

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Interviewing Part I: Overview of Nonadversarial Asylum Interview</i>
Field Performance Objective	Given the field situation of interviewing an applicant for asylum (and witnesses, if any), the asylum officer will be able to elicit in a nonadversarial manner all relevant information necessary to adjudicate the asylum request and to issue documents initiating removal proceedings.
Interim (Training) Performance Objectives	<ol style="list-style-type: none"> 1. Distinguish adversarial from nonadversarial interview methods. 2. Conduct the interview in professional manner. 3. Identify all pertinent persons present, including any witnesses and legal representatives. 4. Explain to asylum applicant the purpose of the interview. 5. Explain confidentiality to asylum applicant. 6. Administer oath to asylum applicant and any witnesses. 7. Explain rights and role of legal representative during the interview. 8. Elicit from applicant information regarding the place and manner of entry. 9. Elicit from applicant basic biographical information. 10. Request/accept additional evidence from asylum applicant or representative. 11. Advise asylum applicant of post-interview procedures, including how he or she will be notified of decision.
Student Materials/References	Participant Workbook; Record of Applicant's Oath at Interview Form (attached), Form G-28 (attached), Interview Checklists (attached), Interview Evaluation Form (attached); 8 C.F.R. § 208.9
Background Reading	Cooper, Bo. INS Office of the General Counsel. <i>Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information</i> , Memorandum to Jeffrey Weiss, Director, Office of International Affairs. (Washington, DC: June 21, 2001), 7p. (attached)

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Presentation**I. INTRODUCTION**

In this lesson, students will learn about the purpose, components, and nonadversarial nature of the asylum interview, as well as the roles of the representative and the applicant. The lesson will also cover eliciting the basic biographical information on the I-589, such as date and place of birth and information pertaining to entry into the U.S.

II. OVERVIEW**A. Regulation**

For each applicant who has filed an asylum application that is complete within the meaning of 8 C.F.R. § 208.3(c)(3) and that is within the jurisdiction of the Office of International Affairs:

1. an interview shall be conducted by an asylum officer;
2. the interview must be nonadversarial;
3. the interview is to be done separate and apart from the general public (except at the request of the applicant).

B. Asylum Officers as Representatives of the United States Government

Asylum officers must always keep in mind their responsibility to uphold the integrity of the asylum process. They represent the United States government and, as such, they must conduct the interview in a professional manner.

C. The Importance of the Interview

The results of the asylum interview hold enormous consequences for the applicant:

1. The interview is the only opportunity for the asylum officer to elicit and clarify information upon which a decision is based.
2. The asylum officer's decision, whether an approval, referral, or denial will affect the applicant's life.

References

**OH #1, 2A, & 2B:
Performance Objectives**

Instructor Note #1

*See, 8 C.F.R. § 208.9,
Procedure for interview
before an asylum officer*

8 C.F.R. §§ 208.9(a) and (b)

8 C.F.R. § 208.9(b)

See, 8 C.F.R. § 208.9(b)

3. An applicant wrongly found ineligible for asylum status may be placed into proceedings before an immigration judge and may eventually be returned/removed to the country of origin and face persecution or death.

Due to the potential consequences of incorrect determinations, it is incumbent upon asylum officers to conduct organized, focused, and well-planned, nonadversarial interviews to elicit sufficient facts to make intelligent and well-informed decisions.

III. PURPOSE OF THE INTERVIEW

Instructor Note 3

Interviewing asylum applicants is one of the main tasks of an asylum officer. It is crucial in the asylum process and it serves two main purposes: gathering information and disseminating information.

A. Gather Information

The asylum officer cannot be passive during the interview; rather, the asylum officer has the affirmative duty "to elicit all relevant and useful information bearing on the applicant's eligibility" for the form of relief sought.

"Eliciting" information often means more than simply asking questions and receiving responses. The asylum officer may need to draw forth from the applicant information that has a bearing on the applicant's eligibility for asylum.

