

Lesson Plan Overview

Course Asylum Officer Basic Training

Lesson *Credibility*

Field Performance Objective Given a request for asylum to adjudicate, the asylum officer will be able to assess credibility and articulate appropriate reasons supporting the credibility determination.

Student Materials/References Participant Workbook

Background Reading

1. Langlois, Joseph. INS Office of International Affairs. [Matter of O-D, Int. Dec. 3334 \(BIA 1998\)](#), Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 29 April 1998), 3 p.
2. Langlois, Joseph. INS Office of International Affairs. [Discovery of fraudulent documents after the asylum interview](#), Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 27 May 1998), 2 p

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Presentation

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Instructor Note: #1

I. INTRODUCTION

Evaluation of the credibility of an applicant's testimony is fundamental to evaluation of asylum eligibility and, in many cases, is the determining factor. The asylum officer must make an independent credibility judgment in every asylum case.

This lesson will provide guidance on general considerations in evaluating the truthfulness of an asylum applicant, factors upon which a credibility determination may be based, factors upon which a credibility finding may not be based, and how to determine whether any non-credible aspects of a claim affect eligibility. Additionally, the lesson will provide guidance on how to handle credibility issues that arise during the interview and how to write a credibility analysis in an assessment or Notice of Intent to Deny (NOID).

Instructor Note: #2

II. GENERAL CONSIDERATIONS

A. Misrepresentations Do Not Necessarily Lead to a Finding of Ineligibility

Untrue statements by themselves are not a sufficient reason to deny or refer an asylum request. The statements must be evaluated in light of all the circumstances in the case.

See, Turcios v. INS, 821 F.2d 1396 (9th Cir. 1987)

Example: An applicant lied to an INS official about his citizenship when he told the official that he was Mexican. When the applicant applied for asylum, he asserted that he was Salvadoran. The Court of Appeals for the Ninth Circuit found that the Immigration Judge erred in finding that the misrepresentation made the applicant ineligible for

Turcios v. INS, 821 F.2d 1396 (9th Cir. 1987)

asylum. Rather than defeat the testimony, the misrepresentation supported it, because it was consistent with the applicant's testimony that he feared deportation to El Salvador.

B. There is No Moral Component to Credibility Determinations

There is no moral component to the credibility determination in asylum adjudication. Although most asylum officers will agree that it is generally wrong to lie, the purpose of evaluating an asylum applicant's credibility is solely to determine eligibility, not to punish the applicant if he or she is untruthful. The fact that an applicant commits perjury (intentionally lies under oath) does not in itself render the applicant ineligible for asylum.

C. A Credibility Finding Must be Based on Objective Facts Only

A credibility finding cannot be based on "gut feelings" or intuition, which are unreliable methods for determining credibility, particularly in a cross-cultural situation, with a stranger, and through an interpreter.

Instructor Note: #3

III. FACTORS TO KEEP IN MIND WHEN EVALUATING CREDIBILITY

The asylum officer should remain aware of the following factors and, to the best of his or her ability, prevent them from adversely affecting the credibility evaluation.

Instructor Note: #4

A. Interpreter's or Applicant's Use of a Second Language

Because English usually is not the applicant's and/or interpreter's first language, their ability to speak and understand English may be limited, and there may be subtle nuances of American English with which they

See lesson, [*Interviewing Part VI: Working with an Interpreter.*](#)

may not be familiar. In addition, the applicant and interpreter may not speak the same first languages and so they may be communicating with each other in a language in which one or both of them are not entirely fluent.

Furthermore, the interpreter and applicant may have had little experience with the process of translating and may speak too rapidly or explain too much at once for all of the information to be accurately translated.

These factors may lead to misunderstandings that, if unresolved, can adversely affect the credibility evaluation.

Examples:

An applicant explained that he left his country "por aventura." The interpreter translated this as "for adventure," when actually, the applicant meant "because of risk."

An applicant stated that his job in his country was "vigilante," meaning "poll watcher." However, this was translated as "vigilante."

B. Cross-Cultural Misunderstandings

1. body language

The meaning of body language varies from culture to culture. These differences can cause the applicant, interpreter, or asylum officer to misconstrue the non-verbal signals of one another.

Examples:

Nodding the head, while indicating affirmation in the U.S., indicates negation in some other cultures. If an asylum officer is insensitive to cultural differences, he or she might

See lesson, [*Interviewing Part IV: Cross-Cultural Communication and Other Factors that May Impede Communication at an Asylum Interview.*](#)

erroneously suspect that an applicant is lying when the applicant verbally answers, "No," but at the same time nods his head.

Eye contact is another form of body language that has different meanings in different cultures. An asylum applicant may not maintain eye contact with the asylum officer out of deference to or respect for a person in authority. The asylum officer generally should not view this as a sign of evasiveness.

2. customs

A cultural *faux pas* may distract the asylum officer or the applicant, resulting in responses or non-verbal signals that might be misconstrued as signs of untruthfulness.

Example: A female asylum officer might shake the hand of an Asian Buddhist monk, not knowing that this would be considered extremely inappropriate in the monk's culture. This action may disturb the monk (and/or the interpreter) and, until he regains composure, cause him to reply to questions in a shaken manner - giving an impression that he is not being forthright.

3. culturally based perceptions

To accurately assess credibility, asylum officers must be sensitive to differences in culturally-based perceptions.

