



Intro to UC Asylum

2025



Today's Topics

UC Asylum Overview

**Tips for Preparing
the Asylum Claim**

**Asylum
Adjudication**

**Benefits of Obtaining
Asylum**

UC Asylum Overview

“Unaccompanied Alien Children” aka UAC/UC

- Status that provides certain protections
- Designation given upon apprehension

Definition:

- No lawful immigration status
- Under age 18
- No parent or legal guardian in the U.S. available to provide care & physical custody

Homeland Security Act, 6 U.S.C. § 279(g)



Asylum

- 8 U.S.C. § 1158; INA § 208
- Applicant's burden to establish:
 - Authorized to apply;
 - Refugee definition in INA 101(a)(42)(A);
 - Merits asylum as a matter of discretion.



Who is Authorized to Apply?

- Physically present in the US
- There are 3 exceptions to this authorization:
 - ~~Safe third country available;~~
 - ~~Application not filed within 1 year of arrival;~~
 - Asylum application **previously denied.**
 - Unless applicant can show changed circumstances that would **materially affect** eligibility for asylum.



Refugee Definition

“A person located outside of their country, who is unable or unwilling to return to, and 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, political opinion or membership in a particular social group.” INA 101(a)(42); 8 USC 1101(a)(42)

Asylum Elements

Persecution:

- Past persecution or well-founded fear of persecution
- By government OR private actor/group that government is unable or unwilling to control

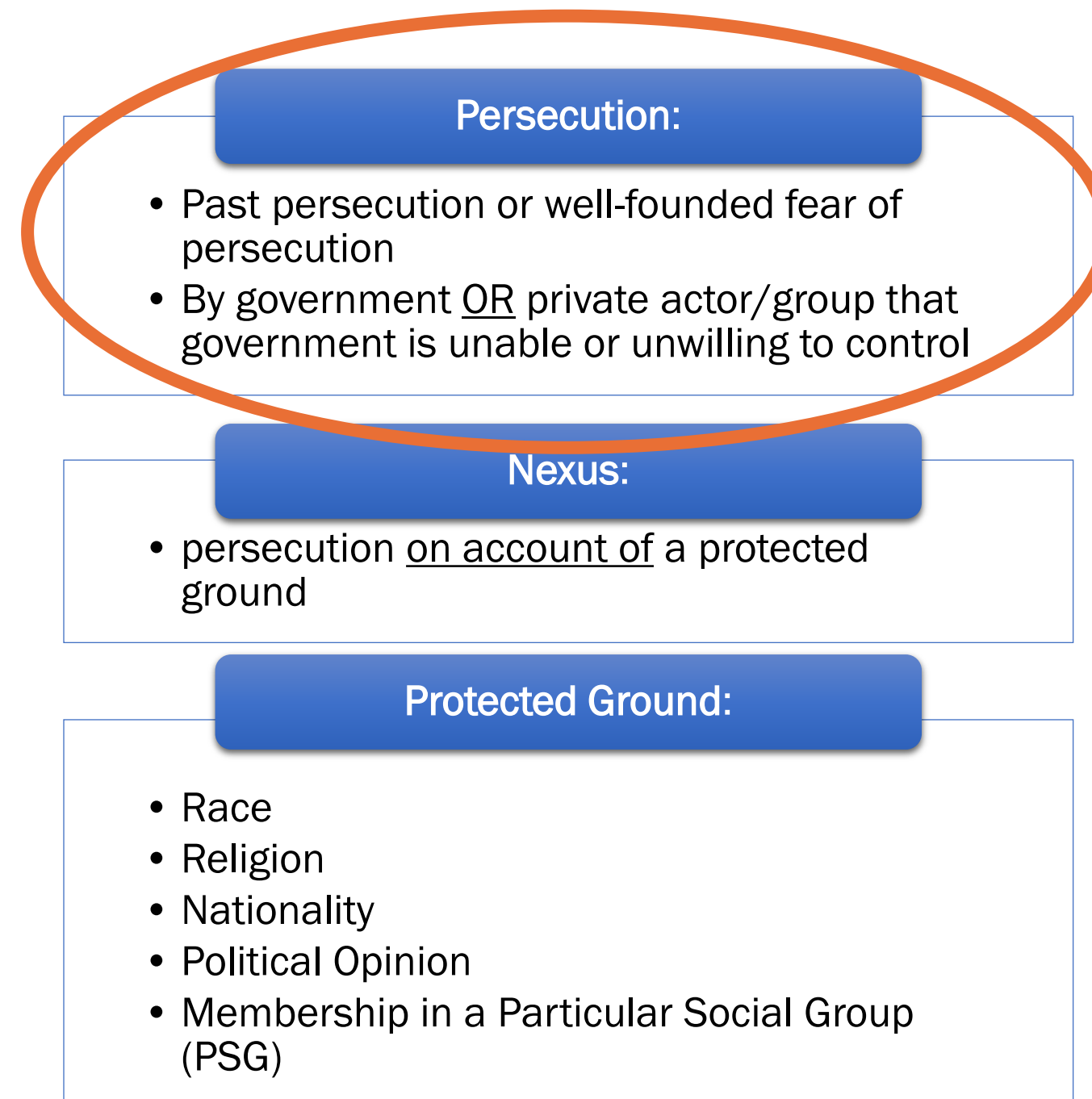
Nexus:

