecution and discrimination is one of degree, which makes a hard and fast line difficult to draw.⁵⁰ Moreover, the Board of Immigration Appeals (BIA) has held that harms and abuses that might not individually rise to the level of persecution may, in the aggregate, constitute persecution.⁵¹ For example, in *Shi v. U.S. Att’y Gen.*, the Eleventh Circuit held that the evidence compelled the conclusion that a Chinese Christian applicant had suffered persecution where he had been arrested during an underground church service, interrogated, detained for a week, and chained to an iron

⁴⁷ Being forced to change one’s religion and being prohibited from voluntarily changing one’s religion are both considered violations of religious freedom.

⁴⁸ 22 U.S.C. § 6401(a)(4) and (5).

⁴⁹ See *Kovac v. INS*, 407 F.2d 102, 105-07 (9th Cir. 1969) (holding that persecution is not limited to physical suffering).

⁵⁰ *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

⁵¹ *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998)

bar outside in the rain for a night; the Court found it especially significant that the police had confiscated the applicant's religious group's bibles and attempted to force him to abandon his religious principles.⁵²

In *Sumolang v. Holder*, the Ninth Circuit found that “[h]arm to a child can amount to past persecution of the parent when that harm is, at least in part, directed against the parent ‘on account of’ or ‘because of’ the parent’s race, religion, nationality, membership in a particular social group, or political opinion” in the context of a religious persecution claim. It noted that, where a child is so young that she lacks the capacity to have a religious belief of her own, harm to the child on account of religion must be understood as intended to punish the parent for the parent’s religious belief.⁵³

When determining whether particular harm or abuses constitute persecution, you must consider their impact on the individual applicant. See RAIO Training modules, *Refugee Definition and Persecution*.

7.2 Religious Persecution

IRFA lists a wide array of actions that persecuting regimes may take to violate religious freedoms, ranging from severe physical abuse and torture, to various forms of psychological harm. These violations may or may not constitute persecution, depending upon the severity of the harm imposed, and the applicant’s individual circumstances.

1. Relevance of inclusion on IRFA list of violations

As noted in “Violations of Religious Freedom According to IRFA,” above, the range of violations listed in IRFA is instructive for determining persecution, given IRFA’s training requirements on the nature and methods of religious persecution practiced abroad.⁵⁴ That a particular type of harm is listed in IRFA as a violation of religious freedom does not necessarily mean that the violation rises to the level of persecution. Similarly, the omission from IRFA of a type of harm does not mean that the harm cannot amount to religious persecution under the INA.

In most instances, the serious forms of mistreatment categorized in IRFA as “particularly severe violations of religious freedom,” such as torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges; disappearance by abduction, and other flagrant denial of the right to life, liberty, or the security of persons, will constitute persecution.⁵⁵

⁵² *Shi v. U.S. Att’y Gen.*, 707 F.3d 1231, 1236-1237 (11th Cir. 2013).

⁵³ *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013).

⁵⁴ See 22 U.S.C. § 6473(b) & (c).

⁵⁵ 22 U.S.C. § 6402(11).

IRFA states that other “severe and violent forms of religious persecution,” include “detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of, or practice of their faith.”⁵⁶ Additional violations of religious freedom listed in IRFA, including arbitrary prohibitions on, restrictions of, or punishment for various religious activities, may constitute persecution, depending on the circumstances.⁵⁷

2. Restrictions on practicing religion

As noted above, prohibitions on or restrictions of religious beliefs and practices may rise to the level of persecution, even without physical mistreatment. The Seventh Circuit has held that “[i]f a person is forbidden to practice his religion, the fact that he is not imprisoned, tortured, or banished, and is even allowed to attend school, does not mean that he is not a victim of religious persecution.”⁵⁸

Where religious beliefs or practices have been restricted or banned, and the individual has not been physically harmed, the adjudicator must determine the degree of suffering or psychological harm caused by the religious freedom violation. In these cases it will be useful to determine the importance or centrality of the particular practice in the religion or to the individual applicant, in order to assess whether the suffering caused by the restriction amounts to persecution.⁵⁹

3. Forced compliance with religious laws or practices that are abhorrent to an applicant’s beliefs

The U.S. Courts of Appeals for the Third and Seventh Circuits have indicated that forced compliance with laws that are “profoundly” or “deeply” abhorrent to a person may rise to the level of persecution.⁶⁰ In *Fatin v. INS*, the Third Circuit upheld the denial of asylum to an Iranian applicant who testified that, although she objected to a law requiring that women wear the chador and she did not want to wear it, she would be willing to do so rather than be punished; therefore, the Court reasoned, she had not demonstrated that compliance with the law would be profoundly abhorrent to her. In *Yadegar-Sargis v. INS*, however, the Seventh Circuit cautioned that the refugee definition does not require “that one be willing to suffer martyrdom to be eligible for asylum.”⁶¹

⁵⁶ 22 U.S.C. § 6401(a)(5); see also § 6402(13)(B) (listing the following additional religious freedom violations: interrogation, imposition of an onerous financial penalty, forced labor, forced religious conversion, and mutilation).

⁵⁷ 22 U.S.C. § 6402(13)(A).

⁵⁸ *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997); see also Membership in a Religious Community, below.

⁵⁹ For additional information on considering the importance of the feelings, opinions, and physical and psychological characteristics of the applicant, see RAIO Training modules, *Refugee Definition and Persecution*.

⁶⁰ *Fatin v. INS*, 12 F.3d 1233, 1241-42 (3d Cir. 1993); see also *Yadegar-Sargis v. INS*, 297 F.3d 596, 604-05 (7th Cir. 2002).

⁶¹ *Yadegar-Sargis*, 297 F.3d at 603 n.5.

4. Guidance from UNHCR *Handbook*

The UNHCR *Handbook* also provides that various violations of religious freedom, even without physical mistreatment or abuse, can constitute persecution.⁶² Religious persecution may include:

1. Prohibition of membership in a religious community
2. Prohibition of worship in private or in public
3. Prohibition of religious instruction
4. Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community

7.3 Agents of Persecution

Religious persecution is not limited to government-sponsored violence; it can also include “[d]iscrimination, harassment, and violence by groups that the government is unwilling or unable to control” as well as acts of persecution by private entities that are either tolerated or outright sponsored by the government.⁶³

An applicant may meet the burden of proving that the government is “unable or unwilling” to control nongovernmental entities by specific evidence of government inaction and evidence that generally the government is complicit in, or tacitly approves of the private persecution.⁶⁴ See RAIO Training Modules, *Persecution and Well-Founded Fear*.

7.4 No Requirement to Conceal Religious Beliefs

Recognizing that “[o]ne aim of persecuting a religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining population,” you cannot require applicants to conceal their religion upon return in order to avoid persecution.⁶⁵ In *Muhur v. Ashcroft*, the Seventh Circuit rejected an Immigration Judge’s determination that a Jehovah’s Witness could not establish a well-founded fear of persecution in Eritrea because she was “not a religious zealot.”⁶⁶ The court held that the IJ improperly assumed that one is not entitled to asylum on the basis of religious

⁶² See *UNHCR Handbook*, para. 72.

⁶³ *Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir.1996)

⁶⁴ *Ivanov v. Holder*, 736 F.3d 5 (1st Cir. 2013); see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

⁶⁵ *Muhur v. Ashcroft*, 355 F.3d 958, 961 (7th Cir. 2004).

⁶⁶ *Muhur v. Ashcroft*, 355 F.3d 958, 960-961 (7th Cir. 2004);

persecution if one can escape the notice of persecutors by concealing one's religion.⁶⁷ The Ninth Circuit has also held that forcing an individual to practice his or her religion in hiding is contrary to our basic principles of religious freedom and the protection of religious refugees.⁶⁸ In *Kazemzadeh v. U.S. Att'y Gen.*, the Eleventh Circuit adopted a similar approach, finding that being forced to practice a religion underground to avoid punishment is itself a form of persecution.⁶⁹

Cases in which applicants are forced to conceal their religion in order to avoid persecution are distinct from those in which the evidence indicates that the applicant **voluntarily** practices his or her religion in such a way that it is not reasonably likely to come to the attention of the feared persecutors. In such cases, the applicant may not have a well-founded fear of persecution. For example, in *Yi Xian Chen v. Holder*, the Seventh Circuit upheld a determination that an applicant who began practicing Falun Gong in the United States, had never had any problems with the Chinese government, and testified that he planned to practice Falun Gong inside his house or on a nearby farm outside rather than in public did not have a well-founded fear because he was not reasonably likely to draw the Chinese government's attention.⁷⁰

7.5 Religious Discrimination

Although serious forms of religious discrimination may constitute persecution, lesser forms of religious discrimination, without more, may not rise to the level of persecution. For example, in *Sofinet v. INS*, a Romanian Seventh Day Adventist claimed that he suffered religious persecution because he was reprimanded for not working on his Sabbath.⁷¹ The U.S. Court of Appeals for the Seventh Circuit held that although the applicant was occasionally reprimanded for failing to work as a police officer on Saturdays, he enjoyed steady employment for the five years between his conversion and his departure from Romania, and he failed to provide any evidence that he sought work that did not require Saturday hours. The Court further added that the totality of the evidence Sofinet presented was insufficient to demonstrate his claimed religious persecution. The Court noted that the evidence highlights only that Sofinet, at worst,

⁶⁷ *Id.*; *Antipova v. U.S. Att'y Gen.*, 392 F.3d 1259, 1263-1265 (11th Cir. 2004) (overturning an IJ decision noting with disfavor that the applicant had been subjected to acts of persecution because she "advertised" that she was a practitioner of Judaism by displaying her menorah on a window. The court noted that neither the INA provision on withholding of removal nor the related regulations required the applicant to avoid "signaling" her religious affiliation.).

⁶⁸ See *Zhang*, 388 F.3d at 719 (rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret); see also *lao v. Gonzales*, 400 F.3d 530, 532 (7th Cir. 2005) ("[T]he fact that a person might avoid persecution through concealment of the activity that places her at risk of being persecuted is in no wise inconsistent with her having a well-founded fear of persecution.").

⁶⁹ *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1354-55 (11th Cir. 2009).

⁷⁰ *Yi Xian Chen v. Holder*, 705 F.3d 624, 630 (7th Cir. 2013).

⁷¹ *Sofinet v. INS*, 196 F.3d 742, 744 (7th Cir. 1999).

experienced ridicule, harassment and self-initiated job termination because of his religious beliefs.”⁷²

Similarly, in *Nagoulko v. INS*, the Ninth Circuit held that occasional disruptions in worship services and other church activities, where the applicant was not prevented from practicing her religion and did not suffer physical violence, did not amount to treatment so extreme as to compel a finding of past persecution.⁷³

On the other hand, discrimination or harassment, especially in combination with other harms, may be sufficient to establish persecution if the adverse practices or treatment accumulates or increases in severity to the extent that it leads to consequences of a substantially prejudicial nature. Discriminatory measures that lead to serious restrictions on an individual’s right to practice his or her religion could amount to persecution.⁷⁴

In *Krotova v. Gonzales*, a Russian Jewish family presented evidence of sustained economic discrimination and pressure, physical violence and threats against the principal applicant and her close associates, and serious restrictions on the applicant’s ability to practice her religion.⁷⁵ The court rejected the BIA’s determination that the family experienced discrimination, and held that the cumulative impact of the anti-Semitic harms amounted to persecution. The *Krotova* opinion includes a useful discussion comparing cases finding discrimination with cases where the harm constitutes persecution.⁷⁶

7.6 Reduced Evidentiary Burden: Lautenberg-Specter Cases in the Refugee Program

Under the Lautenberg Amendment,⁷⁷ certain categories of overseas refugee applicants – largely religious minorities from the former Soviet Union, Southeast Asia, and Iran – may establish a well-founded fear of persecution under a reduced evidentiary burden. Specifically, a category member may show a well-founded fear by establishing a “credible basis for concern about the possibility of persecution.” Applicants generally establish a credible basis of concern by showing multiple instances of discrimination in one or more of the following areas:

⁷² *Id.* at 747.

⁷³ *Nagoulko v. INS*, 333 F.3d 1012, 1016-1017 (9th Cir. 2003); see also *Matter of V-F-D-*, 23 I&N Dec 859, 863 (BIA 2006) (holding that discrimination in school, neighborhood and employment opportunities on account of religion did not amount to past persecution).

⁷⁴ For additional information on discrimination and harassment, see RAIO Training modules, *Refugee Definition and Definition of Persecution and Eligibility Based on Past Persecution*. See also *UNHCR Handbook, para. 54*.

⁷⁵ *Krotova v. Gonzales*, 416 F.3d 1080, 1082 (9th Cir. 2005); see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998) (holding that Ukrainian father and son who experienced anti-Semitic attacks, vandalism, threats and a humiliating incident suffered persecution).

⁷⁶ *Krotova*, 416 F.3d at 1084-1087.

⁷⁷ The Lautenberg Amendment amended the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. No. 101-167. For a list of Lautenberg category members, please see the Lautenberg Lesson Plan.

- Inability to study or practice religion or cultural heritage
- Denial of access to educational, vocational or technical institutions
- Adverse treatment in the workplace
- Loss of home, job or educational opportunities

Lautenberg-Specter applicants may also establish a credible basis of concern by showing mistreatment against similarly situated individuals or by showing that they suffered harm on account of their request to emigrate. There is no provision in the law for asylum applicants to be covered by the reduced evidentiary burden set forth in the Lautenberg Amendment.

7.7 Membership in a Religious Community

Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.⁷⁸ Each case requires an analysis of whether the individual suffered or may suffer harm amounting to persecution. Of course, an individual need not show that she will be singled out individually for persecution if she shows that she is included in a group that suffers a pattern or practice of persecution.⁷⁹

7.8 Issues with “on Account of” in Religious Persecution Cases

In many countries, politics and religion are intertwined, making the analysis of nexus more complex. In such cases, you must determine whether the applicant was targeted on account of his or her religious beliefs, political opinion, in the course of legitimate government investigation of crimes, or some combination of all three. Motivation of the persecutor is a critical element in the analysis of nexus.⁸⁰

In two separate cases before the BIA, *Matter of R*,⁸¹ and *Matter of K-S*,⁸² each respondent based his asylum claim, in part, upon the premise that the Indian authorities persecute Sikhs on account of religion. In *Matter of R*, the BIA held that harm suffered incidental to the government’s pursuit of Sikh militant separatists was not persecution on account of religion. Likewise in *Matter of K-S*, the BIA relied heavily on a State Department opinion which stated that the government of India does not take action against individuals solely on account of their membership in the Sikh faith, but against those accused of committing acts of violence.

⁷⁸ UNHCR Handbook, para. 73.

⁷⁹ See 8 C.F.R. 208.13(b)(2)(iii). For additional information, see also RAIO Training module, *Well-Founded Fear*, section on *Pattern or Practice of Persecution*.

⁸⁰ For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

⁸¹ *Matter of R*, 20 I&N Dec. 621, 623-625 (BIA 1992).

⁸² *Matter of K-S*, 20 I&N Dec. 715, 722 (BIA 1993).

In both cases the BIA rejected the notion that the respondents' membership in the Sikh faith was the reason ("on account of") for the harm suffered, because they presented no direct or circumstantial evidence that the authorities were motivated by the respondents' religious beliefs.

7.8.1 Conversion

It may be illegal in some countries to convert from one religion to another and the penalties may be severe. In some countries, for example, conversion from Islam to another religion is considered apostasy (renunciation of faith) and may be punishable by imprisonment or death. Punishment for conversion may be considered persecution on account of religion, depending on the degree of the harm threatened or imposed.

7.8.2 Prosecution v. Persecution

Cases involving forced compliance with laws of general applicability raise challenging questions of nexus and motive. In general, prosecution for a criminal offense is not persecution, and a government has the right to investigate and punish individuals for violations of legitimate laws. In *Matter of H-M-*, the BIA held that the applicant's prosecution for foreign currency speculation, black market sales, and conspiracy to possess illegal weapons did not constitute persecution.⁸³ However where a law of "general applicability" punishes individuals because of a protected ground and the punishment for violations of the law rises to the level of persecution, an applicant who has been punished for violating the law may be able to establish past persecution, and an applicant who is reasonably likely to violate the law may have a well-founded fear. For example, in *Karouni v. Gonzales*, the Ninth Circuit Court of Appeals noted that the applicant's feared arrest and detention for violating a law prohibiting same-sex acts would constitute persecution on account of membership in a particular social group defined by his sexual orientation.⁸⁴

General Considerations

To determine whether punishment for violation of a generally applicable law constitutes religious persecution, you should consider:

- Is the law neutral in intent?
- Is the law neutrally or unequally enforced?
- How does the persecutor view those who violate the law?

⁸³ See *Matter of H-M-*, 20 I&N Dec. 683 (BIA 1993); *Abedini v. INS*, 971 F.2d 188 (9th Cir. 1992) (holding that prosecution for violation of generally applicable anti-propaganda and conscription laws is not persecution on account of protected ground). For additional information, see also RAIO Training module, *Nexus and the Five Protected Grounds*.

⁸⁴ *Karouni v. Gonzales*, 399 F.3d 1163, 1174 (9th Cir. 2005).

Laws Based on Religious Principles

Laws that target particular religious beliefs and practices generally are not neutral in intent. When a law criminalizes a particular religious practice, punishment for violation of the law may amount to persecution on account of religion.

Examples

Prosecution for the crime of attending religious services, or for providing “illegal” religious instruction to a child, could constitute persecution on account of religion.⁸⁵

Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion or another protected ground.⁸⁶

Punishment for violation of a law that is designed to prevent the commingling of individuals of different faiths, such as laws against interfaith dating or marriage, could amount to persecution on account of religion.⁸⁷

When a civil or criminal law is itself based on religious laws or principles in a country where there is little separation between church and state, the evaluation of the persecutor’s intent may be complex. A thorough understanding of country conditions will help you evaluate how the authorities view individuals who violate religious laws. Keep in mind that Section 601 of IRFA requires Immigration Judges, Asylum, Refugee, and Consular Officers to use the Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution.

Laws of Neutral Intent that Affect Religious Practices

While laws that require punishment for holding a particular belief would almost always be considered a violation of religious freedom, punishment for violation of laws that proscribe particular actions or practices associated with a religion may or may not be linked to the protected ground of religion.

Example

⁸⁵ UNHCR Handbook, para. 57

⁸⁶ See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000)(granting asylum to a woman with liberal Muslim beliefs who was persecuted by her father who had more orthodox Muslim beliefs); *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011)(although this is a particular social group case, the court noted that “[s]ociety as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the appropriate punishment—in this case, death.”).

⁸⁷ *Bandari v. INS*, 227 F.3d 1160, 1168 (9th Cir. 2000)(finding applicant suffered persecution for interfaith dating), citing with approval *Maini v. INS*, 212 F.3d 1167 (9th Cir. 2000)(finding applicants suffered persecution for interfaith marriage).

In *Romeike v. Holder*, the Sixth Circuit Court of Appeals held that prosecution for violating a truancy law by a couple who homeschooled their children in accordance with their religious values did not constitute persecution on account of religion because the law applies equally to all parents, is not intended to target the applicant's religion, and does not impose disproportionately harsh treatment on parents who homeschool for religious reasons.⁸⁸

Some state restrictions on religious practice can be legitimate. It is important, therefore, to focus on the intent or the purpose of the law. Article 18 of the International Covenant on Civil and Political Rights provides that the "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others."⁸⁹

Example

A curfew imposed during a period of civil strife may prevent individuals from attending evening religious services. Because the law was not intended to overcome a characteristic, but rather to protect public safety, no nexus to religion would be established.⁹⁰

Unequal or Pretextual Enforcement of the Law or Disproportionately Severe Punishment

Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. Prosecution that is used as a pretext to harm an individual on account of any of the five protected grounds may constitute persecution. Punishment that is unduly harsh or disproportionately severe, given the nature of the offense committed, may be evidence of pretext.⁹¹

Examples

A law that prohibits public gatherings on public property without a permit is enforced only against members of one particular religion, but not against other groups. The unequal enforcement is evidence that the persecutor's intent is to punish members of a particular religious group because of their religious beliefs.

In *Ghebremedhin v. Ashcroft*, the Seventh Circuit overturned an Immigration Judge's finding that a Jehovah's Witness who feared that he would be harmed because of his failure to perform national service would not be targeted on

⁸⁸ *Romeike v. Holder*, 718 F.3d 528, 533-534 (6th Cir. 2013).

⁸⁹ Art. 18 of *International Covenant on Civil and Political Rights (ICCPR)* (16 December 1966).

⁹⁰ See also *UNHCR Religion Guidelines*, para. 15 (discussing examples of permissible restrictions, including, for example, prohibition on ritual killings).

⁹¹ *Matter of A-G-*, 19 I&N Dec. 502, 506 (BIA 1987); *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996); *UNHCR Handbook*, para. 57-59.

account of his religion because all Eritreans are required to. According to the Court, the IJ failed to consider evidence both from the applicant's testimony and from country conditions reports that Jehovah's Witnesses are singled out for disproportionately severe treatment, such as extended detention and extreme physical punishment, for their failure to serve.⁹²

The Ninth Circuit, in *Bandari v. INS*, considered the claim of an Iranian Christian who had been arrested by police for violating a law that prohibited public displays of affection when he kissed a Muslim girl. The initial stop of the applicant by the police may have been characterized as equal enforcement of a neutral law. The police, however, detained the applicant for several days, beat him, insulted his religion, and sentenced him for violation of a law that prevented interfaith dating. These actions by police demonstrated that the harm the applicant suffered was persecution on account of his religion, rather than prosecution.⁹³

The Persecutor's View of Violators

Where an individual is punished for his or her refusal to comply with a religious law, the persecutor may view the individual as both a law-breaker and as an individual with "improper" religious values. You must, therefore, explore all possible motives, as well as the possibility that the persecutor had mixed motives, when assessing whether the harm the applicant suffered or fears is on account of a protected ground. See Mixed Motives section, below.

7.8.3 Refusal to Comply with or Alleged Flouting of Religious Norms

Harm resulting from an applicant's refusal to comply with religious norms may constitute persecution on account of religion. In *Matter of S-A-*, a woman with liberal Muslim beliefs differed from her father's orthodox Muslim views concerning the proper role of women in Moroccan society. As a result of her refusal to share or submit to her father's religion-inspired restrictions and demands, her father subjected her (but not her brothers) to repeated physical assaults, imposed isolation, and deprivation of education. The BIA held that harm inflicted on the applicant by her father because she refused to comply with religious norms amounted to past persecution on account of religion.⁹⁴

Harm to a person who is alleged to have flouted repressive moral norms may also constitute persecution on account of the person's membership in a particular social group. In *Sarhan v. Holder*, the Seventh Circuit noted that honor killings occur where a woman commits the "sin" of going for a walk with a man who is not her husband or relative.⁹⁵ The applicant in *Sarhan* was falsely accused of adultery by her sister-in-law and was

⁹² *Ghebremedhin v. Ashcroft*, 385 F.3d 1116, 1120 (7th Cir. 2004).

⁹³ *Bandari v. INS*, 227 F.3d 1160, 1168 (9th Cir. 2000).

⁹⁴ *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000).

⁹⁵ *Sarhan v. Holder*, 658 F.3d 649, 654 (7th Cir. 2011).

threatened with death by her brother for bringing dishonor to her family. The court found that Jordanian society as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the punishment.⁹⁶ The court rejected the BIA's conclusion and the government's argument that this was merely a "personal dispute" between the applicant and her brother. The court held that the dispute is a "piece of complex cultural construct that entitles male members of families dishonored by perceived bad acts of female relatives to kill those women."⁹⁷

7.8.4 Mixed Motives

A persecutor may have more than one motive in seeking to harm an individual. One or more of the persecutor's motives may be a protected ground. There is no requirement that the applicant demonstrate that the protected characteristic is or was the **only** factor motivating the persecutor to harm the applicant.

For example, organized criminal groups may be motivated to harm religious people both to further their criminal goals and because of their religious beliefs. In *Ivanov v. Holder*, the First Circuit Court of Appeals considered the case of a Russian applicant who practiced the Pentecostal faith and volunteered at a drug rehabilitation center run by his church. One night, while the applicant was leaving the center, a group of skinheads involved in drug trafficking beat him, kidnapped him, and detained him for three days in a basement without food and water. The Court rejected the Board's conclusion that the group was motivated solely by the applicant's interference with its drug trade, holding that it failed to consider the possibility that the group had mixed motives given that it also had an "overarching mission" of intolerance toward adherents of "foreign" religions and specifically expressed opposition to the center's religious methods.⁹⁸

A mixed motive analysis for asylum applications filed on or after May 11, 2005 is governed by the REAL ID Act of 2005, which amended INA § 208. Under the amendment, an asylum applicant "must establish that race, religion, nationality, membership in a particular social group, or political opinion, was or will be at least one central reason for persecuting the applicant."⁹⁹ See ASM Supplement – Mixed Motives at the end of this module.

Refugee adjudications are governed by case law interpreting the refugee definition, prior to the 2005 amendment. In *Matter of Fuentes*, for example, the BIA held that an applicant does not need to establish the exact motivation of his persecutor, but he does need to establish that a reasonable person would fear the danger arises on account of a protected

⁹⁶ *Id.* at 655.

⁹⁷ *Id.* at 656.

⁹⁸ *Ivanov v. Holder*, 736 F.3d 5, 15 (1st Cir. 2013).

⁹⁹ INA §208(b)(1)(B)(i).

ground.¹⁰⁰ See RAD Supplement – Mixed Motives at the end of this module. See RAIO Training module, *Nexus the Five Protected Grounds*.

7.9 Persecution by Members of Applicant's Religion

You may encounter cases in which the persecutor belongs to the same religious group as the applicant. This may occur, for example, when the persecutor believes that the applicant is not sufficiently complying with religious tenets. In *Matter of S-A-* (see above, *Refusal to Comply with Religious Norms*), the BIA found that the applicant had been persecuted by her father because her beliefs regarding the proper role of Muslim women differed from his. Both the applicant and her father practiced Islam.¹⁰¹ Similarly, in *Maini v. INS*, the petitioners argued that despite the fact that the Communist Party Marxist (CPM) of India is comprised of both Sikhs and Hindus, *Maini* and his wife were persecuted on account of their interfaith marriage. The U.S. Court of Appeals for the Ninth Circuit held that “if an applicant can establish that others in his group persecuted him because they found him insufficiently loyal or authentic to the religious, political, national, racial, or ethnic ideal they espouse, he has shown persecution on account of a protected ground. Simply put, persecution aimed at stamping out an interfaith marriage is without question persecution on account of religion.”¹⁰²

8 RESOURCE MATERIALS

Title VI of IRFA requires Asylum and Refugee Officers and other immigration officials to consult the Department of State annual report on religious freedom, as well as other country conditions reports, when analyzing claims for asylum or refugee status based on religion. A body of resource materials is available to document the status of religious freedom in the world.

8.1 Countries of Particular Concern

The President is required to designate as “countries of particular concern” those countries that have engaged in or tolerated violations of religious freedom. The United States uses sanctions against these countries to encourage them to improve their treatment of religious groups.¹⁰³

8.2 The US Department of State Annual Report on International Religious Freedom

¹⁰⁰ *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

¹⁰¹ *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

¹⁰² *Maini v. INS*, 212 F.3d 1167, 1175 (9th Cir. 2000) (“That a person shares an identity with a persecutor does not foreclose a claim of persecution on account of a protected ground.”).

¹⁰³ See U.S. Dep’t of State, “Countries of Particular Concern.”

Each year the Department of State publishes an annual report which provides information on the treatment of religious groups in most countries of the world, much in the same way as the annual *Country Reports on Human Rights Practices*.¹⁰⁴

8.3 U.S. Commission on International Religious Freedom Reports

Established by the International Religious Freedom Act, the U.S. Commission on International Religious Freedom (USCIRF) monitors the status of religious freedom in other countries and advises the President and Congress on how best to promote religious freedom.

Annual Reports

Each year the U.S. Commission on International Religious Freedom issues its Annual Report.¹⁰⁵ Mindful of its mandate to make recommendations on how to combat violations of religious freedom in the world, its reports focus on particular countries that it sees as “priorities” in the fight for global religious freedom.

In its annual report, the Commission summarizes its activities over the course of the past year and recommends policies to the United States Government that would promote and protect religious freedom around the world. The Commission also recommends that the State Department designate certain “Tier 1” countries as Countries of Particular Concern and has a “Tier 2” list of countries where the Commission believes that religious freedom conditions do not rise to the statutory level requiring designation as Countries of Particular Concern, but which require close monitoring of the situation.

Individual Country Reports, Hearings, and Testimony

In addition to its annual report, the Commission periodically publishes reports dealing with particular countries. Quite often, these reports are issued in response to particular issues or violations of religious freedom in a given country.

The Commission also organizes hearings on issues of religious freedom when it determines that greater examination of the situation in a country is required. Human rights monitors, religious scholars, and other interested parties have presented their views to the Commission in such fora.

Finally, Commission members occasionally testify before Congress on issues of religious freedom and concerns regarding threats to that freedom around the world.

8.4 Comments on the DOS Annual Report on International Religious Freedom

¹⁰⁴ See U.S. Dep’t of State, “Annual Reports to Congress on International Religious Freedom.”

¹⁰⁵ USCIRF, Frequently Asked Questions.

Each year the U.S. Commission on International Religious Freedom responds to the statements made by the Department of State in its *Annual Report*. These comments may be published in a separate report or as part of the USCIRF *Annual Report*. The comments intend to balance the body of material on international religious freedom by pointing out omissions of information and to critique the implementation of policy on international religious freedom.

