U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

CREDIBILITY

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

CREDIBILITY

Training Module

MODULE DESCRIPTION

This module provides guidance on evaluating the credibility of an applicant's testimony, 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 module provides guidance on how to handle credibility issues that arise during the interview.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing the applicant and adjudicating the case, you, the officer, will be able to assess credibility and articulate appropriate reasons supporting your credibility determination.

ENABLING PERFORMANCE OBJECTIVES

1. Distinguish between appropriate and inappropriate factors to consider in evaluating credibility of the applicant and the evidence presented.
2. Distinguish between minor v. substantial and internal v. external inconsistencies in the evidence presented by the applicant.
3. Identify credibility issues raised in cross-cultural communication among parties to the interview.
4. Identify the role of corroborating documentary evidence in evaluating credibility of the applicant and the evidence presented.
5. Address credibility problems at the interview.
6. Explain the analytical framework for a credibility determination.

INSTRUCTIONAL METHODS

Interactive presentation

Discussion

Practical exercises

METHOD(S) OF EVALUATION

Multiple-choice exam

Observed practical exercises

REQUIRED READING

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR22	Knowledge of the criteria for establishing credibility (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM4	Skill in determining applicants credibility (5)
DM7	Skill in making legally sufficient decisions (5)

DM9	Skill in making legally sufficient decisions with limited information (5)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (3)
ITS7	Skill in identifying inconsistencies and false statements (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
10/16/2012	Entire Lesson Plan	Lesson Plan published (minus ASM supplement)	RAIO Training
11/23/2015	Throughout document	Corrected links and minor typos	RAIO Training
6/20/2016	Supplement B	Added Supplement B – Asylum Division	RAIO Training

TABLE OF CONTENTS

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

"If you give me six lines written by the most honest man, I will find something in them to hang him."

– Cardinal Richelieu (1585–1642), Prime Minister of France

"Anyone who has ever tried a case or presided as a judge at a trial knows that witnesses are prone to fudge, to fumble, to misspeak, to misstate, to exaggerate. If any such pratfall warranted disbelieving a witness's entire testimony, few trials would get all the way to judgment."

– *Kadia v. Gonzales*, 501 F.3d 817, 821 (7th Cir. 2007).

1 INTRODUCTION

Evaluating the credibility of an applicant's testimony is fundamental to the evaluation of eligibility and, in many cases, is the determining factor. You must make an independent judgment as to the applicant's credibility in every case. While making your decision, you must remain impartial and unbiased.

All applicants for asylum and refugee status must submit an application form and must be interviewed. When an individual submits an application for asylum or refugee status, he or she is asserting eligibility for an immigration benefit based on his or her identity, past events, and fear of what might happen upon return to the home country. Other interviews conducted by officers in the RAIO Directorate, such as asylee/refugee following-to-join, naturalization, orphan, and certain relative petition cases, may also require an interview

and a credibility determination. The main purpose of the interview is to elicit and provide information related to eligibility for an immigration benefit or for some other official purpose. The interview also provides an opportunity for the interviewee to ask questions that he or she may have and to present relevant information.

This module provides guidance on general considerations in evaluating the credibility of an 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 module provides guidance on how to handle credibility issues that arise during the interview. The division-specific supplements provide guidance on how to record your credibility analysis – in asylum adjudications through the assessment or Notice of Intent to Deny (NOID) (See ASM Supplement Decision-Writing); in refugee adjudications through the assessment form (See RAD Supplement –Decision Recording; and in other International Operations adjudications through the Adjudications Worksheets and, where appropriate, Service Center return memoranda and decision letters.

2 GENERAL CONSIDERATIONS

2.1 Duty to Remain Neutral

Your duty as an adjudicator is to remain neutral and unbiased. You must evaluate the record as a whole and fairly assess the testimony and evidence you have gathered and which the applicant has presented to you.