The asylum officer must gather information in order to:

1. Establish the identity of those present at the interview
2. Evaluate credibility and determine eligibility for asylum (and in certain cases, eligibility for withholding of removal)
3. Make a determination on alienage and removability

B. Disseminate Information

In addition to gathering information during the interview, the asylum officer also provides information to the applicant and to any other persons who may be present, such as witnesses, an interpreter, and the applicant's representative. Information to be explained includes:

1. The purpose and process of the interview

OH #3 Purpose of the Interview: A) Gather Information

8 C.F.R. 208.9(b); *UNHCR Handbook*, paras. 196 and 205(b)(i)

OH #4 Purpose of Interview: B) Disseminate Information

2. The roles and rights of all persons involved in the interview
3. What can be expected after the interview is completed

IV. NONADVERSARIAL NATURE OF THE ASYLUM INTERVIEW

Refer to 8 C.F.R. § 208.9

Instructor Note 4

A. Regulation

Pursuant to regulation, the asylum officer must conduct the interview in a nonadversarial manner.

8 C.F.R. § 208.9(b)

B. Definition

At asylum interviews (unlike in defensive proceedings before an immigration judge, the Board of Immigration Appeals, or the federal courts) there is no government official present arguing in opposition to the asylum applicant. Neither the asylum officer nor the representative cross-examine the applicant and witnesses (if any), nor do they make objections, as in defensive proceedings. The asylum officer is not an advocate for either side; rather the asylum officer is a neutral decision-maker.

C. Purpose

1. The nonadversarial nature of the asylum interview allows the applicant to present a claim in as unrestricted a manner as possible, within the inherent constraints of an interview before a government official.
2. An interview with a government official may be intimidating to an applicant. Asylum applicants may feel vulnerable and threatened during an interview with a representative of the United States government because of
 - a. prior negative experiences with authority figures
 - b. the trauma due to a possible sudden flight from the country of persecution
 - c. the differences between the applicant's culture and the culture of the person conducting the interview

Cross-cultural issues are discussed in lesson, *Interviewing Part IV, Cross-Cultural Communication and Other Factors that May Impede Communication at an Asylum Interview.*

- d. fear of exposing information of a highly personal or sensitive nature

D. Points to Keep in Mind When Conducting a Nonadversarial Interview

The asylum officer's role in the nonadversarial interview is to ask questions formulated to elicit and clarify the information needed to make a determination on the applicant's request for asylum and, when appropriate, for withholding of removal. This questioning must be done in a professional manner that is non-threatening and non-accusatory.

Instructor Note 5

- 1. The asylum officer must:

OH #5: "Musts" of Nonadversarial Interviews

- a. treat the applicant with respect

Even if an applicant is not eligible for asylum based on the facts of the claim, the asylum officer must treat the applicant with respect.

The asylum officer may hear similar claims from many applicants, but must not show impatience towards an applicant.

Even the most non-confrontational asylum officer may begin to feel put upon or annoyed if he or she feels an applicant is lying. It is important that the asylum officer keep these emotions from being expressed during the interview, however.

- b. be non-judgmental and non-moralistic

Applicants may have reacted to situations differently than the asylum officer might have reacted. The applicant may have left family members behind to fend for themselves, or the applicant may be a member of a political organization for which the asylum officer has little respect.

Although asylum officers may feel personally offended by some applicants' actions, asylum officers need to put their personal feelings aside in their work, and avoid passing moral judgments on asylum applicants in order to make neutral decisions.

- c. create an atmosphere in which the applicant can freely express his or her claim

The asylum officer must make an attempt to put the applicant at ease at the beginning of the interview and continue to do so throughout the interview.

If the applicant is a survivor of torture or other severe trauma, he or she may feel especially threatened during the interview. As it is not always easy to determine who is a survivor, asylum officers should be sensitive to the fact that every applicant is potentially a survivor of torture or trauma, even if there are no outward signs of such.

This topic is discussed in depth in lesson, *Interviewing Part V, Interviewing Survivors*.

Treating the applicant with respect and being non-judgmental and non-moralistic can help put the applicant at ease. There are a number of other ways to help put an applicant at ease such as:

Instructor Note 6

- (i) greet the applicant and others pleasantly
- (ii) introduce yourself by name and explain your role
- (iii) keep the desk free from clutter and have necessary materials (forms, pens, notepad, etc.) easily accessible to avoid distractions
- (iv) explain the process of the interview to the applicant so he or she will know what to expect during the interview
- (v) avoid speech that appears to be evaluative or that indicates the asylum officer thinks he or she knows the answer to the question
- (vi) be patient with the applicant
- (vii) keep language simple

- d. treat each applicant as an individual

Although many claims may be similar, each claim must be treated on a case-by-case basis and each applicant must be treated as an individual. Asylum officers must be open to each applicant as a potential approval.

