

Gender-Based Asylum for Afghan Nationals

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Agenda

Background

Definition of Refugee & Basics of Asylum Process

Elements of an Asylum Claim

Gender-Based Asylum for Afghan Nationals

Bars, Benefits & Filing Logistics of Asylum

Trauma-informed, Culturally Sensitive Representation

Background

Introduction to Tahirih

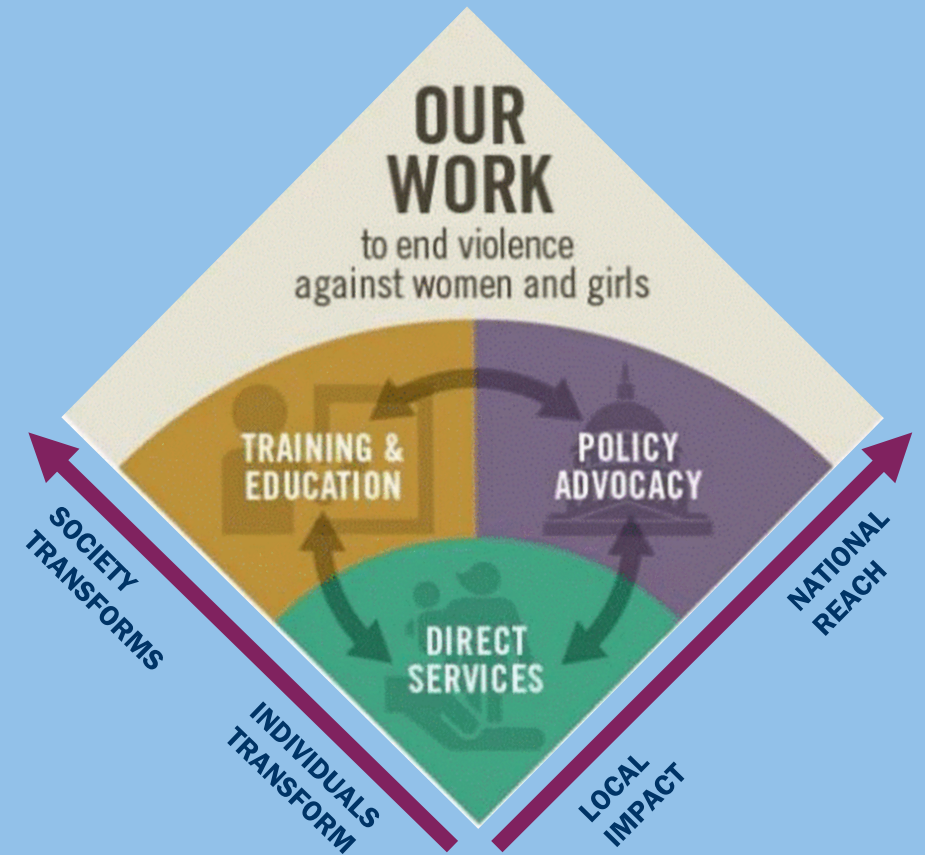
The Tahirih Justice Center is a national, nonprofit organization headquartered in the Greater DC Area and with offices in Atlanta, Baltimore, Houston, and the San Francisco Bay Area.

The Mission of the Tahirih Justice Center

The Tahirih Justice Center supports immigrant women and other survivors of gender-based violence seeking safety and justice. Our interdisciplinary model of service combines free legal services, social services case management, with bridge-building policy advocacy, and training and education. We amplify the voices of survivors in communities, courts, and Congress to create a world where everyone can live in safety and with dignity.

Organizational Snapshot

- Founded in 1997 after the first-ever grant of asylum because of persecution on account of gender
- Provide free interdisciplinary legal and social services
- Focus legal work on immigration because it is key to accessing benefits, services, and safety
- Assisted more than 30,000 individuals
- Robust pro bono program, with a 96% rate of successful outcomes for immigration cases and 53% of cases co-counseled in 2020
- Leader in public policy advocacy on issues affecting immigrant survivors of gender-based violence



Afghan Refugees in the U.S.