2.2 Burden of Proof - A Cooperative Approach

A non-adversarial interview requires a cooperative approach between you and the applicant. While the applicant must establish eligibility, you have a duty to fully and fairly develop the record – by conducting country of origin information research, where applicable, by carefully reviewing the file, and by eliciting testimony during the interview.

In the asylum and refugee context, credible testimony may be enough for the applicant to meet his or her burden unless you decide that corroborating documentation is necessary. In such cases, the applicant must provide the corroborating evidence unless he or she does not have it and cannot reasonably obtain it.

2.3 Take into Account the Factors as a Whole

It is crucial that you consider all the evidence available to you when analyzing an applicant's credibility. In discussing the proper approach to credibility determinations, the Third Circuit outlined the following approach, stating that:

> [an] overall credibility determination does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements. Where, as here, the asylum applicant has presented testimony that was for the most part quite detailed, internally consistent, materially in accord with his asylum application, and accepted by the [adjudicator], and there is supportive evidence of general country conditions and some corroborative documentation of the applicant's testimony, the [adjudicator] is not justified...in concluding that the applicant is not credible based on a few equivocal aspects not logically compelled by the record or by reason or common sense.[1]

Examples

- ***Matter of Pula***

  The BIA found that the credibility of an applicant's testimony was not impeached by minor discrepancies in the written asylum application, which was prepared by interpreters, "[i]n view of the detail, consistency, and candor of the applicant's lengthy testimony."[2]

- ***Matter of O-D-***

  The BIA upheld an immigration judge's (IJ) negative credibility finding in the asylum case of an applicant who submitted a fraudulent national identity card in an attempt to establish central elements of his claim – his identity and nationality – and failed to provide an explanation for doing so. There were also inconsistencies found between the applicant's testimony in his Form I-589 asylum application and his testimony at the immigration hearing. The BIA reviewed the IJ's credibility determination based upon the totality of the circumstances, considering not only the submission of the fraudulent document, but the entirety of the record and found "that the remaining inconsistent record presented by the respondent is insufficient to overcome the pall cast on the respondent's credibility by virtue of his submission of the counterfeit document."[3]

- ***Matter of B -***

  Negative factors in a case must be balanced against positive factors to determine whether, on the whole, an applicant is credible. This proposition holds true even

[1] *Jishiashvili v. U.S. Att'y Gen.*, 402 F.3d 386, 396 (3d Cir. 2005).

[2] *Matter of Pula*, 19 I&N Dec. 467, 472 (BIA 1987).

[3] *Matter of O-D-*, 21 I&N Dec. 1079, 1084 (BIA 1998).

where there are several factors that may point toward a lack of credibility. For example, in *Matter of B-* the BIA considered an IJ's negative credibility finding based on several factors – the applicant's allegedly evasive demeanor while testifying, inability to remember exact dates, departure to the U.S. while his brother and family remained behind, and failure to have others from Afghanistan testify to corroborate his general experience. In overturning the IJ's determination, the BIA, "impressed with the indications of the applicant's truthfulness," accepted the applicant's explanations for not looking at the judge while testifying and his inability to remember exact dates. The BIA also rejected the relevance of the applicant's brother's staying behind and discounted his failure to provide corroborating evidence that would have been of limited usefulness. Because the applicant's testimony was consistent throughout the examination and lengthy cross-examination, consistent with his written application, and contained no embellishments, the BIA found that on the whole, the applicant was credible.[4]

- ***Matter of Kasinga***

  Taking into account all the factors as a whole refers not only to the whole of the applicant's testimony, but also to the individual circumstances of each applicant. The BIA rejected a negative credibility finding that was based upon an alleged lack of rationality, persuasiveness, and consistency in the applicant's presentation, finding that the 19-year-old applicant presented a plausible, detailed, and internally consistent asylum claim. The BIA considered the applicant's age (17) at the time of her flight from her country, her father's death, her separation from her mother and control by an "unsympathetic aunt," her long journey to the U.S., her eight months in INS detention at several facilities, and her explanations for any possible credibility concerns when determining that the applicant was credible.[5]

2.4 No Moral Component

There is no moral component to credibility determinations. The purpose of evaluating the credibility of an applicant is solely to determine eligibility, not to punish the applicant if he or she is untruthful.