Examples:

Instructor Note: #5

Different cultures have different perceptions of and measurements of time. In some cultures, events are remembered not by specific dates, but rather in reference to seasons, religious holidays, or other important events. Even in

cultures where time is measured by calendar, the asylum applicant may be using a different calendar than the Gregorian calendar used in the United States, and errors are sometimes made in translating from one calendar to another.

In some Asian cultures, a child is considered to be one year old at birth. Thus, an Asian applicant may state that he or she is 30 years old, while a calculation of the age based on the birth date in the application might indicate that the applicant is 29 years old, by Western standards.

Identification of family members also varies between cultures. For example, an individual referred to as "brother" in one culture may actually be considered a "cousin" in another culture.

C. Personal Background of the Applicant

The level of education or sophistication of an applicant may affect his or her ability to articulate a claim. If the asylum officer perceives that the applicant is having difficulty articulating a claim, the asylum officer should inquire into the applicant's background to determine if there are reasons, other than lack of credibility, to explain the applicant's inability to express the claim.

D. Trauma from Flight and Past Persecution

Many applicants have experienced trauma to some degree. Severe trauma, such as torture, can greatly affect the survivor long after the actual event. Trauma sufferers may not wish to discuss the details of their experiences, may have difficulty remembering all of

See lesson, [Interviewing Part V: Interviewing Survivors](#).

the events that occurred, and may exhibit other symptoms, such as an inability to maintain eye contact, loss of composure, anxiety, and suspiciousness towards others. These factors can give the appearance that the applicant is not being forthright at the interview.

E. Stress and Environment

Asylum officers should keep in mind that they are in familiar territory -- in their own office, in a culture they understand, in their country of citizenship. The applicant, however, may be nervous in such an unfamiliar cultural environment.

See lesson, [Interviewing Part IV: Cross-Cultural Communication and Other Factors that May Impede Communication at an Asylum Interview.](#)

In addition, the interview is in itself a stressful situation for the applicant. Stress may cause individuals to change their voice and speech patterns, forget things, try to take control or defer to authority, or become defensive. Verbal and non-verbal signals associated with stress are sometimes viewed as signs of dishonesty. The unfamiliar environment and stress inherent to the interview process may impair the applicant's ability to articulate the claim and cause him or her to appear confused, nervous, and unconvincing in manner, even when telling the truth.

F. Time Constraints

Time pressures are a reality for the asylum officer. However, attempting to inappropriately rush an interview may cause the asylum officer to lose focus, become impatient, and miss information related by the applicant. This could lead the asylum officer to erroneously believe that the applicant did not provide enough detail, that there were gaps in the applicant's testimony, or that the testimony was internally inconsistent. Some interviews may simply take longer in order to accurately evaluate credibility.

G. Difficulty in Evaluating the Behavior of a Stranger

The asylum officer has never met the applicants whom he or she interviews and may form a first impression of an applicant that may be incorrect. The asylum officer should bear in mind the unreliability of first impressions to avoid misinterpreting the applicant's actions and words.

For example, an applicant's reticence and confusion in answering questions may mean that the applicant is shy or fears authority figures rather than that he or she is not telling the truth. Likewise an initial impression that an applicant is truthful because he or she can easily relate the claim may be indicative of an outgoing personality rather than a credible story.

H. Personal Baggage

Personal opinions, preferences, and biases ("personal baggage"), if not set aside at the interview, may negatively affect determinations regarding credibility.

See lesson, [Interviewing Part IV: Cross-Cultural Communication and Other Factors that May Impede Communication.](#)

For example, an asylum officer may have learned that the human rights conditions in country X are among the worst in the world and may therefore feel that asylum seekers from there are deserving of asylum. This "baggage" should not lead the asylum officer to unconsciously overlook inconsistencies in an application from country X or forget to inquire about mandatory bars.

Instructor Note: #6

Alternatively, an asylum officer may have just interviewed several applicants from country X and found them not credible. If not set aside, this "baggage" could lead the asylum officer to assume erroneously that the next applicant from country X is relating a fabricated claim and to latch onto minor inconsistencies to find the applicant not credible.

IV. FACTUAL ANALYSIS -- IS THE APPLICANT TELLING THE TRUTH?

In evaluating the credibility of an asylum applicant, the first

issue that must be resolved involves a factual analysis -- the determination of whether the applicant is telling the truth. If it is determined that the applicant is untruthful, then a second issue, which requires legal analysis, must be resolved -- the determination of whether the falsehood is material to the claim. This part of the lesson focuses on appropriate and inappropriate factors to consider in determining whether the applicant is telling the truth.

See Credibility Flowchart at end of lesson.

A. Factors Upon Which Credibility Finding Appropriately May Be Based

An applicant may be found credible if the applicant's testimony is consistent, detailed, and plausible.

1. Consistency

a. general rule

Minor inconsistencies and omissions are to be expected in most applications and will not undermine credibility. However, substantial inconsistencies may indicate that the applicant is untruthful.

b. considerations

For inconsistencies to establish reliably that a claim is not credible, they cannot be minor mistakes, such as those normally resulting from faulty memory. Whether an inconsistency is considered minor or substantial depends not only on the nature of the inconsistency, but also on the entire circumstances of the case.

The inconsistency must involve an alleged fact that has a direct bearing on the claim. See [section VII.B.2](#) below on materiality.

The inconsistencies may be between the testimony and the application, or they

may be internal, within the testimony. The inconsistencies may also be between the applicant's claim and reliable country conditions information.

c. examples of substantial inconsistencies, depending on context

(i) The applicant testified that she was arrested and detained only once; however, she stated in her written application that she was arrested and detained two times and provided a detailed written description of each detention.

