

June 16, 2014

The Honorable John Lafferty
Chief, Asylum Division
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Refugee, Asylum and International Operations Directorate
Washington, DC 20529

Dear Mr. Lafferty:

We, the undersigned legal experts and nonprofit organizations working with refugees, asylum seekers, and torture survivors, write to express our deep concern with the recent revisions to the Asylum Division Officer Training Course Lesson Plan, [*Credible Fear of Persecution and Torture Determinations*](#), (hereinafter “Lesson Plan”) and the accompanying [memorandum announcing the revisions](#). A number of the changes effectuated through the Lesson Plan could have devastating effects for individuals fleeing persecution and torture and are inconsistent with the statutory standards and intent. We urge USCIS to immediately revise the Lesson Plan so that it is consistent with the asylum provisions of the Immigration and Nationality Act and reflective of their language and purpose.

We appreciate that USCIS is responsible for implementing the law in a way that protects *bona fide* refugees while maintaining the integrity of the asylum process, and that it is grappling with increased numbers of individuals fleeing violence and seeking the United States’ protection. However, the guidance and accompanying memorandum go well beyond just addressing gaps in training and instead indicate that asylum officers should apply a newly heightened standard when screening for credible fear. The guidance also appears to suggest that credible fear interviews should be conducted more like full-blown asylum interviews. The right response to a surge in humanitarian need, however, is a parallel build-up in resources, not a heightened restriction on access to asylum.

Both the statute and the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) make clear that Congress intended the credible fear process to serve as a low-threshold screening mechanism for protection claims. The “significant possibility” standard for credible fear determinations was set lower than the standard for full-scale asylum determinations with the understanding that potential refugees would be granted a later opportunity to prepare and present their full claims before an immigration judge. Potential refugees are often afraid of authorities, too traumatized to disclose their suffering, and unable to access legal counsel or understand what issues are relevant to support an asylum claim. Together, the process and the standard it employs were designed to ensure that the United States would continue to abide by its longstanding obligations under domestic and international law to not return an individual to a country where he or she is likely to face persecution or torture. The safeguards Congress put in place function only if individuals are appropriately referred to USCIS by ICE or CBP, and only if USCIS correctly applies the appropriate standard to credible fear screenings.

However, the Lesson Plan nonetheless deletes several references to this legislative history. The structure, tone, and content of the Lesson Plan seem, in a number of places, to require an asylum officer to complete a full assessment of the asylum-seeker's potential asylum or Convention Against Torture (CAT) claim. Although the Asylum Division claims that "these modifications... do not change the 'significant possibility' standard or alter the screening function of the credible fear process," in practice, these revisions will considerably heighten the longstanding "significant possibility" standard. The revisions also are likely to yield confusion among asylum officers by conflating the credible fear standard with the full asylum and CAT standards – often without sufficient explanation and distinction.

The potential for resulting harm cannot be overstated. With complex asylum and CAT determinations being made through a truncated process with a heightened and unclear standard and none of the mechanisms that allow for full record development, the safety net Congress created will be drastically undermined and untold numbers of bona fide refugees could be returned to their persecutors. These harms will only be exacerbated by the increase in the use of telephone interviews to conduct this critical screening process. The heightening of the "significant possibility" standard will further violate U.S. commitments under international law – including the Refugee Convention's prohibition against returning a refugee to a country where he or she is likely to face persecution. The Lesson Plan's approach will also have an inordinate effect on individuals with asylum claims that implicate rapidly evolving, unsettled areas of law, which cannot possibly be adequately developed and applied in a credible fear interview.

We urge the Asylum Division to immediately revise the portions of the Lesson Plan that are inconsistent with the statutory standard and the "screening" purpose of these interviews. We also encourage USCIS to carefully review and consider all comments on the lesson plan, and to quickly implement revisions. In the interim, we urge the Asylum Division to intensify supervisory review. Finally, given the significant increase in funding to CBP and the sharp increase in the use of expedited removal and reinstatement of removal, we urge the Asylum Division and USCIS to insist on sufficient additional funding to properly conduct credible fear and reasonable fear interviews in person and in a timely manner. Increased resources would allow USCIS to properly conduct its crucial role in these processes without adding to the backlog of affirmative asylum applications.

We greatly appreciate the willingness of the Asylum Division to engage with stakeholders, and respectfully request an in-person meeting to be scheduled by June 28, 2014 – 120 days since the memorandum was issued – to discuss the Lesson Plan and its impact on asylum seekers. Please do not hesitate to contact Kate Voigt at kvoigt@aila.org or Katharina Obser at obserk@humanrightsfirst.org with any questions or concerns.

Sincerely,

Organizations

Advocates for Human Rights

American Civil Liberties Union

American Friends Service Committee
American Gateways
American Immigration Council
American Immigration Lawyers Association
Catholic Charities of the Archdiocese of Newark
Catholic Legal Immigration Network, Inc.
Center for Gender & Refugee Studies, U.C. Hastings College of the Law
Center for Victims of Torture
Florence Immigrant and Refugee Rights Project
HIAS
Human Rights First
Human Rights Initiative of North Texas
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Lutheran Immigration and Refugee Service
National Immigrant Justice Center
Tahirih Justice Center
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