The fact that an applicant may have made untrue statements during an interview raises questions about the veracity of the claim and should be considered. However, not all untrue statements lead to a denial or referral of the application.

Example

[4] *Matter of B-*, 21 I&N Dec. 66, 70-71 (BIA 1995).

[5] *Matter of Kasinga*, 21 I&N Dec. 357, 364 (BIA 1996).

A Salvadoran citizen told an INS enforcement officer 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 asylum. The misrepresentation supported the claim for asylum eligibility, because the applicant's misrepresentation to the enforcement officer whom he feared might deport him was consistent with the applicant's testimony that he feared deportation to El Salvador.[6]

2.5 Credibility Concerns Must Be Clearly Articulated

A credibility finding must be clearly articulated and based on objective facts. It cannot be based on "gut feelings" or intuition, as intuition and gut feelings are unreliable, particularly when interviewing a stranger from a different culture through an interpreter. To ensure that your credibility determination is fair and impartial, follow the analytical framework outlined below.

3 AN ANALYTICAL FRAMEWORK FOR CREDIBILITY DETERMINATIONS

You must evaluate credibility in every case and carefully analyze the applicant's testimony in light of all of the evidence in the record. After gathering all the facts, if you find that the applicant is not credible, you must provide a specific, clearly articulated basis for the adverse credibility finding.[7]

An applicant's retelling of his or her story to you during the interview will inevitably have some flaws. Evaluating those flaws is fundamental to the evaluation of eligibility and arguably the most challenging part of your job.

The testimony an applicant gives during the interview must be reasonably detailed, consistent with what he or she and others say and have said before, and plausible in light of logic. This testimony is evidence, just like a passport is evidence of identity or a human rights report is evidence of the political and economic conditions of a specific country or region.

The credibility determination is an evidentiary determination. It is the basis upon which you decide what evidence to use in your assessment and how much weight to give that evidence.

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[6] *Turcios v. INS*, 821 F.2d 1396, 1400-1401 (9th Cir. 1987).

[7] *See*, e.g., *Matter of A-S-*, 21 I&N Dec. 1106, 1110 (BIA 1998); *Hajiani-Niroumand v. INS*, 26 F.3d. 832, 838 (8th Cir. 1994); and *Malek v. INS*, 198 F.3d 1016, 1021 (7th Cir. 2000).

Factors upon which a Credibility Finding Must Be Based

An applicant's testimony is credible if it is detailed, consistent, and plausible. Therefore, a clear and well-articulated basis for a negative credibility finding should accurately describe significant material flaws in consistency, detail, and/or plausibility.

The REAL ID Act of 2005 added some additional factors that may be considered in making a credibility determination, all based on prior case law. As discussed below, these factors apply only to asylum determinations and should be considered only as part of a negative credibility determination that finds flaws in consistency, detail, and/or plausibility. See "Other Relevant Factors" below.

You can minimize subjectivity in your credibility determinations by taking a methodical approach and using the following analytical framework, derived from existing statutory guidance and case law. This framework provides a step-by-step process for determining whether flaws in the applicant's testimony might lead to a negative credibility finding.

- Step One: Identify the type of credibility concern
- Step Two: Determine if the concern is material (relevant) to the claim
- Step Three: Inform the applicant of your concern
- Step Four: Ask the applicant to explain
- Step Five: Assess the reasonableness of the explanation

If there are no significant material flaws in the applicant's testimony, the applicant is credible.