- With U.S. withdrawal, we expected some Afghan refugees to be resettled
- After Taliban takeover, administration moved quickly to fly more than 75,000 Afghans to the U.S., including many survivors of gender-based violence or women and girls at risk of persecution
- These individuals did not have legal refugee status under U.S. law – limited their access to benefits and safety net support
- Now, majority should have humanitarian parole or SIV status, along with some benefits conferred by administration and Congress. Still, they need to apply for asylum to ensure long-term status and help family members

Tahirih's Response

- Immediately began raising funds to start an Afghan Asylum Project
- Established the Afghan Help Line
- Contracted with Dari/Pashto translators
- Identified contract attorneys to take on intakes, technical assistance, and co-counseling
- Began visiting military bases after learning about conditions
- Speaking with White House and other administration officials regularly
- Coordinating with State Department to represent about 300 women activists and academics

Why Tahirih?

- Expertise in the complex law of asylum
- Specific focus on the rapidly changing law of gender-based asylum with a national, coordinated perspective
- Training and experience managing gender-based trauma and its effects on representation
- History of successfully representing Afghan asylum seekers facing gender-based persecution

Bottom Line Up Front

How you can help...

- Contact Tahirih's Chief of Programs, Maricarmen Garza, at MaricarmenG@Tahirih.org for more info
- Express interest by sharing your availability, language capacity, and prior experience
- Join Tahirih's additional upcoming trainings on trauma-informed advocacy, safety planning, and other relevant topics
- Donate to Tahirih to help us staff this project so we can continue to co-counsel with you (www.Tahirih.org/give/)

Definition of Refugee & Basics of Asylum Process

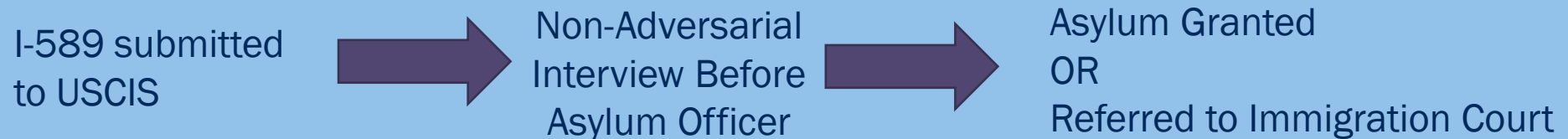
A Refugee Is...

“any person who is outside any country of such person’s nationality . . . and who 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.” (INA § 101(a)(42(A))

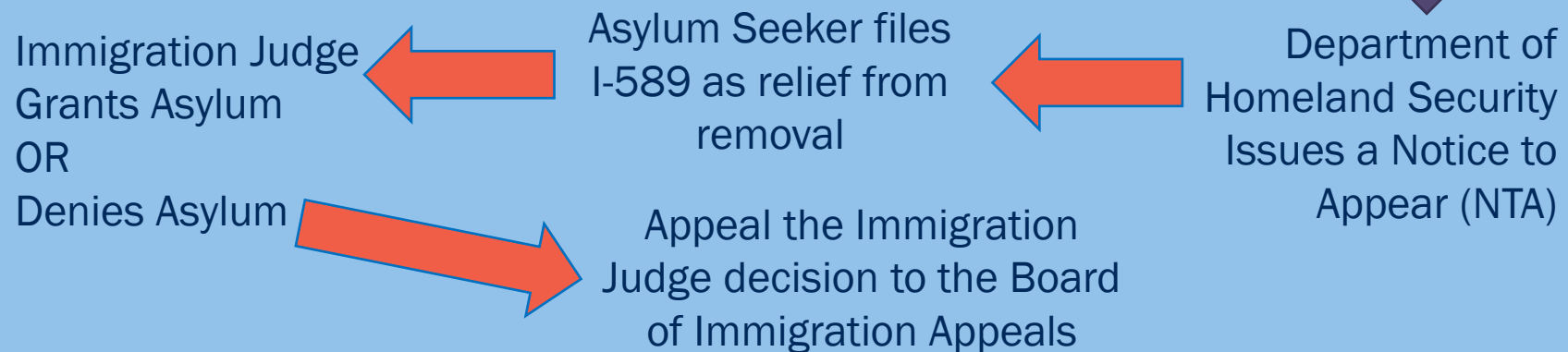


How To Apply for Asylum: 2 Avenues

Affirmative Process



Defensive Process



Elements of Asylum

Elements of an Asylum Claim

- Applicant has suffered Past Persecution; or has a...
- Well-Founded Fear of Future Persecution
- Nexus (“on account of”)
- Statutory ground – currently one of five* (Tahirih has launched a 6th ground campaign)
- Failure of state protection