- e. set aside "personal baggage"
- Everyone has individual preferences, biases, and prejudices formed during life experiences that may cause them to view others either negatively or positively.
- Asylum officers must become aware of any "personal baggage" they may have and recognize how it can potentially interfere with the interview process. Asylum officers must make an effort to prevent personal baggage from interfering with their ability to conduct interviews in a nonadversarial, neutral manner.
- "Personal baggage" is discussed further in lessons, *Credibility*, and *Interviewing Part IV, Cross-Cultural Communication and Other Factors that May Impede Communication at an Asylum Interview*.
- f. probe into all material elements of the applicant's claim
- The asylum officer has the affirmative duty "to elicit all relevant and useful information bearing on the applicant's eligibility."
- The asylum officer must ask questions to expand upon and clarify the applicant's statements and information in the I-589 and supporting documents. The response to one question may lead to additional questions about a particular topic or event that is material to the applicant's claim.
- This is discussed in depth in lesson, *Interviewing Part III, Eliciting Testimony*.
- 8 C.F.R. 208.9(b); *UNHCR Handbook*, paras. 196 and 205(b)(i)
- g. provide the applicant an opportunity to clarify inconsistencies
- 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.
- See lesson, *Credibility*.
- On the other hand, the applicant may be fabricating a claim. If the asylum officer believes that an applicant

is fabricating a claim, the asylum officer must be able to clearly articulate why he or she believes that the applicant is not credible.

- h. maintain a neutral tone throughout the interview

Asylum interviews can be frustrating at times for the asylum officer. The applicant may be long-winded, may discuss issues that are not relevant to his or her claim, may be confused by the questioning, may appear to be or may be fabricating a claim, etc. It is important that the asylum officer maintain a neutral tone, however, even when frustrated.

2. The asylum officer must not:
- a. argue in opposition to the applicant's claim
 - b. interrogate the applicant (i.e., must not question the applicant in a hostile manner)
 - c. take sides in the applicant's claim
 - d. attempt to be overly friendly with the applicant
 - e. allow the asylum officer's "personal baggage" to influence him or her during the interview, either in favor of or against the applicant.

OH #6: "Must Nots" of Nonadversarial Interviews

Instructor Note 7

See, section IV.D.1.e., Set Aside Personal Baggage, above. See also, lesson, Interviewing Part IV, Cross-Cultural Communication and Other Factors that May Impede Communication at an Asylum Interview.

Instructor Note 8

V. COMPONENTS OF AN ASYLUM INTERVIEW

There are several components of an asylum interview. Unless the interview is discontinued (e.g., due to inadequate interpretation), the asylum officer must include all of the components when interviewing an asylum applicant. These components are listed below.

- **Pre-interview Preparation**
- **Introduction**
- **Oath**

OH #7: Components of an Asylum Interview

- **Verification of Basic Biographic and Entry Information**
- **Testimony**
- **Closing Statement/Comment/Questions by Applicant and/or Representative**
- **Conclusion**

The above-listed components are expanded upon below.

Note: A number of checklists have been devised during the past few years to aid asylum officers in their task of interviewing (and making and writing decisions). Please refer to the end of this lesson (in both Instructor Guide and Participant Workbook) for sample *Pre- and Post- Interview Checklist* and *Interview Checklist*.

Instructor Note 9

A. Pre-Interview Preparation

1. Review file and INS computer systems to:

Instructor Note 10

- a. determine who is included in the application
- b. determine which version of the I-589 the applicant submitted
- c. ascertain if the file is complete

Instructor Note 11

If the file is missing any documents, such as photographs or photocopies of documents, the asylum officer should request the applicant to provide the missing documents.

Instructor Note 12

The asylum officer should also determine if there is a “Notice of Entry of Appearance as Attorney or Representative” (INS Form G-28) in the file and if it is properly completed.

Refer to copy of INS Form G-28 in supplemental materials, *Forms*.

If there is no G-28 in file, but if it appears that the applicant is represented, the asylum officer should ask the representative and applicant to complete a G-28 during the interview.

- d. determine if there is any indication that the application is not within the jurisdiction of the asylum office

See lesson, *Overview of the Asylum Program -- History, Process, and Jurisdiction*.