3.1 Step One: Identify the Type of Credibility Concern

There are four factors upon which you must always assess the credibility of an applicant's testimony:

1. Detail
2. Internal Consistency
3. External Consistency
4. Plausibility

There are other relevant factors that may be taken into consideration when making a credibility determination, but which must be used with caution and only after you have

determined whether the testimony contained material flaws in detail, internal consistency, external consistency, or plausibility. *See* Other Relevant Factors below.

You must learn to identify and distinguish among these factors. For example, a political activist is unable to tell you the name of the party leader. Is this a lack of detail or a plausibility factor?

3.1.1 Detail

General Rule

An applicant should be able to provide sufficient detail to indicate first-hand knowledge of the events that form the basis of his or her claim. Therefore, the applicant's ability or inability to provide detailed descriptions of the main points of the claim is critical to the credibility evaluation. The applicant's willingness and ability to provide those descriptions may be directly related to your skill at placing the applicant at ease and eliciting all the information necessary to make a proper decision.8 Impatience with an applicant or frequent interruptions may result in the applicant providing fewer details.

It is reasonable to assume that a person relating a genuine account of events that he or she has experienced will be able to provide a higher level of detail, especially sensory detail, about that event than he or she could if the account were not genuine. A person claiming a leadership role in an opposition political party should be able to provide more detail about the inner workings of the party, the leadership and the party goals, than someone who was merely a supporter. The more recent the event the greater the level of detail an applicant may be capable of providing. It is reasonable to expect more detail from an applicant describing events that took place within the past year than if he or she were describing events that took place several years ago.

The more detailed testimony an applicant gives, the more opportunities there will be for it to contain inconsistencies and contradictions. This is true for even the most truthful applicant. It is your job to determine whether those inconsistencies and/or contradictions are due to a lack of credibility or may be explained by other factors.

Factors That Impair Memory

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

[8] See RAIO Training Modules, *Interviewing: Eliciting Testimony* and *Interviewing: Introduction to the Non-Adversarial Interview.*

remember. Additionally, you should exercise caution in determining the type of detail you expect 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, each will probably remember different details. The applicant will not necessarily remember the type of detail you would remember in a similar situation.

Your Duty to Elicit Detail

The applicant may not know the type of detail you seek and may believe that stating simply that he or she was arrested, without more, is sufficient to answer your question, "What happened?" Furthermore, in the refugee context, since the applicant may already have divulged the details to a case worker, he or she may believe that you already have the details.

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. The purpose of the interview is to elicit all relevant and useful information bearing on the applicant's eligibility for the benefit being sought. Keep in mind that in a non-adversarial interview you control the interview. Therefore, you cannot reach a negative credibility finding based on lack of detail if you do not pose questions regarding the specific detail you are requesting.

Example

Follow-up Questions Regarding an Arrest

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

As with any credibility concern, if the applicant does not provide a reasonable amount of detail about an incident when asked specific questions, you must inform the applicant of your concerns and provide the applicant an opportunity to address those concerns and offer explanations for the lack of detail.

Examples

- "I've asked several questions about the circumstances surrounding your arrest, and you have only told me the place and time you were arrested. Please provide me with information about where you were taken and how you were treated."

- "If you are unable to provide these additional details, please explain to me why you cannot."

- "You said that you printed political leaflets several times at your office and that you had to hide to do so. However, you told me you cannot describe the leaflets, where you got the paper, or how you were able to hide from your co-workers. Please explain why you cannot tell me these things."

If after being asked follow-up questions focusing on specific details, the applicant still cannot provide any detail about the arrest, and if there is no explanation for the applicant's inability to provide detail, the applicant may be found not credible.