Persecution

Harm “of a deliberate and severe nature and such that it is condemned by civilized governments”
(*Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007))

Harm Constituting Persecution:

- Threats to life or freedom; more than mere harassment (Li v. Gonzales, 405 F.3d 171 (4th Cir. 2005))
- Torture
- Severe economic persecution such that it threatens life or freedom
- Physical harm/beatings/assault
- Rape or sexual assault
- Prolonged detention or confinement
- Female genital mutilation/cutting
- Servitude or child soldier
- Forced Marriage
- Cumulative Analysis of discriminatory actions (Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998); Baharon v. Holder, 588 F.3d 228 (4th Cir. 2009))

Well Founded Fear of Future Persecution

Subjectively Genuine

- Applicant's declaration/credible testimony
- Letters/affidavits from friends/family
- Psychological evaluation
- Letters from therapists or other supports

Objectively Reasonable

- “[R]easonable person in like circumstances would fear persecution.” Fear has “some basis in objective reality” and is not “mere irrational apprehension”
- 10% chance of future persecution
 - INS v. Cardoza-Fonseca, 480 U.S. 421 (1987)
- Country Conditions Evidence/Expert

- WFF creates a presumption of future persecution on the basis of the original claim.
- Gov't can rebut the presumption by (preponderance of the evidence) showing:
 - Fundamental Change of Circumstances; OR
 - Possibility of reasonable internal relocation
 - Societal, economic, cultural, psychological factors considered see 8 C.F.R. § 1208.13(b)(1)

Nexus and Statutory Grounds

The persecution feared must be **on account of** one of five protected grounds. The statutory ground “was or at least will be one central reason for persecuting the applicant.” REAL ID Act, 8 U.S.C. § 1158(b)(1)(B)(i) (2008)

Grounds:

- Race
- Religion
- Nationality (ethnic group, linguistic group, citizenship)
- Membership in a particular social group
- Political opinion

*Currently, “Gender” is not a protected ground statutorily, but Tahirih is working to update the law

Failure of State Protection

State is the Persecutor OR

**State Cannot or Will Not
Protect Applicant from the
Non-State Actor Persecutor**

Evidence of Country Conditions

- Laws on the books to protect the persecuted group of people? Are they enforced?
- How have police/courts previously responded to such incidences of persecution?
- Applicant's attempts to seek gov't protection would be futile

Gender-Based Asylum for Afghan Nationals

Gender-Based Asylum



Gender-based Asylum refers primarily to two types of claims:

- Claims where the form of persecution is unique to, or disproportionately inflicted on women (FGM, DV, rape, forced marriage) regardless of reason
- Claims where the harm may or may not be gendered, but the reason (nexus) it is inflicted is because of gender (or non-adherence to expected gender norms)

Gender Must Fit within the Five Statutorily Protected Grounds

Gender and Political Opinion:

- Actual or imputed political opinion – a woman who believes, e.g.,
 - Women should lead their lives without male domination
 - Women should control their own bodies
 - Belief in feminism
- **Expression of Political Opinion Can Be....**
 - Through Actions –attending a protest, joining a political party that advances women’s rights, involvement and membership in women’s rights groups
 - Through overt expressions of opinion –public oral expression of an opinion for or against something
 - Less overtly symbolic acts (i.e., defying custom, refusing to conform with cultural norms. See *Saldarriaga v. Gonzalez*, 4th Cir.)