9 SUMMARY

9.1 Overview of IRFA

IRFA, the International Religious Freedom Act, was enacted on October 27, 1998, to promote religious freedom and call attention to its abuse worldwide. IRFA also created new foreign policy mechanisms for use by the United States to act against religious persecution abroad.

9.2 Title VI of IRFA

Title VI of IRFA speaks directly to the role of Asylum, Refugee, and Consular officers in improving the U.S. government response to religious persecution.

1. Section 601 mandates that immigration judges, asylum officers, and immigration officers refer to the Department of State Annual Report on International Religious Freedom when adjudicating requests for asylum or refugee status.
2. Section 602 requires greater attention to issues of refugee law and religious persecution by those involved in the processing of refugees overseas, including DOS consular officers, immigration officers, and interpreters.
3. Section 603 requires greater scrutiny of the potential biases of those individuals used as interpreters during inspection or interviews. The section also requires training on religious persecution for all those involved in the expedited removal process.
4. Section 604 creates a new ground of inadmissibility for any foreign government official who has been responsible for or has directly carried out severe violations of religious freedom.
5. Section 605 provides the U.S. Commission on International Religious Freedom with the authority to request studies by the Comptroller General on certain aspects of the expedited removal process.

9.3 The Nature of Religion

1. The protected ground of religion is broadly understood, and protects familiar as well as unfamiliar belief systems.

2. The definition of religion includes religious beliefs (and non-belief) and religious practices.
3. Religious beliefs and practices may vary by sect, region, country, and culture, and you must put aside preconceived notions of what can be considered a religion and how religions are practiced across the globe.
4. An individual's religious identity generally cannot be verified by "testing" the applicant on his or her knowledge of the tenets of the religion.

9.4 Right to Religious Freedom

Internationally-recognized standards regarding religious freedom are codified in various international instruments and cited in IRFA. These instruments, such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, provide invaluable guidance in determining what actions may be considered violations of religious freedom.

9.5 Violations of Religious Freedom

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a non-exclusive list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom." The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

Whether or not a particular violation of religious freedom (either particularly severe or not) could be considered persecution on account of religion depends upon the degree of harm threatened or imposed, and the applicant's individual circumstances.

9.6 Religious Persecution – General Considerations

1. Prohibitions or restrictions on religious beliefs and activities can, without physical mistreatment, rise to the level of persecution.
2. Forced compliance with religious laws or practices that are fundamentally abhorrent to a person's deeply held religious convictions may constitute persecution.
3. Persecution by government, as well as by private individuals whom the government is unable or unwilling to control, may establish a religious persecution claim.
4. Adjudicators cannot require an applicant to conceal his religious beliefs upon return in order to avoid persecution.

5. Serious measures of discrimination on account of religion may be sufficient to establish persecution if the adverse practices accumulate or increase in severity leading to consequences of a substantially prejudicial nature. Other forms of religious discrimination, without more, may not be sufficient to establish persecution.
6. Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.
7. The motivation of the persecutor must be examined to determine if:
 - i. the applicant has been targeted or could be targeted
 - ii. the applicant's religion is the targeted characteristic
8. Laws that impose harsh penalties for conversion from one religion to another may constitute persecution on account of religion.
9. Punishment for violation of a generally applicable law affecting religious beliefs or practices may constitute persecution on account of religion. You must analyze the intent and purpose of the law, whether the law is unequally enforced, and how the persecutor views those who violate the law.
10. It is possible for individuals to establish that they have been persecuted on account of their religion by members of the same faith community. For example, an individual could be harmed because he or she is perceived by others to be failing in the faith or to have violated moral norms.

9.7 Resource Materials

You have at your disposal a number of tools to aid in the adjudication of cases of claimed religious persecution. IRFA requires you to consider the information contained in the Department of State *Annual Report on International Religious Freedom* when adjudicating asylum and refugee cases. In addition, you may consult other resources, such as the reports and press releases issued by the U.S. Commission on International Religious Freedom.

You must not assume that a religious persecution claim is unfounded because of the absence of information on persecution of a particular group in either of the above-mentioned reports, or the fact that a refugee-producing country is not designated as a country of particular concern.¹⁰⁶

¹⁰⁶ *Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164 (11th Cir. 2014).

PRACTICAL EXERCISES

[NOTE: Practical Exercises for this module to be added later.]

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996).
2. *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

SUPPLEMENTS

RAD Supplement – Mixed Motives

As mentioned in the Mixed Motives section of the module, refugee resettlement adjudications are not governed by the 2005 amendments to the asylum statute. As with asylum adjudications, however, you must explore all possible motives, including mixed motives, when assessing a claim based on an applicant's religious beliefs or practices. An applicant bears the burden of establishing that "a reasonable person would fear that the danger arises on account of" a protected ground.¹⁰⁷ In *Maini v. INS*, for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.¹⁰⁸

¹⁰⁷ *Matter of S-P-*, 21 I&N Dec. 486, 490, 497 (BIA 1996).

¹⁰⁸ *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

INA §208(b)(1)(B)(i) – REAL ID Act amendment regarding mixed motives for persecution.

ADDITIONAL RESOURCES

1. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).
2. *Ndayshimiye v. Att’y Gen. of U.S.*, 557 F.3d 124 (3d Cir. 2009).
3. *Rizal v. Gonzales*, 442 F.3d 84 (2d Cir. 2006).
4. *Huang v. Gonzales*, 403 F.3d 945 (7th Cir. 2005).
5. Elwood, Kenneth J., Deputy Executive Associate Commissioner, INS Office of Field Operations. Implementation of the International Religious Freedom Act of 1998, Memorandum for Jeffrey L. Weiss, Acting Director, Office of International Affairs. (Washington, DC: 5 April 1999), 3 p.
6. Langlois, Joseph E., Deputy Director, Asylum Division. Religious Persecution, [with two attachments: letter to William Bartlett, Office of Asylum Affairs, Department of State, concerning training conducted for Asylum Officers on religious persecution; list of documentation distributed by the Resource Information Center on religious persecution, 1992-1998] Memorandum for Asylum Office Directors. (Washington, DC 5 May, 1998), 12 p.
7. Pearson, Michael A., Executive Associate Commissioner, INS Office of Field Operations. Amendment to the Immigration and Nationality Act (the Act) adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p.
8. Landau, David, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, Guidance on Religious Persecution Claims Relating to Unregistered Religious

Groups, Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), 12 pp.

SUPPLEMENTS

ASM Supplement - Mixed Motives

Under INA section 208, as amended by the REAL ID Act of 2005, the applicant must establish that religion, or any other protected ground, was or will be “at least one central reason for the persecution.”¹⁰⁹ In *Matter of J-B-N- & S-M-*,¹¹⁰ the Board found that amendments added by the REAL ID Act did not radically alter the BIA’s mixed motive analysis. This decision was modified by the Third Circuit in *Ndayshimiye v. Att’y Gen. of U.S.*,¹¹¹ which held that the BIA’s interpretation of the “one central reason” standard is in error only to the extent that it would require an asylum applicant to show that a protected ground for persecution was not “subordinate” to any unprotected motivation.

The REAL ID Act changes only apply to asylum applications filed on or after May 11, 2005. For applications filed prior to the REAL ID Act, the applicant bears the burden of establishing that “a reasonable person would fear that the danger arises on account of” a protected ground.¹¹² In *Maini v. INS*, for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.¹¹³

ASM Supplement – Use of DOS Annual Report

Although section 101(a)(3) of the REAL ID Act of 2005, codified at 8 U.S.C. §1158(b)(1)(B)(iii), states that credibility determinations may be based on the consistency of an applicant’s statements with DOS country reports, IRFA prohibits Adjudicators from making an adverse determination based solely on the fact that an applicant’s claims are not mentioned in the DOS annual report.

Section 601 of IRFA requires immigration judges, asylum officers, and refugee and

¹⁰⁹ INA § 208(b)(1)(B)(i). For additional information, see also RAIO Training module, *Nexus the Five Protected Grounds*.

¹¹⁰ *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

¹¹¹ *Ndayshimiye v. Att’y Gen. of U.S.*, 557 F.3d 124 (3d Cir. 2009).

¹¹² *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996).

¹¹³ *Maini v. INS*, 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

consular officers to use the US Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution. Asylum Officers are required to cite the Department of State's Annual Report On Religious Freedom and other reliable country of origin information during the adjudication of an affirmative asylum claim.

Supplement C

International Operations Division International Religious Freedom Act (IRFA) and Religious Persecution

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

<p style="text-align: center;"><u>IO Supplement</u></p> <p style="text-align: center;">Module Section Subheading</p>
--

4 SiMPLe Components of the Legal Definition of Persecution

Seriousness

Why does this component matter?

Harm must be sufficiently serious to rise to the level of persecution - not mere harassment or discrimination.

☐ Yes ☐ No

What was the harm?

Cumulatively and taking into consideration the applicant's individual circumstances, was the harm suffered serious enough to rise to the level of persecution?

Why does this

The actor carrying out the least in part, by the

imputed) of a protected characteristic.

Why was the applicant harmed? (provide evidence)

Why does this component matter?

The actor carrying out the harm must be a government

Who hurt the applicant?

Motivation

component matter?

harm must be motivated, at applicant's possession (actual or

Ask yourself:

Is there evidence the harm was motivated by the applicant's actual or imputed race, religion, nationality, political opinion or membership in a particular social group?

☐ Yes ☐ No

Persecutor

actor or a person or group the government is unwilling or unable to control.

Ask yourself:

Was the actor carrying out the harm a government actor?

☐ Yes ☐ No

If no, was it someone the
government was unwilling or
unable to control? (evidence
needed)

☐ Yes ☐ No

Location

Why does this component matter?

The harm must have happened in the applicant's country
of nationality.

In what country did the applicant suffer the harm?

Ask yourself:

Did the harm happen in the
applicant's country of
nationality?

☐ Yes ☐ No

Put it all together – **Do you have four YES boxes checked?** If yes, you've SIMPLY established
persecution.

Student Name: Click here to enter text.

RAIO CT Reading Case Law Exercise (Please note, this is a simplified format, not following the usual IRAC format of a law school brief that is described in your reading.)	
The facts of the case: Within the decision the court will describe the relevant facts upon which they based their decision. Do not simply copy and paste the facts found in the decision, but summarize them in your own words.	
The sources of authority: Please list any statutes, regulations, or foreign law that the decision maker relied upon in reaching their decision. Also list the major cases that were relied upon.	
The decision: How did the court resolve the controversy at issue -- what did the court rule?	
The reasoning behind the decision: What explanation did the court give for their decision that would apply to future cases?	

RAIO DT Interview Observation Form			
Your name:	Click here to enter text.		
Date of Interview:	Click here to enter a date.	Interview Office:	Choose an item.
Applicant's Country of Nationality:	Click here to enter text.	Applicant's Date of Entry into the US:	Click here to enter text.
State the basis of the claim: <i>(The statement should include what type of harm the applicant fears, who the alleged agent of harm is, and what nexus is involved)</i>			
Click here to enter text.			
Give a short summary of the relevant facts that were elicited during the interview: <i>(the summary should include all the facts that were elicited that are material to the applicant's claim, so they should be facts that are relevant to one or more of the elements of the refugee definition at INA 101(a)(42) – the summary does not have to be in narrative form, just a list of the facts that were elicited during the interview that you think are material to the claim.)</i>			
Click here to enter text.			
Additional Comments or Feedback on the Interview Experience (if you have any):			
Click here to enter text.			



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

DETECTING POSSIBLE VICTIMS OF TRAFFICKING

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course*

DETECTING POSSIBLE VICTIMS OF TRAFFICKING

Training Module

MODULE DESCRIPTION:

This module provides guidelines for adjudicating requests for benefits by victims of trafficking. Issues addressed include indicators that may demonstrate an individual is a victim of trafficking, specific assistance and benefits available to victims of trafficking as well as guidelines for sensitive interview techniques.

TERMINAL PERFORMANCE OBJECTIVE(S)

You will be able to assess whether an interviewee is a victim of trafficking and articulate whether the trafficking-related experience relates to the benefit being sought, and where appropriate, provide trafficking-specific information and/or assistance to the interviewee.

ENABLING PERFORMANCE OBJECTIVES

1. Define the components of human trafficking.
2. Distinguish between human trafficking and human smuggling.
3. Discuss factors that may indicate that an interviewee has been or is currently a victim of human trafficking.
4. Summarize the rights and forms of immigration relief that may be available to a trafficking victim.
5. Identify factors that may inhibit a victim's ability to fully present his or her claim for protection.
6. Analyze substantive issues related to the past persecution and well – founded fear of persecution specific to victims of trafficking.
7. Describe possible issues affecting benefit eligibility for trafficking victims and traffickers.

INSTRUCTIONAL METHODS

- Interactive Presentation
- Practical Exercises

METHOD(S) OF EVALUATION

Written exam
Practical exercise exam

REQUIRED READING

- 1.
- 2.

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

- 1.
- 2.

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR12	Knowledge of policies and procedures for processing claims from victims of trafficking (3)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK5	Knowledge of strategies and techniques for communicating with survivors of torture and other severe trauma (4)
RI6	Skill in identifying information trends and patterns (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
IR2	Skill in interacting with individuals who have suffered trauma (e.g., considerate, non-confrontational, empathetic) (4)
IR5	Skill in persuading others and gaining cooperation (4)
IR7	Skill in collaborating and coordinating with external stakeholders (4)
SCM1	Skill in maintaining professional demeanor in stressful situations (e.g., potentially dangerous encounters, emergency situations, threats to personal safety) (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/12	Entire Lesson Plan	Lesson Plan published	RAIO Training
6/16/14	3.4.3 Human Trafficking Distinguished from Smuggling	Changed "illegal alien" to "undocumented alien" and added three hyperlinks to the footnote on page 24	LG
6/5/15	Asylum supplement	Removed outdated sample assessment	RAIO Training
11/27/15	Throughout document; section 2.2.2, TVPA/TVPRA, section 3.5.2, T visa, section 3.5.3, U visas, ASM supplement	Corrected links; updated references to TIP report for 2015; added references to confidentiality protections for T/U visa applicants and changes from 2013 VAWA/TVPRA reauthorization; updated AAPM language in ASM supplement	RAIO Training

Table of Contents

1	INTRODUCTION & OVERVIEW.....	9
2	INTERNATIONAL AND DOMESTIC LAWS & GUIDELINES REGARDING TRAFFICKING	10
2.1	International Agreements & Conventions.....	11
2.2	United States Laws Related to Human Trafficking	11
2.2.1	Thirteenth Amendment & Related Criminal Federal Statutes.....	12
2.2.2	Trafficking Victims Protection Act (TVPA) and Trafficking Victims Protection Re-authorization Act (TVPRA).....	12
2.2.3	Mandate for federal immigration officials.....	12
3	SEVERE FORMS OF TRAFFICKING IN PERSONS.....	13
3.1	Definition	13
3.2	Components.....	14
3.2.1	Act/Mobilization.....	15
3.2.2	Means.....	15
3.2.3	Purpose	16
3.3	Common Forms of Human Trafficking	16
3.3.1	Sex Trafficking	17
3.3.2	Labor Trafficking	17
3.3.3	Child Trafficking	20
3.3.4	“Re-Trafficking”.....	22
3.4	Differentiating Human Trafficking from Other Crimes.....	22
3.4.1	Trafficking Victim Liability for Criminal Activities.....	22
3.4.2	Fraudulent Intercountry Adoption Does Not Constitute Human Trafficking	23
3.4.3	Human Trafficking Distinguished from Smuggling.....	24
3.5	Rights and Immigration Relief for Victims of Human Trafficking	26
3.5.1	Continued Presence (CP).....	26
3.5.2	T Visa	27
3.5.3	U Visa	28
3.5.4	Refugee/Asylum/Withholding of Removal/Credible Fear	29
4	ENCOUNTERING VICTIMS OF HUMAN TRAFFICKING	30
4.1	“What Does a Human Trafficking Victim Look Like?”	30
4.2	Detecting Indicators of Human Trafficking	31

4.2.1 Pre-Adjudication File Review	31
4.2.2 Screening for Potential Victims of Trafficking: Suggested Lines of Inquiry.....	32
4.2.3 Other Indicators of Trafficking.....	33
4.2.4 Interviewing Where the Victim is Accompanied by a Third Party	33
4.3 Other Adjudication Considerations.....	34
4.4 Issues Affecting Benefit Eligibility for Trafficking Victims and Traffickers.....	34
4.4.1 Trafficking Victim.....	34
4.4.2 Trafficker.....	35
4.4.3 Additional Resources.....	35
PRACTICAL EXERCISES.....	36
OTHER MATERIALS	37
SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....	55
Required Reading	55
Additional Resources.....	55
Supplements.....	55
SUPPLEMENT B – ASYLUM DIVISION.....	56
Required Reading	56
Additional Resources.....	56
Supplements.....	56
SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....	65
Required Reading	65
Additional Resources.....	65
Supplements.....	65

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION & OVERVIEW

"This year's Report places a special emphasis on human trafficking in the global marketplace. It highlights the hidden risks that workers may encounter when seeking employment and the steps that governments and businesses can take to prevent trafficking, including a demand for transparency in global supply chains.

The bottom line is that this is no time for complacency. Right now, across the globe, victims of human trafficking are daring to imagine the possibility of escape, the chance for a life without fear, and the opportunity to earn a living wage."

John F. Kerry, U.S. Secretary of State¹

As an officer in the RAIO Directorate, you may come in contact with interviewees who are victims of human trafficking and individuals who have engaged in the trafficking of human beings. It is crucial that you understand the relevant laws and regulations related to the trafficking of human beings, as well as the procedures for interviewing and adjudicating benefits for both trafficking victims and perpetrators.

Although sometimes incorrectly used interchangeably, the terms "trafficking" and "smuggling" are actually two distinct crimes governed by different bodies of law. While a great deal of international law has been developed regarding trafficking, smuggling continues to remain primarily under domestic jurisdiction, making it easily adaptable to different criminal justice capacities in countries of origin, transit and destination.

¹ U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

TRAFFICKING VS. SMUGGLING—THE PRIMARY DIFFERENCES²

The distinctions between smuggling and trafficking are often very subtle and at times the two crimes overlap. A situation that begins as migrant smuggling may develop into a situation of human trafficking. There are four primary differences between trafficking and smuggling:

1. Consent – migrant smuggling, while often undertaken in dangerous or degrading conditions, involves consent. Trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers.
2. Exploitation – migrant smuggling ends with the migrant's arrival at his or her destination, whereas trafficking involves the ongoing exploitation of the victim.
3. Transnationality – smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another state or moved within a state's borders.
4. Source of profits – in smuggling cases profits are derived from the transportation or facilitation of the illegal entry or stay of a person into another country, while in trafficking cases profits are derived from exploitation.

This module focuses on trafficking and:

- Provides a general overview of international and U.S. human trafficking legislation and policy.
- Discusses the elements of a human trafficking crime, trends in trafficking, and rights and benefits accorded to identified victims in the United States.
- Describes how you may encounter a potential victim or perpetrator of trafficking during the course of your work and how it may impact the outcome of the final adjudication.

2 INTERNATIONAL AND DOMESTIC LAWS & GUIDELINES REGARDING TRAFFICKING

² *Migrant Smuggling FAQs*, United Nations Office on Drugs and Crime, located at <http://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html>

Concern about human trafficking, both internationally and domestically, has led to the development of a globally coordinated response aimed at combating the practice. One of the first international treaties to address trafficking was the *International Agreement for the Suppression of the White Slave Traffic* signed in 1904. As the first comprehensive international agreement on the subject, the agreement contained several key provisions reflected in current legislation, including:

- identifying trafficking victims at ports of entry and transportation stations
- collecting information from trafficked women
- providing protection and care of indigent victims pending repatriation³

2.1 International Agreements & Conventions

Since the enactment and implementation of the International Agreement for the Suppression of White Slave Traffic in 1904, countries throughout the world have entered into and adopted various treaties and agreements, as well as developed and implemented new policies and legislation related to human trafficking. The most significant agreement to which the United States is a party is the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children—also known as the Palermo Protocol.

United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)

The establishment of the Palermo Protocol in 2000 brought the issue of trafficking to the forefront of governmental discourse and global consciousness. Calling for a comprehensive international approach to the issue of trafficking in countries of origin, transit, and destination, the Palermo Protocol utilized the “three P” strategy to combat trafficking (prevention, protection, prosecution).⁴ The United States subsequently used this approach as the foundation of federal trafficking legislation including the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).

To date, there are 133 parties to the Palermo Protocol, of which 117, including the United States, are signatories. Additional policies and legislation related to trafficking are discussed in further detail below.

2.2 United States Laws Related to Human Trafficking

³ International Agreement for the Suppression of the White Slave Traffic (1904), May 18, 1904, reprinted at <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1904.html>.

⁴ United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49 at 60, U.N. Doc A/45/49 (Vol. I)(2001), entered into force Dec. 5, 2003 [Palermo Protocol], preamble, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

2.2.1 Thirteenth Amendment & Related Criminal Federal Statutes

Domestic trafficking statutes in the United States are rooted in the prohibition of slavery and involuntary servitude as guaranteed by the Thirteenth Amendment, which states in pertinent part that:

Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Title 18 of the U.S. Code (U.S.C.) houses the specific criminal statutes related to trafficking.

2.2.2 Trafficking Victims Protection Act (TVPA) and Trafficking Victims Protection Re-authorization Act (TVPRA)

On October 28, 2000, Congress enacted The Trafficking Victims Protection Act (TVPA), affording certain rights and protections to victims of severe forms of trafficking, including:

- Protection and assistance to trafficking victims;
- Punishment of traffickers; and
- Prevention of trafficking domestically and internationally.

In 2003, 2005, 2008, and 2013 Congress re-authorized the TVPA. Since its re-authorization, the TVPA is now referred to as the Trafficking Victims Protection Re-Authorization Act (TVPRA).

2.2.3 Mandate for federal immigration officials

The TVPA (2000) and its subsequent re-authorizations and accompanying regulations specifically outline a mandate for federal immigration officials as part of the U.S. Government-led anti-trafficking efforts and more clearly define our legal responsibilities. For example, the 2008 TVPRA significantly impacted asylum field policy and procedures when the Asylum Division was accorded initial jurisdiction on unaccompanied minor cases, a particularly vulnerable demographic within the U.S. immigrant population.⁵

In July 2010, the Department of Homeland Security (DHS) launched the Blue Campaign – a first-of-its-kind campaign to coordinate and enhance the Department’s anti-human trafficking efforts. The Blue Campaign harnesses and leverages the varied authorities and resources of DHS to deter human trafficking by increasing awareness, protecting victims, and contributing to a robust criminal justice response. The campaign is led by an innovative cross-component steering committee, chaired by the Senior Counselor to the

⁵ For additional information, please refer to RAIO module, *Children’s Claims*.

Secretary of Homeland Security, and comprised of representatives from **seventeen** operational and support components from across DHS. The Blue Campaign **mandates** that all USCIS and other DHS personnel receive training on human trafficking issues.

As an officer within the RAIO Directorate, you are responsible for identifying potential victims of trafficking and reporting your findings so that data on such individuals can be tracked. If you are working domestically, your responsibilities may, where appropriate, include providing victims of trafficking with mandated informational materials about the benefits which may be accorded to them as potential victims, and making referrals to the closest law enforcement official charged with investigating and prosecuting trafficking-related crimes within your jurisdiction.

3 SEVERE FORMS OF TRAFFICKING IN PERSONS

In order for a victim of trafficking to qualify for trafficking-related immigration relief and other benefits, services, and protections in the United States, she or he must meet the definition under the TVPRA of an individual who has been a victim of a “severe form of trafficking in persons.” The term “severe form of trafficking” implies a legal determination that you, as an officer, are not responsible for making. Rather, as an officer you are responsible for familiarizing yourself with the definition of trafficking to the extent that it will assist you in recognizing when an interviewee may be involved in a trafficking-related situation so you can take appropriate next steps to protect that individual and/or ensure the interviewee receives a fair adjudication.

In addition to this definition, the T visa (trafficking-related immigration relief which is discussed below) has additional eligibility requirements. As an officer within RAIO, you will not need to analyze whether an interviewee meets the criteria for a T visa when you are assessing whether an interviewee is a potential victim of trafficking for RAIO adjudication or protection purposes.

3.1 Definition

Under the TVPRA, the following are listed as severe forms of trafficking in persons:

- **Sex trafficking**, which is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,” in which the commercial sex act is induced by
 - force, fraud, or coercion, or
 - in which the person induced to perform such act has not attained 18 years of age

or

- **Labor trafficking**, which is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through

- the use of force, fraud, or coercion
- for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

A simple way to define human trafficking is all of the activities involved in obtaining or maintaining a person in forced labor or sex service.

Three categories of trafficking victims emerge from this legal definition. They include:

- Minors (under 18) induced into commercial sex
- Individuals age 18 or over involved in commercial sex via force, fraud or coercion
- Children and adults forced to perform labor or other services in conditions of involuntary servitude, peonage, etc. by force, fraud or coercion

This definition applies to any individual who is subjected to trafficking, whether she or he is a foreign national or U.S. citizen.

No Movement Necessary

Despite popular misconception to the contrary, the movement or transportation of an individual is not a required element of the crime of “trafficking.”

Trafficking is a process comprised of many actions that may occur over a long period of time. During the course of your work with USCIS, you may encounter foreign national interviewees who were trafficked via a range of diverse methods, and who come before you at different points in the spectrum of exploitation. These individuals may have been trafficked in the past, be in a situation of ongoing trafficking/exploitation in the United States or in the third-country where she or he is:

- being interviewed for resettlement
- at-risk for trafficking in the United States or a third country, and/or
- at-risk for being trafficked upon return to his or her home country

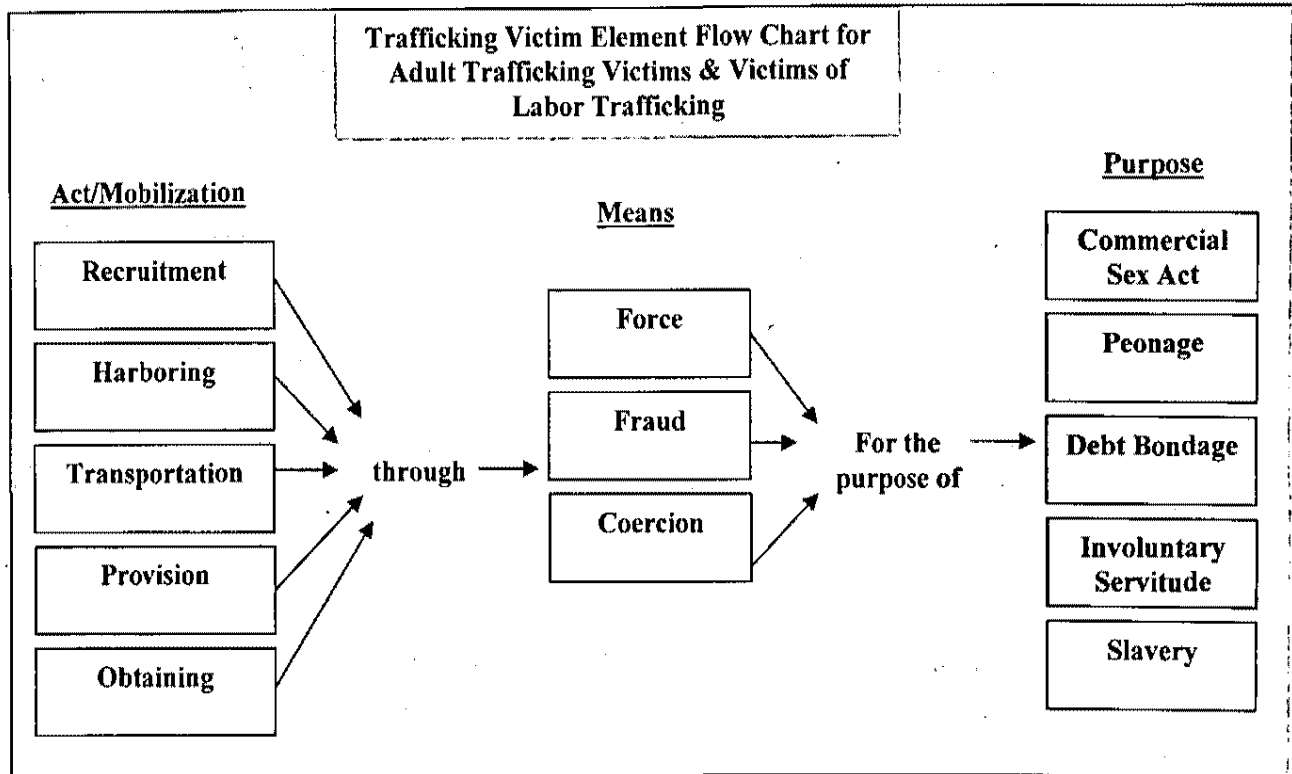
3.2 Components⁶

In order to better understand what constitutes a trafficking crime and how to recognize whether an interviewee is involved in a trafficking-related situation, it is helpful to look at the component parts of the definition individually. The chart below provides a visual

⁶ The framework used in the following sections is derived from International Organization for Migration (IOM) Counter-Trafficking Training Modules.

framework for you to understand the process of human trafficking. The three components include:

- Act/Mobilization
- Means
- Purpose



3.2.1 Act/Mobilization

What act initiated the trafficking process? Was the person recruited, transported, transferred, harbored, or received? Certain acts by the victim or the perpetrator in the initial stages of the human trafficking process may not be self-evident as trafficking acts. Further, the trafficking victim may initially appear to be complicit in the arrangement. An example of this would be if someone responded to an employment advertisement posted by a local employment agency advertising positions abroad (“recruitment”) or voluntarily contracted a smuggler to arrange travel to the United States (“transport”).