The Applicant's Obligation to be Truthful

Just as you are obligated to elicit relevant details, the applicant is required to tell the truth and fully cooperate with you in establishing the facts of his or her claim. The applicant must:

- supply all pertinent information concerning him or herself and past experience in as much detail as is necessary to enable you to establish the relevant facts

- give a coherent explanation of all the reasons invoked in support of his application and should answer any questions you ask

- make an effort to support his or her statements by providing any available evidence, by giving satisfactory explanations for any lack of evidence, and by making every reasonable effort to procure necessary evidence

Example

(Incorrect Adverse Credibility Finding Due to Lack of Detail)

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

Example

(Correct Adverse Credibility Finding Due to Lack of Detail)

An applicant from Nepal supplied only vague assertions that Maoists had been inquiring about him and gave few details. The applicant did not identify the names of any of the Maoists or describe them in any way. Nor did he state how many were inquiring about him; why they were looking for him; what they

wanted; why he thought their interest in him persisted given that they had not inquired about him since 2001; or why he continued to fear the Maoists in light of their apparent loss of interest in him. The IJ gave the applicant an opportunity to supplement his responses to provide more detail concerning any "fear [he has] of anything bad happening to [him] or has happened to [him]," but the applicant declined to do so.[9]

3.1.2 Consistency

An applicant's statements (oral or written) that are internally consistent, consistent with the applicant's other statements, and consistent with other evidence in the record, such as country conditions reports, may support a positive credibility finding.[10]

An applicant's testimony may contain minor inconsistencies and omissions that generally will not, alone, undermine credibility. However, substantial, material inconsistencies or omissions are a negative factor that can lead, when viewed as part of the record as a whole, to an adverse credibility finding.[11]

Minor mistakes, such as those that result from faulty memory, may not reliably indicate that a claim is not credible. Whether an inconsistency is considered minor or substantial depends not only on the nature of the inconsistency, but also on the record as a whole.

Inconsistencies may arise during the course of the interview when the applicant contradicts himself or herself, or when the documentation presented by the applicant contradicts the claim. For example, a passport submitted to establish identity may reveal travel that indicates that the applicant was not in the country during a period when he or she claims to have been persecuted.

Inconsistencies also may occur between testimony given by family members on the same case and/or, in overseas refugee processing, between family members on cross-referenced cases.[12] In the following-to-join context, you may identify inconsistencies between

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[9] *Shrestha v. Holder*, 590 F.3d 1034, 1046 (9th Cir. 2010).

[10] INA § 208(b)(1)(B)(iii); *Matter of Kasinga*, 21 I&N Dec. 357, 364 (BIA 1996).

[11] *See Ismaiel v. Mukasey*, 516 F.3d 1198, 1204 (10th Cir. 2008) (...the significance of an omission must be determined by the context, and rigid rules cannot substitute for common sense.), *Pop v. INS*, 270 F.3d 527, 531 (7th Cir. 2001); (inconsistencies went to the heart of the asylum claim). *See also Bandari v. INS*, 227 F.3d 1160, 1166 (9th Cir. 2000) (discrepancies not significant enough to support adverse credibility finding).

[12] Refugee resettlement cases will often be cross-referenced with other family members. For purposes of refugee interviews, discrepancies between cross-referenced cases would be considered an inconsistency, though confidentiality should be considered when addressing such issues with the applicant. In the asylum context, RAPS may reveal cases of related family members, but for confidentiality purposes those cases should not usually be referenced in the decision making process. In the following-to-join context, information in the refugee or asylum

information in the principal refugee or asylum application and the following-to-join family member's testimony. These would be external credibility issues. Inconsistencies between the applicant's claim and reliable country conditions information would be considered external credibility flaws.

Internal Consistency

Dealing with internal consistency requires you to assess whether "[t]he material facts are coherent and internally consistent with facts asserted by the applicant, witnesses or dependents, and with any [personal] documentary evidence relied upon by the applicant,"[13] such as identity documents. It is for you to consider how well the evidence fits together and whether or not it contradicts itself.