- persecution on account of a protected ground

Protected Ground:

- Race
- Religion
- Nationality
- Political Opinion
- Membership in a Particular Social Group (PSG)

Asylum Elements





Persecution

- Harm of a serious nature, more than mere harassment, injustice, unconstitutionality
 - Serious physical harm to self or
 - Threats to life or freedom
 - Severe economic deprivation
 - Rape/sexual assault
 - Trafficking
 - Servitude
 - Harm to family
 - Torture
 - Emotional and psychological
- Lesser harm can be considered *cumulatively*
- Standard for children - harm can be *less than* that of an adult and still constitute persecution. Children may not be fully aware of harm.

Source of Persecution

- The Government
 - No need to show state response to state action.
- Non-state actors
 - Government is unable or unwilling to control
 - State has a duty to provide effective and meaningful protection – have they taken reasonable steps?
 - Did the applicant make a police report?



Past Persecution

- If established, there is a presumption of a well-founded fear of persecution
- Presumption can be rebutted by DHS if there has been:
 - A fundamental change in circumstances so that the applicant no longer has a well-founded fear
 - Internal relocation would protect from continued persecution and would be reasonable – typically considered unreasonable for minors.
 - Applicant must show internal relocation will not protect from persecution if non-state actor; non-viability of relocation presumed if state actor