It is important to remember that an individual is not excluded from consideration as a victim of trafficking if she or he was initially complicit in their own mobilization into trafficking.

3.2.2 Means

What techniques such as force, fraud, or coercion (including non-physical inducements) were employed by the third party in order to induce the individual into trafficking?

Some examples of means of force, fraud, or coercion that traffickers may use to control the victim include but are not limited to: debt bondage from a smuggling agreement; confiscation of passports or other identity documents; use of or threat of violence toward the individual and/or his or her family; the threat of shaming the individual; threats of imprisonment or deportation; control of a victim's money; psychological manipulation; and/or isolation from the public and/or the individual's family.

Collusion, a commonly used method of control, is used where the victim may initially have been complicit in an illegal act but then was subjected to trafficking against his or her will, through force, fraud, or coercion. In these situations, the victim may feel responsible for his or her own situation and believe that she or he will be punished for illegal acts in which she or he participated, resulting in a feeling of hopelessness and a reluctance to break free from the trafficking situation.

Under U.S. law, minors cannot consent to providing commercial sex services. Accordingly, in cases where a victim of sex trafficking was under 18 years of age at the time of the crime, the means through which she or he became a victim need not be analyzed. As long as a third party induced the minor's involvement in the exploitation, a determination of the particular means utilized by a third party to traffic the minor is not required.

3.2.3 Purpose

What was the end result? Was the individual exploited or was there intent to exploit? If the individual was exploited, was it through sexual exploitation, forced labor, debt bondage, slavery, or another form of qualifying activity?

As the examples that follow demonstrate, a person may be a trafficking victim "regardless of whether they were born into a state of servitude, were exploited in their hometown, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being subjected to trafficking."⁷

3.3 Common Forms of Human Trafficking⁸

In order to fully understand the conditions facing a victim of trafficking, you must bear in mind the full range of potential activities that could constitute trafficking. In the U.S. asylum context, interviewees have disclosed a range of trafficking-related experiences, including forced prostitution, domestic servitude, and child sexual exploitation.

⁷ U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

⁸ Derived from U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

Trafficking: Not Just a Sex Crime

Although trafficking is most often associated with the sex trade, RAIO officers should keep in mind that trafficking includes various forms of labor and/or services.

3.3.1 Sex Trafficking

Activities that may constitute sex trafficking:

- pornography: If the individual is induced by force, fraud or coercion to perform the commercial sex act for the purpose of producing the pornography
- sex tourism: An individual who engages in illicit sexual conduct in foreign places⁹
- prostitution: If the individual is induced by force, fraud or coercion to perform commercial sex acts
- military prostitution: Under U.S. law, it is illegal for anyone to engage in, aid or abet, or procure or solicit prostitution in the vicinity of a military or naval camp. In some instances, individuals may be brought to military camps to engage in sex acts against their will¹⁰

Participation in these activities does not necessarily mean an individual is a victim of trafficking. When the victim is over 18, a third party must be employing fraud, force or coercive techniques to compel a person into sexual services in order for the person to be a victim of trafficking.

3.3.2 Labor Trafficking

Activities that may constitute labor trafficking:

- forced labor
- peonage/bonded labor/debt bondage
- involuntary domestic servitude

Labor trafficking may involve sexual violence being inflicted on the victim but the end result in these forms of exploitation is the labor service.

⁹ 18 U.S.C. § 2423.

¹⁰ 18 U.S.C. § 1384.

Sheldon — From Seasonal Worker to Bonded Laborer¹¹

A recruiter in Jamaica promised Sheldon a visa through the U.S. federal H-2B seasonal worker program. The processing fee was hefty, but the prospect of working in America seemed worth it. Sheldon arrived in Kansas City eager to work, but ended up at the mercy of human traffickers. Along with other workers from Jamaica, the Dominican Republic, and the Philippines, Sheldon cleaned rooms at some of the best-known hotels in Kansas City. The traffickers kept Sheldon in debt, constantly charging him fees for uniforms, transportation, and rent in overcrowded apartments. Often, his paychecks would show negative earnings. When Sheldon refused to work, the traffickers threatened to cancel his immigration status, making him illegal. In May 2009, a federal grand jury indicted the leaders of this trafficking ring, including eight nationals of Uzbekistan, on charges related to forced labor in 14 states.

Forced labor or involuntary servitude

Involuntary servitude is defined as:

[a] condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.¹²

In other words, forced labor or involuntary servitude is labor provided against an individual's will. She or he may be obligated to work long hours, under inhumane conditions with little or no pay. The entity exacting the forced labor may use methods such as physical force or the threat of physical force, death threats against the victim or the victim's family, threats to denounce the victim to the police or immigration or another entity that may have authority over the victim (e.g., village elders or parents who have sold the victim), debt repayment obligation (the victim's, the victim's family or ancestors), or other financial obligation scheme.¹³

Because immigrants may be undocumented and may be unfamiliar with the language, culture, authorities, rights and protections afforded to them in a new country, they are particularly vulnerable to these forms of coercion.

Peonage (Bonded labor, Debt bondage)

¹¹ Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

¹² 8 C.F.R. § 21.11 (a).

¹³ International Labor Organization, "The Cost of Coercion," *supra*.

“A status or condition of involuntary servitude based on real or alleged indebtedness.”¹⁴

Peonage is when a bond or debt is used to force or coerce an individual to remain in involuntary servitude. Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment.

In the refugee and asylum context, interviewees often assume the initial cost of employment or cost of passage/entry into the third country. Then, upon arrival, once the individuals are isolated and/or restricted in their ability to control their own circumstances, the traffickers may exacerbate the existing debt by charging exorbitant prices for food, clothing, or other basic life or work-related necessities.

You may also see debt bondage amongst legal, documented immigrants. As many foreign nationals enter the country as temporary guest workers (migrant agricultural workers, domestic servants, teachers, nurses, etc.), they are required to remain with their employers as a condition of their legal status. This has the potential to engender a situation where peonage may be easily created or maintained.

Interviewees may also have a fear of harm based on a debt they absconded from in their home countries. For example, in South Asia, in particular, it is estimated that there are millions of victims working to pay off their ancestors' debts.¹⁵

Involuntary Domestic Servitude

Amita — From Domestic Service to Slavery¹⁶

Amita came to London from the Middle East as a domestic servant for a family that treated her well and paid her decently. When her employer moved into a high-level job that provided house staff, the family no longer needed Amita. They helped her find work with another family. Amita's new employers took her passport as soon as she arrived and made her sleep on the floor in the living room to prevent her from stealing things and hiding them in her room. They did not pay her or allow her out of the house, and they threatened to report her to the police as an illegal if she tried to run away. Amita worked in the family's house from 6a.m. to 8p.m. After that, she was taken to clean various office buildings until midnight or early morning. One night, the employer's son and his friends were in the house and attempted to rape Amita. After that she decided to run away and managed to escape with the help of a security guard.

¹⁴ 8 CFR § 214.11 (a)

¹⁵ U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015

¹⁶ Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

Domestic workers are vulnerable to exploitative conditions because of the nature of their informal work environment. The victim may work as a household servant or as a caretaker of children and live in the employer's house or in adjoining living quarters.

Victims of such exploitation may voluntarily enter into employer/employee arrangements but their situations may evolve over time, or upon arrival in their new country. They may be forced to remain in situations where they become victims of trafficking through force, coercion and sexual exploitation.

Domestic servants may be subjected to verbal abuse, untreated illnesses, deprivation of food, long hours, and, especially in the case of women and girls, sexual abuse and exploitation.¹⁷ As the exploitation occurs in a private residence and the domestic worker is often secluded from outside observation, this type of trafficking would not easily come to the attention of police or other governmental authorities.

3.3.3 Child Trafficking

The age and gender of the trafficking victim are often closely related to the type of trafficking to which they are subjected. Male children are often trafficked to be exploited in forced labor, and illicit activity such as petty crimes and drug trafficking, whereas girls tend to be subjected to sexual exploitation and as forced domestic servants.¹⁸

A child may become involved in trafficking through any of the following means: the child may have been kidnapped; taken from the street (where the child is homeless); legally or illegally adopted; bought from the parents or caretakers; or been given to the traffickers by the parents or caretakers in order to obtain employment.¹⁹ The victims of such trafficking include the child trafficked, the parents or caretakers (where the child was taken or where false pretenses were used), and even the community from which the child was taken if the traffickers were perceived as legitimate job brokers.²⁰

Vipul — A Childhood Lost²¹

Vipul was born into extreme poverty in a village in Bihar, the poorest state in India. His mother was desperate to keep him and his five brothers from starving, so she accepted \$15 as an advance from a local trafficker, who promised more money once 9-year-old Vipul started working many miles away in a carpet factory. The

¹⁷ U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

¹⁸ *Id.*

¹⁹ It is important to note that a fraudulent intercountry adoption would only constitute trafficking if it resulted in the child becoming a victim of sex trafficking or labor trafficking.

²⁰ U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

²¹ Example derived from the Derived from the U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010.

loom owner treated Vipul like any other low-value industrial tool. He forced Vipul and other slaves to work for 19 hours a day, never allowed them to leave the loom, and beat them savagely when they made a mistake in the intricate designs of the rugs, which were sold in Western markets. The work itself tore into Vipul's small hands, and when he cried in pain, the owner stuck Vipul's finger in boiling oil to cauterize the wound and then told him to keep working. After five years, local police, with the help of NGO activists, freed Vipul and nine other emaciated boys.

Types of exploitation²² to which children in particular might be subjected include the following:

- Labor Exploitation – examples include farming, fishing, domestic servitude, mining, market or street vending, begging, camel jockeying, textile industry, restaurant/hotel work, and shop keeping.
- Sexual Exploitation/Child Sex Trafficking
 - Induced into performance of commercial sex acts.
- Military Conscription/Child Soldiers
 - Victims are often forcibly abducted or “recruited” by government forces, paramilitary organizations, or rebel groups.
 - Victims may be used as combatants, human shields, porters, cooks, guards, servants, messengers, or spies. Young girls may be subjected to forced marriage or forced to have sex with male combatants.
 - Child soldiers of either gender are often sexually abused and are at high risk of contracting sexually transmitted diseases.
- Forced marriage
 - Forced or coerced marriages are used by parents and families for a variety of reasons, such as:
 - to settle debt, receive compensation/dowry, create social ties among families, obtain residency permits, display status, provide inheritance, or to counteract promiscuity.
 - The existence of a forced marriage does not necessarily present a case of human trafficking. When you encounter a case where a minor is married or when an

²²U.S. Dep't of State, *Trafficking in Persons Report 2015*, July 2015.

individual testifies that she or he was married against their will, you should inquire into the terms of the marriage, if there was a bride price and whether conditions of exploitation coupled with one of the three means (force, fraud, or coercion) has been or is being employed. The common forms of exploitation seen in forced marriages may include slavery-like conditions in the form of domestic or sexual servitude.

- Delinquent behavior – carrying out criminal activities for others
 - This may arise in the context of homeless or street children and/or children who live in territories controlled by gangs who are compelled to provide services to local gangs, criminal entities or other third parties in order to survive.

3.3.4 “Re-Trafficking”

The term re-trafficking was coined to describe a situation in which a trafficked individual falls victim to further trafficking upon return to his or her home country. Individuals may be re-trafficked by the same trafficker that initially exploited them or another individual. In the refugee and asylum context, the issue of “re-trafficking” may arise in an interviewee’s discussion of their persecutor and fear of future harm if she or he returns to the home country.

Traffickers often target individuals from families, communities and/or countries which are suffering from socioeconomic and other forms of instability. The individual may have been homeless, sold by his or her family or kinship network, or come from a particularly disadvantaged or disfavored group. The government in the victims’ countries may also be unable or unwilling to protect these individuals from the traffickers for a range of reasons, including its own antagonism to a specific population, apathy, lack of resources, and/or general lawlessness and corruption of the security and political authorities in their country.

The same conditions that initially rendered individuals and their communities vulnerable to traffickers likely still exist. After the individual has been trafficked, she or he may suffer from physical and psychological trauma (including shame and humiliation) which left unaddressed could render her or him vulnerable to further manipulations and coercive tactics of the traffickers.

At the practical level, once a trafficker has victimized an individual, it is relatively easy for the trafficker to locate the victim again. The trafficker is likely to have knowledge of or access to the victim’s personal biographical information, his or her family, and even relationships with the authorities in the individual’s home locality and/or country.

3.4 Differentiating Human Trafficking from Other Crimes

3.4.1 Trafficking Victim Liability for Criminal Activities

Through the course of being trafficked, an individual may be induced to participate in activities which in and of themselves, constitute crimes under U.S. law. The TVPRA absolves trafficking victims of criminal liability for crimes resulting from their being trafficked.

Examples of this include the following: An individual trafficked in the United States for the purpose of sexual exploitation would not be held criminally liable for the sex acts she or he performed while she or he was trafficked. An individual who was transported into the United States and then exploited would not be criminally liable for his or her illegal entry and/or use of invalid documents.

An interviewee with a criminal record involving certain crimes could raise a red flag to you that she or he may be a victim of trafficking.

3.4.2 Fraudulent Intercountry Adoption Does Not Constitute Human Trafficking

“Over the past few years, the term ‘trafficking’ has often been used as informal shorthand to refer to any type of inappropriate movement of people across international borders.”²³ This is incorrect and often leads to certain fraudulent intercountry adoptions being mislabeled as child trafficking. In many African countries, including Ethiopia, Sierra Leone, Liberia, Madagascar, and Lesotho, fraudulent intercountry adoptions are officially referred to as trafficking.

However, under U.S. law there is a clear distinction between trafficking in persons and illicit intercountry adoption practices, including child-buying and fraud. Human trafficking is the exploitation of a person for the purposes of forced labor or commercial sex. (Please see Section 3 above for the complete definition of human trafficking.) Children undergoing intercountry adoption may be victims of bad actors engaged in criminal practices or other questionable procedures, but a fraudulent intercountry adoption would only constitute trafficking if the adoption was completed for the purposes of forced labor or commercial sex.

One type of illicit intercountry adoption practice that is most often confused with trafficking is “child-buying.”²⁴ Since trafficking and child-buying can both involve the giving/receiving of unlawful payments/benefits, many assume that child-buying for adoption is a form of human trafficking. However, that is not always the case. Whereas child-buying is an unacceptable, illegal practice that can occur in the context of an intercountry adoption, it does not necessarily constitute human trafficking under U.S. law. Cases where child-buying occurs during an intercountry adoption, but is not for the purposes of commercial sex or forced labor, would not meet the criteria for trafficking as

²³ Fraudulent Intercountry Adoption Does Not Constitute Trafficking in Persons, Department of State cable 11 STATE 64500 (Jun. 27, 2011)

²⁴ See 8 C.F.R. § 204.3(i) for non-Hague cases and §§ 204.304 and 204.309(b)(3) for Hague cases.

defined by TVPRA, and under U.S. law would solely be classified as illicit adoption practices.

Trafficking v. Child-buying

If prospective adoptive parents adopt and emigrate a child to the United States using the correct immigration process, there would be no element of child trafficking unless the adoption was for the purpose of forced sex or labor. This is true even if there were concerns of fraud and/or child-buying in connection with the adoption.

For example, if a businessman from Costa Rica paid money to obtain custody of a local villager's daughter, then formally adopted her and moved the child to El Salvador to work in a factory, this may constitute trafficking. Alternatively, if a person connected to an orphanage paid a birth mother in Vietnam to release her child and that child was in turn adopted by a U.S. family, this may meet the definition of child-buying but would not in itself constitute trafficking.

3.4.3 Human Trafficking Distinguished from Smuggling

The terms human trafficking and human smuggling are often used interchangeably when they are, in fact, distinct crimes. Under U.S. law, the crime of smuggling is generally defined as: "the importation of people into the United States involving deliberate evasion of immigration laws." This offense includes bringing undocumented aliens into the United States illegally, as well as the unlawful transportation and harboring of aliens already in the United States. The end result of a smuggling agreement is that the individual arrives in the destination country, and after having paid the smuggler the previously-agreed upon fee, the relationship between the two parties ends. Individuals who have been smuggled may have experienced or witnessed violence, including murder, kidnapping, rape and other crimes, but the presence of these aggravating factors alone does not constitute human trafficking.²⁵

U.S. v. Jimenez-Calderon et al.—Smuggled Into Trafficking

Between October 2000 and February 2002, Antonia Jimenez-Calderon, Librada Jimenez-Calderon, and their brothers conspired to recruit underage girls from Mexico to perform acts of prostitution in the United States. The brothers would target young girls from poverty-stricken areas in Mexico, and lure them away from their families and communities with false promises of love, marriage, and a better

²⁵ INA § 274; ICE Office of Investigations Memo "Definitions of 'Human Smuggling' and 'Human Trafficking'", dated December 13, 2004.

life. Once smuggled into the United States the girls were held captive and forced into prostitution in a brothel in New Jersey.²⁶

Human trafficking involves an act of compelling or coercing an individual to perform labor services or commercial sex acts. These two crimes are often mistaken for one another. As discussed above (3.2.1 Acts/Mobilization), under the TVPA definition of trafficking, one of many methods a trafficker may use to mobilize an individual to be trafficked is to transport him or her. A trafficker may “smuggle” an individual into another country against his or her will in order to exploit him or her upon arrival, or the trafficker may misrepresent him or herself as a smuggler and then change the terms of the agreement once the individual arrives in the destination country. However, the act of smuggling an individual and/or being smuggled has no direct relationship to the crime of trafficking itself.

Complicity is not Always a Crime

An individual’s willingness to be smuggled into another country does not minimize the victimization he or she may experience at the hands of a trafficker.

The chart below highlights the factors that distinguish the crime of smuggling from human trafficking.²⁷

	Smuggling	Trafficking
Purpose	Obtain illegal entry into the United States	Recruiting, transporting, harboring or receiving persons by force or coercion for the purpose of exploitation
Consent	Consented to be smuggled	May or may not have consented, or initial consent rendered meaningless by coercive or abusive actions

²⁶ U.S. v. Jimenez-Caleron, Criminal Section Selected Case Summaries, U.S. Department of Justice, located at <http://www.justice.gov/crt/about/crm/selcases.php#humantrafficking>.

²⁷ INA § 274; ICE Office of Investigations Memo “Definitions of ‘Human Smuggling’ and ‘Human Trafficking’”, dated December 13, 2004.

		of the traffickers
Result	Ends with arrival into the United States	Involves ongoing exploitation

3.5 Rights and Immigration Relief for Victims of Human Trafficking

With each re-authorization of the TVPRA, the U.S. Government response to trafficking has become more comprehensive, as has its ability to extend protection to victims and to more aggressively investigate and prosecute these crimes.

Victims of trafficking who are present in the United States, especially undocumented foreign nationals, will likely not be aware that the crimes being committed against them are punishable under U.S. law, and that they have rights and could be eligible for benefits in the United States because of the crimes committed against them. Human traffickers also often use the threat of reporting the victim to immigration authorities as a way of keeping the victim under their control.

In order to provide protection to those who are undocumented and to enable these individuals to participate in law enforcement investigations, immigration law provides specific forms of relief from removal for such victims of severe forms of trafficking and benefits from the U.S. Department of Health and Human Services, similar to the benefits granted to refugees. Trafficking victims may also qualify for other forms of relief available to all qualifying aliens under immigration law, such as asylum or withholding of removal.

During the course of your work, you may encounter interviewees who have received or have pending applications for trafficking-related immigration benefits. It is important for you to understand the significance of these documents only so far as it furthers your understanding of the interviewee's claim during their adjudication.

The forms of immigration relief available to victims of severe forms of human trafficking include:

- Continued Presence
- T Visa
- U Visa
- Asylum/Withholding of Removal

3.5.1 Continued Presence (CP)

CP is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. In order to qualify, the individual must be an identified victim of trafficking who is a potential witness in the investigation or prosecution of the trafficker.

This status allows such victims to remain in the United States temporarily during the ongoing investigation into the human trafficking-related crimes of which they were victims. CP is initially granted for one year and may be renewed in one-year increments. It provides victims a legal means to temporarily live and work in the United States for the duration of the investigation of the trafficking case and/or the adjudication of another form of immigration relief.²⁸

Only federal law enforcement officials are authorized to apply for CP on a victim's behalf and applications are submitted to ICE HQ for consideration. If granted, the victim becomes eligible for a work permit and U.S. Department of Health and Human Services benefits.²⁹

3.5.2 T Visa

The T visa provides a victim of trafficking with four years of legal status in the United States, which can be extended, and the possibility of becoming a Lawful Permanent Resident (LPR). T visa recipients receive work authorization, and may also request advance parole and may seek derivative status for their relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18).³⁰ A trafficked person may meet the requirements for T visa eligibility if he or she:

- is or was a victim of trafficking, as defined by law
- is in the United States or its territories, or at a port of entry due to trafficking
- complies with any reasonable request from law enforcement for assistance in the investigation or prosecution of the human trafficker
- demonstrates that he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States
- is admissible to the United States or, if inadmissible, qualifies for a waiver

An application for a T Visa is completed on a Form I-914, Application for T Nonimmigrant Status. Click on the link below for more detailed information about eligibility requirements for T visas.

- T Visa Eligibility Requirements

²⁸ 22 U.S.C. § 7105(c)(3)

²⁹ ICE Information Pamphlet, "Continued Presence: Temporary Immigration Status for Victims of Trafficking," <http://www.dhs.gov/xlibrary/assets/ht-uscis-continued-presence.pdf>.

³⁰ INA § 1101(a)(15)(T)(ii)

The requirements for a T visa, specifically the need to be physically in the United States on account of said trafficking, should not be confused with the definition of a trafficking victim. If you come across a file which contains a T visa application, you should only use the information it contains to elicit more nuanced testimony that substantiates or discredits the interviewee's claim to the extent it is relevant to your adjudication. DHS employees are prohibited by statute from disclosing information related to T visa applicants to anyone outside the Department.³¹

3.5.3 U Visa

The U visa provides immigration status to victims of twenty-eight specified serious crimes including trafficking, domestic violence, involuntary servitude, and kidnapping.³² The U visa affords similar benefits as the T visa, including four years legal status, with the possibility of extension, LPR status after three years if the alien qualifies, work authorization, and advance parole. The individual may also seek derivative status for his or her relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18). Eligibility for a U visa requires that an individual:

- is or was the victim of qualifying criminal activity
- is or has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity
- has information about the criminal activity
- is, was, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime
- was involved in a crime that occurred in the United States or violated U.S. laws
- is admissible, or if inadmissible, able to qualify for a waiver

An application for a U-Visa is completed on a [Form I-918, Petition for U Nonimmigrant Status](#). Click on the link for below for more detailed information about U-visas.

- [U Visa Eligibility Requirements](#)

As with the T visa, if you come across a file which contains a U visa application, you should only use the information it contains to elicit more nuanced testimony to the extent that it substantiates or discredits the interviewee's claim and is relevant to your adjudication. Also as with T visa applicants, DHS employees are prohibited by statute

³¹ 8 U.S.C. § 1367(a)(2).

³² INA § 1101(a)(15)(U)(iii)

from disclosing information related to U visa applicants to anyone outside the Department.³³

The fact that an individual's legal advocate made the strategic and discretionary decision to apply for a U visa on an individual's behalf in lieu of a T visa is in no way determinative as to whether an individual is a victim of trafficking.

Two Visas for Trafficking?

The "T" nonimmigrant status, also known as the "T" visa, was created to provide immigration protection to victims of a severe form of human trafficking. The "U" nonimmigrant status, or "U" visa, is designated for victims of certain crimes who have suffered mental or physical abuse because of the crime and who are willing to assist law enforcement and government officials in the investigation of the criminal activity.

Congress created the "T" and "U" nonimmigrant classifications with passage of the TVPA in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while, at the same time, offering protection to victims of such crimes.³⁴

3.5.4 Refugee/Asylum/Withholding of Removal/Credible Fear

A victim of trafficking or an individual who fears being trafficked in his or her country of origin may be eligible for refugee or asylum status or withholding of removal as would any other individual who meets the definition of a refugee. The United Nations Office of the High Commissioner for Refugees recognizes that not all victims or potential victims of trafficking fall within the scope of the refugee definition. However, on occasions where trafficking victims do fall within the refugee definition, the international protection community has a responsibility to recognize it as such and afford the corresponding international protection.³⁵ Click on the link below for specific information about asylum and refugee eligibility for trafficking victims.

- [Eligibility requirements for asylum or refugee status](#)

³³ 8 U.S.C. § 1367(a)(2).

³⁴ [Fact Sheet: USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity](#).

³⁵ [Guidelines on International Protection: The Application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked](#), UN High Commissioner for Refugees (UNHCR), 7 Apr 2006, 17 p.

4 ENCOUNTERING VICTIMS OF HUMAN TRAFFICKING

The officers and agents of the three DHS front-line agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), are most likely to encounter potential victims of trafficking during the course of their daily work. An ICE agent may encounter a trafficking victim during an investigation or operation, whereas a CBP officer may intercept someone who is being smuggled or who is attempting entry into the United States through a port of entry. Officers within one of the three RAIO divisions may encounter a potential victim of trafficking in the context of the adjudication of a request for an immigration benefit.

Indicators that an interviewee may be a victim of trafficking may surface prior to, during, and/or after the interview adjudication.

4.1 “What Does a Human Trafficking Victim Look Like?”

Trafficking victims can include individuals from any country, of any age, gender, nationality, educational background and immigration status. Trafficking may take place in “underground” operations, like illegal brothels, sweatshops, factories, mines, agriculture fields, fishing vessels or private homes. However, trafficking is often carried out in public establishments such as bars, restaurants, nightclubs, casinos, hotels and massage parlors, or in street vending and/or begging.

While a trafficking victim’s experience may be quite unique, there are certain risk factors, patterns and trends in trafficking among different demographics in the population that you interview (within ethnicities, countries of origin, age, and gender) of which you should be aware. This knowledge will assist you in detecting and discerning indicators of trafficking from other concerns for a particular interviewee.

Addressing the Myths about Trafficking Victims

- Trafficking is not equivalent to smuggling. It does not require forced movement or border crossing.
- Trafficking does not require physical force, kidnapping, restraint or abuse.
- The consent of the victim is considered irrelevant, as is payment.
- Not all trafficked people have been trafficked for the purposes of sexual exploitation.
- Those who migrate legally can be victims of trafficking.

- Women and children are not the only victims of trafficking.
- Trafficking is not only a problem in Eastern Europe and Southeast Asia.
- Trafficking is not only a problem amongst the uneducated and poor.

4.2 Detecting Indicators of Human Trafficking

As discussed above, as an officer in the RAIO directorate you are responsible for detecting indicators that the interviewee before you may have been trafficked or may be at ongoing risk of trafficking, and following appropriate procedures within your division depending on the circumstance.

4.2.1 Pre-Adjudication File Review

Prior to the adjudication of a benefit, you may have the opportunity to review the case file.

Documents or database notations that may indicate that the interviewee may be a victim of trafficking include:

- Notations within database records from other agencies regarding investigations, encounters, or contact with informers that indicate that the person has been or is being trafficked. Please keep in mind that such notations may be entered post-USCIS interview but prior to final adjudication.
- Documents from other federal agencies such as DOS, ICE, CBP, etc. that indicate a past encounter with the interviewee indicative of a possible trafficking or smuggling situation.
- Documents from other federal agencies that indicate a past or ongoing investigation or operation regarding trafficking or smuggling.
- Documents or applications for continuing presence or T or U visas present in file.
- Criminal court documents/Database hits that show that the interviewee was arrested for a type of crime in which a trafficking victim might be subjected to exploitation.
- Letters from informants or "snitches."
- Unusual travel patterns indicated in application documents. Such patterns may indicate possible trafficking or smuggling routes.

- Travel from foreign countries that are known for being a source area for trafficking victims.³⁶
- Employment in the United States or abroad that may indicate that interviewee has been or is being exploited.
- School-age children who have not listed attendance in school (minor principal interviewees),
- Background information on the application indicates that the interviewee is from a group in society that would be particularly vulnerable to trafficking and the interviewee's presence in the United States or the country from which he is requesting the benefit does not appear to be logical given that background. An example of this may be an unaccompanied minor with uncertain ties in the United States.

If there are indicators that the interviewee before you has been trafficked, you must still maintain your focus on trying to elicit sufficient testimony related to his or her eligibility for the particular benefit you are adjudicating. You may also provide the interviewee with informational pamphlets to fulfill the TVPRA mandate, as appropriate, taking care to note the circumstances of the interviewee as she or he may be endangered if such pamphlets are provided in the presence of the trafficker. If there are indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor as soon as possible. This may be prior to adjudicating the benefit or even during pre-interview file preparation or during the interview, if appropriate.

Depending on the nature of the evidence and the nature of the situation, your supervisor or Office Trafficking Coordinator may need to contact local ICE or other agents, who may have additional information or desire to be present in the event that you interview the individual. Remember that the necessity to contact law enforcement can arise at any stage of the adjudication process.