- e. determine when the applicant claims to have entered the United States and when he or she filed the asylum application

The asylum officer should be prepared to inquire into whether the applicant's I-589 was filed timely, i.e. within one year of the last arrival into the United States, and whether an exception to that filing requirement applies.

See lesson, *One-Year Filing Deadline*

- f. become familiar with the applicant's background and claim

The asylum officer must read the information on the I-589 and review any supporting documents.

An applicant may have submitted extensive background information on country conditions. It is not necessary to review all of the information prior to the interview, as this can be very time-consuming. However, the asylum officer must look through the information and read any information that specifically pertains to the applicant or his or her claim.

- g. identify issues to cover during the interview

A review of the file allows the asylum officer to identify lines of questioning and specific questions to raise during the interview.

- h. determine if the applicant may be in any "special status" (e.g., *ABC*, *Mendez*)

See section V.A.3, *Review Procedures*, below

The procedures for handling certain cases, such as cases involving *ABC* class members, are different from other cases. Asylum officers must be aware at the outset of the interview whether the case is governed by special procedures, in order to follow correct procedures.

2. Review country conditions information

If the asylum officer is unfamiliar with country conditions relevant to the applicant's claim, the asylum officer should quickly look up basic conditions in that country, referring to the electronic database REFworld, annual human rights reports, or information in the office library. A review

See lesson, *Country Conditions Research and the Resource Information Center (RIC)*, particularly the section, "Use of Country Conditions Information in the Adjudication Process." The most efficient use of

of country conditions can assist the asylum officer to focus on relevant elements of a claim and disregard that which is irrelevant.

time when reviewing country conditions may be to check Refworld first as it contains extensive human rights documents including many annual reports. Searches utilizing specific terms can be done easily in Refworld.

3. Review procedures, if necessary

The asylum officer may find it necessary to review specific procedures prior to interviewing some applicants (e.g., *ABC* cases, sensitive cases), if he or she is unfamiliar with the particular procedures involved in interviewing these applicants.

B. Introduction

Each asylum officer will develop his or her own style and techniques for handling the Introduction component of the interview. The applicant will probably be feeling anxious about the interview that is about to take place. As soon as the asylum officer meets the applicant, the asylum officer should attempt to establish rapport with the applicant. This can help the applicant feel at ease during the interview so that the applicant will be more comfortable explaining his or her claim.

Instructor Note 13

The asylum officer can help alleviate some of the applicant's nervousness by explaining the process of the interview so that the applicant will know what to expect. Whatever the asylum officer's individual style is, the following must be covered in a nonadversarial manner.

OH #8: Introduction

1. Greet the parties

- a. The asylum officer greets the applicant and others at the interview and introduces him/herself to the applicant.
- b. The individuals present introduce themselves to the asylum officer.
- c. The asylum officer must verify the identity of the applicant and all dependents, checking their identification documents, if any. At the asylum officer's discretion, the dependents may remain in the office during the interview or the asylum officer may dismiss them.

8 C.F.R. §208.9(c)

- d. The asylum officer should generally defer to the applicant's preference when determining whether dependents should remain at the interview. Some applicants may be reluctant to discuss certain issues in front of a spouse or children, or they may prefer the presence of such relatives.

Once the interview has begun, an applicant may be reluctant to request that dependents leave the room. The asylum officer should therefore be alert for signs that an applicant may be uncomfortable discussing certain issues with others present. In some cases, (e.g., involving domestic violence or sexual abuse) the asylum officer may request to speak with the applicant alone first to determine if the applicant would prefer to be interviewed without the dependents present.

- e. Some applicants may request that a relative or friend be present at the interview for "moral support." There is no prohibition against this and the asylum officer, in his or her discretion, may allow such individual to remain during the interview. However, the asylum officer must also explain to the individual that he or she is not the applicant's representative, and also that he or she must not interfere with the interview process.

2. Explain the purpose of the interview

The asylum officer must explain that the purpose of the interview is:

- a. to give the applicant an opportunity to explain to the asylum officer the reasons for requesting asylum and to allow the asylum officer to gather any additional information from the applicant and any witnesses; and
- b. to give information to the applicant concerning the asylum process

3. Explain confidentiality

Asylum officers must inform applicants of the confidential nature of the interview.

- a. Regulations prohibit disclosure of information

8 C.F.R. § 208.6; *See also*, Cooper, Bo. INS Office of the General Counsel. *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information*,

pertaining to an alien's application for asylum, without the written consent of the applicant. Some information may be given to other U.S. government officials, however, but they are required to keep this information confidential. Even the fact that an applicant has applied for asylum is confidential.

