

FORMER ASYLUM OFFICER SHARES HIS EXPERIENCE ON THE ASYLUM INTERVIEW

by Allen Schwartz, former USCIS asylum officer

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Allen Schwartz was an asylum officer in the Miami USCIS office for more than 23 years. He retired at the end of September 2019. His experience included interviewing and making decisions on over 10,000 asylum cases. Mr. Schwartz best practice recommendations and responses to the Q&A portion of this webinar are combined in the following summary. Please refer to our summary of Allen's 1/18/22 webinar, FORMER ASYLUM OFFICER SHARES EXAMPLES OF ASYLUM INTERVIEW DECISIONS, for additional information about which cases are more likely to be granted or denied, or contact info@rifnyc.org.

Asylum officers (AO's) are highly trained government employees with most of them possessing advanced degrees in law or related fields and/or experience in human rights. AO's are experienced listeners and note takers. They are also trained to be open-minded, not confrontational or biased. Before the worldwide Covid-19 pandemic, AO's would routinely interview and adjudicate (make decisions on) between eight to nine cases per week. Currently, although increasing, AO's are interviewing about half this number.

A. WHAT TO KNOW ABOUT THE ASYLUM INTERVIEW

1. Why is there an asylum application backlog (long waiting time for the interview)?

The affirmative asylum backlog currently consists of more than 425,000 applications/cases affecting more than 600,000 individuals. Many of these cases, which include the principal applicant and his/her family members, have been waiting for either an initial interview or a decision for up to eight years now.

The cases in the backlog have increased sharply in the last two years due to the pandemic and the Last In First Out (LIFO) policy introduced by the Trump administration in 2018. In addition, it appears that since the fall of the Afghan government in September of this year, cases from Afghanistan are being prioritized to be interviewed first.

To address this huge backlog as well as interview the huge number of people at the US-Mexican border, USCIS recently announced that they will be hiring 140 new asylum officers across the country. This is a significant increase from their current staff numbers. However, taking into account security clearances and extensive training periods for the new hires, the increase will unfortunately not have an immediate impact on the backlog.

2. What makes a good asylum application?

The best asylum application is a fully completed application, typed rather than handwritten, comprising all the required documentation and supporting documents (but not an excessive amount unless they specifically relate to the applicant - see note 1). It includes a clear and concise written description of an applicant's life, outlining past harm and/or fear of future persecution. Please note that your entire file will typically be reviewed the same day by the asylum officer, most likely only 10 to 15 minutes before your interview (This is why it is so important to have a very clear and fact-based statement/story).

After your interview, the AO will review both your written application and your verbal testimony in order to make a determination about your case.

If the AO identifies missing documentation or would like to examine additional documents/evidence in your case, he/she will give you a Request for Documentation Form (I-72) at your interview. This form will instruct you to send in the missing or required documentation back to the office within a short and reasonable period of time (usually within 10 days to two weeks). The sooner you send in the requested documentation, the faster your case can be decided.

3. How long is the asylum interview?

An asylum interview lasts about two hours on average. For a best asylum interview, dress professionally, establish good eye contact with the asylum officer (see note 2) and do not behave in a confrontational or sarcastic manner. Listen very carefully to the questions, provide clear and concise answers, and clearly explain any identified inconsistencies or discrepancies. Do not embellish or exaggerate the facts in your testimony. Be direct and precise in your answers.

4. How long does it take for a decision after the interview?

Before the coronavirus pandemic, the asylum decision process for out of status cases (see note 3) would normally take two weeks after your interview: a) about one week or so for the asylum officer to make a determination in your case, b) several days for supervisory concurrence, and c) several more days for the administrative/clerical work (including security checks and fraud detection) to be completed. Then you would come back

personally to the office to receive your decision.

Currently, case decisions are being mailed out to applicants and we do not know why the current delay in getting a response (now typically several months or longer) is taking place. There could be bottlenecks at any of the three levels noted above or perhaps the case has been referred to a specific team of fraud officers for further evaluation.

Please note that today, if the asylum officer makes an unfavorable determination about your case, your file does not go through steps b) and c) but rather gets immediately referred to immigration court. You will receive a referral notice through the mail (see note 4).

5. Conclusion: What makes a credible claim? What is an officer looking for in order to grant asylum?

The best asylum case is a believable case. It is important that your claim is well presented in a clear and concise manner. Additionally, there should not be any major discrepancies, inconsistencies or contradictions between your written statement, your supporting documents and your oral testimony at the interview (see note 5).

