



## INTRODUCTIONS



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## LEARNING OBJECTIVES

- Preparing for Court
- Presenting Your Case
- Decisions in Immigration Court and What's Next



**BEFORE YOU WALK INTO THE COURTROOM**



## PREPARING FOR COURT

- Be creative
- Think on your feet
- Be comfortable with being uncomfortable
- Expect the unexpected



## KNOW YOUR COURT

- Executive Office for Immigration Review (DOJ)
- Review the Immigration Court (EOIR) Practice Manual!
- Observe a Master Calendar Hearing and an Individual (Merits) Hearing
- Do homework on your Immigration Judge
- Reach out to your trial attorney, if possible



## WORKING WITH THE OFFICE OF THE CHIEF COUNSEL (OCC)

- Know your trial attorney
- Stipulations
  - Narrowing down issues
  - Agreeing on certain facts
  - Limiting your client's testimony
  - Qualifying expert status and/or witness declarations
- Reach out to the OCC's "friendly" trial attorneys



## MOTIONS IN IMMIGRATION COURT

- Immigration Court Practice Manual Chap. 5
- Continuance - Extend the time for producing documents, witnesses, etc.
- Transfer - Move the proceedings to a different immigration court
- Advance – Recalendar a hearing to take place sooner
- Set to a short matter hearing
- Issue a subpoena
- Hold a pre-hearing conference



## TERMINATION? MATTER OF PEREIRA

- Pereira v. Sessions, 585 US \_ (2018)
- Notices to Appear (NTAs) without specific time and place of hearing information are putative
- Evolving jurisprudence, uneven adjudications
- Pros and cons of termination
- Consult with your Tahirih mentor



## ***MATTER OF E-F-H-L-,*** **27 I&N DEC. 226 (A.G. 2018)**

- Original BIA Decision: 26 I&N Dec. 319 (BIA 2014)
- BIA held that an asylum applicant “is entitled to a hearing on the merits of those applications, including an opportunity to provide oral testimony and other evidence, without first having to establish prima facie eligibility for the requested relief”
- AG vacated the decision because the respondent subsequently withdrew his asylum application and requested administrative closure to file a family petition
- Matter of Fefe, 20 I&N Dec. 116 (BIA 1989) requires that an applicant be questioned under oath to determine whether the information in the written application is complete and correct



## PARTICULAR SOCIAL GROUPS (PSG)

- *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec.189 (BIA 2018)
- *Matter of M-A-F-*, 26 I&N Dec. 651 (BIA 2015)



## COURT RULES ON FILINGS

- Filings must be submitted at least fifteen (15) days in advance of the hearing
  - However, IJs may set a deadline earlier, and that earlier date controls.
- Chapter 3 of Immigration Court Practice Manual
  - "Filings sent through the U.S. Postal Service or by courier should be sent to the Immigration Court's street address. Hand-delivered filings should be brought to the Immigration Court's public window during that court's filing hours."
- Must have a cover page
- Must be paginated (not including exhibit tabs)
- Must be tabbed with side tabs
- Must include a signed Certificate of Service for OCC
- Must include an EOIR-28 (green paper) if one is not already on file for the attorney of record



## FILINGS AT CLERK'S WINDOW

- Take original plus 2 copies of pre-hearing brief and supplemental evidence when filing
- Have clerk stamp all 3 sets
- Clerk will retain the original set
- Take other two copies to OCC and stamp both
- OCC will retain one copy
- The final copy has an EOIR and an OCC stamp, and is for the attorney/Tahirih file, and a copy can be made for the client



## WHAT TO EXPECT (PERHAPS) FROM TRIAL ATTORNEYS AFTER *MATTER OF A-B-*





## OPLA GUIDANCE ON *MATTER OF A-B-*

- Memo issued on July 11, 2018 to all ICE OPLA Attorneys (trial attorneys/TAs): our opposing party at immigration court
- “OPLA attorneys should ensure that IJs and the BIA rigorously analyze each claim such that protection is only granted where the alien has met his or her burden with respect to each and every element.” (p. 3)



## OPLA GUIDANCE ON *MATTER OF A-B-*

- “Simply because a putative PSG may be found cognizable in one case and as to one society, does *not* mean that a similar PSG formulation automatically will be cognizable in other cases and as to other societies.” (p. 5-6)
- Advises OPLA attorneys to use existing case law to attack PSGs based on domestic relationship (p. 6-7)





## OPLA GUIDANCE ON *MATTER OF A-B-*

- “the BIA may not reject a group solely because it had previously found a similar group in a different society to lack social distinction or particularity.” (p. 6) (citing to *Pirir-Boc v. Holder*, 750 F.3d 1077, 1083-84 (9<sup>th</sup> Cir. 2014))
- Advises OPLA attorneys to expect “an increase of voluminous, pre-packaged country/society-specific materials” and to uncover deficiencies in those materials, and submit materials to the court accordingly (p. 6)



## OPLA GUIDANCE ON *MATTER OF A-B-*

- Advises OPLA attorneys to question applicants about “detailed knowledge of her abuser” including copies of photographs, biographic information, and information about: his employment, criminal record, military service, violent behavior towards others, health, any additional domestic relationships he has had, and contact with the applicant since she arrived in the U.S. (p. 7 FN 9)



## OPLA GUIDANCE ON *MATTER OF A-B-*

- “the applicant’s current domestic and/or intimate relationships also may have a bearing on her” eligibility. (p. 7-8 FN 10)
- OPLA should consider questioning the applicant about:
  - (i) her current domestic relationships
  - (ii) any children born in the U.S.
  - (iii) whether she or her children have traveled abroad to place where the persecutor could contact them since their arrival in the U.S.