4.2.2 Screening for Potential Victims of Trafficking: Suggested Lines of Inquiry

Individuals who have been or are in the process of being trafficked or exploited experience a significant loss of control over their lives and activities. During their testimony, such interviewees may testify regarding an area of their life being controlled by another person. Additionally, human trafficking victims may have visible signs of abuse or exhibit behaviors that are associated with people who have been victimized. Such "red flags" may alert you to the fact that the interviewee is or has been a victim of human trafficking.

³⁶ Such as countries designated as "Tier 2," "Tier 2 watch list" or "Tier 3" in the DOS TIP reports. See: <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>

The information in the links below was designed to assist you in eliciting further information from interviewees in interviews where a red flag has been raised, so that you can determine with more certainty whether the interviewee is a victim of human trafficking. These lines of inquiry will improve your ability to articulate your concerns about the interviewee's current situation to your office management and in office referrals to law enforcement. You should keep in mind that the lists are not all-inclusive and only serve as a framework for questioning. Every interview will be different as your questions will be tailored to the interviewee based on his or her answers to the questions.

You are not expected to indiscriminately run through lists of questions. You are expected to select a few choice questions that directly relate to the red flag that has been raised in the interview and which would not appear unusual in the course of the interview. You are expected to proceed with questioning in an extremely sensitive manner, taking into account that any individuals accompanying the interviewee may be affiliated with the trafficker.

Suggested Lines of Inquiry by Subject Matter

- Understanding Asylum Benefits and Process
- Physical health/behavior
- Recruitment/Migration
- Identification
- Working Conditions
- Debt Questions
- Living Environment/Transportation
- Social Ties/Conditions
- Force, Fraud, Coercion
- Minor: Under 18
- Safety Assessment (if interviewee alone and expresses fear)

4.2.3 Other Indicators of Trafficking

If during the interview you discover indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor prior to concluding the interview. In all cases, follow the procedure for such cases in your particular office.

4.2.4 Interviewing Where the Victim is Accompanied by a Third Party

If your interviewee is accompanied by a third party who appears potentially suspicious, such as an interpreter, representative, or (in the case of a minor child) a parent or trusted

adult, you do not want to alert them to your suspicions as he/she may be working with the trafficker. Whenever possible, the interviewee should be questioned in regard to the trafficking concerns apart from such persons, preferably using a trusted person who speaks the interviewee's language. Because of the complicated nature of interviewing individuals in these circumstances, you should consult your division's procedures for specific instructions.

4.3 Other Adjudication Considerations

In a case where the trafficking-related experience that an interviewee testifies to relates to the basis of a protection claim, the interviewee is forthcoming about his or her claim, and does not appear to be at ongoing risk, officers apply the facts of the case, including the trafficking-related elements, to the protection-related legal analysis. Identifying and understanding the type of trafficking the victim suffered can inform the questions you ask to elicit more complete testimony.

If an interviewee is not forthcoming about a trafficking experience and you suspect she or he is currently being trafficked, his or her testimony may arouse suspicions as to his or her credibility when, in fact, there may be reasons other than abject fraud for this behavior. For further guidance and considerations, see RAIO Training modules, *Children's Claims*, *Evidence Assessment*, and *Interviewing—Interviewing Survivors of Torture and Other Severe Trauma*.

4.4 Issues Affecting Benefit Eligibility for Trafficking Victims and Traffickers

The Immigration and Nationality Act (INA) has various legal provisions that are applicable to interviewees who have committed or been convicted of a crime related to human trafficking. Additionally, sometimes the victim of the trafficking crime may have been forced or coerced into committing acts such as theft, drug trafficking, or prostitution that constitute crimes that might be impediments to obtaining immigration status.

Positive results from a background check and/or police or criminal court documents found in the file regarding criminal offenses such as the ones described above, in addition to being evidence of a possible impediment to an immigration benefit, may be an indication that the person is or has been a victim of human trafficking.

4.4.1 Trafficking Victim

A victim of trafficking may have been forced to engage in or have been convicted of a criminal act, such as larceny, drug carrier, prostitution, or other illegal vice, and this activity may render him or her subject to criminal or security inadmissibility grounds under INA § 212 (a)(2) and (a)(3)(b). These interviewees may be eligible for exemptions or waivers. If you interview such an individual, be sure to elicit full testimony as to the nature and type of coercion involved in securing the interviewee's participation or support of the criminal activities as this information may not only assist law enforcement, but also may establish the victim's eligibility for an exemption or waiver if necessary.

4.4.2 Trafficker

If your interviewee has demonstrated participation in criminal behavior that indicates she or he has colluded in trafficking crimes, you must review this activity to determine if it is a bar to eligibility for the benefit you are adjudicating, or if a ground of inadmissibility applies.

In addition to being subject to a mandatory bar in the asylum context, an alien who is found to have persecuted others on account of a protected ground may not be considered a refugee under the refugee definition and therefore would not be eligible for refugee status or asylum status within the United States.³⁷

4.4.3 Additional Resources

Department of State, Trafficking in Persons Report (TIP)

- An annual report produced by DOS to evaluate foreign governments' responses to trafficking. The TIP report is the premier U.S. Government resource on trafficking trends and includes country-specific narratives that describe the specific at-risk populations and types of trafficking in each country. For the most current report visit [DOS TIP Report](#).

National Human Trafficking Resource Center (NHTRC)

- A Department of Health and Human Services (HHS) funded hotline providing comprehensive resources for victims, government and NGO practitioners on all trafficking-related issues. Hotline number: 1-800-3737-888.

UNHCR Report "Refugee Protection and Human Trafficking"

- A December 2008 report analyzing the interaction of refugee protection and human trafficking. The resource list at the end is a very comprehensive list of legal documents and country-specific reports that have been published on trafficking. <http://www.unhcr.org/publ/PUBL/4986fd6b2.pdf>.

³⁷ INA § 101 (a)(42).

PRACTICAL EXERCISES

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS**Other Materials – 1****Definition of Terms**

Coercion: Threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. [\[return\]](#)

Commercial sex act: Any sex act on account of which anything of value is given to or received by any person. [\[return\]](#)

Debt bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. [\[return\]](#)

Involuntary servitude: A condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process. [\[return\]](#)

Peonage: A status or condition of involuntary servitude based on real or alleged indebtedness. [\[return\]](#)

Slavery: (according to Art. 1, Slavery Convention, 1926 as amended by 1953 Protocol) The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. [\[return\]](#)

Smuggling: (according to Article 3(a) of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air): The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

Trafficking in persons (according to Article 3 of the Palermo Protocol): The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery,

servitude or the removal of organs. [\[return\]](#)

Other Materials - 2

T visa Eligibility Requirements

The eligibility requirements for the T visa can be found at INA § 101(a)(15)(T) and at 8 CFR § 214.11. To be eligible for a T visa, the alien:

- Is or has been a victim of a severe form of trafficking in persons;
- Is physically present in the United States, American Samoa, Northern Mariana Islands, or at a port of entry on account of such trafficking;
- Has complied with a reasonable request for assistance in the investigation or prosecution of acts of trafficking or is under 18 years old or is unable to cooperate with a request for assistance due to physical or psychological trauma;
- Would suffer extreme hardship involving unusual and severe harm upon removal;
- Must be admissible, or if inadmissible under any ground of inadmissibility applicable to T visa applicants, must be eligible for a waiver of inadmissibility; and
- Must merit a favorable exercise of discretion.

Exemptions and waivers exist for T visa applicants and can be found at INA § 212(d)(13)(A) & (B). T visa applicants are not subject to the public charge ground under INA § 212(a)(4) and may be granted a waiver of any other inadmissibility ground, except provisions regarding terrorist activity (212(a)(3)) and miscellaneous grounds such as child abduction and renunciation of U.S. citizenship to avoid taxation (212(a)(10)(C) & (E)), if the activities rendering the alien inadmissible were caused by or incident to the victimization and if the Secretary of Homeland Security considers a waiver grant to be in the national interest.

Other Materials – 3

U Visa Eligibility Requirements

The eligibility requirements for the U visa can be found at INA §101 (a)(15)(U) and at 8 CFR § 214.14. To be eligible for a U visa, the alien must establish that:

- The alien has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity, which includes trafficking;
- The alien possesses information concerning that qualifying criminal activity (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The alien has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement investigating or prosecuting one of the qualifying criminal activities (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The criminal activity described violated the laws of the United States or occurred in the United States;
- The alien must be admissible, or if inadmissible under any ground of inadmissibility applicable to U visa applicants, must be eligible for a waiver of inadmissibility;
- The alien merits a favorable exercise of discretion.

With the exception of INA § 212(a)(3)(E) (participants in Nazi persecution, genocide, and/or torture), all inadmissibility grounds may be waived under INA § 212(d)(14) if the Secretary of Homeland Security considers that it would be in the public or national interest to do so.

Qualifying Criminal Activities

- Abduction
- Abusive Sexual Content
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting

- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

Other Materials – 4

Eligibility Requirements for Asylum or Refugee Status

Harm

Victims of trafficking are widely known to have experienced harm (physical and emotional coercion, severe forms of labor and sexual exploitation, threats to their life) to a level of severity that would constitute persecution. This harm may be inflicted or condoned by the government of their country, those closely affiliated with branches of their government, or by individuals and/or groups that the government of the country they are fleeing cannot or

does not control.

Protected Characteristics

A central part of the analysis will focus on whether the persecutor selected the individual indiscriminately and then trafficked him or her for purely opportunistic criminal reasons or if the persecutor was motivated to harm the victim on account of one of the five protected grounds possessed by or imputed to the victim. In some countries, traffickers may target members of particular ethnic or political minorities, which would fit under the traditional rubric of the nationality and political opinion protected characteristics.

Victims may be targeted on account of their status as members of a particular social group, which would require evidence from country conditions reports and a proper legal analysis. See RAIO Training module, *Nexus and the Five Protected Grounds*. Traffickers associated with organized crime or insurgent groups may also have authority or influence over a particular area in a given country such that sub-groups within that area may be considered members of a particular social group. A potential particular social group may be based on an interviewee's status as a victim of trafficking (e.g. "formerly-trafficked COUNTRY females/children/ males") if country conditions reports indicate that trafficking victims who return to their country of origin may be targeted and suffer harm.

Immediately below are sample inquiries relevant to particular social groups that might be used to elicit a possible nexus to a protected ground from a trafficking victim:

- Does the interviewee possess a protected characteristic or could a protected characteristic be imputed to the interviewee?
- Was the perpetrator aware of any such actual or imputed characteristic?
- Does the interviewee know any other persons that were victimized by the feared perpetrator? Did any such victims share common characteristics with the interviewee?
- Did the interviewee know the perpetrator before the harm was committed?
- Is the perpetrator or feared perpetrator a person of power or connected with persons of power in the area in which the interviewee lived?
- Was interviewee targeted as punishment for the protected characteristic? E.g., the interviewee belonged to a rival political group, belonged to particular tribe, minority nationality, minority religion, etc.?
- Does or did the interviewee have shared, immutable or fundamental characteristics that are sufficiently visible within her or his society that facilitated or made trafficking of the victim advantageous?
- Do country conditions indicate that the interviewee is similarly situated to groups that

are selected for harm within her or his country or country of last habitual residence?

- Does the interviewee come from a city/region/country where human trafficking is prevalent? Do populations targeted for trafficking in that country share common characteristics?
- Is the interviewee aware of human trafficking victims who have been returned to their country? Have they had any problems?

Country Conditions Evidence

The Department of State Annual Trafficking in Persons Report (and other country conditions reports) outline the demographic groups at risk for trafficking in each country and monitor and evaluate individual government's efforts to prevent trafficking crimes, protect victims of such crimes, and prosecute those responsible for trafficking others. These resources should be consulted to assist you in making a determination and substantiating your position as to whether the interviewee suffered past persecution or has a well-founded fear of persecution on account of one of the protected characteristics, and whether she or he was targeted by the government or by an entity that the government remains unable or unwilling to control.

NOTE: As mentioned above, the following lines of suggested inquiry are meant to serve as a guide and not an exhaustive list of interview questions. RAIO officers should always tailor interview questions to the specific facts of each interview.

<p style="text-align: center;"><u>Other Materials – 5</u></p> <p style="text-align: center;">Understanding Benefits and Application Process</p>	
Indicators	Suggested Questions
<ul style="list-style-type: none"> • Interviewee does not understand/ know what she or he is applying for • Interviewee has inconsistencies in his or her story • Interviewee is accompanied by someone who is speaking on his or her behalf • Interviewee uses false identification papers 	<ul style="list-style-type: none"> • Do you know why you are here? • What will happen if you receive the benefit? • Who prepared your application? • Was it read back to you? • Were you given any materials to help you during your interview?

	<ul style="list-style-type: none"> • If you are granted the benefit, will you be in debt to anyone? • What is your relationship to the person accompanying you? • How did you meet the person accompanying you/interpreter/preparer/attorney/ representative? • Where did you get these documents?
--	--

<u>Other Materials – 6</u> Physical Health/Behavior³⁸	
Indicators	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee exhibits paranoia, fear, anxiety, depression, tension, nervous behavior • Interviewee displays heightened emotionality that in some way is inconsistent with the benefit request being presented • Submissive, tense, nervous behavior and/or avoids eye contact³⁹ • Reluctance to speak in front of people of shared background • Reluctance to speak with someone of 	<ul style="list-style-type: none"> • Do you have any mental or physical health issues? How long? Cause? • Do you feel uncomfortable speaking about any issues in your claim with a male/female officer? Or with me for any particular reason? • How many meals/day do you eat? • Can you eat anytime you want? Is your food locked up? • Do you have to pay for food? • If you pay your employer for food, could you also buy food from anyone else if you want?

³⁸ Officers should keep in mind that most, if not all, of these indicators are fairly common in victims of torture/trauma/abuse in the asylum/refugee context.

³⁹ Although these might be indicators of trafficking, officers should keep in mind that all of these behaviors may be appropriate/expected depending on the culture of the interviewee and be unrelated to trafficking concerns.

<p>opposite or same gender</p> <ul style="list-style-type: none"> • Signs of poor health/ malnourishment. • Visible physical injuries (scars, cuts, bruises, burns) • Tattoos or other marks 	<ul style="list-style-type: none"> • Were you ever hungry? • Do you have to ask permission to eat? • Do you eat together with the people you are living with? Do you eat the same food as the people you are living with? • How did you receive your injuries? Have you seen a doctor for your injuries? • Where did you receive those tattoos or markings? What do they mean?
---	---

Other Materials – 7**Recruitment/Migration**

Indicators	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee was recruited for one purpose and forced to engage in another job • Interviewee was brought to the United States against his or her will • Interviewee did not know his or her destination was the United States • Interviewee did not arrange his or her own travel • Interviewee is not informed about means and method of travel from home country 	<ul style="list-style-type: none"> • Why did you come to the United States? • How did you get here? • Who did you come with? • How did you get your passport? • Who arranged your travel? • Who paid for your ticket to come? • Do you owe money for your trip? • Did you incur a debt before you left your country? • If so, how did you pay it?

	<ul style="list-style-type: none"> • How much did you pay the smuggler? • Who picked you up from the airport? • How did you find out about the job? • What did you expect when you came? • What was it like when you started to work? • What did you end up doing? • Were you scared?
--	--

Other Materials – 8**Identification**

Indicators	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is not in possession and/or control of his or her documents • Employer is holding interviewee's identity and/or travel documents 	<ul style="list-style-type: none"> • When you traveled to the United States were you able to keep your identification documents with you or did someone take them from you? • Do you have any papers? • Do you have your passport and identity documents? If not, who has them? • Do you have access to them? • Where are they kept?

Other Materials – 9**Working Conditions**

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is not in control of his or her own money • Interviewee expresses lack of freedom to leave working conditions • Interviewee was forced to perform sexual acts as part of employment • Interviewee was forced to work extensive hours without fair compensation 	<ul style="list-style-type: none"> • Are you in school? • Are you working? • What kind of work do you do? • How did you get this job? • Are you paid? How much? • How often? • What are your work hours? • How much do you make per hour? • Do you get overtime pay? • Were you able to discuss how much you were getting paid with your employer? • Do you owe money to your boss or someone else? • What would have happened if you didn't give that person your paycheck? • If you were sick, could you take a day off or stop working? • Can you take days off work? • How much time could you take off? • Has your boss told you that you owe money? • Did anyone ever take your income? • Can you keep your money? • Can you leave your job if you want? Did

	<p>you ever? Why or why not?</p> <ul style="list-style-type: none"> • Were you able to take breaks when you wanted to? • What happens if you make a mistake at work? • Are there guards at work or video cameras that monitor and ensure no one leaves? • What did you fear would happen if you left? • Are you ever forced to do something you don't want to do? • Did anyone ever threaten to hurt you or your family if you did not work? • Are you afraid of your employer? Why? • Did anyone force you to cook or clean the house? • If you worked outside the home, were you lied to about the type of work you would be doing when you accepted the job? • Did your employer tell you what to say to immigration officials or law enforcement? • Did your employer ever threaten to have you arrested?
--	--

Other Materials – 10

Debt Questions

<u>Indicators</u>	<u>Suggested Questions</u>
-------------------	----------------------------

<ul style="list-style-type: none"> • Interviewee's salary is being garnished to pay off debt (Paying off smuggling fee alone is not trafficking but is a red flag.) 	<ul style="list-style-type: none"> • How much money did you have left over after you paid everything you need to pay? • Could you spend your money the way you want to? • Did the person who pays you ever "save" or "hold" money for you? • Do you owe anyone money? If so, who is it and why? • How did you incur the debt? • How long have you had your debt? • Is it increasing? If so how is it increasing and why? • Do you feel it's difficult to pay off your debt and why? • What do you think will happen to other people in your life if you don't pay? • Do you have weekly/monthly expenses to your employer? What are they?
--	---

Other Materials – 11

Living Environment/Transportation

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee exhibits lack of knowledge of his or her own whereabouts (jurisdiction) • Interviewee has been harmed or deprived of food, water, sleep, medical care or other life necessities 	<ul style="list-style-type: none"> • Where do you live? (inability to clarify address = indicator) • Who else lives there? • Where do you sleep?

<ul style="list-style-type: none"> • Interviewee is living at workplace or with employer • Lack of freedom to leave living conditions • Interviewee is always escorted, is never alone 	<ul style="list-style-type: none"> • Can you leave as you wish? • Are you scared to leave? • Do you live in the place where you work? • Do you go to the grocery store by yourself? • What city did you first live in the United States? • How do you get around from place to place? • How much do you usually pay for transportation? • Do you drive? Where did you learn to drive? • Do you go places by yourself?
---	--

Other Materials – 12**Social Ties/Conditions**

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee cannot contact friends and family freely • Interviewee is isolated from their community 	<ul style="list-style-type: none"> • Do you have family or friends in the United States? • Do you spend time with them? • Do you have time to spend with your friends/family? • What do you do with them? • Can you bring friends home? • Do you buy food and clothes on your

	<p>own?</p> <ul style="list-style-type: none"> • If you are in trouble, who are you most likely to call?
--	---

<p align="center"><u>Other Materials – 13</u></p> <p align="center">Force, Fraud, Coercion</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee does not have freedom of movement • Interviewee's friends or family have been threatened with harm if interviewee escapes. • Interviewee has been threatened with deportation or law enforcement action • Unusual distrust of law enforcement • Interviewee was forced to perform acts against his or her will • Interviewee was forced to perform sexual acts against his or her will • Evidence of abuse (physical, mental, sexual) 	<ul style="list-style-type: none"> • Has anyone ever threatened you to keep you from running away? • Has anybody ever hurt you to make you stay? • Has your family been threatened? • Did you ever feel pressured to do something that you didn't want to do or felt uncomfortable doing? How did you feel pressured? • Did your employer ever take photos of you? What (if anything) did he/she say he/she would do with those photos? • How safe do you feel right now? • Were you allowed to leave the location/building where you live, where you work? • Do you feel like your movement is controlled by someone else? • Was there ever a time you wanted to leave somewhere and you felt you couldn't? Why did you feel that way? • What do you think would have happened if

	<p>you left without telling anyone?</p> <ul style="list-style-type: none"> • Were you ever physically hit and/or slapped by your employee/manager or anyone else? • Did you ever see anyone else get hit or slapped by your employer? • Do you feel you were deceived about anything having to do with your current job? • How did you find your job? • What were you told about your job before you started? • Were you ever promised something that did not happen? • Did conditions on your job change over time?
--	--

Other Materials – 14**Minor: Under 18**

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is a child and not in school or has significant gaps in schooling • Interviewee does not live with her or his parents • Interviewee provides insufficient information about parental knowledge of benefit application • Interviewee provides insufficient or contradictory information about the 	<ul style="list-style-type: none"> • Are you in school? • How does your parent/guardian/caregiver treat you? • Are there rules/conditions that your caregiver has set? • Are you responsible for obtaining your food or purchasing other items?

<p>relationship to guardians and/or trusted adults accompanying her or him to the interview</p> <ul style="list-style-type: none"> • Interviewee may be hungry or malnourished or have not reached their full height • Interviewee may have poorly formed or rotten teeth • Interviewee may be attending school sporadically or provides vague testimony on schooling • Interviewee may refer to non-family members with family titles (uncle, aunt, cousin) • Interviewee may display symptoms of disorientation and confusion 	<ul style="list-style-type: none"> • How do you get money to purchase items? • Where do you sleep? • How many people live in the same house? • Who are the other people? • What would happen if you left your caregiver /work without permission?
--	--

Other Materials – 15**Safety Assessment (if interviewee alone and expresses fear)**

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee displays heightened general sense of fear • Interviewee reveals having been physically harmed • Interviewee shares having been deprived of: Food, water, sleep, medical care and/or other life necessities • Interviewee shares having been threatened with harm to him or herself or their family • Interviewee has been threatened with removal or reporting to immigration/ police 	<ul style="list-style-type: none"> • Do you feel safe right now? • Is there anyone you are concerned about? • Anyone who is making you feel uncomfortable or stressed? • What is your understanding of why you are here right now? • How did you get here today?

officials	
-----------	--

<ul style="list-style-type: none"> • <u>Other Materials – 16</u> • Stages of Trafficking • Four sets of circumstances through which RAIO officers may detect indicators of trafficking and initiate component specific trafficking procedures: 	
<ul style="list-style-type: none"> • Ongoing trafficking/At risk 	<ul style="list-style-type: none"> • Officer detects indicators of ongoing trafficking from interviewee in interview and believes the interviewee is currently being exploited.
<ul style="list-style-type: none"> • Past trafficking • Unrelated to claim • Not in imminent danger in U.S. 	<ul style="list-style-type: none"> • Officer detects indicators of trafficking-related violations from interviewee's testimony and/or application, trafficking circumstances are unrelated to interviewee's immigration benefit request, and interviewee is no longer in exploitative situation.
<ul style="list-style-type: none"> • Past trafficking • Related to claim • Not in imminent danger in U.S. 	<ul style="list-style-type: none"> • Officer detects indicators of trafficking-related violations from interviewee's testimony and/or application, these violations relate directly to the immigration benefit the interviewee is seeking, and interviewee is no longer in exploitative situation.
<ul style="list-style-type: none"> • Return to field office/r (Trafficking POC) for follow-up 	<ul style="list-style-type: none"> • Supervisory, Quality Assurance, and/or Headquarters review detects indicators of trafficking through intra-office or HQ case review.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

<p style="text-align: center;"><u>RAD Supplement</u></p> <p style="text-align: center;">Module Section Subheading</p>

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. All Supplemental Materials
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

ASM Supplement – 1

The TVPRA and Asylum

As noted earlier, the 2008 TVPRA significantly impacted asylum field policy and procedures when the Asylum Division was accorded initial jurisdiction on unaccompanied minor cases, a particularly vulnerable demographic within the U.S. immigrant population.⁴⁰ Further, in the asylum context, USCIS responds to the TVPRA mandate to provide victims of trafficking information on the rights and services afforded to them, by providing informational pamphlets regarding these benefits to interviewees. Asylum Officers will not be trained nor expected to “identify” a victim of trafficking for the purpose of determining his or her eligibility for other forms of immigration relief. Officers may provide potential victims, who are not in imminent risk, with specific, authorized, informational pamphlets that apprise individuals of benefits for which they may be eligible. Officers should not give advice or provide any other information about the interviewee’s situation or claim for asylum outside of giving them these informational materials.

⁴⁰ For additional information, please refer to RAIO module, *Children’s Claims*.

The following informational pamphlets are available for dissemination: Department of Justice pamphlet, *Office for Victims of Crime – Funded Grantee Programs to Help Victims of Trafficking*, and USCIS pamphlet, *Immigration Options for Victims of Crime*.

ASM Supplement – 2

Trafficking in the Credible and Reasonable Fear Process

In the Credible and Reasonable Fear Context, officers will have the opportunity to question the interviewee alone, without a third party present, and may be able to elicit more information from an individual at-risk of ongoing trafficking, without compromising the victim's safety.

ASM Supplement – 3

Trafficking Experiences and One-Year Filing Deadline

An interviewee may apply for asylum or refugee status with one basis of claim, e.g. political opinion, but may describe a trafficking-related experience, either in his or her country of origin or in the United States, that materially relates to his or her asylum eligibility. One example of this would be an individual who flees persecution in the home country, arrives in the United States without resources, and finds employment as a domestic servant with an employer who controls and exploits them. This individual may become freed several years after arrival in the United States and pursue an asylum benefit at that time. If the adjudicating officer elicits relevant testimony and applies the appropriate trafficking lens to analyze the conditions the interviewee faced upon arrival in the United States, depending on the circumstances, the officer may find an extraordinary circumstance exception to the one-year filing deadline.

ASM Supplement – 4

Affirmative Asylum Procedures Manual

Section III.B.14. Trafficking Victims⁴¹

⁴¹ The language in this supplement was preliminarily cleared by OCC in March 2012.

The Trafficking Victims Protection Act (TVPA) guarantees certain rights, services, and protections to victims of severe forms of trafficking.

The TVPA defines a victim of a severe form of trafficking as a person subject to:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age OR

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

While Asylum Officers are not responsible for making a determination as to an applicant's status as a victim of trafficking, Asylum Officers can play a key role in the protection of victims and in the prosecution of traffickers by detecting indicators of trafficking during an applicant's testimony and bringing cases of possible trafficking victims to the attention of ICE officials.

If the potential victim is a child filing for asylum as a principal applicant, the Asylum Officer should consult Section III.B.1, Children Filing as Principal Asylum Applicants, for additional guidance.

Each Asylum Office Director must designate a Supervisory Asylum Officer (SAO) as the point of contact (POC) for human trafficking matters for their office. This POC will serve as the principal liaison between the asylum field office and the ICE POC during the trafficking referral process outlined below. In the event that the SAO Trafficking POC is unavailable when a trafficking-related situation arises, all SAOs must be trained and prepared to serve as back-up POCs.

The Asylum Officer must differentiate between a suspected current trafficking situation, where the applicant may be in immediate danger because he or she is a possible or self-declared victim of current trafficking, and a possible or self-declared victim of past trafficking.

Asylum Officers encountering possible victims of human trafficking during the course of an asylum adjudication must follow this five step process: 1) detection, 2) notification, 3) referral, 4) information providing, and 5) tracking.

Step 1- Detection:

In the course of an asylum interview, an AO should be aware of the indicators of human trafficking. For a reminder of possible indicators of trafficking, please

consult the RAIO Combined Training Trafficking Lesson Plan.

Once an Asylum Officer suspects that an applicant has been or is currently being trafficked, he or she should ask follow-up questions to elicit more information without alerting the applicant or any individuals accompanying the applicant of the concern.

Facts related to the suspected trafficking should be documented in the interview notes. The AO should specifically annotate whether he or she thinks the applicant is currently a victim of trafficking who may be in imminent danger and/or has been trafficked in the past and is no longer in imminent danger.

If the applicant is a minor, the AO should consult Section III.B.1, Children Filing as Principal Asylum Applicants, to ensure that his or her inquiry is child sensitive and that it includes questions concerning the minor applicant's care and custody situation, as well as whether the parents are aware of and approve of the asylum application.

Step 2- Notification:

Once the Asylum Officer has identified through line of inquiry indicators that an applicant has been or continues to be a victim of trafficking, the Asylum Officer must alert and discuss the suspicion and indicators of trafficking with the designated SAO POC.

The AO should complete the "Victims of Trafficking Memo to File," located at the end of the RAIO Combined Training Trafficking Lesson Plan, and provide an electronic copy to the SAO POC.

If the potential victim is a minor principal applicant, Asylum Office management must be alerted and the case must be reported to the HQASM QA mailbox. See Section III.B.1, Children Filing as Principal Asylum Applicants. HQASM will instruct on whether the Asylum Office should proceed with drafting an assessment and, if necessary, submitting a QA referral packet or whether the Asylum Office should postpone such action while issues related to the minor's care and custody situation are being addressed.

Step 3- Referral:

The Asylum SAO POC will determine the timing and method of a referral to ICE in the case of a possible victim of trafficking based on whether he or she believes the applicant is currently being trafficked and faces any imminent danger.

In instances where the AO and SAO POC believe the applicant is currently a victim of trafficking and is possibly in danger, referral to ICE is immediate.

The SAO POC makes a referral to ICE by phone while the applicant is still in the Asylum Office.

The SAO POC relays the indicators of trafficking to the ICE agent and together they form a plan for action.