(ii) The applicant initially testified that he fled his home the same day that he was threatened and went into hiding in a distant village. Later, the applicant testified that he stayed in his home village and continued to work for several weeks after he was threatened.

(iii) The applicant claimed to have been harmed because she was a member of a political party in 1984, but country reports establish that the party was not founded until 1990.

(iv) The applicant stated in his application that that when he was kidnapped he was strangled with ropes and tortured him, but did not testify to such mistreatment in his oral testimony. He also stated in his application that he was harassed on a daily basis by Muslim

Ahmad v. INS, 163 F.3d 457 (7th Cir. 1999)

Fundamentalists, but, when questioned at his hearing, he testified that the kidnapping was the only encounter he ever had with them.

d. examples of minor inconsistencies or omissions, depending on context

- (i) A court found it improper to base an adverse credibility finding on minor inconsistencies such as listing two children on the application when the applicant actually had four, and confusion over the date the applicant joined a paramilitary group. *Martinez-Sanchez v. INS*, 794 F.2d 1396 (9th Cir. 1986)
Instructor Note: #7
- (ii) A court found it improper to base an adverse credibility finding on the applicant's failure to list on his written application two incidents that involved harm to relatives and that were collateral to his claim. *Aguiler-Cota v. INS*, 914 F.2d 1375 (9th Cir. 1990)
- (iii) A court found it improper to base an adverse credibility determination on the fact that the applicant stated on his written application that he had been shot at, but stated in oral testimony that he had never been shot at. The applicant explained that his attorney was the one who made the statement in the written application and the applicant signed without reading it. *Garrovillas v. INS*, 156 F.3d 1010 (9th Cir. 1998) (The Court noted that the revised story served to lessen degree of persecution rather than to enhance it; and held that minor inconsistencies cannot serve as the sole basis for an adverse credibility finding, nor can inconsistencies "of less than substantial importance for which a plausible explanation is offered")
- (iv) A court found it improper to base *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994)

an adverse credibility determination on perceived inconsistency between applicant's statement on application that he and his brothers were accosted by "unknown armed men," and his testimony that they were accosted by "death squads."

("[I]n light of the record as a whole,' it is difficult to perceive how a reasonable factfinder could find an inconsistency between the labels 'death squad' and 'unknown armed men' sufficient to impugn the applicant's credibility.")

Instructor Note: #8

2. Detail

a. general rule

Barring unusual circumstances, a genuine refugee should be able to provide sufficient detail to indicate first-hand knowledge of the events that form the basis of the claim. Therefore, the applicant's ability or inability to provide detailed descriptions of the main points of the claim is often critical to the credibility evaluation.

The lack of detail must be with respect to an alleged fact that has a direct bearing on the claim. See [section VII.B.2](#), below on materiality.

b. considerations

(i) factors that impair memory

In evaluating whether an applicant has provided sufficient detail to indicate first-hand knowledge of events, the asylum officer must take into account the amount of time that has elapsed since the events occurred, the possible effects of trauma, the applicant's background and culture, and any other factors that might impair the applicant's ability to remember.

- (ii) types of recall vary from person to person

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Additionally, the asylum officer should exercise caution in determining the type of detail he or she expects the applicant to remember and take into account the fact that different people notice and remember different things. If several people are questioned about an event they experienced together, they will probably each remember different details.

The asylum applicant will not necessarily remember the type of detail the asylum officer would remember in a similar situation.

- (iii) duty to make effort to elicit detail

See lesson, [Interviewing Part III: Eliciting Testimony](#).

An asylum applicant probably will not know the type of detail the asylum officer seeks and may believe that stating simply that he or she was arrested, without more, is sufficient to answer the asylum officer's question, "What happened?"

It would be improper to find that an applicant failed to provide sufficient detail without first attempting to elicit detail from the applicant with follow-up questions.

Examples of follow-up questions:

- "Please describe exactly what happened when you were arrested."
- "Where were you when you were arrested?"
- "Where were you taken when you are arrested?"
- "What was said to you when you were arrested?"

However, if the applicant still could not provide any detail about the arrest, when asked specific questions, and there is no explanation for the applicant's inability to provide detail, the applicant may be found not credible.

c. examples

- (i) proper basis for negative credibility finding (where there are no factors to justify impaired memory)

The applicant claimed that he had been arrested several times, but the only description of the incidents he could provide was that his jaw was broken in one incident.

Berroteran-Melendez v. INS, 955 F.2d 1251 (9th Cir. 1992) (Additionally, there were substantial inconsistencies in the claim.)

- (ii) improper basis for negative credibility finding

The applicant claimed that she was raped, but could not provide a description of the clothes the assailant was wearing.

Instructor Note: #10

3. Plausibility

- a. general rule

The facts alleged by the applicant should be plausible, in light of country conditions and logic. If it is not plausible that the events occurred as the

The implausibility must be with respect to an alleged fact that has a direct bearing on the claim. See section [VII.B.2](#) below on materiality.

applicant described, then the claim properly may be found not credible.

b. considerations

The fact that an allegation appears unlikely or unreasonable does not mean it is implausible. What may appear to be implausible in the United States may be very common in another country. The asylum officer should take care not to base on his or her views of what is plausible based on his or her own experiences, which are likely to be quite different from the applicant's. Additionally, exceptional events do occur.

See, *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994) (“As a general rule, in considering claims of persecution . . . it [is] highly advisable to avoid assumptions regarding the way other societies operate.”)