Gender Must Fit within the Five Statutorily Protected Grounds



Gender and Religion:

- Different religious beliefs from husband, male relatives, or family concerning the role of women in society
 - *In re S-A-*: Father's abuse of a daughter on account of her refusal to confirm to his conservative interpretation of Islamic religion – views regarding women's behavior and attire. (Interim Decision #3433, BIA 2000)

Gender Must Fit within the Five Statutorily Protected Grounds

Gender and Particular Social Group (PSG)

A cognizable PSG must:

- Be defined by common, immutable traits/characteristics
 - “beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed.” (*Matter of Acosta*, 19 I&N Dec. 211, 233–34 (BIA 1985))
- Meet the particularity requirement
 - “particular and well-defined boundaries” and constitute a “discrete class of persons” (*Matter of S-E-G-*, 24 I&N Dec. 579, 582, 584 (BIA 2008)); “discrete and definable boundaries” (*Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014)).
- Be socially distinct
 - “society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” (*Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014))

Formulating a Gender-Based PSG

PSG Elements

- Gender
- Age
- Nationality / Ethnicity
- Family/Kinship Ties
- Marital / Relationship Status
- Historical Fact / Shared Past Experience
 - Lack of male protection?
- Refusal to Conform

Gender-Based Particular Social Groups

- **Domestic Violence-based PSGs**
 - Successfully defined as:
 - “Gender + nationality + inability to leave/status in a domestic relationship/viewed as property by virtue of status in relationship”;
 - “Gender + nationality/ethnicity + opposition to/flouting of social norm”
 - “Gender + nationality + status as a single woman + age”
 - Gender + nationality + past victimization status
 - *Matter of A-R-C-G-* is once again the current law of the land* (*except in the Fifth Circuit currently)
 - PSG: “Married women in Guatemala who are unable to leave their relationship”

Gender-Based Particular Social Groups

- **Female Genital Mutilation:**
 - Future Fear of FGM (*Matter of Kasinga*, 21 I. & N. 357 (BIA 1996))
 - Past FGM (Past FGM/C can be seen as “continuing persecution” as physical and psychological effects can last a lifetime; also, doesn’t preclude future FGM)
 - Parent-protector cases (very challenging)
- **Forced Marriage**
 - Break down what persecution that means for your client – i.e. loss of freedom, control over reproduction, rape, involuntary servitude, physical abuse.
 - May be more common among the Afghan female population

Bars, Benefits, and Filing Logistics of Asylum

Bars to Asylum – One Year Filing Deadline

- One Year Filing Deadline (OYFD): Applicant must file for asylum within one year of last entry into the US; unless:
 - there are **extraordinary or changed circumstances**; if so, must file within a “reasonable time” of that changed circumstance, or the delay due to an extraordinary circumstance must be “reasonable.”
- How the OYFD is calculated can be variable if client has some temporary status in the US, such as TPS, parole, student, etc. (see 8 CFR 208.4(a)(5)(iv))



Bars to Asylum

No Asylum if...

- Firm Resettlement – status in another country
- Prior application and denial; Prior deportation order
- Safe Third Country – signed bilateral/cooperative agreements
- Persecutor of others
- Committed a particularly serious crime in the US or a serious non-political crime outside the US
- Material support to or other involvement with a terrorist group – defined broadly

Legal Benefits of Asylum

- Can obtain Employment Authorization (EAD) after application has been pending for 180 days **with ASAP membership only**; otherwise, must wait 365 days until can file for EAD
- Can apply for green card (I-485 or residency) after one year of physical presence in the U.S. as an asylee
- Eligible for benefits for 8 months post-grant: Medicaid, cash assistance, etc.
- Can petition for children & spouse, Form I-730 follow-to-join process
- Can apply for a travel document (Form I-131), but CANNOT return to home country, even to visit

Contents of an Asylum Application

- Form I-589 Application for Asylum, Withholding, CAT (with Form G-28, Notice of Entry of Appearance as Attorney of Record)
- Applicant's detailed declaration
- Supporting documents: copies of personal documents, passport, marriage and birth certificates, photos, medical records, letters, etc.
- Forensic psychological evaluation if appropriate
- Medical report if appropriate
- Affidavits from witnesses (i.e. friends, family, colleagues)
- Country Conditions materials including expert report
- Brief – letter brief for asylum office or formal brief for court
- *Tips:* Interview the client many times – credibility is important; confirm client's story.