B. WHAT TO KNOW ABOUT THE APPLICATION PROCESS

6. What about attorneys?

Many if not most applicants are assisted by attorneys and/or accredited representatives. Attorneys or accredited representatives are not required for the filing of your asylum application or accompanying you to your asylum interview in front of an AO. However, it can be advantageous to have one since they can address the many nuances and complexities of asylum law.

Please beware that some immigration attorneys are not qualified or competent in this specialized area of law. Furthermore, be certain that your attorney is actually licensed to practice law. Some individuals advertise themselves as or claim to be lawyers and state that they will assist you with your asylum application. Many of these individuals willing to assist are notaries (“Notarios” in Spanish for example). “Notarios” are not attorneys. If you are using an attorney, make sure he/she is well qualified and has particular experience with asylum cases. Check their website or do a research on google to find out

more about their experience, and if they have done asylum cases before.

Your attorney/accredited representative almost always comes to your interview with you but is usually there only for support and does not make many comments. Sometimes the attorney/accredited representative summarizes the case at the end of the interview, but this is at the discretion of the Asylum Officer.

7. What about the one-year application filing deadline?

One-year filing deadline exceptions can be made on a case by case basis due to extraordinary and/or changed circumstances. Examples of this could include severe illness (including mental health conditions) or incapacitation, or significantly changed country conditions.

Another example would be if you have consistently maintained a legal immigration status in the United States and have never fallen out of status (such as if you are currently an individual with a valid student visa attending a qualified school/university) here.

If you are out of status and do not qualify for an exception, missing the one-year filing deadline will most likely mean that your case will be referred to an immigration court.

If you applied before the one-year deadline but your application was returned for being incomplete, and you then resubmitted your application after the one-year deadline, USCIS may consider the initial (first) date of application.

However, it is best to consult with an experienced immigration attorney about the one year deadline issues as these laws tend to change or be modified. Try to make sure you complete the application thoroughly to avoid the application being returned.

8. What if I cannot remember details of my persecution?

You may not be able to remember all the details of your persecution if a) it happened a long time ago and/or b) you are suffering from Post-Traumatic Stress Disorder (PTSD). A reasonable asylum officer will understand this. Make sure you explain why you cannot remember.

Also, make sure that there are no significant inconsistencies/ or contradictions between your written and oral testimonies. For example it is understandable not to remember the exact dates of certain traumatic events included in your asylum application. However,

serious credibility issues would arise if you claimed in your written testimony that a traumatic event in your life occurred in 2008, but during your interview you mention a totally different date.

9. What if I have been falsely accused by the government in my home country, or I have been imprisoned but do not have any document to prove it?

It depends on the country but this situation is very common in countries with repressive laws (against political opponents or LGBTQ people for example). If the government of your country is the one persecuting you, being falsely accused or lacking documentation to prove your harm should have no significant impact on your asylum claim. As always, you will need to clearly explain the unique circumstances in your testimony (both written and/or oral).

10. What are some examples that can disqualify an applicant for asylum?

Examples of asylum cases being referred or denied include:

- a) application filed past the one-year deadline without a reasonable explanation to qualify for an exception due to changed and/or extraordinary circumstances,
- b) a terrorism-related finding,
- c) a major criminal record in the United States,
- d) other case-specific reasons such as credibility issues, past and/or future harm does not rise to the level of persecution or does not fit the five categories (nexus) to qualify for asylum: race, religion, nationality, political opinion or membership in a particular social group.

11. Can my case be referred or denied if I have been waiting for years and am established here?

Yes. Some applicants have been waiting for their interview for many years. In the meantime, they have established themselves here: they have a family, a home, they have been working or studying. Unfortunately, their life in the US has no bearing on their pending case. Their cases could still be either referred to the immigration court (if out-of-status) or denied (if in-status).

If you have children born in the United States, they are US citizens. Their citizenship will not affect how an asylum officer looks at your case; however, if your case is referred to court, judges can sometimes be more accommodating to your family situation.

12. Once I have been granted asylum, how can I get my family to come to the US?

First, congratulations! You will need to file form I-730 to petition for your dependents (spouse and children under age 21). Note that the age of the child is considered at the time you filed for asylum, not at the time you were granted asylum (in case you have been waiting for many years for a decision).

C. YOU HAVE BEEN WAITING FOR A LONG TIME AND HAVE QUESTIONS

13. What if I filed a long time ago, and my application needs to be updated or revised?

If you have been waiting a long time for your initial asylum interview, it makes sense that your application may need updating or revising. You can amend (modify) or add to your file just prior to your interview by sending these amendments/documents to the specific Asylum Office where your interview will be taking place.