## OPLA GUIDANCE ON *MATTER OF A-B-*

- “Gender alone” PSGs: advises OPLA attorneys not to take a position on this formulation until further guidance is disseminated (p. 8)
- Matter of L-E-A-, 27 I&N Dec. 40 (BIA 2017), holding that some PSGs based on family membership may be cognizable, remains good law (p.8-9)





## PRESENTING YOUR CASE AT TRIAL



### MERITS HEARING

- Interpreter sworn in
- IJ marks the exhibits
- Respondent's counsel calls witnesses
  - Respondent
  - Psychological Expert
  - Country Conditions Expert
  - Any other relevant witnesses
- Respondent's counsel does direct exam
- TA cross-examines
- IJ may question witnesses
- Closing arguments
- Decision – oral at close of hearing, scheduled oral decision at future date, or written decision to be sent by mail



## WORKING WITH EXPERTS

- Expert qualifications
  - When to use?
- Procedure – Immigration Practice Manual, Chapter 3
  - Witness List (in compliance with 3.3(g))
    - CV
    - Estimated length of testimony
- Motions and DHS lack of response: noting it on the record
- Managing experts' expectations day-of



## INDIVIDUAL HEARING: OPENING

- Many IJs will not want to hear an opening statement, but you should have one prepared in case the IJ has not time to review the filing and wants a short summary of what the case is about



## INDIVIDUAL HEARING: DIRECT EXAM

- Be prepared to respond to objections from the OPLA attorney
- Know your OPLA attorneys: some object to everything to rattle the client; some object very little
- Craft your direct exam questions with the rules of evidence in mind
- Avoid leading questions
- Ask who, what, when, where, why, explain, describe



## INDIVIDUAL HEARING: DIRECT EXAM

- Don't only use broad "what happened next" questions: it calls for a narrative and even if the OPLA attorney doesn't object, it can create a messy record
- Listen to your client's testimony, and use it to craft the next question: "What happened after he pushed you to the ground?"



## INDIVIDUAL HEARING: DIRECT EXAM

- Hearsay: a statement, other than made by the declarant while testifying at trial, offered to prove the truth of the matter asserted
- Many asylum cases rely on statements by others to prove PSG, nexus, etc.
- Not all such statements are hearsay, and if they are, there may be an exception that applies
- Be ready to argue why the testimony should be permitted under the rules, and under the “fundamental fairness” framework



## INDIVIDUAL HEARING: DIRECT EXAM

- Relevance: past history of abuse might not seem relevant to the reason the client fled her country, but it is often relevant to humanitarian asylum. Be prepared to argue that the client will testify about the facts that tie her past abuse to a protected ground.
- Lack of foundation: transitions can be hard and can sometimes elicit an objection for lack of foundation. Have the client give biographical information (number of children, names and DOBs) at the beginning of her testimony to lay a foundation for later transitions



## INDIVIDUAL HEARING: CROSS EXAM

- Be prepared to object to OPLA attorney's cross exam of your client
- Use the rules
- Common objections:
  - vague
  - argumentative
  - asked and answered
  - relevance



## INDIVIDUAL HEARING: CLOSING

- Most IJs will permit a closing statement
- Remember that there is no jury, and judges do not typically want a recitation of the facts
- Focus on your legal arguments
- Keep it clear and concise





## PRACTICE POINTERS

- Response to evidence and entry of evidence/exhibits at the beginning
- Outsmart trial attorneys – substantively, “cheat sheet” of case law, etc..
- Be more aggressive with removal defense
  - Make DHS do their job and meet their burden
- If your merits hearing is scheduled far in the future, consider filing your evidence and briefing well in advance of the deadline and talk to the TA about whether they will review and entertain any stipulations.



## THE DECISION AND WHAT HAPPENS NEXT



## DECISIONS IN IMMIGRATION COURT

- Often in the form of oral decisions
- IJ may reserve right for a written decision at future date (sent by mail)
- If oral decision
  - Must be prepared to reserve appeal (importance of preserving the record throughout!)



## PRACTICE POINTERS

- Bring a note taker with you!
- Immigration Court Manual, Chapter 4
  - Hearing is recorded except for those occasions when the Immigration Judge authorizes an off-the-record discussion.
    - Results of the off-the-record discussion are summarized by the Immigration Judge on the record.
  - If an Immigration Judge's decision is appealed to the Board of Immigration Appeals, the hearing is transcribed in appropriate cases and a transcript is sent to both parties.



## APPEALS

- If the IJ does not rule in your client's favor, reserve appeal
- If you win, DHS may reserve appeal
- A Notice of Appeal must be filed with the BIA within 30 days of the decision.



## IMMIGRATION COURT RESOURCES

- EOIR hotline for limited case information
  - 1-800-898-7180
- EOIR online registry
  - Attorneys MUST register with EOIR – (1) online registration and (2) take ID to any EOIR court to verify identity and complete registration
- EOIR Practice Manual





## QUESTIONS?

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## UPCOMING WEBINAR AND JOINING TAHIRIH'S PRO BONO NETWORK

- Join Tahirih's Pro Bono Network at [www.tahirih.org/get-involved/our-pro-bono-network/join-our-network](http://www.tahirih.org/get-involved/our-pro-bono-network/join-our-network)
- Join us August 23 from 1-2:30 Eastern for our final webinar in the current series, **Appealing Asylum Denials After Matter of A-B-**
- E-mail [justice@tahirih.org](mailto:justice@tahirih.org) for registration information





**Thank You!**  
The recording will be available on the e-library.

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