The applicant should not be alerted to the fact that an ICE agent is being called, unless the SAO POC can confirm that the applicant is not in danger and is not accompanied by anyone who poses a risk to the applicant. The timing and method of the ICE response will vary based on the AO's and SAO POC's perception of the imminent risk faced by the applicant. Further, the overall accessibility of ICE units may vary nationwide.

The SAO POC must use the following means, in the order listed below, to ensure an immediate verbal referral to an ICE agent in these situations.

Call the individual field office's pre-established ICE POC, the Supervisor of an ICE Human Trafficking and Smuggling Unit, located in the proximity of the Asylum Office.

If the ICE POC is not responsive, call the ICE National Directory (X- Sector) at 1-800-XSector and ask to speak with the supervisor of the Human Trafficking and Smuggling Unit in that city. If X-Sector does not have that information, the SAO POC should request the duty agent in the closest ICE field office.

If the SAO POC is unable to reach an agent through either of these mechanisms, he or she should contact the Trafficking POC at HQASM.

Note: If the potential applicant is a minor, ICE's internal policy dictates that they respond immediately regardless of whether the individual is in a dangerous situation.

In instances where the AO and the SAO POC do not believe that the applicant is currently being trafficked and is not in imminent danger, the referral to ICE will involve the SAO POC sending the local ICE Assistant Special Agent in Charge (ASAC) a copy of the memo to file via email or fax for his or her records.

If the applicant's case has already been investigated by ICE, there would be no need to refer the case, unless the affirmative asylum interview revealed information

that raised new or additional concerns.

In addition to notifying ICE, the Trafficking Victims Protection Act (TVPA) requires that federal, state, and local officials notify the Department of Health and Human Services (HHS) within 24 hours of the discovery of a person who is under 18 years of age (whether accompanied or not) who may be a victim of a severe form of trafficking in persons. (TVPA § 107(b)(1)(G); 22 USC 7705(b)(91)(G)) This is so that HHS can provide interim assistance to any such individual. If Asylum Officers encounter an asylum applicant under 18 years of age whom they discover may be a victim of a severe form of trafficking in persons, they should inform their office's POC for unaccompanied alien children's issues (UAC POC). The UAC POC must send an e-mail to the HHS Office of Refugee Resettlement (ORR) at ChildTrafficking@acf.hhs.gov or call 202-205-4582. An e-mail should contain as much of the following information as possible:

Standard subject line: USCIS Notification to HHS of Discovery of a Person Who is under 18 Years of Age Who May Be a Victim of a Severe Form of Trafficking in Persons

Body:

Pursuant to section 107(b)(1)(G) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), this e-mail serves as notification to the Department of Health and Human Services that U.S. Citizenship and Immigration Services has discovered the following person who is under 18 years of age who may be a victim of a severe form of trafficking in persons:

1. Alien number:
2. Name:
3. Date of birth:
4. Country of citizenship:
5. Residence address:
6. Location of exploitation:
7. Suspected form of trafficking:
8. Represented by:
9. USCIS contact information:
10. Additional notes

An ORR Child Protection Specialist will respond to each notification during regular business hours, Monday through Friday, and will follow up with the reporting official as appropriate. Follow-up will involve facilitating interim and long-term eligibility, where applicable, and providing technical assistance as needed.

Step 4- Providing Information to Possible Victims of Trafficking:

Asylum Officers must provide possible victims of trafficking with the following informational pamphlets. These pamphlets outline the trafficking-specific immigration benefits and the contact information of service providers who assist victims of trafficking.

These pamphlets must only be given to an applicant if the AO and the SAO POC are certain that the applicant is no longer at risk of trafficking and/or that the providing of this information to the applicant (who may be accompanied by persons involved in the trafficking) would not put the applicant in danger.

The AO will provide the applicant with the following:

- 1) USCIS "Immigration Remedies for Victims of Violence" brochure;
- 2) DOJ Office of Victims of Crime list of federally funded anti-trafficking non-governmental organizations that operate across the United States;
- 3) HHS National Human Trafficking Resource Center hotline number (National Directory for all trafficking-related referrals): 1-888-373-7888.

Step 5- Tracking:

The AO completes the "Victims of Trafficking Memo to File," located at the end of the RAIO Combined Training Trafficking Lesson Plan, places a copy on the right-hand side of the A-file, and provides an electronic copy to the SAO POC.

Once this has been done, the AO processes the asylum case as usual.

ASM Supplement – 5

Sample Victims Of Trafficking Memo To File

Alien number:

Interview Date:

Asylum Officer (name, no.):

Consulted with (SAO, Trafficking POC):

Location:

Adjudication: Affirmative Asylum

Attorney name:

Preparer name:

Preparer address:

Interpreter name:

Applicant full name:

Gender: F

Country: Ethiopia

Age: 45

I. BIOGRAPHIC/ENTRY INFORMATION

Applicant was employed by a Saudi Arabian Family (*NAME*) as a domestic servant from 19xx until she came to the United States on *ARRIVAL DATE*. Applicant used an agency in Ethiopia to contract with this employer as a maid. Applicant entered the United States at Washington D.C. with this family. She told her supervisor that she wanted her passport. When he refused, she told him that she would call the police; so, he gave it to her. While the family rested, she left the house, called her friend in California, and never returned to this family.

II. SOURCE OF TRAFFICKING SUSPICION

Is this a past or present, ongoing trafficking concern? Past trafficking concern

III. WHAT FORMS OF TRAFFICKING DOES THE AO SUSPECT?

Applicant was contracted as a maid to clean the house and help raise the children. However, she was forced to work at any hour of the day and at multiple people's homes. Applicant stated she was not allowed to leave the house alone and could only go with the family. Applicant was also raped repeatedly by a supervisor who was hired to watch over Applicant and the other maids. If Applicant fought back, she stated she would be deported to Ethiopia. At one point she became pregnant as a result of the rapes, and made an excuse to return to Ethiopia to have an abortion. Applicant stated she could not have an abortion in Saudi Arabia, as they would find her at fault for being raped and pregnant.

IV. WHAT ACTIONS HAS THE ASYLUM OFFICE TAKEN?

Applicant was given the brochure of DHS/CIS information about trafficking and a packet of resources of NGOs that may be able to help her. Applicant was also represented by an attorney.

Please include copy of memo to file in A file and send electronically to Office
Trafficking POCs NAMES.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

There are no supplemental materials for the International Operations Division.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

<p style="text-align: center;"><u>IO Supplement</u></p> <p style="text-align: center;">Module Section Subheading</p>
--

Well Founded Fear - Exercise

Please consider the following questions after viewing the documentary. If practical, engage others in your office in a discussion on these issues:

1. What is your general reaction to the documentary?
2. Some officers in the film had doubts about their final decisions. How do you feel about this? Have your colleagues mentioned to you that they have had similar doubts? Do you think you may have doubts about your final decisions? How will this affect you personally and how you approach your job?
3. What was your impression of the interpreters in the film? How do interpreters affect the interview in general? What can you do if you sense that the interpreter is not doing a "good" job? Are there clues to identifying interpreter skill levels?
4. Do you think it will be difficult to determine the credibility of applicants? Why / why not? How might you determine whether or not an applicant is credible?
5. How does the statement "it depends on who you get" apply to the different officers in this film? How do you feel about this sentiment? How do you think you might fit into this continuum?
6. How did the officers in the film feel about applicants from certain countries? Have you noticed any general attitudes in your office toward applicants from certain countries? What may cause officers to be frustrated with certain applicants? What have been some of your personal experiences with persons of different cultures in your daily life prior to joining RAIO? Do you have expectations of how you will respond during interviews with people from cultures other than your own? Are there any cultures or countries to which you have particularly positive or negative reactions? What can officers do when they sense they are becoming frustrated with an applicant or they perceive frustration in other officers?
7. Consider the various interview techniques portrayed in the film (and in interviews you have observed in your office). Determine what you think your strongest and weakest techniques are and identify those which you think you may need to improve upon.
8. What do we know about pre-disposition based on our own set of life experiences (parent, no children, travel, military service, knowledge of 2nd language, interaction with people from different cultures, etc.)? How do you think your life experience will affect you in your job with RAIO?



U.S. Citizenship
and Immigration
Services

HQRAIO 120/12a

Memorandum

JUN 04 2013

TO: Donald Neufeld
Associate Director, Service Center Operations

FROM: Ted Kim
Acting Chief, Asylum Division

SUBJECT: Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children

I. Purpose

This memorandum provides updated notification and guidance to the USCIS Service Centers on the handling of I-589 applications for asylum filed by unaccompanied alien children (UACs) under the “initial jurisdiction” provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). These procedures modify the current procedures found in Section III of the April 9, 2009, memorandum, Statutory Change Affecting Service Center Operations’ Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children. These procedures are effective on June 10, 2013, and apply to any I-589s received by USCIS on or after that date.

II. Background

USCIS typically does not have jurisdiction to accept a Form I-589, *Application for Asylum and for Withholding of Removal*, filed by an applicant in removal proceedings. Section 235(d)(7)(B) of the TVPRA, however, placed initial jurisdiction of asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. Effective June 10, 2013, Asylum Offices will adopt a previous determination made by either CBP or ICE that an applicant is a UAC where that determination is in place on the date the applicant files for asylum, without making another factual inquiry into the applicant’s age or unaccompanied status, and will take jurisdiction over the asylum case.¹ Asylum Offices will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE, or CBP to terminate the UAC finding before the applicant filed the initial application for asylum. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

¹ See Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. May 28, 2013 (Attached).

III. Field Guidance

This guidance focuses on the Nebraska Service Center's (NSC) handling of I-589s filed by UACs in removal proceedings. Effective June 10, 2013, the NSC should accept the asylum application of an individual in removal proceedings if any of the following three conditions are met:

- (1) The date of birth listed on the Form I-589 indicates that the applicant is under 18 at the time of filing with USCIS; (or)
- (2) The applicant submits a copy of the UAC Instruction Sheet with the I-589; (or)
- (3) The applicant submits with the I-589 a copy of documentation provided by HHS/Office of Refugee Resettlement (ORR) showing the applicant was in HHS/ORR custody as a UAC, such as the UAC Initial Placement Referral Form or the ORR Verification of Release Form.

In addition, the Asylum Division updated the UAC Instruction Sheet (attached), which the ICE Trial Attorneys disseminate to applicants who appear to be UACs during immigration court proceedings. As a result, the NSC will start receiving the updated UAC Instruction Sheet shortly and should accept both the March 2009 version and the updated version.

The NSC should otherwise follow normal procedures and guidance from the April 9, 2009, memorandum, *Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children*, to verify that the filing is complete and to process the case filing. However, the NSC should reject I-589 applications for lack of jurisdiction where the applicant is in removal proceedings, is 18 or older at the time of filing, **and** has not submitted any of the documents listed in (2) and (3) above.

If you have any questions concerning the guidance in this memorandum, please contact your supervisor, who can forward your inquiry to Headquarters Service Center Operations.

Attachments (5):

1. Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. May 28, 2013.
2. DHS UAC Instruction Sheet (March 2009 version)
3. DHS UAC Instruction Sheet (June 2013 version)
4. HHS UAC Initial Placement Referral Form (internal use only)
5. HHS ORR Verification of Release Form (internal use only)

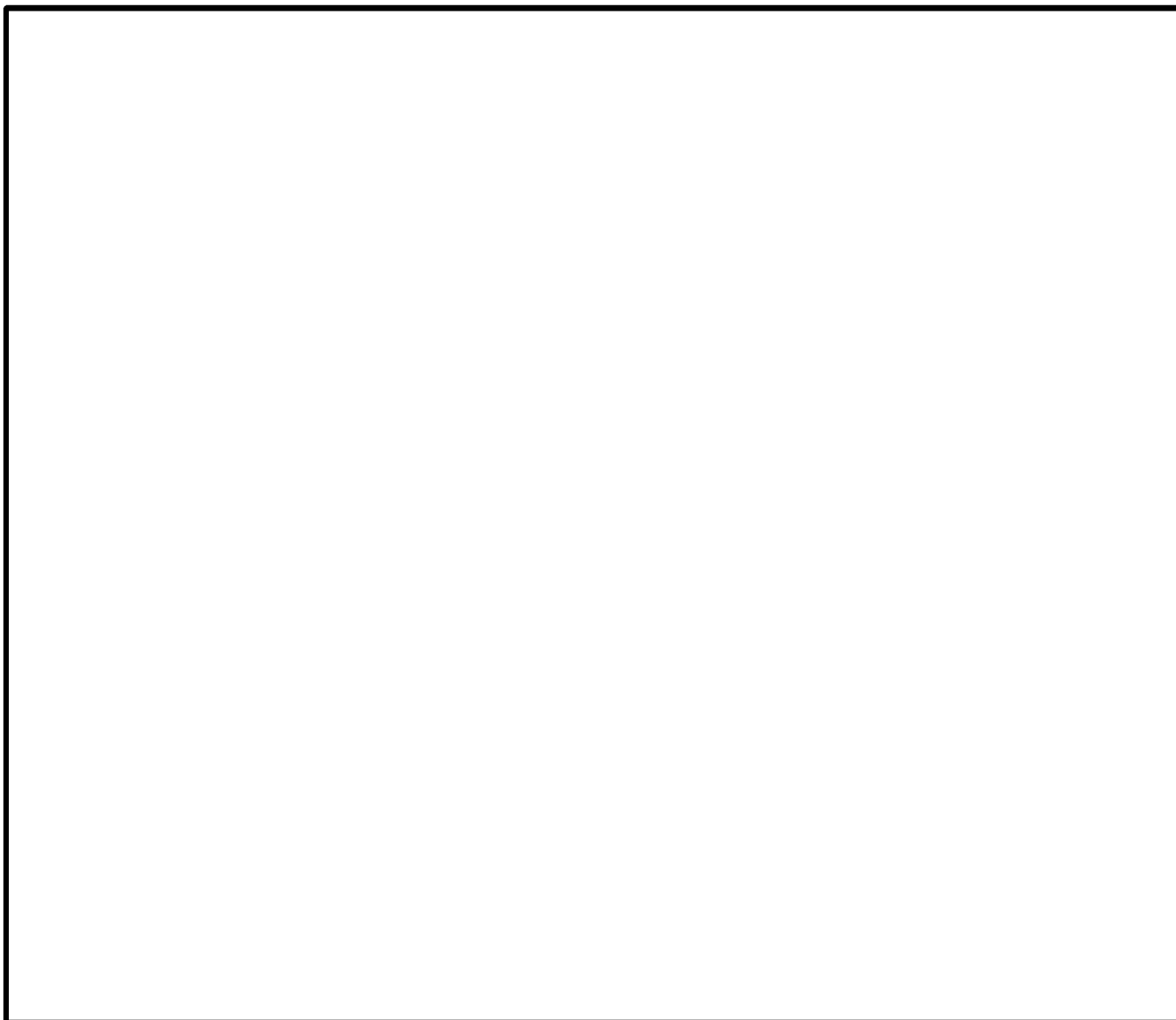
(b)(5)

Lesson Plan Overview

Method of Evaluation Practical exercise exam; written test

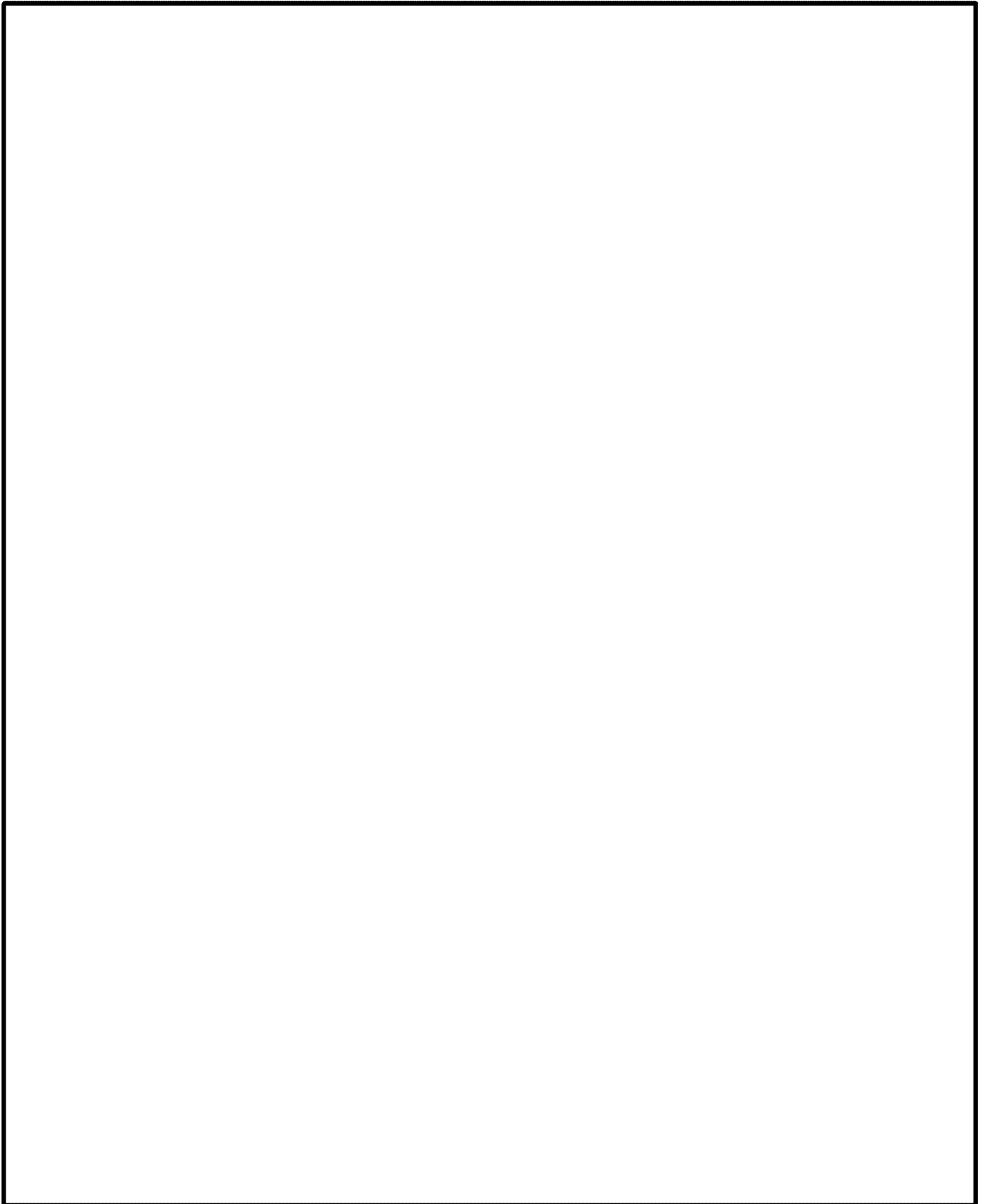
New Critical Tasks

(b)(5)

A large, empty rectangular box with a black border, intended for participants to write their responses to the 'New Critical Tasks' section.

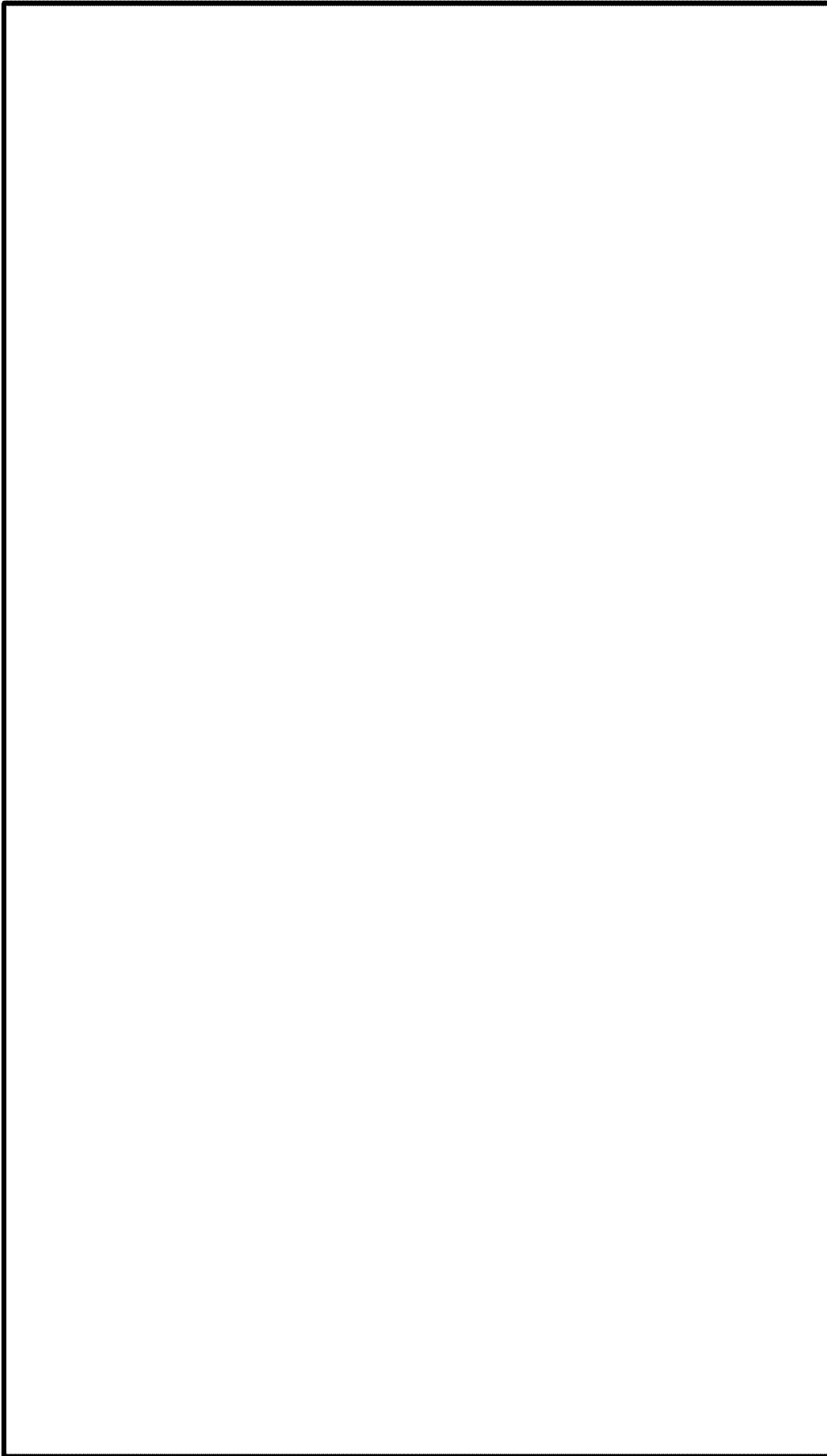
(b)(5)

TABLE OF CONTENTS

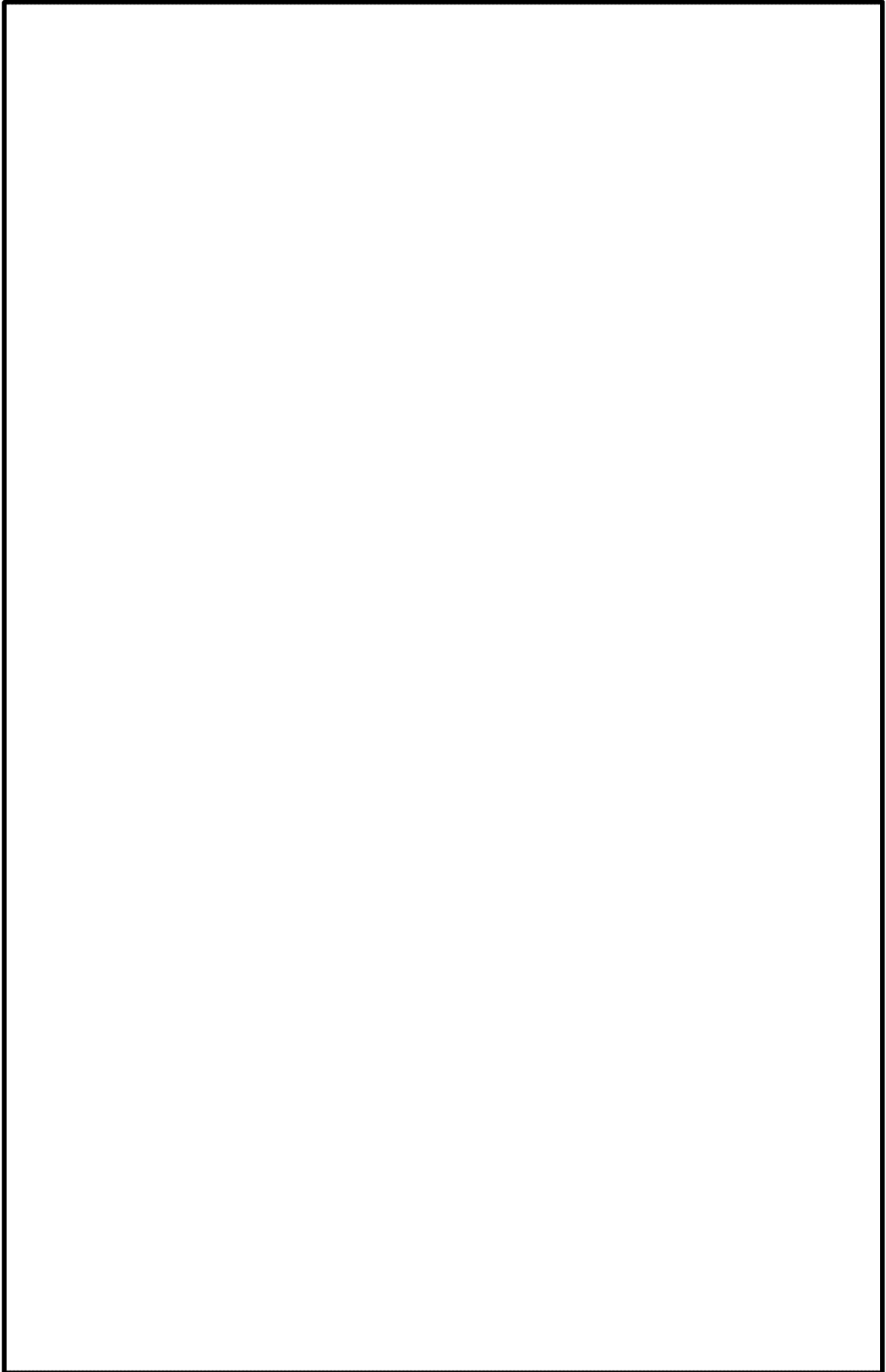


(b)(5)




A large, empty rectangular box with a black border, occupying the majority of the page. It is intended for participants to write or draw their responses during the training course.