Memorandum to Jeffrey Weiss, Director, Office of International Affairs. (Washington, DC: June 21, 2001), 7p.

Instructor Note 14

- b. Applicants for asylum may be hesitant to disclose information if they believe it is not confidential for a variety of reasons such as the following.
- (i) applicants may be privy to information for which others may wish to harm them
 - (ii) applicants may fear for the lives and safety of family members and friends
 - (iii) descriptions of past events may be of a highly personal nature
- c. Each asylum officer may choose language that is appropriate to inform the applicant of the confidential nature of the interview. The following is an example of such language.

"The interview today is confidential and the information you provide will not be shared with anyone from the government of your country. It will not be provided to anyone other than officials of the INS and other branches of the United States government, who will also keep the information confidential."

The asylum officer may choose to explain to the applicant that it is against U.S. law to disclose information about an application for asylum, including the fact that the applicant applied for asylum.

- d. Asylum officers should keep in mind that many applicants come from countries in which there is no presumption that a government will guard the privacy of its citizens. Therefore, it may be difficult for some applicants to understand what we mean by "confidentiality."

4. Explain the interview process and procedures

The asylum officer must explain the following to the applicant.

- a. During the interview, the asylum officer will be asking the applicant questions about the applicant's reasons for applying for asylum. The asylum officer will also be writing down what the applicant says. **Instructor Note 15**
- b. Time will be provided at the end of the interview for the applicant to make any additional statements regarding the claim.
- c. The information from the interview will be carefully considered when the Service determines whether the applicant is eligible for asylum.
- d. No decision will be made at the time of the interview. At the end of the interview, the applicant will be advised of when and how he or she will be notified of the Service's decision on the request for asylum.

5. Explain the applicant's responsibilities

The asylum officer must explain that the applicant must

- a. answer questions truthfully and to the best of his or her knowledge
- b. tell the asylum officer if he or she does not know the answer to a question, rather than guess at the answer or supply an answer he or she thinks the asylum officer wants to hear
- c. advise the asylum officer if he or she does not understand anything the asylum officer or interpreter has said

Note that this is different from asking the applicant what his or her opinions are.

(Note that, due to cultural barriers, fear of authority figures, etc., many applicants may not ask for clarification if they do not understand what the asylum officer asks.)

- d. ask questions at any time during the interview

6. Advise the interpreter (if any)

The asylum officers must advise the interpreter what his or her role is during the interview. After an explanation of its purpose, the interpreter should sign the Interpreter's Oath form.

This is explained further in lesson, *Interviewing Part VI, Working with an Interpreter*.

7. Advise the representative

a. Procedures

INS Form G-28 (Notice of Entry of Appearance as Attorney or Representative) must be properly executed before a representative is permitted to participate in the interview.

Refer to copy of INS Form G-28 in *Asylum Procedures Manual*

Instructor Note 16

See, 8 C.F.R. § 292.4

As noted above in **Pre-Interview Preparation**, prior to the interview, the asylum officer must review the G-28 to be sure it has been completed. If the representative and/or the applicant has not signed the G-28, they must do so at the interview.

If no G-28 is in the file, the asylum officer must request the representative to submit a G-28 at the interview.

The asylum officer must verify that the representative at the interview is the same person who signed the G-28. If not, but the representative is from the same office, he or she must sign the G-28 and correct any information on it, if necessary.

If the representative has submitted a G-28 but is not present at the interview, the asylum officer must inform the applicant that he or she has a right to have a representative present at the interview. If the applicant wishes to proceed without the representative, the applicant must sign a waiver form before the interview can be conducted. If the applicant does not wish to proceed without the representative, the case must be rescheduled.

See sample Waiver of Presence of Representative form in the *Asylum Procedures Manual*

- b. Cooperative relationship of representative and asylum officer

The representative and the asylum officer are not adversaries. Therefore, some actions that may be appropriate for attorneys during adversarial settings (such as making objections) are not appropriate in the nonadversarial interview, where the asylum officer and representative share a cooperative role in developing and clarifying the merits of the applicant's claim.

