

GUIDELINES FOR EXPERT WITNESSES:

SERVING AS COUNTRY OR SUBJECT MATTER EXPERTS IN ASYLUM OR WITHHOLDING OF REMOVAL CASES

Country of Origin Information experts act as a source to provide 'objective' information on the conditions that led a refugee to flee their country. It is increasingly difficult to win a refugee case without an expert comment on the plausibility of a case in the light of conditions in the particular country of origin.

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 experts affidavits and then we outline the elements that your affidavit should contain. Because each case is different, we highly recommend discussing the case first with the lawyer 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 international law (1951 Geneva Convention, 1950 European Convention on Human Rights, European Union Asylum Qualification Directive) and, which consists of the following elements:

- (1) *Alienage*: the asylum seeker is outside their home country.
- (2) *Persecution*: the asylum seeker suffered or there is a 10% chance or greater that they will suffer serious harm – more than discrimination or harassment – if forced to return to their home country.
- (3) *Well-Founded Fear*: the asylum seeker fears return based on past persecution or the likelihood of future persecution. This element consists of both subjective and objective components; the applicant subjectively fears persecution, and this fear is substantiated by objective, relevant evidence of conditions in the home country.
- (4) *On Account Of a Statutory Ground*: the harm feared is due to (1) race, (2) religion, (3) nationality, (4) political opinion, or (5) membership in a particular social group.
 - (4.1) *Gender-based claims*. Many gender-based claims are based on "membership in a particular social group," an evolving legal term. This figurative "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 they are at least plausible, so that a court can declare the case as credible. Finally, the expert provides an opinion as to what would likely happen if the asylum seeker were forced to return to their 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, honours, or recognition as an expert in the field at issue
- Prior experience in testifying as an expert or serving as an expert witness
- Prior testimony before domestic asylum courts, 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 'honour', cultural importance of female genital mutilation, entrenched cultural attitudes towards homosexuality, how domestic violence is viewed within a society).

If you have any 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 the documents that you have reviewed to prepare the statement (the applicant's declaration, etc.). This section should address the danger that the applicant faces upon return, and should corroborate their story. Some tips for drafting:

- Describe what you believe has happened to the applicant and why, and what may happen to them if they were to be removed from the United Kingdom
- Provide the basis for your opinion about what will likely happen to the applicant if removed from the United Kingdom
- Please address the following questions:
 - What is the likely harm that the asylum seeker would face upon return to their 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 them? 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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