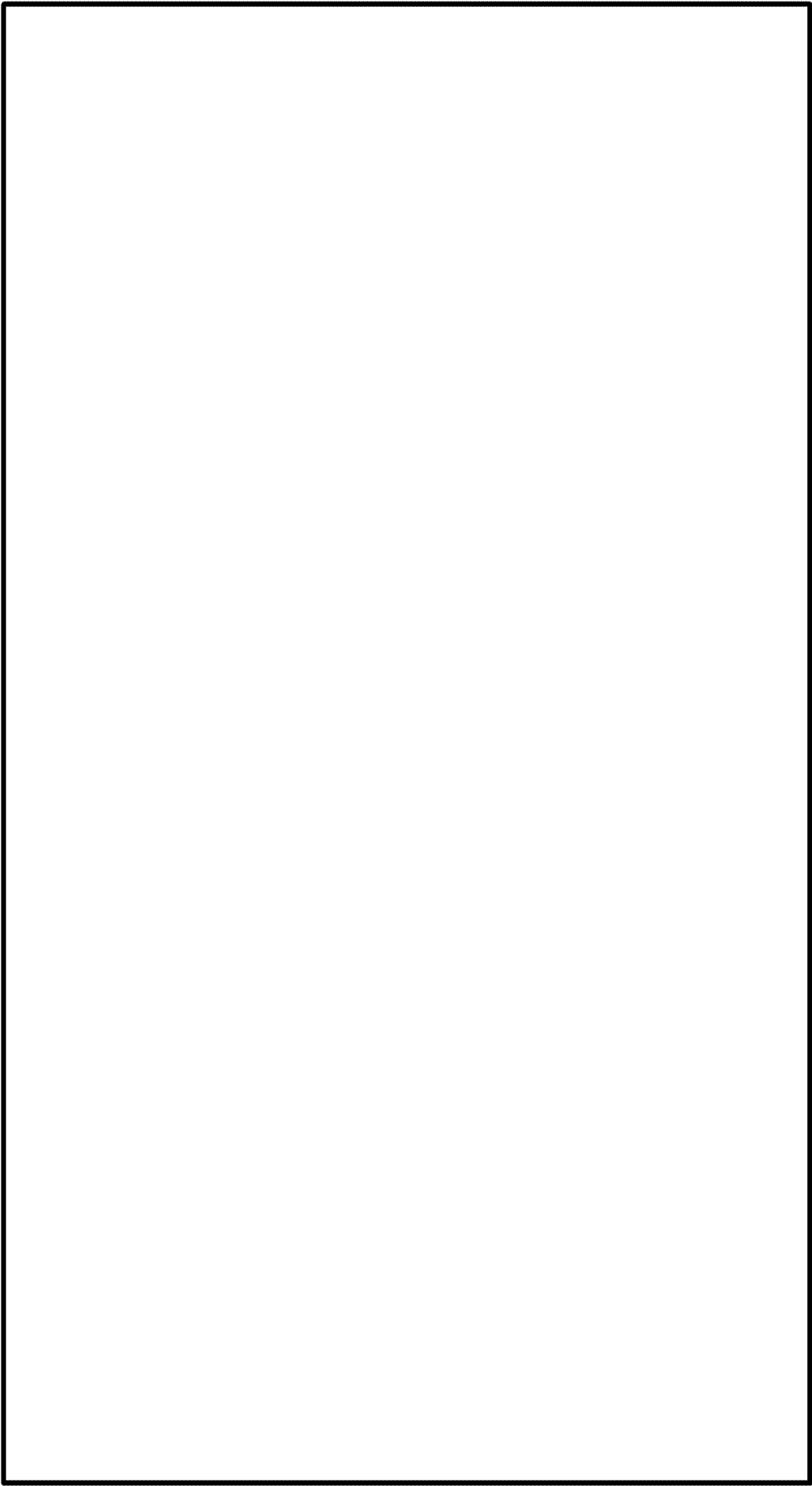
(b)(5)



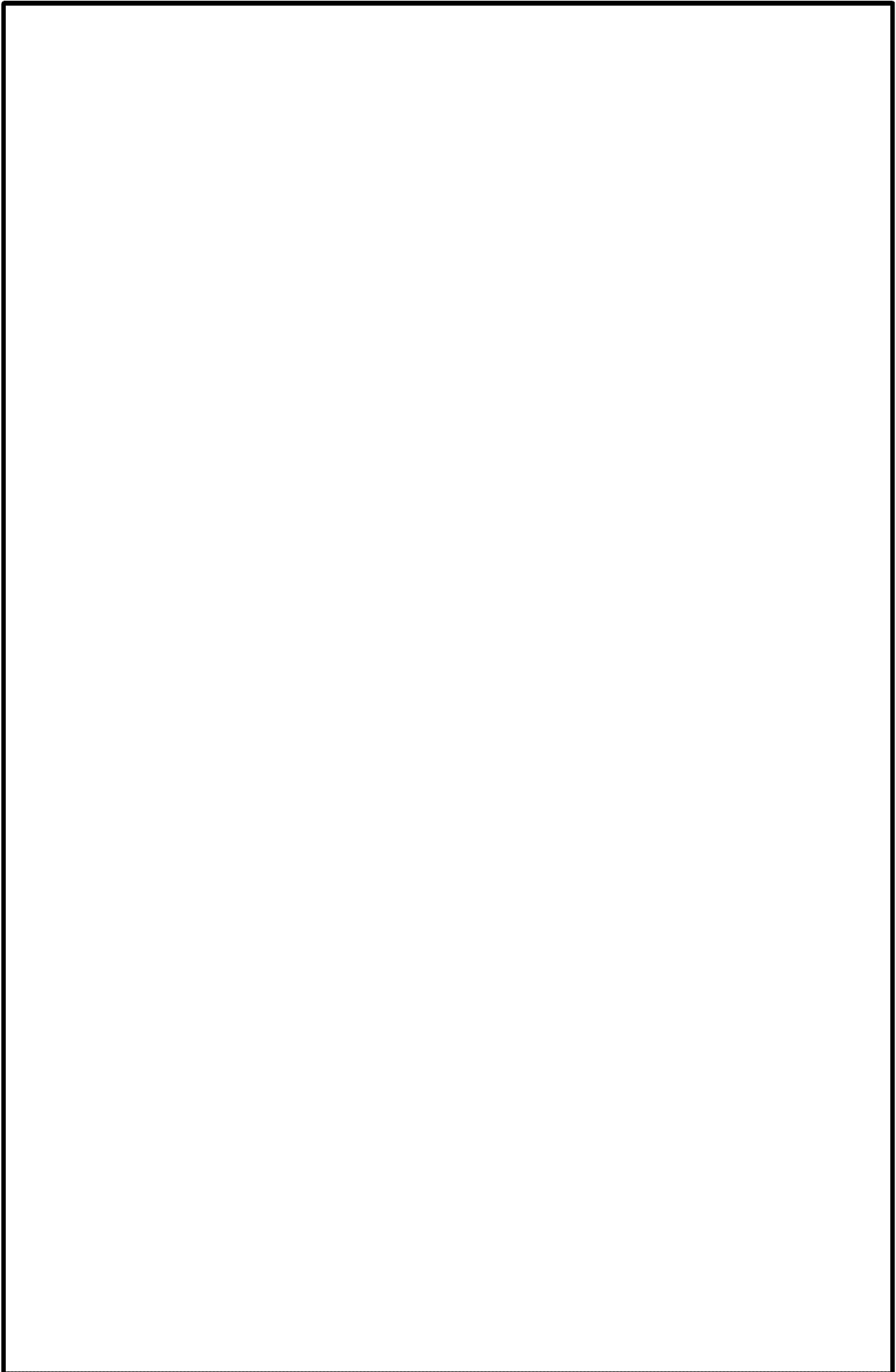
(b)(5)



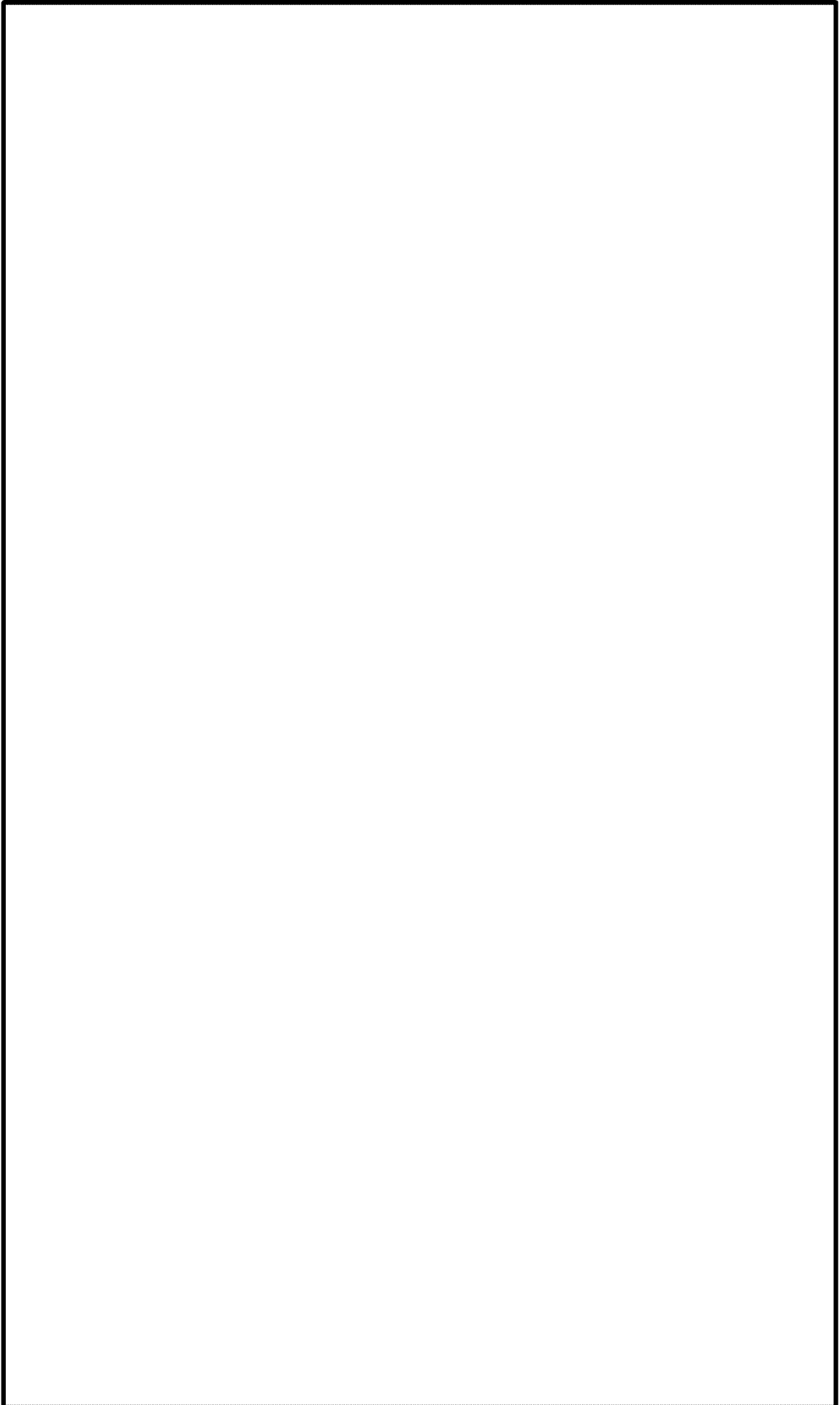
(b)(5)



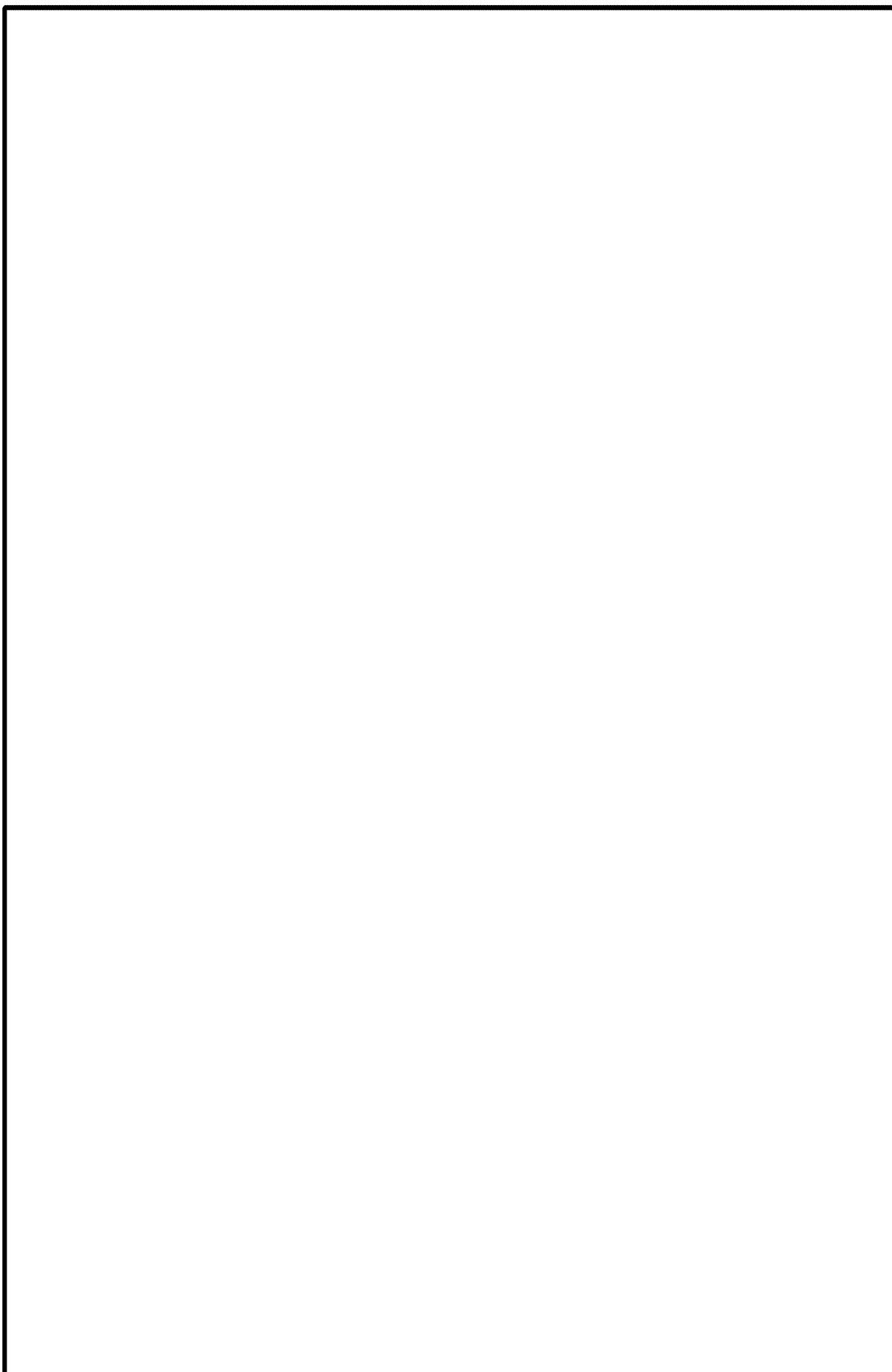
(b)(5)



(b)(5)



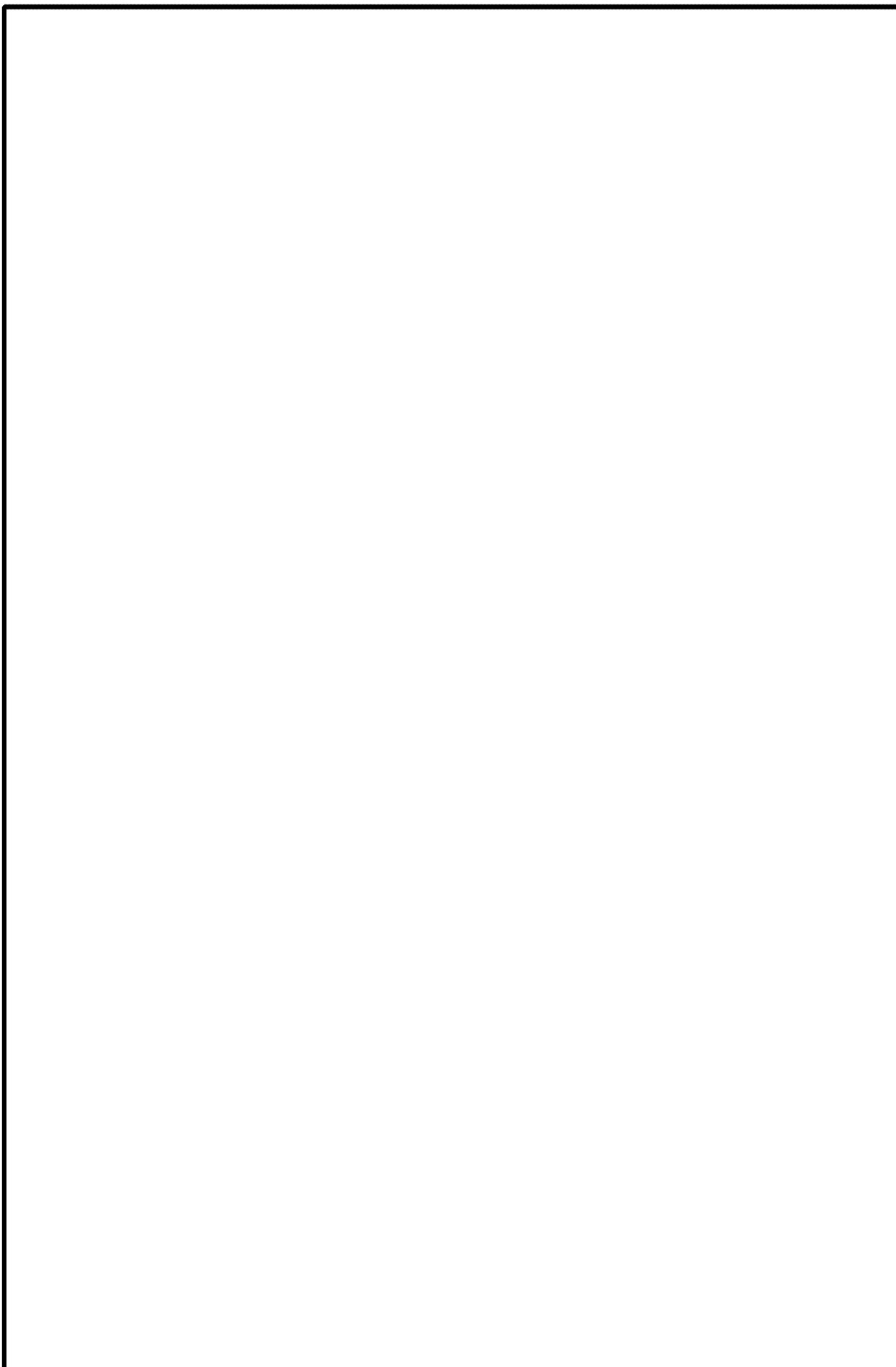
(b)(5)



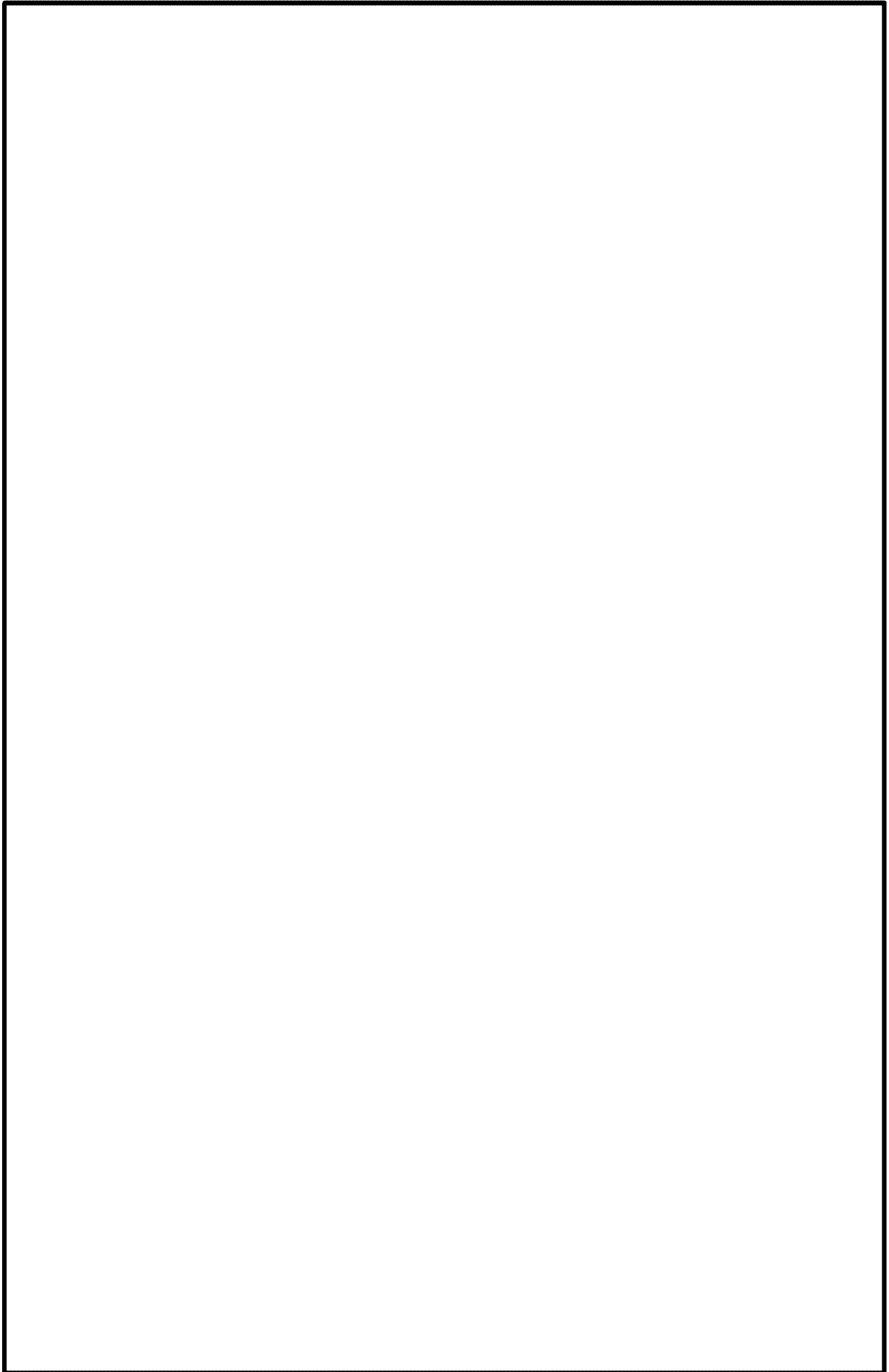
(b)(5)

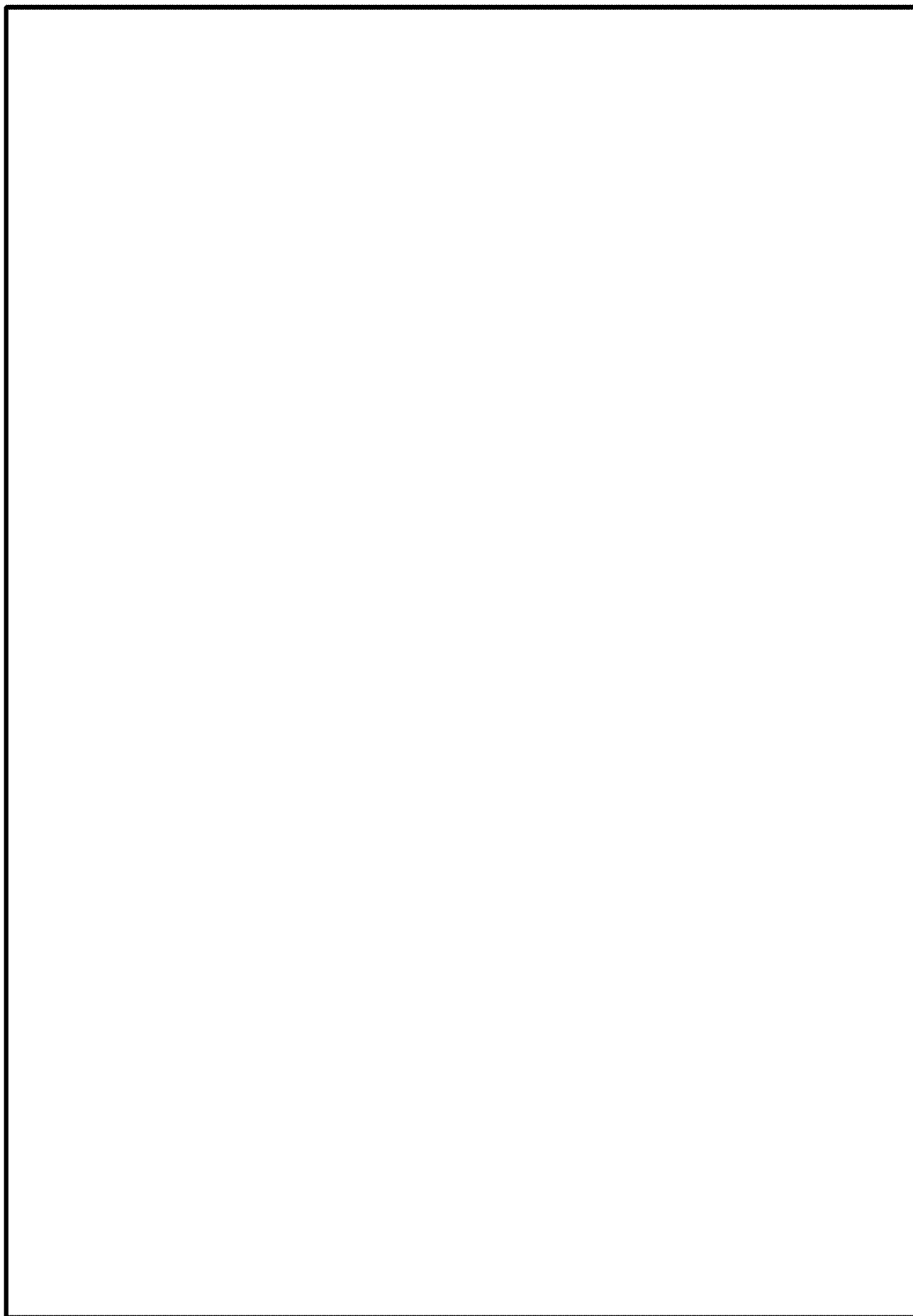
[Redacted content]

(b)(5)

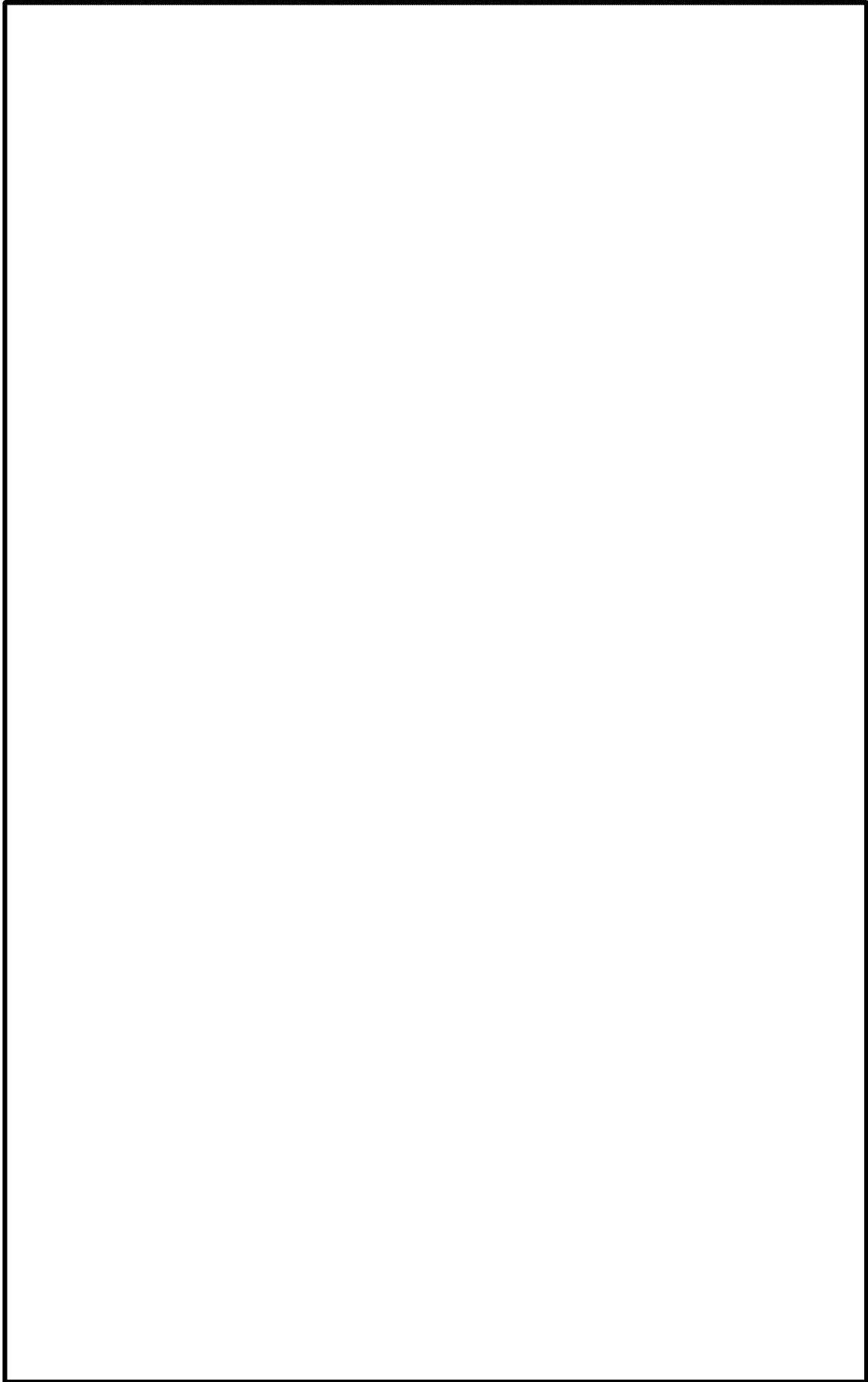


(b)(5)