In certain instances, it may be appropriate for the representative to comment during the course of the interview to avoid confusion or misunderstandings. Such comments may be helpful and should not be discouraged. At the same time, it is important that the asylum officer retain control of the interview. If the representative repeatedly interrupts or otherwise disrupts the interview, the asylum officer should ask the representative to refrain from interrupting the interview and explain that the representative will be given an opportunity at the end of the interview to ask questions and make comments.

There may be times when there is an interpreter and the representative does not understand the applicant's language but the asylum officer does. The asylum officer may be tempted at times during the interview to dispense with the interpretation of what the applicant says. This should be avoided, however, as the representative must be able to understand all that transpires during the interview in order to best represent the applicant.

This is also discussed in lesson, *Interviewing Part VI, Working with an Interpreter*, section IX.O., *Be Certain That the Representative Remains in the "Communication Loop" During the Interview*

The asylum officer may at times need to remind the representative of the nonadversarial nature of the asylum interview. In doing so, the asylum officer must conduct him/herself in a professional manner, even if provoked.

- c. The asylum officer must advise the representative of the following:

At the end of the interview, the representative will be allowed to make a closing statement or comment on

8 C.F.R. §208.9(d)
See section V.F., *Closing*

the evidence presented and/or may also ask the applicant additional questions. The asylum officer, in his or her discretion, may limit the length of such statement or, in lieu of such a statement or comments, the asylum officer may request that a statement be submitted in writing.

Statement/Comment/Questions by Applicant and/or Representative, below.

C. Oath

Applicants and any witnesses must be placed under oath prior to giving testimony. Some applicants may have religious objections to using the term "swear." Other applicants may object to the phrase "so help me God." The asylum officer must adapt the oath to accommodate the applicant, ensuring that the applicant understands that he or she is promising, under the law, to tell the truth.

8 C.F.R. § 208.9(c)

The applicant must also sign a statement acknowledging that he or she swears to tell the truth and understands the penalties for misrepresentation. The applicant should not be made to sign the form without a brief explanation of significance of the oath and the acknowledgement of the penalties for misrepresentation.

See sample Record of Applicant's Oath During Interview form in the *Asylum Procedures Manual*
Instructor Note 17

The interpreter must sign a statement (interpreter's oath), which puts the interpreter under oath. At the asylum officer's discretion, he or she may administer the oath to the interpreter in addition to having him or her sign the interpreter's oath.

See, lesson, Interviewing Part VI, Working with an Interpreter, section VI.C., Interpreter's Oath

Instructor Note 18

D. Verification of Basic Biographic and Entry Information

The asylum officer must verify the biographic information and entry information on the I-589.

1. Become familiar with I-589

Information on the I-589 must be verified and updated or corrected if necessary. Someone other than the applicant may have completed the I-589, or information about the applicant may have changed since the application was filed. As a result, some of the information on the I-589 may not be correct. At the outset of the interview, the asylum officer should ascertain who prepared the application.

2. Verify Biographical Information

Asylum officers must be certain that the I-589 contains the applicant's full and correct name, plus any aliases; that the

date and place of birth and address are correct; that the entry information is correct; and that all other biographical information on the I-589 is correct.

The asylum officer must also compare this information with other documentation on file or presented by the applicant at the interview, such as a birth certificates, passports, etc. If there are any dependents, the asylum officer must verify that the biographical information for each dependent is also correct.

3. Review Identity documents

- a. Although it is not required that applicants submit identity documents (or any other documents), the asylum officer must ask the applicant and dependents if they have any identity documents. This includes identity documents from both the applicant's country and the U.S.

Note that this discussion on documents pertains to all documents, not just identity documents.

If the applicant does not have any identity documents, the asylum officer should ask the applicant to explain why he or she does not have any documents.

- b. If the applicant submits at the interview an original document and copies of the document, the asylum officer should retain copies for the file, write on the copies, "original seen and returned," and sign and date each copy below this statement.

Similarly, if the applicant presents an original document for which there are copies in the file, the asylum officer should note on the file copies that the original was seen and returned, and sign and date the file copies.

If the applicant only has photocopies of a document, the asylum officer should write on the copies retained for the file, "from photocopy," and sign and date each one.

- c. The asylum officer must not keep any original documents unless they are clearly fraudulent.
- d. If the applicant submits a Form I-94, the asylum officer must retain a photocopy of the document, place

See, lesson, Fraud in the Context of Asylum Adjudications, section III.C., Retention of Documents

it on the non-record side of the file, and return the original I-94 to the applicant. At no time will the asylum officer retain the applicant's original Form I-94, even if the authorized stay has expired.