The fact that no corroboration of the existence of a particular group or event is found in country reports generally does not render the claim implausible. The weight to be given to the fact that country conditions information fails to corroborate a claim depends on the specific allegations, the country, and the context of the claim.

See lesson, [Country Conditions Research and the Resource Information Center \(RIC\)](#) for further discussion on when an allegation may and may not be considered implausible in light of country conditions.

c. examples

(i) proper implausibility findings

Applicant claimed that, although she was detained at the county jail two miles from her brother's home, she watched from a jail window as the police entered her brother's home and arrested him. It is not plausible that the applicant could witness

Implausible in light of logic

the arrest at such a distance.

Applicant claimed that he had been persecuted by the Stalinist Courts in Switzerland.

Implausible in light of country conditions

(ii) improper implausibility finding

It is not plausible that a prison guard would risk a government career by accepting the bribe of a gold bracelet.

See also, *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994), for examples of improper plausibility findings.

Note: There may be some overlap in evaluation of the three factors discussed above (consistency, detail, and plausibility). An aspect of the testimony characterized as an inconsistency by one asylum officer may reasonably be characterized as lack of detail by another.

Instructor Note: #11

Example: The applicant claimed that he feared persecution because he filmed a documentary that exposed government corruption when he worked as lead cameraman for a news agency that was critical of the government. When questioned about his work as a cameraman, the applicant could provide no detail whatsoever about the type of camera or any of the other equipment he used, how he filmed, or any other aspects of the work filming a documentary entails. This called into question whether he was a cameraman for the news station and had filmed the documentary. Since his claim was based on fear of persecution because of his work as a cameraman, his knowledge of the work has a direct bearing on his claim.

This inability to explain his work as a cameraman could be considered 1) lack of detail; 2) an inconsistency (his statement that he filmed a documentary is inconsistent with his inability to provide detail about how it was done); or 3) implausible (it is implausible that someone who filmed a documentary and worked as lead cameraman for a news station would not know anything about the equipment necessary to accomplish the job).

Instructor Note: #12

4. Submission of fraudulent documents

a. general rule

Ordinarily, an applicant with a legitimate claim would not find it necessary to fabricate documents to establish eligibility for asylum; therefore submission of fraudulent documents to support a claim creates doubts regarding the applicant's overall credibility.

Matter of O-D, Int. Dec. 3334 (BIA 1998); Langlois, Joseph. INS Office of International Affairs. *Matter of O-D, Int. Dec. 3334 (BIA 1998)*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 29 April 1998), 3 p.

b. considerations

The use of fraudulent documents is not always inconsistent with a credible claim, and the context in which the documents are used is critical to the credibility determination. Genuine refugees may need to use fraudulent identity or travel documents to escape persecution. There may also be cases in which an applicant with a genuine claim submits fraudulent documents because he or she is under the misimpression that documentation is required to receive asylum.

Therefore, an asylum officer may not automatically conclude that a claim is untrue because an applicant submits fraudulent documents. Rather, the asylum officer must inquire into the reason the fraudulent documents were submitted and evaluate the commission of fraud in light of the entire circumstances presented in the case.

5. Demeanor

a. general rule

An applicant's demeanor may be considered in evaluating credibility, but only with caution, and it never should be the exclusive basis for a credibility finding.

b. consideration

Demeanor is generally an unreliable indicator of credibility, particularly in the asylum context where cultural differences and effects of trauma make it difficult to read accurately non-verbal signals.

B. Factors Upon Which a Credibility Finding May *Not* Be Based

Some of the following factors are always inappropriate to consider in evaluating credibility, because they do not shed light on whether or not an applicant is credible. Other factors discussed below may be considered with caution or may lead the asylum officer to further test the applicant's credibility during the interview. None of the factors, however, can form the sole basis for finding that a claim is not credible.

1. The asylum officer's moral judgment

An asylum officer's moral judgment of an applicant's behavior is irrelevant to a determination of whether or not events occurred as the applicant described. Moral judgments can never form the basis for a credibility determination.

Example: In unusually strong language, the Ninth Circuit found it was inappropriate for the immigration judge to find that an applicant was not credible because he failed to marry the mother of his two children.

Damaize-Job v. INS, 787 F.2d 1332 (9th Cir. 1986)

Similarly, it would be inappropriate to find an applicant credible, because he was an upstanding father.

2. The asylum officer's opinion about how an individual would act in a given situation or that an applicant has not acted rationally

The comparison of how an asylum applicant acted in a given situation to how the asylum officer believes a "rational person" would act in such a situation is not a reliable indicator of credibility. What is rational to one person is not necessarily rational to another person, particularly if the two are from different cultures or backgrounds. Additionally, human beings do not always act rationally.

Example: It would be inappropriate to find an applicant not credible because the asylum officer believes that no rational woman would place herself at risk by publicly distributing anti-government pamphlets in a country where dissent is not tolerated and women do not take part in political life.

If the facts of the case lead the asylum officer to believe that the applicant acted in a manner that was unusual in light of the applicant's country and background, it may be appropriate to ask the applicant about his or her behavior, in a nonadversarial, non-judgmental manner, or to test credibility by asking for additional detail. For example: "I understand that it must have been dangerous for you to distribute the

The applicant's response to the question may alleviate the asylum officer's concerns about credibility. If the applicant could provide no response, the asylum officer may wish to probe the credibility of other aspects of the claim a bit further. However, the fact that the applicant took a risk the asylum officer does not believe rational and could

pamphlets. What led you to take this risk?"

not explain why should not be a sole basis for an adverse credibility finding.