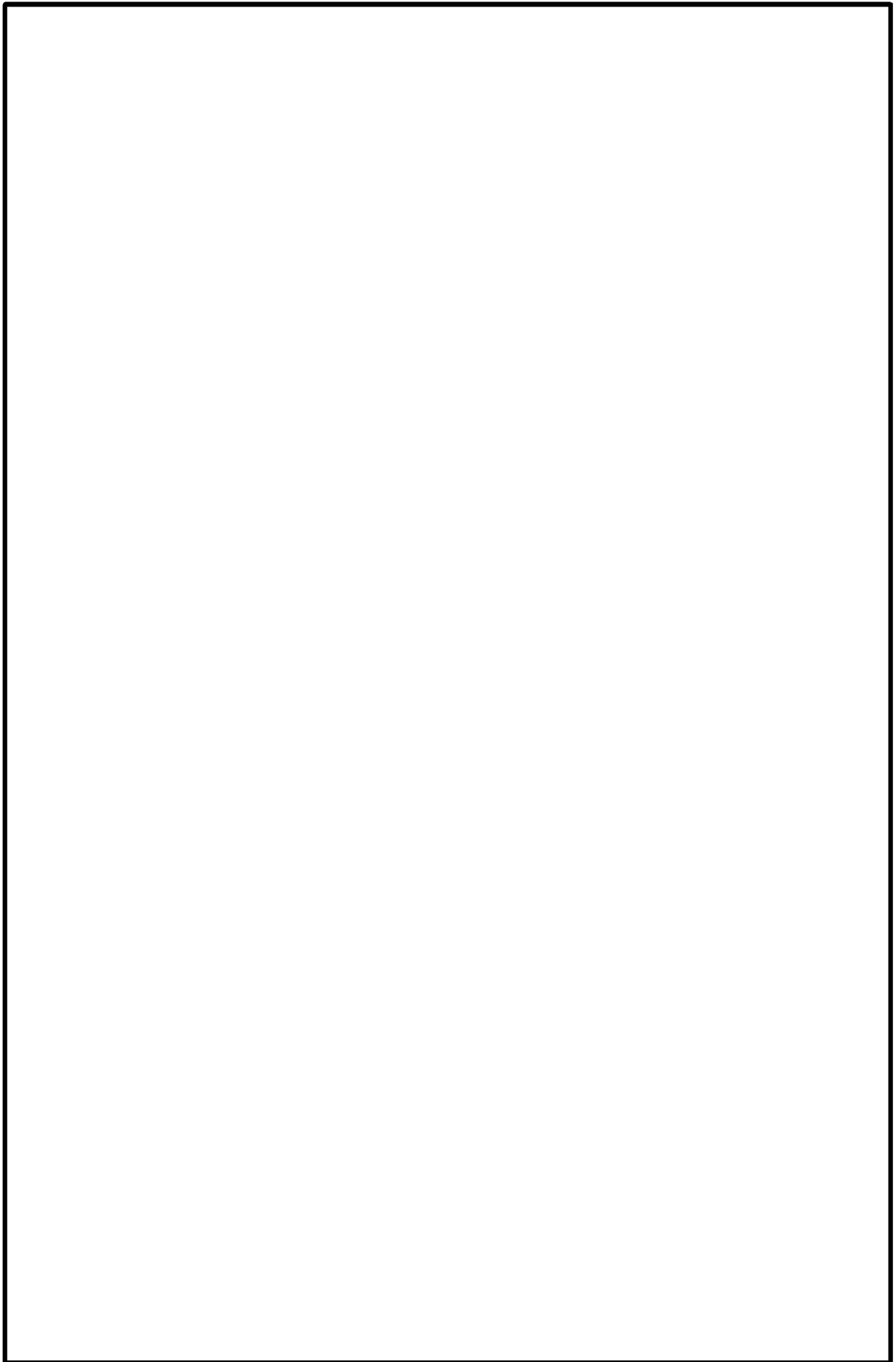




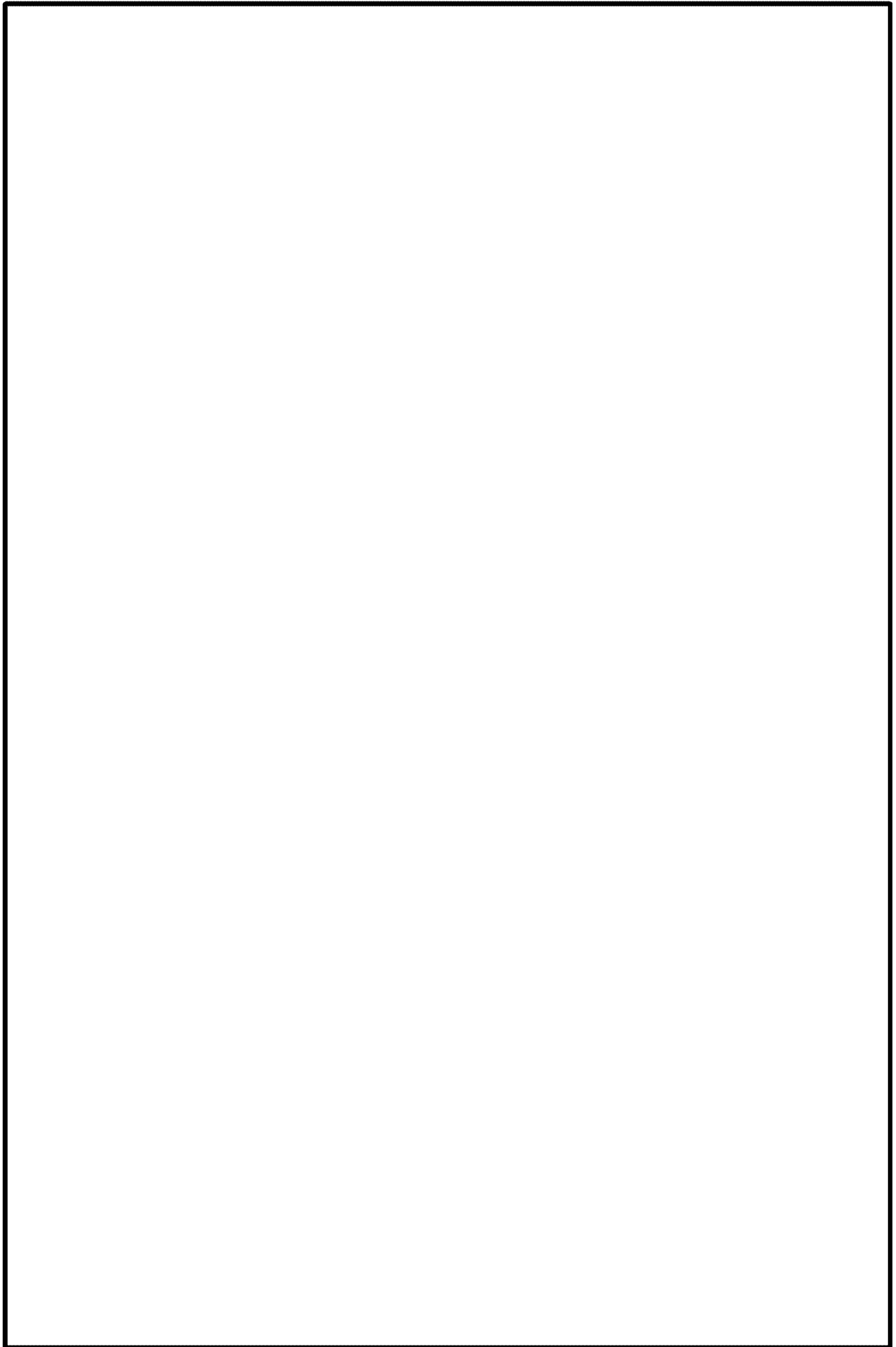
(b)(5)



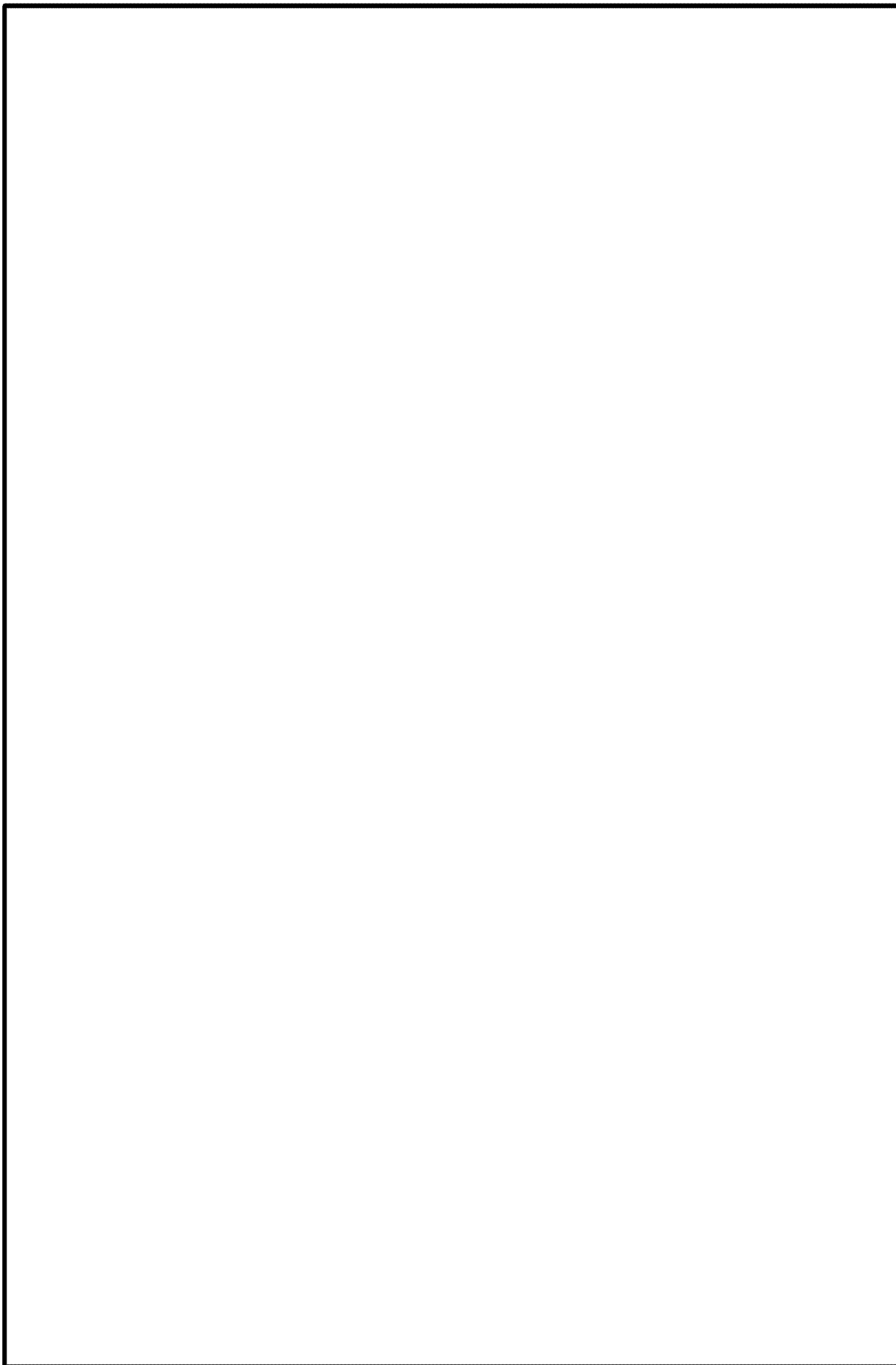
(b)(5)

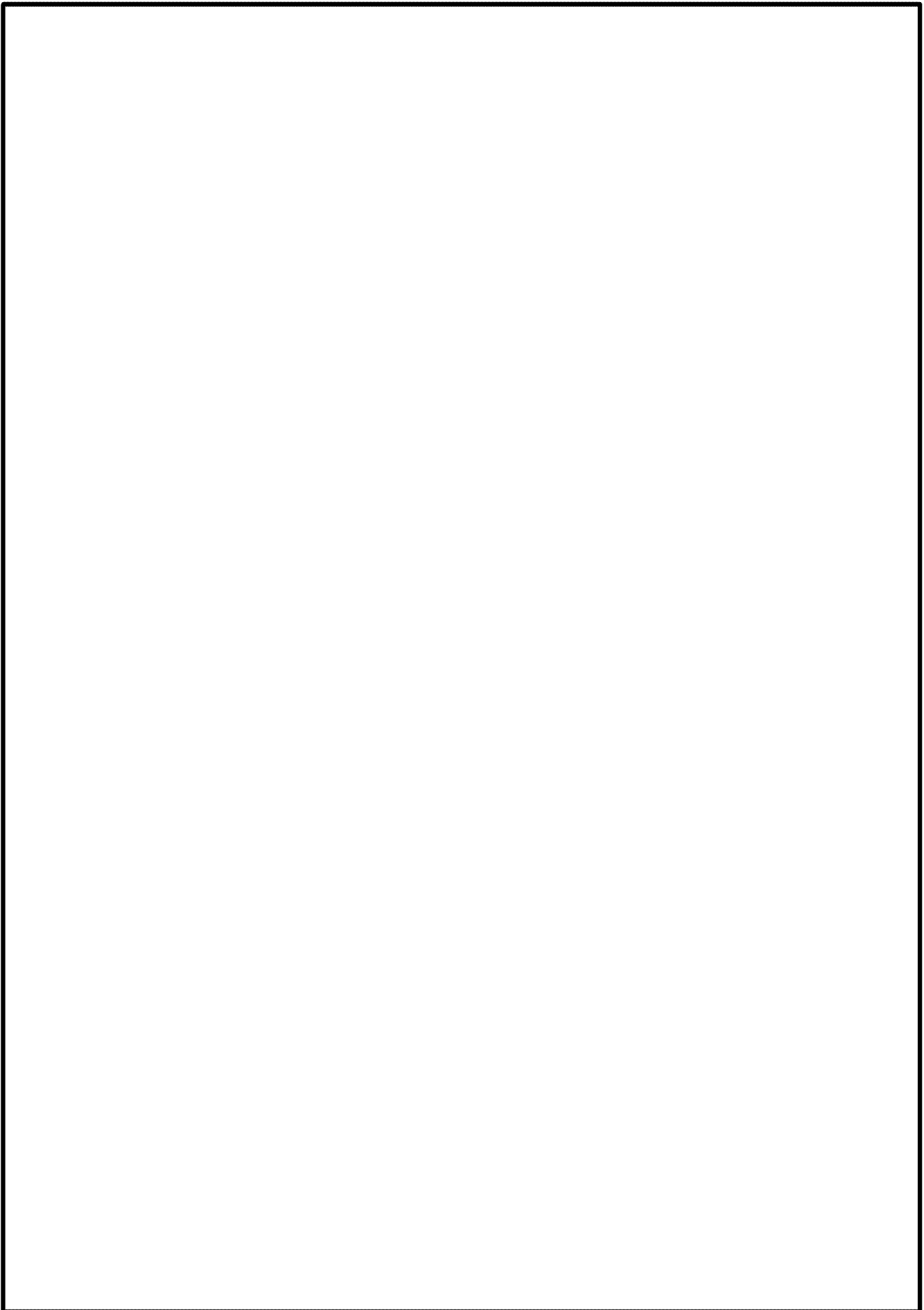


(b)(5)

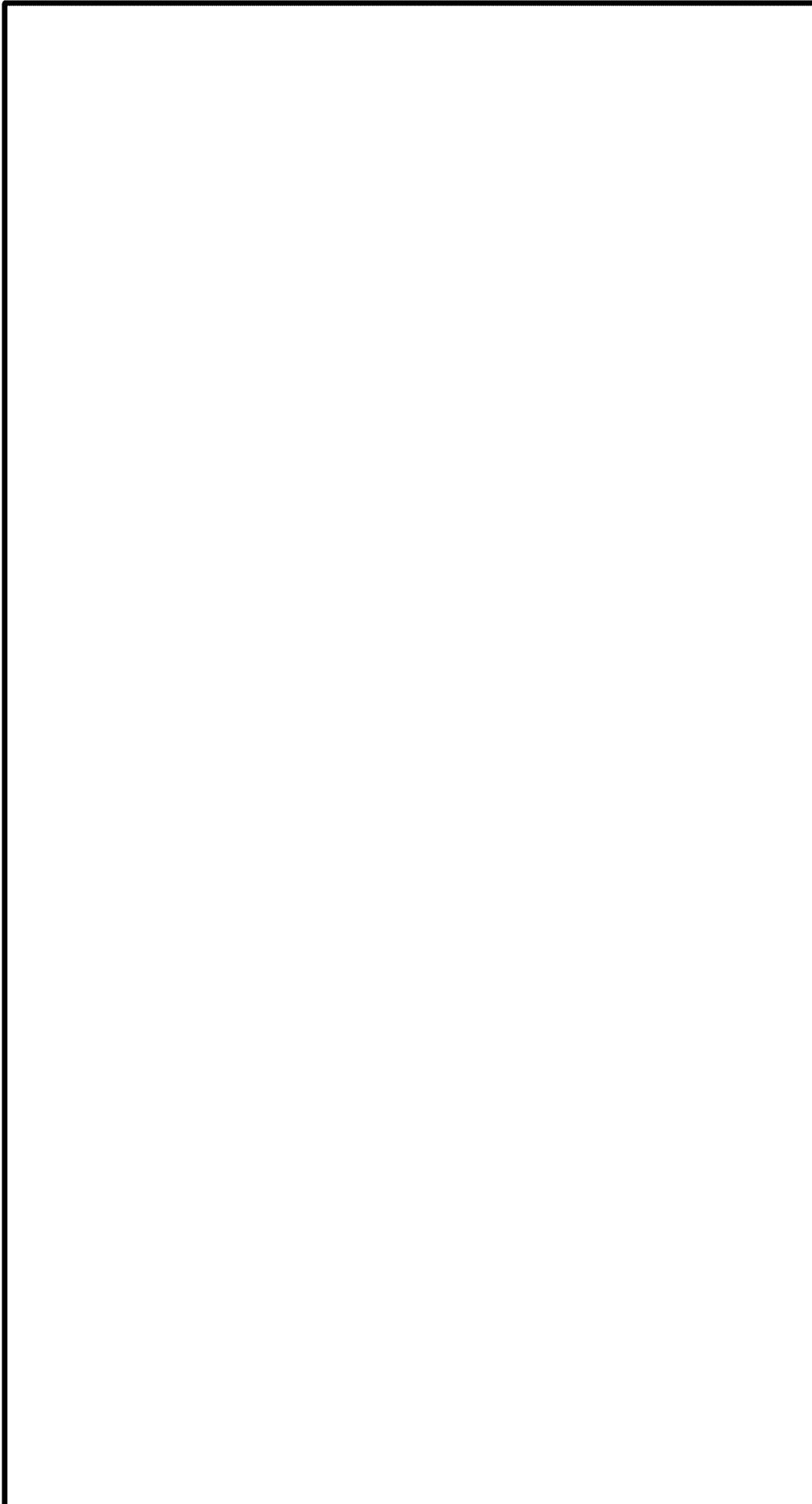


(b)(5)

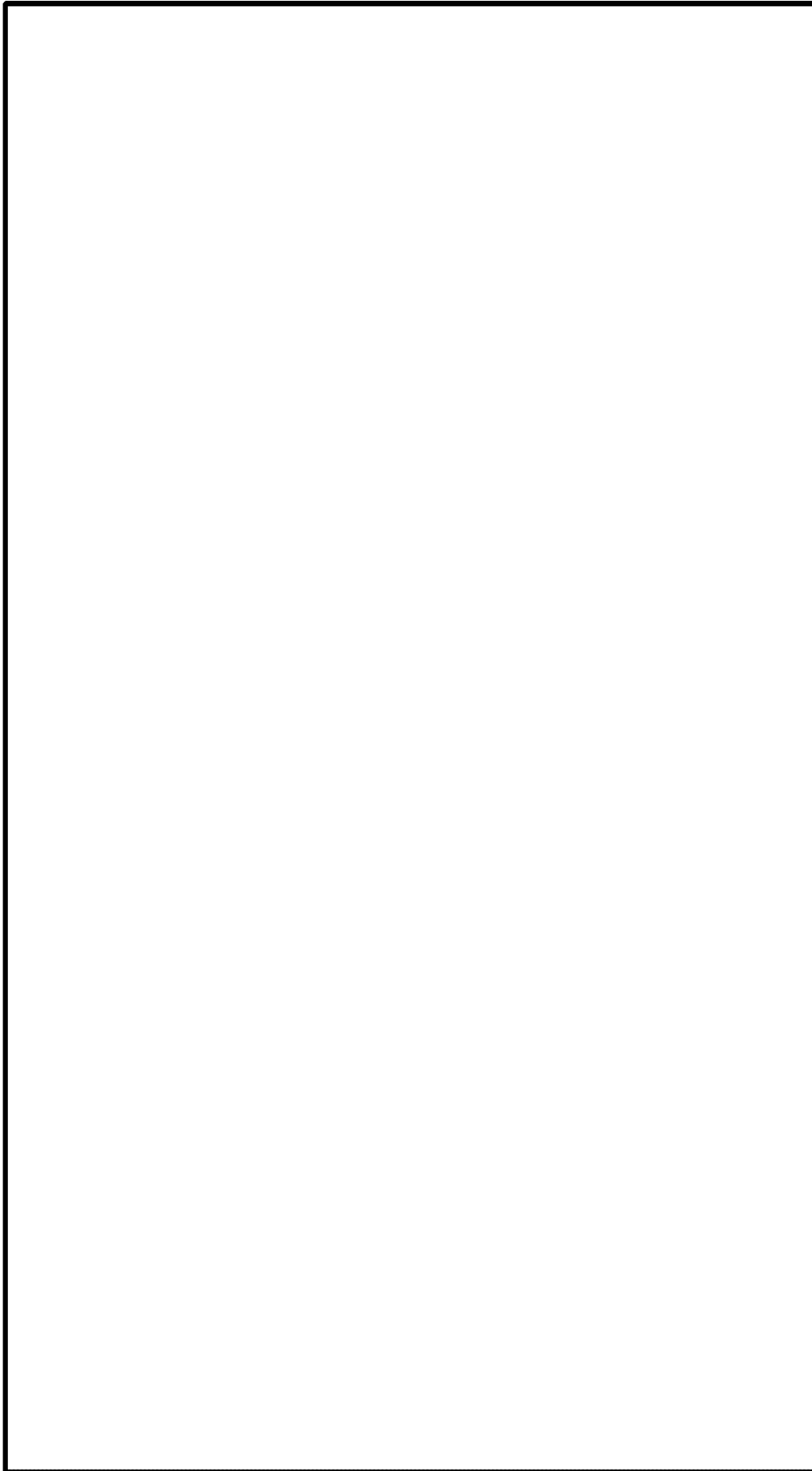





(b)(5)

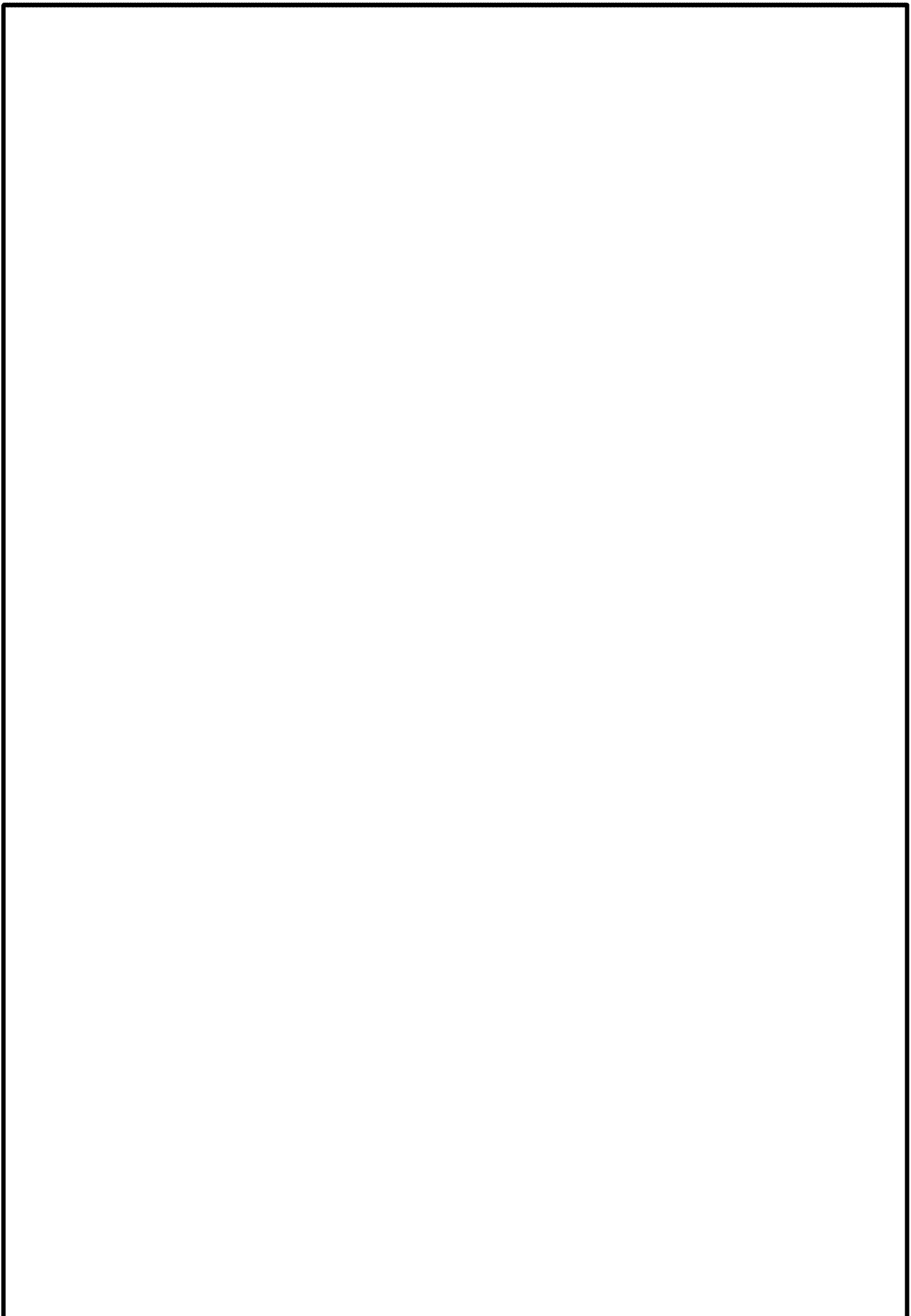


(b)(5)

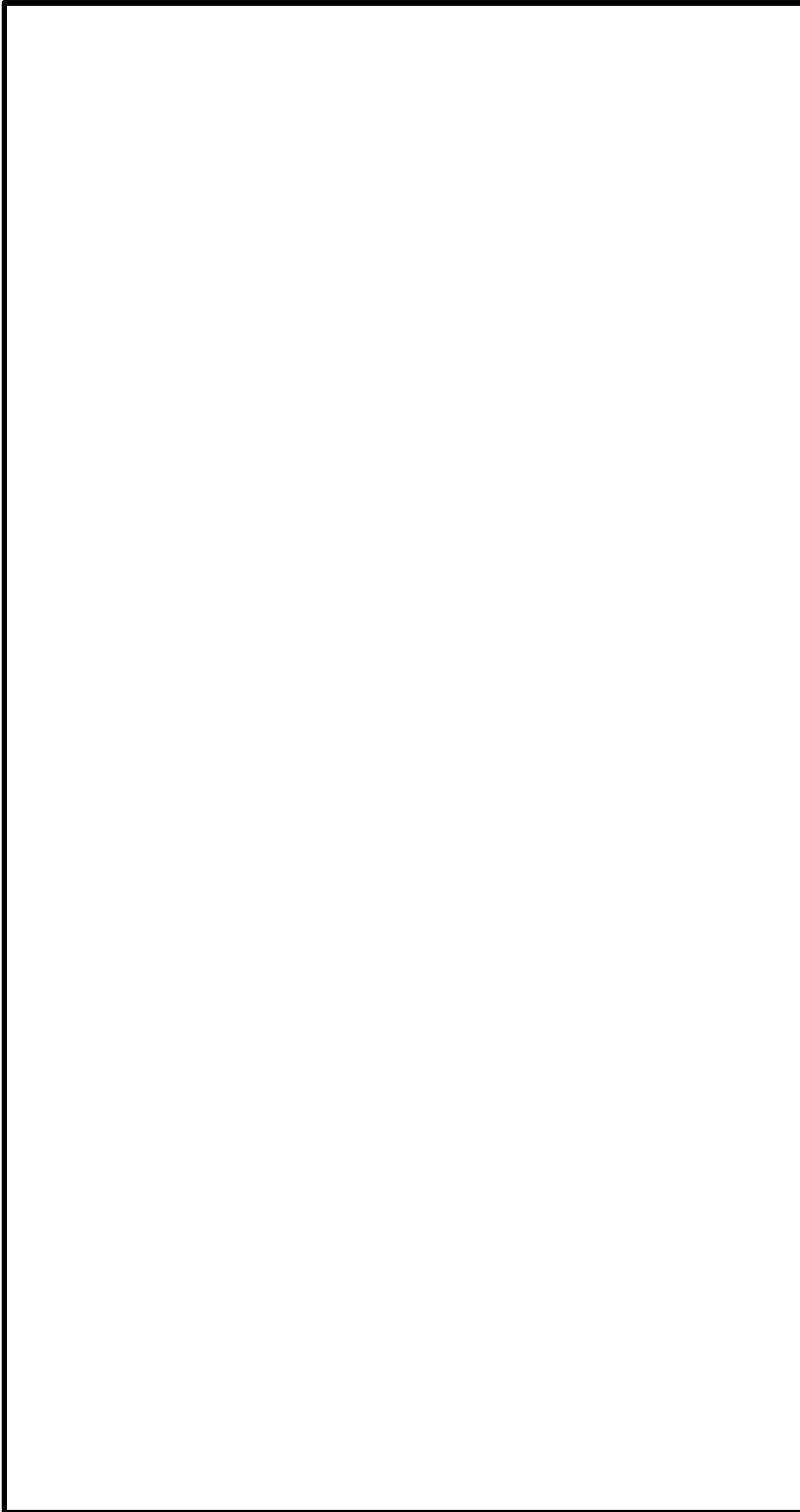


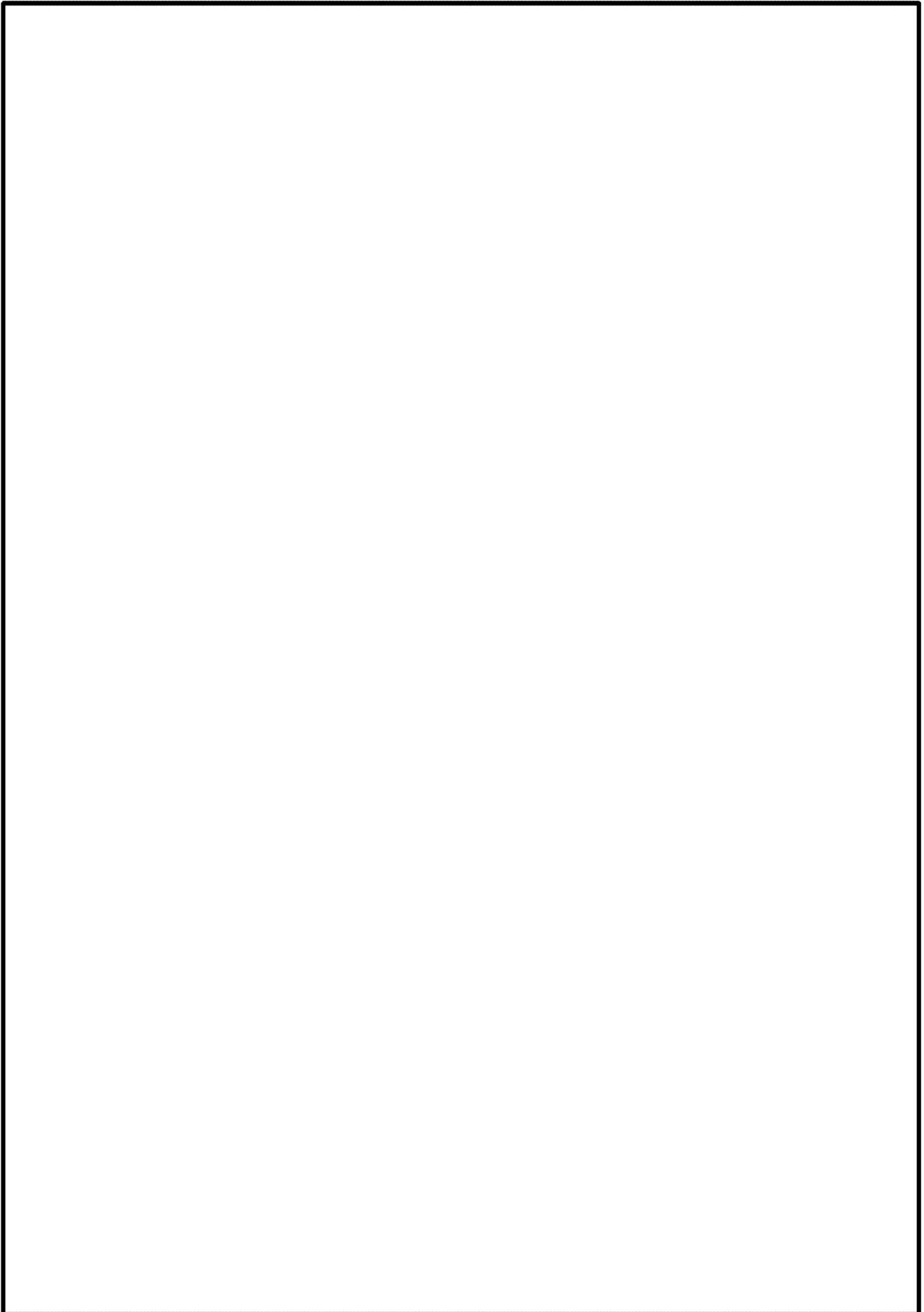
(b)(5)