Well-Founded Fear of Persecution

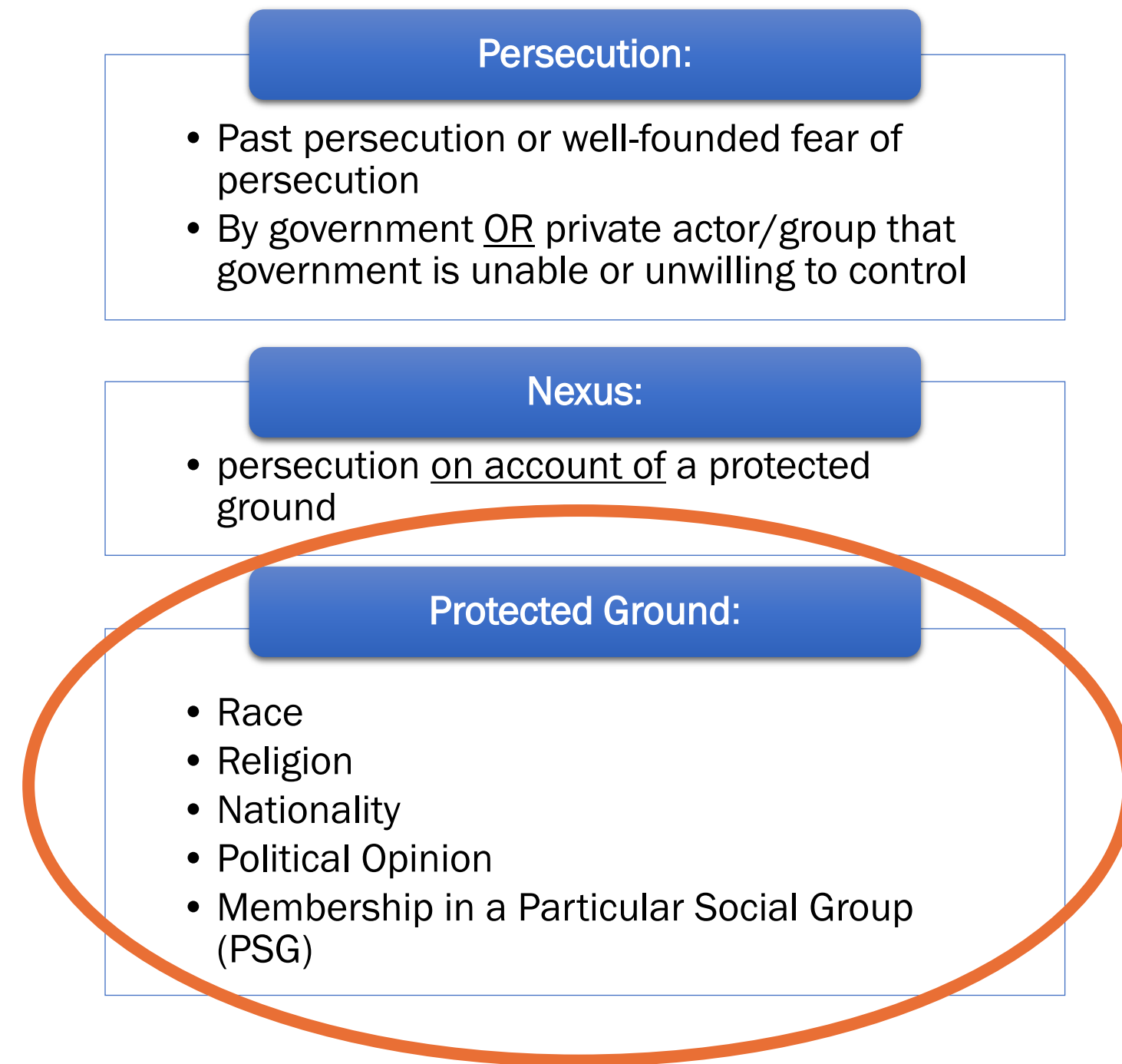
- Can be separately established based on fear of persecution upon return.
- Must show >10% chance of persecution – which can be proved by demonstrating that the applicant would be singled out individually, or there is pattern or practice of persecution against similarly situated individuals in country of persecution.
- Applicant's fear is both subjective to the person AND objectively reasonable:
 - **Subjective fear:** Was/is the applicant genuinely afraid? (can be difficult when child very young)
 - **Objective fear:** A reasonable person under similar circumstances would fear the persecution/harm
 - 5th Circuit Standard - a reasonable person in similar circumstances would fear persecution.
 - Supreme Court in *INS v. Cardoza-Fonseca* found that there is a reasonable possibility of persecution if there is a 10% chance of persecution happening.

Humanitarian Asylum

- **Humanitarian Asylum** can be granted in the ***absence*** of a well-founded fear of persecution. See 8 C.F.R. 1208.13(b)(1)(iii); see *also* *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989); *Matter of D-I-M-*, 24 I&N Dec. 448. 450 (BIA 2008); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012).
 - applicant is unable or unwilling to return because of suffering **severe past persecution** OR
 - applicant has a **reasonable possibility** of suffering **other serious harm** (does not need to be based on a protected ground).