3. The fact that a statement is self-serving

Almost all the statements an asylum applicant makes at the interview are made in an attempt to obtain a benefit, whether the applicant is a genuine refugee or not. The fact that a statement is self-serving fails to indicate whether or not the statement is true.

4. The fact that a statement was made only after the advice of a lawyer

The fact that the applicant files an application prepared by an attorney or consults with an attorney before making a statement does not indicate whether the statement is true or not. An applicant may be afraid to reveal information to a government official, or may not know which information is important to reveal, until after consultation with a lawyer.

However, if a statement made after the advice of a lawyer contradicts an earlier statement made by the applicant, then the asylum officer should elicit further information to determine whether there is a reasonable explanation for the change in testimony. Such inconsistencies and explanations should be considered in the same manner as any other inconsistencies and explanations that may arise in asylum cases.

5. The fact that a request for asylum was not made at the earliest possible opportunity

The fact that an applicant did not apply for asylum as soon as possible does not mean that the applicant fabricated the claim. A genuine refugee may wait until he or she is safely in the United States before making a claim, may be unaware of his or her eligibility for asylum,

and/or may be unaware of the procedures for obtaining asylum.

6. The fact that the applicant was in a third country prior to coming to the United States, but did not apply for refugee status there

The fact that an applicant chose the United States over a third country does not mean that the applicant feels safe in his or her own country. The third country may have had a regime similar to the one that the applicant fled or may not have been a party to the 1951 Convention and the 1967 Protocol, or the applicant may have been unable to find means to survive in the third country.

7. The fact that the applicant did not approach the U.S. Embassy in his or her home country to apply for refugee status, or was able to obtain a visa from the U.S. Embassy

An applicant may have been unable to apply for refugee status in his or her country, may have felt unsafe waiting in the country for the application to be processed, or may have believed that applying for refugee status would have placed him or her at further risk of harm.

There are only a few countries where the United States processes refugee applications of individuals who are still in their own countries.

The applicant's ability to obtain a visa may present a legitimate line of questioning during the interview, but unless that part of the testimony is materially inconsistent with the applicant's claim, it cannot form the basis for a negative credibility finding.

8. The fact that the applicant's claim is similar to other claims

The fact that an applicant's claim is similar to other applicants' claims is not in itself determinative of credibility, because there are

See [section VII.B.2](#) below on materiality.

reasons that claims may be similar that are unrelated to the applicant's credibility.

For example, an applicant's claim may be similar to other applicants' claims because there is a pattern of persecution in the applicant's country, resulting in many similar claims. Or, the applicant may have a genuine claim, but several other applicants copied it and filed their own claims based on the same or similar facts.

However, unrelated claims may also be similar because the applicants went to the same preparer who fabricated the claims. The asylum officer may come across some "boiler-plate" applications that are identical (word for word) or unusually similar in content. The fact that one application is identical to another cannot form the basis for an adverse credibility determination, but may alert the asylum officer to look particularly closely at the credibility of the claim.

Instructor Note: #13

The asylum officer must provide the applicant an opportunity to present the full claim and explain any discrepancies between the testimony and the application in order to determine whether the applicant is a genuine refugee who is the victim of an unscrupulous application preparer, or is an individual attempting to obtain asylum through fraud.

9. The fact that the claim is different from other claims made by refugees from the same country

An asylum officer may become familiar with certain types of claims originating from a particular country. However, dissimilarity in claims is not a determinative factor in evaluating credibility. Human behavior is rarely consistent, and as a result, events in any given country cannot be expected to always be

consistent.

10. The fact that country conditions do not corroborate the applicant's claim (not to be confused with the fact that the claim is implausible in light of country conditions)

In some instances, the asylum officer may be the first to learn about human rights abuses or other developments in another country. In some refugee producing countries, freedom of expression and association is non-existent, and human rights monitors are prevented from visiting. This makes it difficult for organizations that document human rights abuses to obtain up-to-date information. Even where human rights monitors have access to a country, they are not able to document every human rights abuse that occurs.

11. The fact that the applicant's fear does not appear to be well-founded

A conclusion that an applicant has no reasonable basis for fearing persecution does not mean that the claim presented is not true. The determination of whether the alleged events occurred should not be confused with an evaluation of whether those events would lead a reasonable person to fear persecution.

See [section VI.D.1](#) below

V. LEGAL ANALYSIS -- IS THE FALSEHOOD MATERIAL?

As noted above, the credibility evaluation requires a two-step process whenever one or more of the applicant's assertions are found not credible. The second step, requiring a determination as to whether a falsehood is material, is discussed below.

A. Definition of "Material Fact"

A material fact is one that is necessary for a claim to succeed. It has a direct bearing on eligibility for the benefit sought. In the asylum context, this generally means that the fact is connected to one of the elements in the refugee definition or to a mandatory ground for denial.

Example: An applicant claims that he was detained because he participated in a demonstration protesting irregularities in elections. He also claims that he is an architect. The allegation that the applicant attended the demonstration is necessary to his claim that he is eligible for asylum, because it has a direct bearing on whether he is at risk of persecution (one element in the refugee definition) on account of political opinion (another element in the refugee definition). Therefore, this alleged fact is material. The applicant's claim that he is an architect has no bearing on whether he is eligible for asylum and therefore is not material.

B. Application

1. Effect of false statements that are not material

If a false statement is found to be immaterial, and the applicant is approvable on the facts that are believed to be true, the false statement does not lead to a denial or referral. The asylum officer must evaluate the claim based on all the evidence that is found credible.