(b)(5)



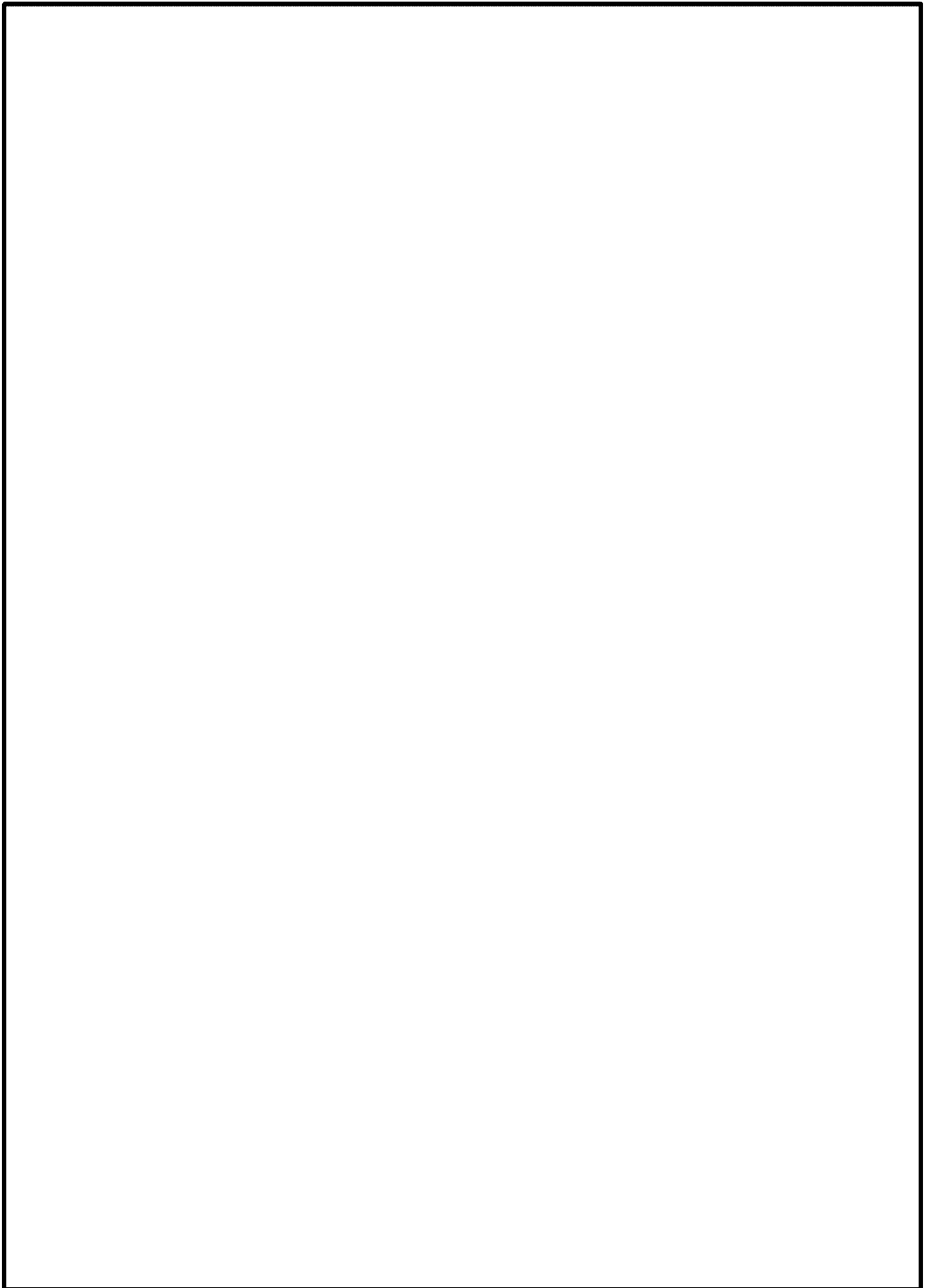


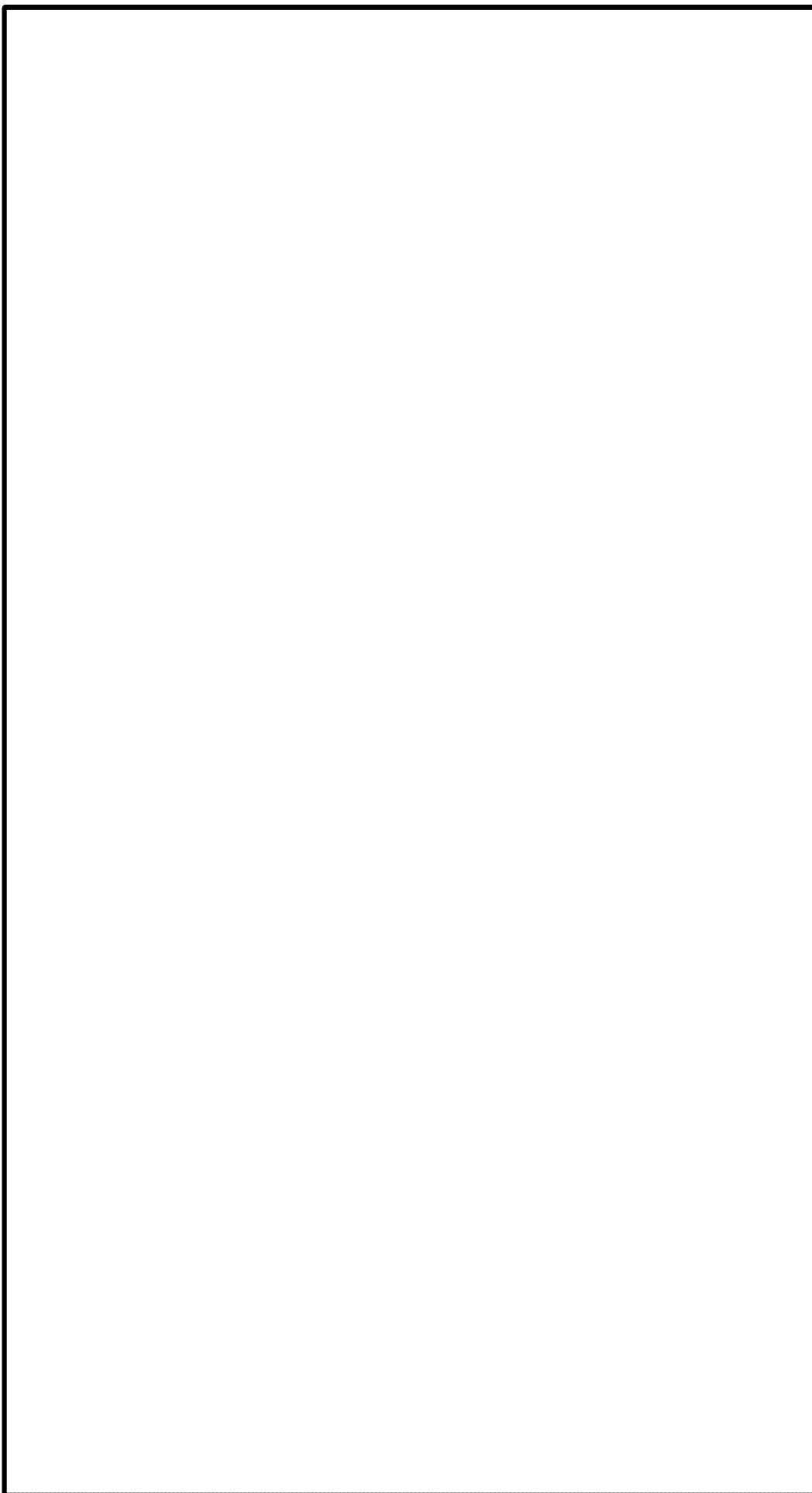
A large empty rectangular box with a black border, intended for a participant to write their response. It occupies the majority of the page area below the header and above the footer.

plete

it,

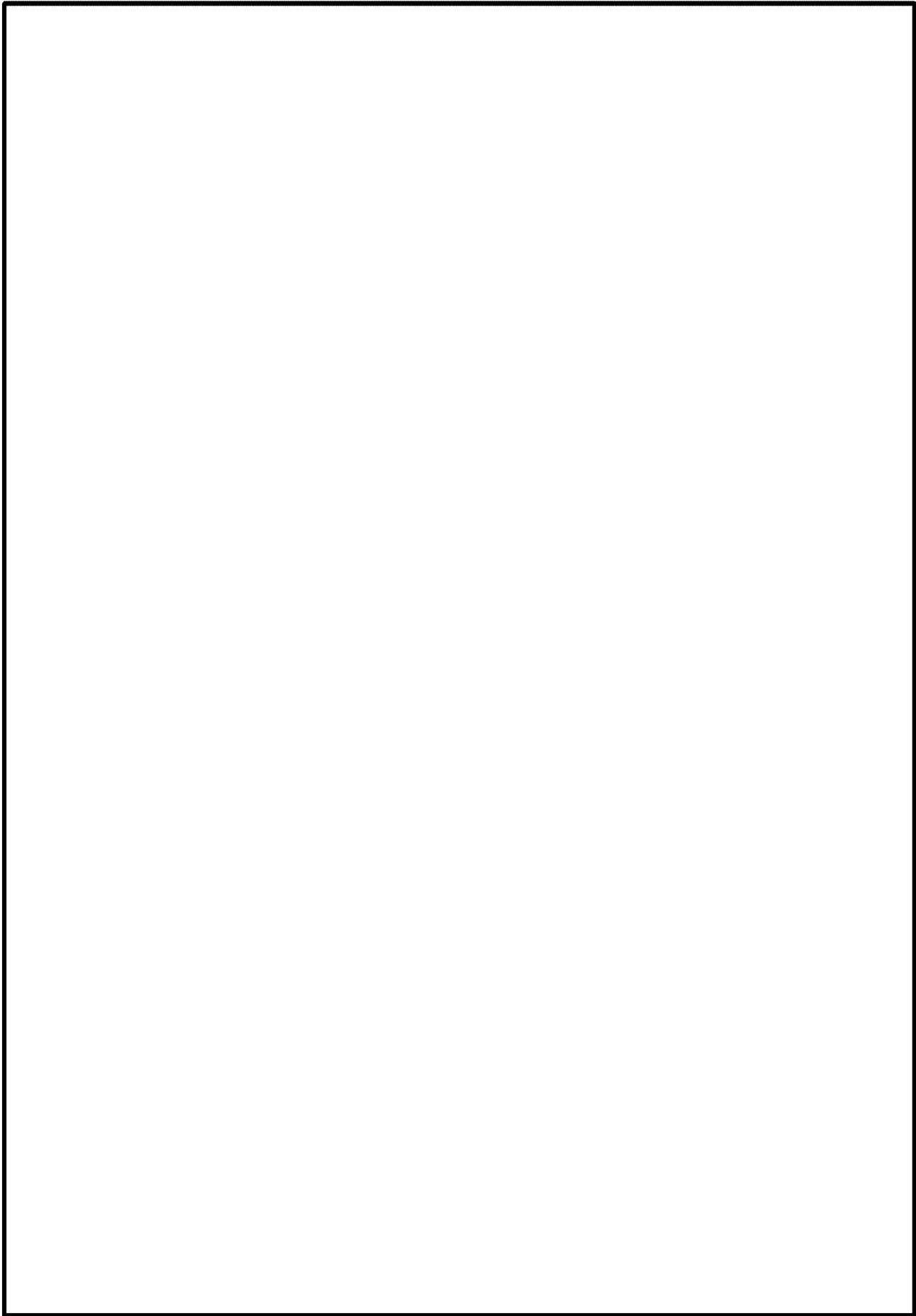
s



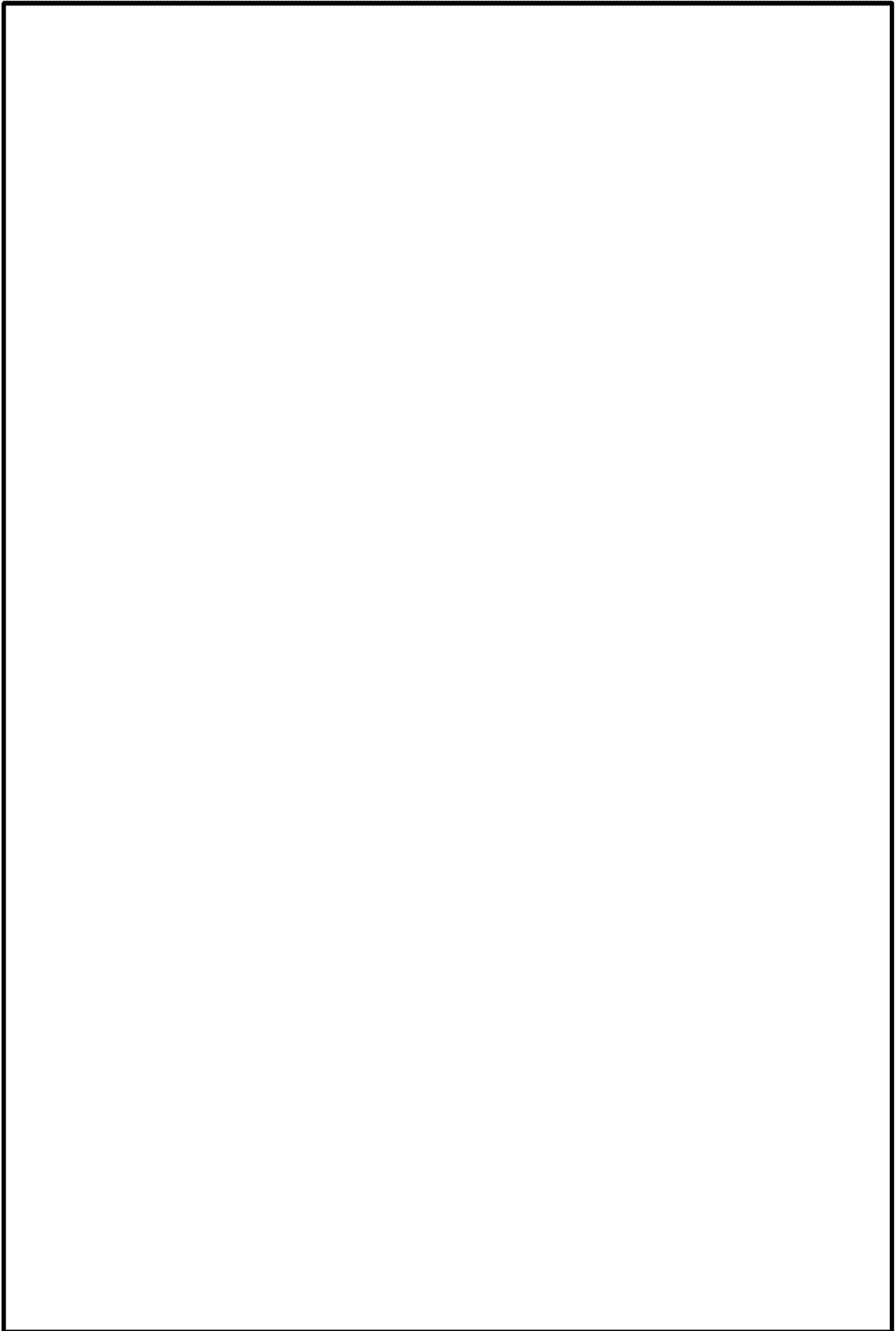


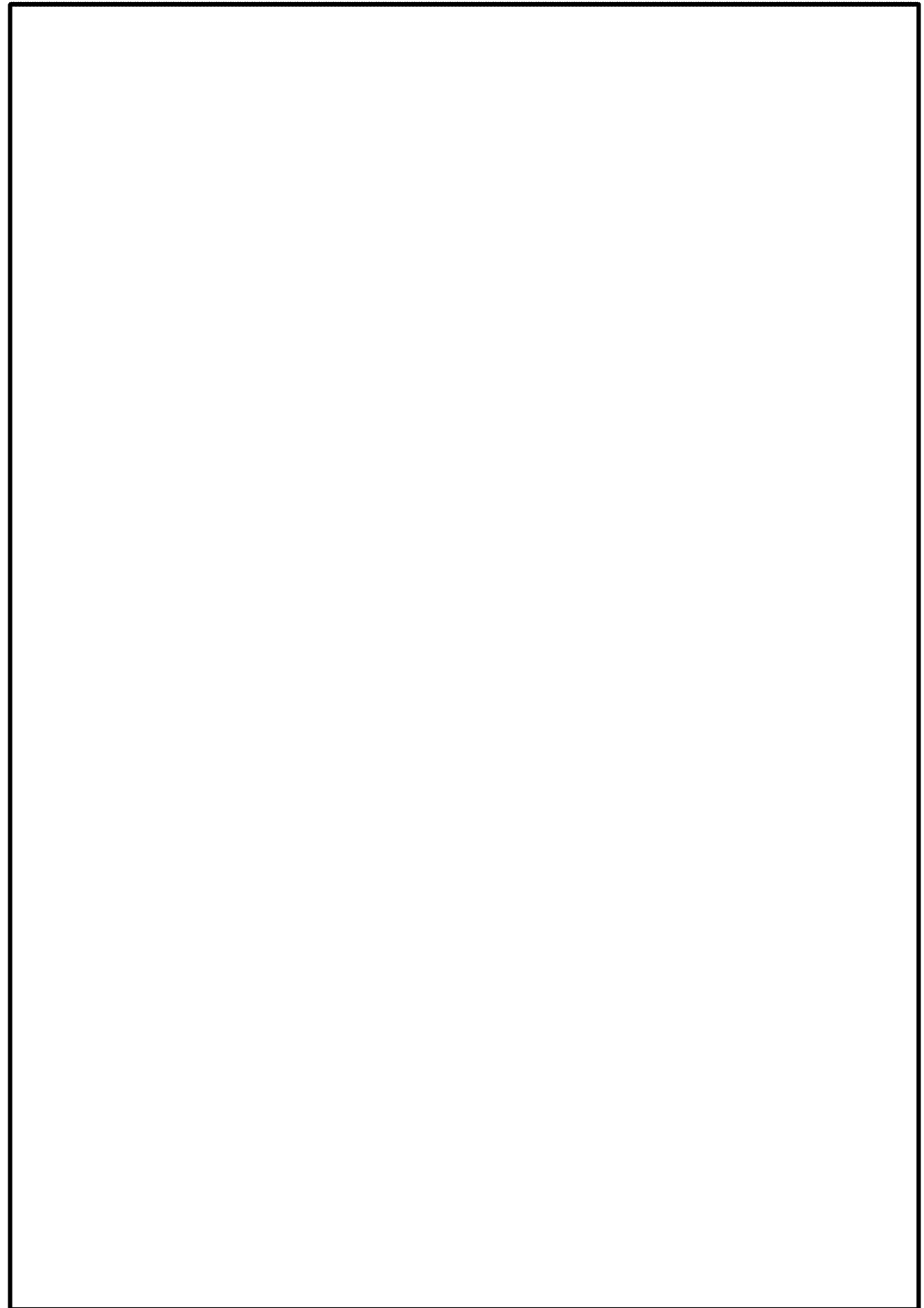
(b)(5)

(b)(5)

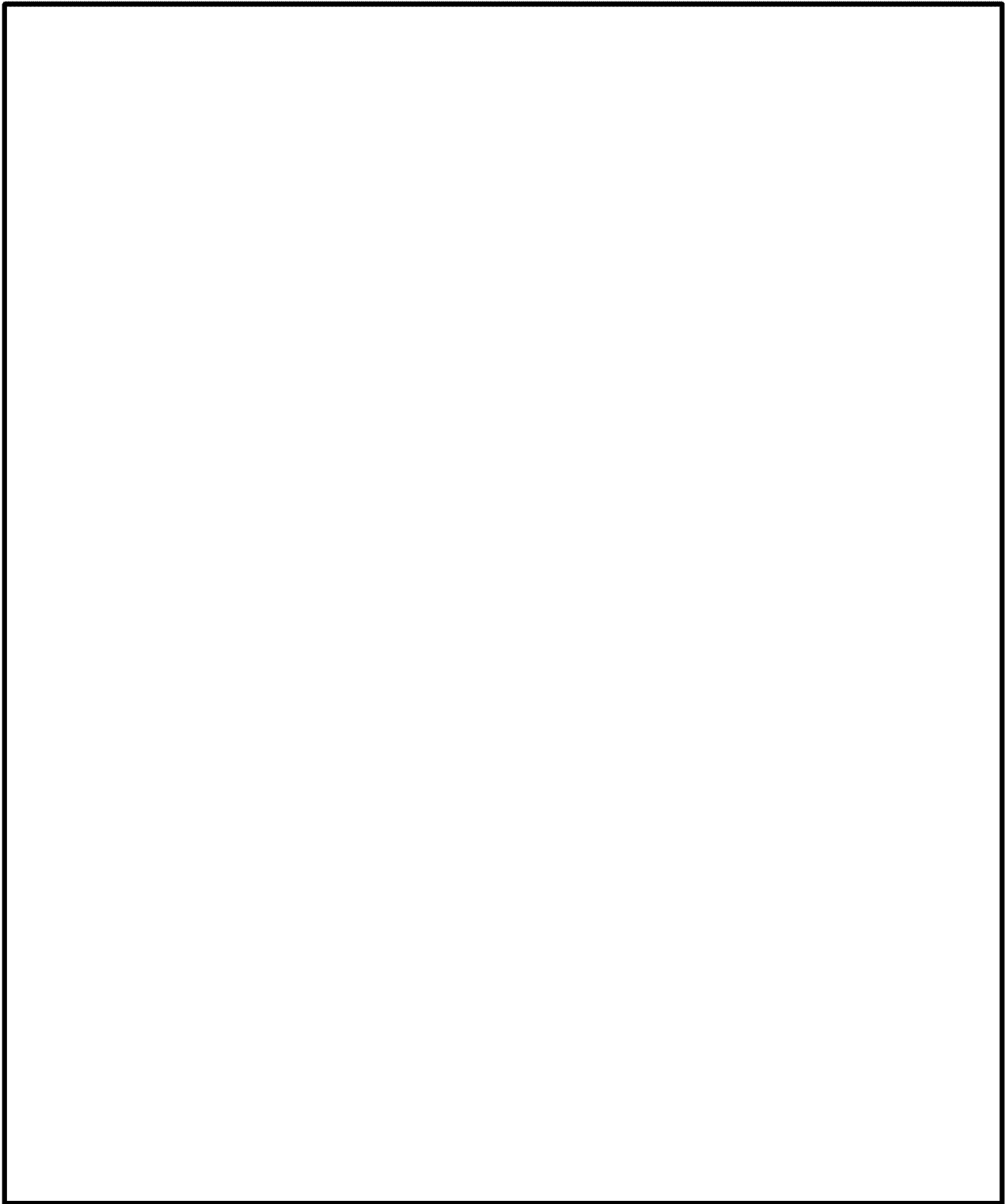


(b)(5)





(b)(5)



RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

EVIDENCE

TRAINING MODULE

This Page Left Blank Intentionally

RAIO Directorate – Officer Training / *RAIO Combined Training Course***EVIDENCE**

Training Module

MODULE DESCRIPTION

This module discusses burden and standards of proof and describes the types of evidence presented in support of petitions and applications for benefits in the RAIO Directorate.

TERMINAL PERFORMANCE OBJECTIVE(S)

You, the officer, will be able to determine whether an applicant establishes eligibility (meets his or her burden of proof) for the requested benefit based on the evidence of record.

ENABLING PERFORMANCE OBJECTIVES

1. Determine the proper standard of proof to apply in determining an applicant's eligibility as a refugee under INA § 101(a)(42).
2. Distinguish the applicant's burden of proof from the standards of proof necessary to establish eligibility as a refugee under INA § 101(a)(42).
3. Evaluate evidence presented in an application for protection under INA § 101(a)(42) for reliability and relevance.
4. Evaluate evidence presented in an application for protection under INA § 101(a)(42) to determine if the applicant has met the appropriate standard of proof.

INSTRUCTIONAL METHODS**METHOD(S) OF EVALUATION****REQUIRED READING**

Division-Specific Required Reading - Refugee Division**Division-Specific Required Reading - Asylum Division****Division-Specific Required Reading - International Operations Division****ADDITIONAL RESOURCES****Division-Specific Additional Resources - Refugee Division****Division-Specific Additional Resources - Asylum Division****Division-Specific Additional Resources - International Operations Division****CRITICAL TASKS**

Task/ Skill #	Task Description
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (4)
RI1	Skill in identifying issues of a claim (4)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
RI7	Skill in identifying information gaps, deficiencies, and discrepancies in data or information (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (3)
DM7	Skill in making legally sufficient decisions (5)
DM9	Skill in making legally sufficient decisions with limited information (5)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
June 6, 2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	MMorales, RAIO Training
August 3, 2015	Throughout document	Reorganization of module, some stylistic edits, updated links	RAIO Training.

TABLE OF CONTENTS

1	INTRODUCTION	8
2	TYPES OF EVIDENCE	9
2.1	Testimonial Evidence from the Applicant.....	10
2.2	Statements by Other Parties.....	11
2.3	Travel Documents	12
2.4	Identification Documents	13
2.5	Civil Documents Issued by Government Agencies.....	14
2.6	U.S. Government Records.....	14
2.7	Medical Evidence	15
2.8	Country of Origin Information	16
2.9	Other Types of Physical Evidence	17
3	BURDEN OF PROOF	18
3.1	Burdens of “Persuasion” and “Production”.....	18
3.2	Establishing Eligibility (the Applicant’s Burden)	19
3.3	Special Consideration in the RAO Context	20
3.4	Testimony Alone May Be Enough	20
4	STANDARDS OF PROOF.....	21
4.1	Beyond any Reasonable Doubt	24
4.2	Clearly and Beyond Doubt	24
4.3	Clear and Convincing Evidence	25
4.4	Preponderance of the Evidence	26
4.5	More Likely Than Not.....	27
4.6	To the Satisfaction of the Adjudicator.....	26
4.7	Reasonable Possibility.....	28
4.8	Significant Possibility.....	28
5	METHODOLOGICAL APPROACH	29

6	CONCLUSION	30
7	SUMMARY	31
	PRACTICAL EXERCISES	33
	OTHER MATERIALS	34
	SUPPLEMENT A – REFUGEE AFFAIRS DIVISION	35
	Required Reading	35
	Additional Resources	35
	Supplements	35
	SUPPLEMENT B – ASYLUM DIVISION	38
	Required Reading	38
	Additional Resources	38
	Supplements	38
	SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION	45
	Required Reading	45
	Additional Resources	45
	Supplements	45