

## **GUIDELINES FOR EXPERT WITNESSES: SERVING AS COUNTRY OR SUBJECT MATTER EXPERTS IN ASYLUM OR WITHHOLDING OF REMOVAL CASES**

Thank you for agreeing to serve as an expert on behalf of a client of the Tahirih Justice Center (Tahirih). Tahirih works to protect immigrant women and girls seeking justice in the United States from gender-based violence.

Our asylum work consists of providing pro bono legal representation to women and girls in the United States who are fleeing gender-based violence in their home countries such as female genital mutilation, torture, rape, human trafficking, honor crimes, widow rituals, forced marriage, and domestic violence. More information about us is on-line at: [www.tahirih.org](http://www.tahirih.org).

This document reviews the legal elements of asylum and withholding of removal claims, explains how an expert affidavit helps to prove those elements, and provides guidelines for drafting expert affidavits. Because each case is different, we highly recommend discussing the case first with the attorney representing the asylum seeker to ensure that the affidavit is sufficiently tailored to the particular facts of the case.

### **OVERVIEW OF ASYLUM AND WITHHOLDING OF REMOVAL**

To qualify for asylum or withholding of removal, the applicant must show that she is a “refugee” under US Immigration Law, which consists of the following elements:

- (1) *Alienage*: she is outside her home country.
  
- (2) *Persecution*: she suffered or there is a 10% chance or greater that she will suffer serious harm—more than discrimination or harassment—if forced to return to her home country. To qualify for an alternative form of relief called withholding of removal, she must show that it is more likely than not (i.e., 51% chance or greater) that she will suffer serious harm if forced to return to her home country.
  
- (3) *Well-Founded Fear*: she fears return based on past persecution or the likelihood of future persecution. This element consists of both subjective and objective components; the asylum seeker subjectively fears persecution, and this fear is substantiated by objective, relevant evidence of conditions in the home country.

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- (4) *On Account Of a Statutory Ground*: the harm feared is due to her (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group.

Many gender-based claims are based on “membership in a particular social group,” an evolving legal term. This figurative “group” consists of others similarly situated who, because they possess the same immutable characteristic, would face similar harm. Some courts require that the group be “socially visible” within the society and particular. Social visibility can be met by demonstrating that society as a whole treats members of the group differently than non-members of the group. Particularity is met by defining the group so as to avoid amorphous and overbroad groups (i.e. instead of “Guatemalan women” a more particular group would be “unmarried Guatemalan women”).

- (5) *Failure of State Protection*: the government is unwilling or unable to protect the applicant.

## **PURPOSE OF AN EXPERT AFFIDAVIT**

An expert affidavit may serve multiple purposes in an asylum or withholding claim. By providing a detailed description of relevant cultural practices, laws, or attitudes, the expert helps to prove the applicant’s objective fear of return. In addition, the expert typically reviews the applicant’s declaration, corroborates that her story is consistent with the expert’s knowledge and experience, and explains portions of the applicant’s declaration that require clarification. This corroboration bolsters the applicant’s story and helps to show that she is credible. Finally, the expert provides an opinion as to what would likely happen if she were forced to return to her home country.

## **GUIDELINES FOR DRAFTING AN EXPERT AFFIDAVIT**

### **QUALIFICATIONS AND EXPERTISE**

Your statement should begin with a summary of your qualifications and expertise to demonstrate that you are an expert in the country and subject matter relevant to the claim (we will also include your CV with the final declaration). This part of the statement should include:

- Your name, age, citizenship or immigration status
- Place of employment and position
- Educational background and Publications
- Travel to and, if any, extended periods of time spent in the country the asylum seeker is fleeing
- Other evidence of expertise, such as awards, honors, or recognition as an expert in the field at issue
- Prior experience in testifying as an expert or serving as an expert witness
- Testimony before the US Congress, international courts, bodies of the United Nations, etc.
- Remuneration for your affidavit and testimony, if any
- Description of how you keep apprised of new developments in the country the asylum seeker is fleeing

### **COUNTRY BACKGROUND**

This part of the statement includes a description of relevant country background and conditions in addition to an explanation of key concepts in the context of the culture (examples: concept of “honor,” cultural importance of female genital mutilation, entrenched cultural attitudes toward homosexuality, how domestic violence is viewed within a society). If you have findings from published studies or reports, please include them!

### **ASYLUM SEEKER’S STORY/YOUR EXPERT OPINION**

In this section, you should first explain whether you know the applicant personally and address which documents you have reviewed to prepare the statement (the applicant’s declaration, etc.). This section should address the danger that she faces upon return, and should corroborate her story. Some tips for drafting:

- Describe what you believe has happened to the applicant and why, and what may happen to her if she is removed from the United States
- Provide the basis for your opinion about what will likely happen to the applicant if removed from the United States

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- Please address the following questions:
  - What is the likely harm that the asylum seeker would face upon return to her country?
  - Could the asylum seeker safely live in another part of the country?
  - Are there services provided by the government or non-profit organizations for victims of the type of abuse the asylum seeker fears?
  - Would the government be willing or able to protect her? Why not?
- You should end with a concluding statement that gives your expert opinion as to what you believe would happen to the asylum seeker if forced to return.

Your statement should end with the following: “I declare under the penalty of perjury that the foregoing is true and correct.” You should then sign and date the statement and include your current contact information. It is not necessary to have the statement notarized.

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