Example: A discovery that the applicant in the above example is really a doctor, not an architect, may raise suspicions about the applicant's honesty, but would not in itself be a sufficient basis to find the applicant ineligible.

2. Effect of false statements that are material

In most cases, a material falsehood defeats the applicant's claim. If the asylum officer determines that an applicant has presented materially false testimony, the asylum officer may properly decide not to believe other parts of the applicant's testimony, but is not required to do so.

See, Logue v. Intern'l Rehab., Inc., 683 F. Supp. 518 (W. D. Pa. 1988)

There may be unusual cases where a material part of the testimony is found not credible, but the asylum officer concludes that the credible parts of the testimony establish refugee status.

Example: The applicant claims to have suffered persecution because he was an active member of an opposition political party in country X and belongs to a minority ethnic group. The applicant's testimony that he belonged to the political party is not credible. However, the applicant credibly establishes membership in the minority ethnic group. Country conditions reports establish that there is a pattern or practice of persecution of members of the applicant's ethnic group in country X.

Instructor Note: #14

3. Accumulation of non-material falsehoods

Non-material falsehoods cannot be added together to find the applicant ineligible for asylum. There must be at least one material falsehood in order to find an applicant ineligible based on lack of credibility.

4. Misrepresentation as to identity

Because identity is a critical element of an asylum claim, a misrepresentation as to the identity of the applicant at the asylum interview

[Matter of O-D](#), Int. Dec. 3334 (BIA 1998)

Remember that an applicant's misrepresentation of identity outside the asylum

is material and will call into question the credibility of the entire claim.

application context (for example, to obtain travel documents to flee persecution) does not necessarily undermine the credibility of the claim but may in fact support it.

VI. HANDLING CREDIBILITY ISSUES AT THE INTERVIEW

A. Probing Credibility

In general, the following techniques will aid the asylum officer in evaluating the credibility of asylum applicants. Some of the techniques discussed below apply specifically to cases in which fraud is suspected.

1. Elicit general biographical information about the applicant at the beginning of the interview.

At the beginning of an interview, the asylum officer should elicit basic information about the applicant, especially regarding the applicant's life during the previous few years -- where the applicant lived, with whom he or she lived, whether the applicant continued living at the same residence until departure from his or her country, where the applicant worked, when he or she stopped working, and information about the applicant's schooling.

Eliciting this information can give the asylum officer a general picture of the applicant's life prior to coming to the United States and enable the asylum officer to take into account the applicant's background in evaluating the type of information the asylum officer expects the applicant to be able to provide.

Additionally, applicants who have fabricated

claims sometimes do not "prepare" all the basic background information elicited at the beginning of the interview and therefore may present this type of evidence truthfully. If an asylum applicant has fabricated a claim, it may conflict with this general biographic information, which may alert the asylum officer that the claim is not genuine.

2. Listen carefully to what the applicant says.

By listening carefully to the applicant's testimony, the asylum officer will be able to determine whether it is consistent. The asylum officer should also remain attentive to avoid missing information. If the asylum officer misses information, he or she may be unclear about whether information related later in the interview is consistent with information related previously.

3. Elicit as much detail as possible.

If an applicant is not credible, he or she may not be able to provide details about the alleged events which form the basis of the claim. For example, if the applicant claimed to have been a political party leader who actively campaigned by giving speeches at rallies, the asylum officer should consider eliciting information about the party. If the applicant cannot describe basic information about the party (such as its goals or structure), the credibility regarding the extent of his participation in the party is put into question.

4. When appropriate, ask questions out of chronological order.

If an applicant is not telling the truth, he or she may have memorized the story in sequence. If

the asylum officer asks questions so that the applicant is required to describe events out of chronological order, the applicant may not be able to relate the story accurately. Caution must be exercised, however, because a truthful applicant who is nervous might also become confused when having to explain events out of order.

5. When appropriate, ask the applicant to explain certain events a second time.

If the applicant is not being truthful, he or she may relate events differently the second time.

6. Be sure that understanding is clear and elicit information surrounding any discrepancy before asking the applicant for an explanation of the discrepancy.

Before asking about a discrepancy, it may prove helpful to rephrase questions or repeat back to the applicant what the applicant said to be sure that the meaning is clear. It may also be useful to elicit additional information surrounding any discrepancy before having the applicant explain.

The point is *not* to trap the applicant or "catch" the applicant in a lie. However, when fraud is suspected, it is important to be sure to have a firm understanding of any discrepancies before asking for explanations.

Example: If the applicant states she was only arrested one time, but the I-589 indicates she was arrested two times, it might be helpful to clarify with the applicant whether or not she was arrested any other time aside from the time described and be sure that details regarding the arrest were elicited (was she released and immediately rearrested?), before pointing out

the inconsistency.

7. Take careful notes

Evidence of the reasons for a negative credibility finding must be documented in the interview notes. It should be evident that the asylum officer asked the applicant about discrepancies between the I-589 and the oral testimony and also asked about internal inconsistencies in the testimony.

If the asylum officer has carefully recorded the applicant's statements, the officer will be able to refer to specific testimony when questioning the applicant about any inconsistencies. This can help avoid confusion and may prevent disputes about what the applicant did nor did not say earlier in the interview.

8. Review closely any documents the applicant has presented in support of his or her claim.

The asylum officer should carefully examine the content of any documents the applicant submits when the applicant is still in the asylum officer's office, paying particular attention to names and dates. After the applicant has presented his or her claim, the asylum officer should compare it with the information in the documents and ask the applicant about any discrepancies.