4. Correct the I-589

If any information on the I-589 needs to be corrected, it must be done in red ink on the record copy of the I-589, crossing out the original information so that it is still legible. The corrections must be numbered, so that they may be noted when the applicant signs the I-589 at the end of the interview.

E. Testimony

The asylum officer has the affirmative duty to elicit information from the applicant. The information must be elicited in a nonadversarial manner.

8 C.F.R. § 208.9(b); *UNHCR Handbook*, paras. 196 and 205(b)(i).
Eliciting testimony is discussed in depth in lesson, *Interviewing Part III, Eliciting Testimony*.

1. Although the asylum officer must cover all of the information requested in the I-589, the asylum officer should not simply ask the applicant the same questions that are on the I-589.

Instructor Note 19

Instead, the asylum officer must ask the applicant questions so that the applicant has an opportunity to explain in his or her own words the reasons he or she is applying for asylum.

2. If any of the information in the I-589 conflicts with the applicant's oral testimony, or if there are any inconsistencies within the applicant's testimony, the asylum officer **must** give the applicant an opportunity to explain the discrepancies. The asylum officer must make corrections on the I-589 when necessary, advising the applicant of the corrections.

See, section V.D.4., *Correct the I-589*, above.

3. The asylum officer must pursue all relevant lines of questioning until he or she is certain that all pertinent information has been gathered in order to make a determination on the applicant's request for asylum, and, if necessary, withholding of removal.

Instructor Note 20

Lines of questioning should also cover matters relating to the applicant's time of entry into the United States, time of filing the I-589, and any reasons why the I-589 might have

See, lesson, *One-Year Filing Deadline*

been filed more than a year after the applicant's last entry.

4. The asylum officer must also allow the applicant to ask questions as appropriate.
5. The asylum officer must accept any additional documents provided by the applicant at the interview in support of his or her claim.

See section V.D.3., Review Identity Documents, sub-point b., above.

F. Closing Statement/Comment/Questions by Applicant and/or Representative

The asylum officer must allow the applicant or representative to make a closing statement or to comment on evidence presented. In addition, the representative may ask the applicant questions about any additional information that was not covered in the interview.

8 C.F.R. § 208.9(d)

At the asylum officer's discretion:

1. the time allowed for a closing statement may be limited; or
2. the officer may request that the statement be submitted in writing.

Because of time constraints, the asylum officer should only request that a statement be made in writing in unusual circumstances. This should be done with the consent of a supervisory asylum officer. The submission of such statement must not delay the process in which the applicant is required to pick up his or her decision.

G. Conclusion

1. Signatures on I-589

The applicant and asylum officer must sign the record copy of the I-589. The corrections made to the I-589 must be noted and explained to the applicant. The asylum officer must inform the applicant that, by signing the application, he or she is affirming that all the information in the application is true.

2. Requests to submit additional documents

8 C.F.R. § 208.9(e)

If the applicant requests additional time to submit documentation, the asylum officer may, in his or her

discretion, grant a brief extension of time to the applicant. This should only be done with the consent of a supervisory asylum officer. If an extension of time is granted at the request of the applicant, it is important for the asylum officer to inform the applicant that such extension shall toll (stop) the 150-day “clock” for purposes of employment authorization.

8 C.F.R. 208.7(a)(2)
Instructor Note 21

In certain rare cases, the asylum officer may request that the applicant submit additional documentation as evidence in support of his or her claim.

Note that any delay caused by the Service shall not toll the “clock” for purposes of employment authorization.

Because of time constraints, however, submission of additional documents should be done only in rare cases in which such documentation is necessary to properly process the case. This must be done with the consent of a supervisory asylum officer.

3. Explanation of the next steps in the asylum process

The asylum officer must explain to the applicant how he or she will be informed of the decision.

See, Asylum Procedures Manual, sections II. L., N, & O., Preparing the Decision, Service of Decision, and Post-Service Processing, respectively

The asylum officer must not inform the applicant of what the decision on his or her request for asylum or withholding of removal is or might be. Instead, the asylum officer must advise the applicant that he or she will be informed of the outcome of the interview at a later date and that he or she will receive a grant letter, a referral letter, or a Notice of Intent to Deny.