It is best not to submit any additions to your file before your interview is scheduled since there is a chance they could be lost or misplaced. Once you receive your interview notice (typically three weeks before your interview date), you can contact the specific asylum office where you have to appear, and ask when would be the best time to send your new documents (some interview notices actually provide specific instructions for sending them in). You may also be allowed to present these additions at the interview, but some AO's will not accept them on the same day, so it is best to check. Always maintain copies of everything you add to your file.

14. Can I take proactive steps to move my case forward?

For your case to move forward, you will need some external intervention. Here are some examples of what you can do:

- ask to be placed on a Short Notice List (see note 6), if your asylum office keeps one,
- contact your attorney, if you have one,
- look for an attorney if you don't have one, or would like to have a different one..

You can also refresh the details of your application by going through a mock interview, even if your interview has not been scheduled yet.

You can also try the following steps:

- contact the office of the USCIS Ombudsman (see note 7),
- contact your local US senator or Congressperson (see note 8),
- consider a Mandamus action (see note 9).

15. Should I transfer my case to another asylum office to accelerate my interview?

There are currently eight asylum offices in the United States: New York, Newark, Miami, New Orleans, Houston, Los Angeles, San Francisco, and Chicago. You cannot just simply transfer your case to a different asylum office hoping to accelerate your interview. The only way your case can be transferred is when you actually move to a different jurisdiction from where you originally filed your asylum application. If so, make sure you communicate your change of address to the USCIS.

16. Can I transfer my asylum case to another country?

You can pursue your asylum claim elsewhere, but if your application is pending in the United States and you apply for asylum in another country, this action may adversely affect your case here.

17. I had my interview a long time ago, why is there no decision?

Some applicants had their interview scheduled and met with an asylum officer, but they have been waiting for a decision for many months, sometimes even one or two years or more. There could be a number of reasons for the long wait:

- The asylum officer who interviewed the applicant left the office. The applicant's case needs to be reassigned, but that can take a long time if there is a shortage of staff;
- A supervisor has doubts about the validity of the asylum officer's decision to grant asylum, and requests a second interview. It can take a long time for this second interview to be scheduled;
- The asylum officer has submitted some of your documents to the fraud department of the Asylum Office for examination, and that investigation can take several months or years.

NOTES:

1. Please note that asylum officers have ready access to country conditions reports from the US State Department and major international human rights organizations, so there is no need to include these in your supporting documents, unless your name appears in them (which would be very helpful), or they are very unique to your situation.
2. To avoid any misperception, if establishing eye contact is considered disrespectful in your culture, please definitely make sure you inform the asylum officer at the beginning of the interview.
3. Out of status cases are those whereby the applicant no longer maintains a legal immigration status in the United States. Visitor/Tourist visa overstays are very common examples of affirmative asylum applicants who are out of status.
4. The referral notice is brief and usually not detailed. It might state any or all of the following reasons: a) you did not file your asylum claim within one year of your most recent entry into the United States; b) your testimony was not credible (believable); c) you did not either experience persecution in the past or currently have a well-founded fear of future persecution; d) you are barred from receiving asylum (read about [Bars to Receiving Asylum or Refugee Status](#)).
5. For more details about cases most likely to be granted or denied, please refer to Mr. Schwartz webinar of 1/18/2022: [FORMER ASYLUM OFFICER SHARES EXAMPLES OF ASYLUM INTERVIEW DECISIONS](#).

You can find links to its video here:

(<https://www.youtube.com/watch?v=wqsX9gtkE4U>)

and its summary here:

(<https://static1.squarespace.com/static/55e65ac9e4b028016a8e7b2b/t/61d869afa3de762da8aa89fe/1641572783165/Allen+Formatting+%281%29.pdf>)

You can also contact Mr. Schwartz directly at allen.schwartz@visaconsults.com.

6. To learn about the steps to make a request for the Short Notice List, please email info@rifnyc.org.
7. The CIS Ombudsman can help with issues not resolved with USCIS. Specifically, issues related to an emergency/hardship as the result of a USCIS mistake or delay or if you have had an application/petition pending past normal processing times or believe a processing error has occurred. For more information, please visit <https://www.dhs.gov/topic/cis-ombudsman>.
8. You would need to reach out to the [congress members](#) in your area, by looking up their website info and contact details. Once you find them, you call them or send them an email explaining your situation. Sometimes there is a form you can fill out on their website, after which you wait for them to contact you.

9. A Mandamus action is a lawsuit used to compel someone, such as an officer or employee of the US government, to act on an administrative matter that is not discretionary (where they have a legal duty to do so and have not).