It is often difficult to determine whether documents issued in another country are genuine. If they are not genuine, or if the applicant's claim is fabricated, then the information contained in the documents may not match the details of the applicant's claim. However, the asylum officer should keep in mind that sometimes applicants obtain false documents in order to leave their country to

escape persecution. Additionally, possession of false documents, in itself, is not a sufficient basis to find an applicant ineligible for asylum.

The asylum officer must determine whether any discrepancies between documents and the applicant's testimony present inconsistencies that are material to the applicant's claim.

B. Provide the Applicant an Opportunity to Explain Perceived Inconsistencies and Discrepancies

The asylum officer must provide the applicant an opportunity during the interview to explain any discrepancy or inconsistency that is discovered. The applicant may have a legitimate reason for having related testimony that outwardly appears to contain an inconsistency, or there may have been a misunderstanding between the asylum officer and the applicant. Similarly, there may be a legitimate explanation for a discrepancy or inconsistency between information on the I-589 and the applicant's oral testimony.

Instructor Note: #15

Note: It is incumbent upon the officer to have sufficiently reviewed materials in the A-file prior to the interview to be able to identify any inconsistencies in the course of the interview. Nonetheless, there may be some rare situations (for example when submitted documents are later discovered to be fraudulent) in which the asylum officer discovers a discrepancy or misrepresentation only after the interview. In most cases, a second interview will not be provided. If a NOID is issued, the applicant will be able to clarify in the rebuttal or, if the case is referred, the applicant will be given a second opportunity to present his or her claim before the immigration judge. However, there may be some rare cases in which a second interview is appropriate and may, with the concurrence of the Director, be conducted.

Langlois, Joseph. INS Office of International Affairs. [*Discovery of fraudulent documents after the asylum interview*](#). Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: May 27 1998), 2 p.

C. Remain Composed and Professional, Even When

Suspecting Fraud

1. Asylum officers should not argue with applicants.

When the asylum officer asks an applicant to explain the reasons for apparent inconsistencies, the applicant may become defensive, evasive, and/or argumentative. The asylum officer must remain professional at all times, however, and not argue with the applicant about the inconsistency. In a nonadversarial manner, the asylum officer should simply ask the applicant to explain the inconsistency, ask for further clarification if necessary, and write the applicant's explanation in the interview notes.

2. Asylum officers should remain composed and avoid unprofessional body language.

If the asylum officer does not believe an applicant, the officer should not use body language to convey his or her disbelief. For example, the officer should not tap the desk impatiently, shake his or her head or laugh in disbelief, or roll his or her eyes upward.

VII. CREDIBILITY ANALYSIS IN THE ASSESSMENT OR NOID

A credibility judgment must be made in every asylum case and must be reflected in each assessment or NOID.

[8 C.F.R. § 208.17](#)

A. Positive Credibility Finding

If the asylum officer determines that the applicant's claim is detailed, consistent, and plausible, then the

assessment need only make a brief statement indicating that the applicant was found credible.

Examples:

1. Prior to the summary of the facts, the assessment may state, "The applicant credibly testified that"
2. The assessment may contain a separate statement after the summary of the facts: "The applicant's testimony was detailed, consistent, and plausible. Therefore, it is found credible."

B. Negative Credibility Finding

The written explanation of a negative credibility finding must reflect the two-step determination process: a factual analysis of truthfulness and a legal analysis of materiality.

1. Factual analysis

The written assessment or NOID must state the specific reasons the applicant was found not credible. It is insufficient to state only that the testimony was inconsistent, that it lacked detail, and/or that it was not plausible.

- a. inconsistencies

If the testimony was inconsistent, then the assessment or NOID must identify the parts of the claim that were found to be inconsistent. It should also indicate that the applicant was given an opportunity to explain the inconsistencies, but that the applicant's explanation was insufficient.

Example: The applicant's testimony is found not credible because it was internally inconsistent. Initially, the applicant testified that she was in her mother's home when she was arrested. Later, she testified that she was at the market when she was arrested. When asked about this inconsistency, the applicant could provide no convincing explanation, but rather changed her testimony again and stated she was at the hospital when she was arrested.

b. lack of detail

If the claim lacked detail, then the assessment or NOID must identify the type of detail that was lacking.

Example: The applicant's testimony is found not credible because it lacked important detail that an individual in the applicant's situation should reasonably be able to provide. For example, the applicant stated that he distributed pamphlets for his party every day for several months. However, he could not explain how he received the pamphlets, where he distributed them, or the type of information the pamphlets contained.

c. implausible

If the claim was not plausible, then the assessment or NOID must explain why.

Example: The applicant's testimony is found not credible, because it was implausible. The applicant stated that he was able to escape from the police, because he had magic powers that

rendered him invisible.

2. Materiality

After the asylum officer identifies the part of the claim that was found not credible and explains the reasons, the asylum officer must then explain why the non-credible part of the claim is material to the overall asylum claim.

Example: The applicant's inability to credibly establish that he is Christian is material to his claim, because his claim is based on fear of persecution for having converted from Islam to Christianity.

C. Split Credibility Finding

In some cases, the asylum officer may determine that part of the applicant's testimony is not credible, but that another part is credible. The asylum officer should then identify those parts of the testimony that were found not credible, explain why they were found not credible, and state whether they are material to the applicant's claim. The assessment should also identify those parts of the claim that were deemed credible.