The asylum officer should let the applicant know whether he or she is required to return to the Asylum Office to pick up the decision, or will receive notification by mail. The asylum officer should explain what the applicant can expect with these decisions.

a. pick-up decision

Instructor Note 22

Advise applicant:

- of the date he or she must return
- that he or she should bring an interpreter if he or she does not speak English

- that he or she must bring identification if he or she has any; and
- that all dependents 14 years of age and older must also return to pick-up the decision.

b. notification by mail

Advise applicant that he or she will receive notification by mail of the Service's decision and of the next steps in the asylum process.

In general, the circumstances under which applicants are notified by mail include:

- applicants who are in status
- applicants interviewed on a circuit ride
- applicants who are eligible for benefits of the ABC Settlement Agreement

American Baptist Churches v. Thronburgh 760 F. Supp. 796 (N.D. Cal. 1991). See lesson, *American Baptist Churches (ABC) Settlement Agreement*.

4. Escort applicant and others to exit

Asylum officers should escort to the waiting room the applicant and the other individuals who were present at the interview. They should not be permitted to wander the halls of the office.

Instructor Note 23

VI. TIME CONSTRAINTS

Asylum officers must work under time constraints. Asylum officers may interview up to 12 applicants per week, which may involve interviewing three cases per day, conducting the necessary legal and country conditions research, writing assessments, preparing decisions, and preparing documents such as a Notice to Appear (NTA), I-213, and I-94. The tasks and time involved in completing a particular case may increase due to factors such as the following: a complicated story that takes additional time to fully elicit; several dependents on the file who also require the documents listed above; a dependent who needs to be added or deleted. To be able to successfully accomplish all of the tasks required, asylum officers need to be able to work expeditiously under the time constraints. This includes developing interviewing skills that will enable asylum officers to quickly and

efficiently gather all of the information needed to adjudicate an applicant's request.

Instructor Note 24

VII. SUMMARY

A. Asylum Interview

OH #9 Summary A

Pursuant to regulation, asylum applicants who are under the jurisdiction of the Office International Affairs, are entitled to a nonadversarial interview by an asylum officer, separate and apart from the public.

B. The Purpose of the Asylum Interview: To Gather and Disseminate Information

OH #10 & 11 Summary B

Gather information:

1. Establish the identity of those present at the interview
2. Evaluate credibility and determine eligibility for asylum
3. Make a determination on alienage and removability

Disseminate information:

1. The purpose and process of the interview
2. The roles and rights of all persons involved in the interview
3. What can be expected after the interview is completed

C. Points to Keep in Mind When Conducting a Nonadversarial Interview

The asylum officer must:

OH #12 & 13 Summary C

1. Treat the applicant with respect
2. Be non-judgmental and non-moralistic
3. Create an atmosphere in which the applicant can freely express his or her claim
4. Treat each applicant as an individual
5. Set aside "personal baggage"

6. Probe into all material elements of the applicant's claim
7. Provide the applicant an opportunity to clarify inconsistencies
8. Maintain a neutral tone throughout the interview

The asylum officer must not:

1. Argue in opposition to the applicant's claim
2. Interrogate the applicant
3. Take sides in the applicant's claim
4. Attempt to be overly friendly with the applicant
5. Allow the asylum officer's "personal baggage" to interfere with the interview process

D. The Components of an Asylum Interview

OH #14 Summary D

1. Pre-interview preparation

Review A-file and country conditions information; check INS databases if appropriate
2. Introduction

Make introductions; explain purpose and process of the interview; explain roles
3. Oath

Administer oath to applicant and any witnesses; interpreter signs interpreter's oath form
4. Verification of basic biographic and entry information

Verify identity information, manner and place of entry, and current immigration status; correct any errors on I-589
5. Testimony

In nonadversarial manner, elicit testimony regarding the facts that form the basis for the claim; pursue all lines of

questioning that have a bearing on the claim; accept additional documents; allow applicant to ask questions when appropriate

6. Closing statement/comment/questions by applicant and/or representative

Allow applicant and representative to make final comments; allow representative to ask applicant questions about information not already covered during interview

7. Conclusion

Applicant and asylum officer sign I-589; advise applicant of how he or she will be notified of the next step in the asylum process; close the interview.

E. Time Constraints

OH #15 Summary E

Asylum officers must work under time constraints and must develop interviewing skills that will enable them to expeditiously and efficiently gather all of the information needed to adjudicate an applicant's request for asylum.