Asylum Elements





Protected Grounds

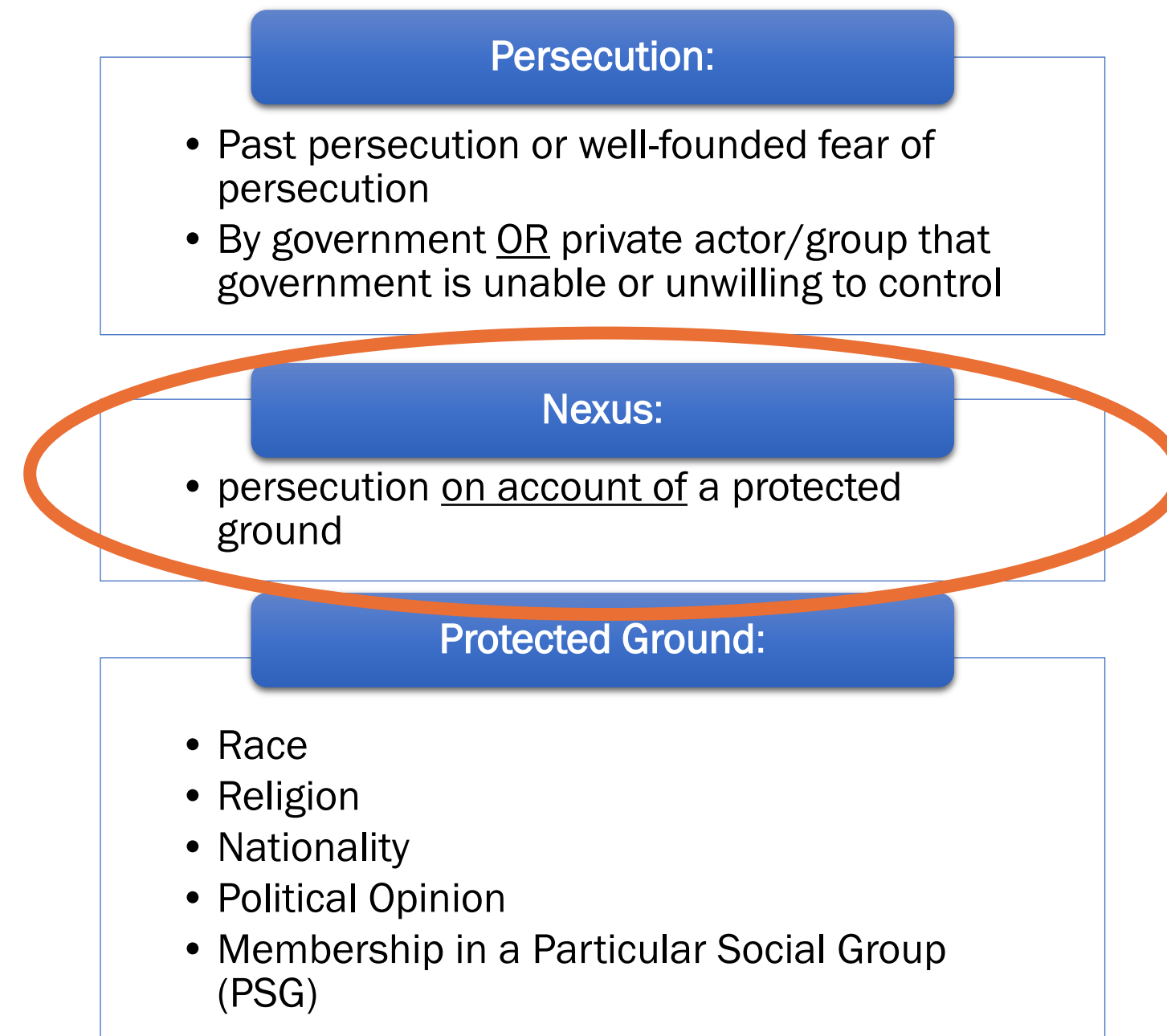
Five Grounds - can be actual or imputed

- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group (PSG)

PSG must be defined

- Common immutable or fundamental characteristic. See Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985)
- Socially distinct from rest of society (ocular visibility not necessary). See Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014); Matter of W-G-R-, 26 I. & N. Dec. 208 (BIA 2014).
- Particular - i.e. not vague, ambiguous or too broad. See Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014); Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008)

Asylum Elements



Nexus



- Persecution must be *on account of* the protected ground.
- Motive must be “one central reason” for persecution – but can have mixed/multiple motives
 - See INA § 208(b)(1)(B)(i); *In re J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).
- Establish motive through direct or circumstantial evidence
 - See *INS v. Elias-Zacarias*, 502 U.S. 478 (1991)

Tips for Preparing the Asylum Claim



How to Prepare the Asylum Claim With Your Child Client

- Meet several times to develop rapport and trust with the child. Keep the child informed and make sure they are making the decisions. Help child understand what is happening and explain roles: Immigration Judge, ICE Attorney, Asylum Officer, Interpreter, etc.
- Meet privately with the child and establish direct communication (even when using interpreter).
- Know the facts! Draft an outline of the child's story with the child.
 - Elicit information in a variety of formats to ensure consistent answers
 - Elicit facts and descriptive details rather than conclusions
 - Explain that it's okay for child to say, "I don't know", "I don't remember", or "I don't understand"
- Understand that your client may not be accurately reporting dates, duration, frequency, names, etc. due to age or trauma, and may define normalcy by his/her own experience

Where Do I File?