Example:

The applicant's claim that she entered the United States in December of 1991 is not credible, because INS documents in the file establish that she entered in July of 1991. This inconsistency is not material to the applicant's claim, because it does not have any bearing on the applicant's assertion that she was arrested and detained for two months in 1990. Because the applicant's testimony regarding her arrest was detailed, consistent, and plausible, it is found to be credible.

D. General Considerations

1. Avoid confusing the credibility analysis with

the analysis of well-founded fear.

The determination of whether an applicant's claim is credible should be distinguished from the determination of whether an applicant's fear of future persecution is reasonable. The credibility finding should focus on whether the events the applicant described actually occurred, not the degree of risk an applicant may face upon return.

Examples:

- a. inappropriate

The applicant's fear of future persecution is not credible, because it is not reasonable for the applicant to fear harm after remaining safely in her country for 10 years after she was threatened.

- b. appropriate

The applicant's testimony was consistent, detailed, and plausible. Therefore it is credible.

The applicant's ability to remain in her country for ten years after she was threatened indicates that the authorities do not have the inclination to harm her. Therefore, the applicant has failed to establish that her fear of future persecution is well-founded.

2. The assessment or NOID should contain a firm credibility finding.

The asylum officer should not avoid reaching a credibility determination by making non-

committal statements such as, "It is difficult to completely believe the information the applicant provided," or "The applicant's testimony stretches the imagination."

3. The asylum officer's personal opinions should be absent from the written credibility determination.

Just as the legal analysis in an assessment or NOID must be free of the asylum officer's personal opinions, the credibility determination must also be free of such opinions. The determination should not contain any language in the first person "I." It should not contain any reference to whether a fact is difficult to believe or not, because that is a subjective opinion. The credibility analysis should contain objective factors only.

Instructor Note: #16

VIII. SUMMARY

A. General Considerations

1. Misrepresentations do not necessarily lead to a finding of ineligibility.
2. The credibility determination must be based on objective facts.
3. There is no moral component to credibility determinations.

B. Factors to Keep in Mind When Evaluating Credibility

The asylum officer should remain aware of the following factors and, to the best of his or her ability, prevent them from adversely affecting the credibility evaluation:

1. Interpreter or applicant's use of a second language
2. Cross-cultural issues, including body language, customs, and culturally based perceptions, such as perceptions of time or family
3. Personal background of the applicant
4. Trauma from flight and past persecution
5. Stress and environment of the interview
6. Time constraints
7. Difficulty in evaluating the behavior of a stranger
8. Personal baggage

C. Factual Analysis -- Is the Applicant Telling the Truth?

In evaluating credibility, the asylum officer must first determine whether the facts alleged by the applicant are true.

1. Factors upon which credibility finding appropriately may be based

An applicant's claim may be found credible if it is consistent, detailed, and plausible. An applicant's claim may be found not credible if it is inconsistent, lacks detail, is implausible, or the applicant submits fraudulent documents in support of his or her claim. The demeanor of the applicant may also be considered, but it is generally a poor indicator of credibility and should never form the sole basis for a credibility finding.

2. Factors upon which credibility finding should not be based
 - a. the asylum officer's moral judgments or opinions about how an individual in the applicant's situation would have acted
 - b. the fact that a statement is self-serving or was made upon the advice of a lawyer
 - c. the applicant's decision regarding where and when to apply for asylum
 - d. the fact that the applicant's claim is similar to or different from other applicants' claims
 - e. the fact that country conditions reports do not corroborate the applicant's claim (not to be confused with claims that are implausible in light of country conditions)
 - f. the fact that the fear is not well-founded

D. Legal Analysis -- Is the Falsehood Material?

If any of the applicant's assertions are found not credible, then the asylum officer must determine whether the false assertions are material; that is, whether they have a direct bearing on eligibility for the benefit sought.

If false assertions are material, then the applicant's request for asylum must be denied or referred. If they are immaterial, and the applicant's request is approvable on the true facts, then the request should be granted.

E. Probing Credibility at the Interview

To probe credibility at the interview, it may be helpful to use some of the following techniques:

1. Elicit general biographical information about the applicant at the beginning of the interview.
2. Listen carefully, elicit as much detail as possible, and take careful notes.
3. If fraud is suspected, have the applicant describe events out of chronological order, and/or ask the applicant to explain certain events a second time. Bear in mind, however, that even individuals who tell the truth may become confused in relating events out of order.
4. Elicit detailed information surrounding any discrepancy and be sure understanding is clear before asking the applicant to explain the discrepancy.
5. Review closely any documents submitted in support of a claim, paying particular attention to dates and names, and compare them with the applicant's testimony. Bear in mind that genuine refugees may have legitimate reasons for possessing fraudulent documents.

F. Provide the Applicant an Opportunity to Explain Perceived Discrepancies

The asylum officer should not only give the applicant an opportunity to explain perceived discrepancies, but should record the applicant's response in the interview notes.

G. Remain Composed and Professional at the

Interview, Even When Suspecting Fraud

Even when suspecting fraud, the asylum officer must remain composed, avoid use of an adversarial tone or adversarial body language, and refrain from arguing with the applicant.

H. Credibility Analysis in the Assessment or NOID

All assessments and NOIDs must contain a credibility finding. If the credibility finding is positive, then the assessment or NOID need only state as much. If the credibility finding is negative, then the assessment or NOID must identify the parts of the testimony that were found not credible, explain the reason(s), and explain how the false statements are material to the claim.

The credibility finding should be separate from the analysis of well-founded fear. It should be clear and must not contain reference to the asylum officer's subjective beliefs or opinions.