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November 8, 2007

Memorandum

TO: Asylum Office Directors
Asylum Office Deputy Directors

FROM: Joseph E. Langlois, Chief
Asylum Division

A blue ink signature of Joseph E. Langlois, Chief Asylum Division.

SUBJECT: Guidelines for Partnerships between Asylum Offices and Non-Governmental Organizations to Provide Access to Legal Consultation for Applicants in the Credible Fear Process

The purpose of this memorandum is to provide general guidance for Asylum Offices in establishing partnerships with non-governmental organizations (NGOs) to facilitate access to pro bono consultants for individuals in the credible fear process. Asylum Offices are encouraged to establish partnership arrangements with NGOs pursuant to the terms of this memorandum, using internal procedures appropriate to each individual office.

Background

Since 2000, the Arlington Asylum Office and the Capital Area Immigrants' Rights (CAIR) Coalition, comprising a network of thirty NGOs, have partnered to provide access to pro bono consultants for applicants in the credible fear process. The Arlington Asylum Office's internal procedures address determining whether an applicant would like access to a pro bono consultant and referring the CAIR Coalition to the applicant. During the credible fear orientation, the Asylum Pre-Screening Officer (APSO) confirms whether the applicant would like to meet with a consultant if there is not an attorney of record. The APSO notifies the CAIR Coalition that a consultant is requested for the credible fear interview and provides the gender, country of nationality and age of the applicant. The Arlington Asylum Office does not provide any identifying information or potential claim of the applicant.

Generally, on the date of the credible fear interview, the APSO introduces the consultant to the applicant, and allows them to privately confer for a short period of time prior to the interview. The

Arlington Asylum Office also established a similar partnership with the Atlanta Bar Asylum Project to facilitate access to consultants to applicants in the credible fear process within the jurisdiction of Arlington's Atlanta Office.

In 2005, the United States Commission on International Religious Freedom (CIRF) issued a *Report on Asylum Seekers in Expedited Removal*.¹ CIRF referenced the Arlington Asylum Office's partnership with the CAIR Coalition and concluded that the access to consultants was a factor in its higher dissolve rate. CIRF also noted that legal consultation may contribute to the efficiency of the credible fear process since an applicant may dissolve his or her claim if advised by a consultant that the claim does not meet the criteria for asylum.² The CIRF report recommended an expansion of the Arlington Asylum Office's pro-bono partnership program to all eight Asylum Offices.

General Guidelines for Partnerships with Non-Governmental Organizations

Pursuant to 8 C.F.R. § 208.30(d)(4), applicants in the credible fear process are entitled to:

consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and on the length of the statement.³

Consultation generally facilitates the credible fear process and helps to ensure that asylum seekers' claims are fully elicited in the credible fear interview. Partnerships with NGOs further facilitate the credible fear process by assisting applicants gain access to consultants to discuss legal options, explore potentially valid claims, or dissolve claims that do not appear to have a legal basis for a grant of asylum or withholding of removal.

An Asylum Office may enter into informal partnerships with an NGO or multiple NGOs, if the Asylum Office is approached by the NGOs. **Asylum Offices may not in any way create the appearance that the Asylum Office favors specific NGOs.** Therefore, Asylum Offices may not

¹ See <http://www.uscirf.gov/mediaroom/press/2005/february/02072005%5Fuscirf.html>.

² In the first part of fiscal year 2007, approximately 25% percent of the applicants in the credible fear process within the jurisdiction of the Arlington Asylum Office chose to dissolve their credible fear claims, giving the Arlington Asylum Office a higher credible fear dissolve rate than other asylum offices. The twenty-five percent dissolve rate for the Arlington Asylum Office includes the credible fear statistics from October to May 2007. In fiscal years 2005 and 2006, the Arlington Asylum Office's credible fear dissolve rates were 35.71% and 31.78%, respectively, giving it the highest rate of credible fear dissolves of any Asylum Office in the country for those fiscal years.

³ See also Joseph E. Langlois Memorandum to Asylum Directors, Supervisory Asylum Officers, and Asylum Officers, *Role of Consultants in the Credible Fear Interview*, (Washington, DC: 17 November 1997), accessed at <http://z02rscow12:8080/docushare/dsweb/View/Collection-10364>.

approach NGOs to enter into a partnership, as such actions may appear as favoritism by the government to a specific group or counsel.

Consistent with the regulations, the consultations must be at no expense to the government. Therefore, NGOs should be made aware that they are responsible for securing any funding for creating a program to provide pro bono legal consultation to applicants in the credible fear process. NGOs must also provide interpreters, if necessary, to facilitate communications between the consultants and the applicants. USCIS will continue to provide interpreter services for the orientation, interview, and service of the decision. However, government contract interpreters may not be used for the purpose of facilitating communication between the NGOs and the applicant, outside of the course of the regular credible fear orientation and interview process.

Also consistent with regulations, informal partnerships with NGOs to facilitate access to consultants may not cause unreasonable delay to the credible fear process. Any policies developed at the local asylum offices to facilitate consultation should be consistent with regulations and take into account the timeliness goals of the program. However, every effort should be made to ensure that a consultant is present at the interview, if the applicant desires such a person's presence, as long as it does not unreasonably delay the process.⁴

Finally, any process entered into with an NGO for the purpose of providing pro bono legal consultation to applicants in the credible fear process must incorporate confidentiality restrictions provided by the federal regulations at 8 CFR § 208.6. The regulations generally prohibit the disclosure to third parties of information contained in or pertaining to asylum applications, credible fear determinations and reasonable fear determinations, including information contained in RAPS or APSS, except under certain limited circumstances.⁵

The Asylum Division encourages the Asylum Offices to establish informal partnerships to provide pro bono legal consultation to applicants in the credible fear process if approached by reputable NGOs. Asylum Offices are encouraged to coordinate the outreach of information to the NGO community, including sharing this memorandum with NGOs, so that the community is aware of these guidelines. NGOs should also be made aware of confidentiality concerns regarding asylum seekers and the limited amount information that will be related to them by the Asylum Office before the credible fear interview.

Asylum Division Headquarters is available to provide support in establishing partnerships with the NGO community. Please contact Jedidah Hussey at 202-272-1614 to discuss any issues regarding partnerships with NGOs.

⁴ See *Credible Fear Procedures Manual*, at <http://z02rscow12:8080/docushare/dsweb/View/Collection-12202>.

⁵ See *Fact Sheet on Confidentiality: Federal Regulations Protecting Confidentiality of Asylum Applicants*, at <http://z02rscow12:8080/docushare/dsweb/View/Collection-10131>.