Trauma-Informed, Culturally Sensitive Representation for Afghan Refugees

Recognize Your Client's Situation



Basic Needs and Prior Trauma:

- Recent arrivals subjected to extended stays on US army bases, in dehumanizing conditions – lack of freedom of movement; no access to family, friends, or known contacts
- Commonalities with survivors of trafficking, who during victimization experience loss of agency, and loss of identity documentation, feelings of being trapped, isolation
- May have multiple or compounded trauma, such as previous life under Taliban rule, previous subjection to GBV
- May currently be concerned about threat of GBV from male peers or family members at bases or upon reunification in the U.S., including possible forced marriage

Recognize Your Client's Situation



Legal Status:

What legal immigration status does my client currently hold?

- Uncertainty of legal limbo is real
- Don't legally hold refugee status under US law, but some are being given refugee resettlement benefits
- May have Humanitarian Parole, which is a temporary status without a pathway to lawful residence
- May have student visa status, which is also temporary

What is a Trauma?

Trauma is...

“Individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.” (SAMHSA)

Trauma, Memory, and Common Effects

During a traumatic event, our survival response may cause us to:

- focus on some details and not others
- we may “check out” or dissociate during a traumatic event
- trauma responses might make it difficult to remember details later, or to access the emotions we felt at the time
- Traumatic Brain Injury can also impact one’s memory of past events

Common effects of trauma include:

- **Physical:** Nervous energy or lack of energy, upset stomach, dizziness, muscle tension, headaches
- **Emotional:** Fear, loss of trust, inability to feel safe, emotional distance, intense or extreme feelings, sadness, grief, depression, loss of self esteem
- **Behavioral:** Becoming withdrawn, startling easily, avoiding places or situations, insomnia and nightmares
- **Mental:** Flashbacks or intrusive thoughts, difficulty concentrating, difficulty making decisions, difficulty recollecting memories

Providing Trauma-Informed Services...

- Aims to avoid and minimize re-victimization.
- Strives to maximize choices for the survivor and control over the healing process.
- Seeks to be culturally competent.
- Understands each survivor in the context of life experiences and cultural background.
- Puts the client at the center, meets them where they uniquely are and works at a pace with which they are comfortable
- Incorporates an understanding of the impact of trauma upon individuals, families and communities
- Supports healing and resiliency

Tips for Interviewing Survivors of Trauma

1. BUILDING TRUST:

At the start of the relationship:

- Start slow, best not to dive into story telling immediately
 - Get to know each other
 - What are the client's goals? How will you help the client reach her goals?
- Transparency
 - About the process and timelines of putting the case together
- Offer choices: About space and timing of meetings to empower the client
- **Give the client control over story telling, remember trust takes time, and clients are experts of their own life and story, and will share more as they become comfortable**

Tips for Interviewing Survivors of Trauma

2. CONSIDERATIONS DURING DECLARATION PROCESS

Violence is about taking away power and control. Every interaction we have with a survivor is an opportunity to create safety and rebuild trust that was previously broken.

- Offer options in the physical space
- Use open body language
- Explain things in advance
- Offer breaks
- Make space for self-soothing
- Be thoughtful about note-taking

Tips for Interviewing Survivors of Trauma

3. INTERVIEW QUESTIONS

The survivor may share details about traumatic experiences or abuse that seem peripheral. Be patient!

- These may be some of the things the survivors' brain encoded during traumatic incident(s)
- Ask follow up questions
 - Don't ask "what happened next?" But rather, ask "what else do you remember?"
- By allowing the survivor to bring back memories at their own pace and how they remember them, you are helping them own the process
- Talking about what they remember first may help bring back other memories

Things You Can Always...

DO:

- Pause the meeting
- End the meeting
- Make room for more fact gathering later

SAY:

- "I believe you."
- "I am not judging you."
- "It is not your fault."

Questions?

Contact Us



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