Typically, if a person is NOT in removal proceedings, the USCIS Asylum Office (AO) has jurisdiction over the application. If the AO does not grant asylum, they will refer (not deny) the case to the Immigration Court. The Immigration Court then considers asylum de novo after a referral (along with some lesser forms of protection).

If a person IS in removal proceedings, the Immigration Court has jurisdiction over the asylum application and the applicant only has the one opportunity to have their case heard.

If a child is designated as a UC, initial jurisdiction lies with the AO, *regardless* of whether they are in removal proceedings. INA § 208(b)(3)(C); 8 USC § 1158(b)(3)(C), as amended by the TVPRA. This an additional asylum protection.



How Do I Avoid Jurisdictional Pitfalls?

The Immigration Judge (IJ) *could* try to **redetermine UC status** and **TAKE jurisdiction**, if:

- the child has been reunified with a parent or legal guardian, OR
- the child applied for asylum after turning 18.

In order to preserve your client's right to UC asylum protections, prepare to do the following:

- File application with USCIS **prior to the first master calendar hearing or scheduling order deadline** so that a receipt can be filed with the Immigration Court.
- File application with USCIS **before the child turns 18**.
- File application with USCIS **prior to obtaining SIJS predicate order granting custody to a non-parent**.

What do I file?

Start by filing a “skeletal” or “bare bones” application with the USCIS Asylum Office to avoid issues with corroboration and credibility at time of adjudication. You will continue to build out additional evidence that will be supplemented after the initial filing.

Do this by filing **Form I-589** by mail with a basic cover letter and required accompanying documents (this is considered an “*affirmative*” application). You will not file corroborative evidence at this stage. Your KIND mentor will provide samples and templates. Please note that UC filings have special labels and the mailing address can differ, so it’s important to follow KIND’s instructions on filing.



What should I do after I file?

- Further develop the legal theory by mapping out the elements and evidence. Understand that it will take time to sufficiently build the argument and gather evidence.
- Draft and gather the following:
 - Legal brief (after outlining, determine whether to file)
 - Witness declarations
 - Country conditions documentation
 - News articles
 - Human Rights Reports
 - State Department reports
 - Google
 - Other publications
 - Expert evaluations
 - Psychological evaluation
 - Physical evaluation
 - Country conditions expert report
 - Motions and other ancillary court filings.

Asylum Adjudication



Asylum Adjudication before the USCIS Asylum Office

- Adjudication of “affirmative” application in interview format.
- Pre-pandemic, attorney would be seated behind the child, taking notes. COVID protocols have resulted in the asylum officer being seated in one office, while child and attorney may join by iPad in a separate office in the AO. An interpreter is provided by the AO via telephone.
- Asylum officer will review asylum application with child and child will directly answer asylum officer’s questions.
- Attorney takes a more passive role, but may have the opportunity to provide a closing statement and can speak up when appropriate or ask for a supervisor.
- Decision is issued on a later date, either by mail or in person.

Asylum Adjudication Before the Immigration Court

- Adjudication of “defensive” application during an “Individual Calendar Hearing”.
- Trial-like format and considered civil proceedings, but rules of evidence are relaxed and the court has its own procedures laid out in the Immigration Court Practice Manual.
- Attorneys will conduct direct and cross examination of witnesses (including client) and *may* have the opportunity to make an opening and closing statement.
- Immigration Judge will likely also question witnesses.
- Immigration Judge may issue decision orally or provide a decision in writing on a later date.

Benefits of Obtaining Asylum



Benefits of Asylum

- Employment Authorization
 - Can become eligible once the application has been pending for 180 days. Your client can apply after 150 days.
 - After obtaining asylum, work authorization is automatic
- A spouse or child can be included as a “derivative” beneficiary in an asylum claim.
- Asylum status creates eligibility for refugee benefits (like Medicaid and other support).
- Asylee cannot be removed from the U.S. because of protection granted from home country.
- Immigration Court proceedings are terminated because permanent relief has been granted.
- Asylees are eligible for permanent residency after one year of being granted asylum.

KIND Contact Info

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