In the assessment of internal consistency, you should watch for the level of detail and the introduction of inconsistencies, keeping in mind at all times that there may be mitigating circumstances in some cases, such as mental or emotional trauma, inarticulateness, fear, or mistrust of authorities.[14] When dealing with either internal or external consistency make certain that you inform the applicant of your concerns (without violating confidentiality of other's asylum or refugee claims) and give the applicant an opportunity to address those concerns and offer an explanation.

Examples

The following are examples of inconsistencies or omissions that, standing alone, generally would not lead to a negative credibility finding:

- The applicant failed to list on his written application two incidents that involved harm to relatives and that were collateral to his claim.[15]

- 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 representative (or in the refugee context, the RSC or

application may relate to family relationships, including when and how the following-to-join applicant last had contact with the principal. While confidentiality rules preclude you from informing the applicant of those inconsistencies, they may direct the line of questioning to probe more deeply into the related issues. If some contradictory information comes to your attention, it should be treated as an external inconsistency since there is no legal connection between the two cases.

[13] European Asylum Curriculum Course on Evidence Assessment, online materials sub-module 3, unit 3.2 "Assessing the Claim's Credibility" (Oct. 28, 2010).

[14] James A. Sweeney, *Credibility, Proof and Refugee Law*, 21 Int'l J. Refugee L. 700 (2009).

[15] *Aguilera-Cota v. INS*, 914 F.2d 1375, 1383-1384 (9th Cir. 1990).

UNHCR) was the one who made the statement in the written application and the applicant signed without reading it.[16]

- There was an inconsistency between applicant's statement on the application that he and his brothers were accosted by "unknown armed men," and his testimony that they were accosted by "death squads."[17]

The last example is an example of a very common perceived inconsistency that results when an officer fails to clarify language in an interview. It is very easy to resolve such inconsistencies during the interview. "When you say 'death squads,' what do you mean?"

3.1.3 External Consistency

External consistency relates to country of origin information (COI),[18] known facts, and other pieces of evidence provided by the applicant or ascertained by you in the course of your investigation.

Consistency with Known Objective Information

Material facts asserted by the applicant should be consistent with generally known facts and your COI research. Where relevant, you are required to conduct research into COI. In conducting that research you should keep in mind the difference between assessing the likelihood of future persecution and the more immediate task of determining whether the material facts asserted by the applicant in relation to past or current events are consistent with country information.

When an asylum or refugee applicant has established his or her general credibility (i.e., is sufficiently detailed, internally consistent and plausible), you can accept a claimed fact as credible when there is reliable COI to support the applicant's evidence about a material fact, and other reliable evidence does not contradict the applicant's account. For example, you will rarely find evidence that the applicant was a participant at a specific protest at a specific place and time. However, you may well find COI information to support the applicant's claim that there was such a protest at that place and time. If so, the applicant's testimony is externally consistent. Not all protests or other events, however, will be documented in COI. Nevertheless, you may still find those applicants credible based on their testimony. When in doubt, discuss the issue with your supervisor who may discuss the issue with the RAIO research unit.

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[16] *Garrovillas v. INS*, 156 F.3d 1010, 1014 (9th Cir. 1998).

[17] *Cordero-Trejo v. INS*, 40 F.3d 482, 488 (1st Cir. 1994).

[18] For additional information in using COI in adjudication, *see* RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

Contradictory Reliable Country of Origin Information

Reliable COI that clearly contradicts a claimed material fact is a negative credibility factor.

Example

> An applicant gives the name of a member of parliament representing the area where the applicant lived and voted, but reliable COI gives a different person as the member of parliament representing the applicant's area.
>
> Keep in mind, however, that politicians are voted in and out, so you should make sure the COI you consult relates to the relevant period when the politician was elected to parliament and the relevant area where the applicant lived– the current country report may not provide this information. When you see a contradiction, make sure that it applies to the right period of time. Verify external information before applying it to the facts of the case.

Where there is a perceived inconsistency, you must confront the applicant to give him or her an opportunity to explain the inconsistency. You should review the record to ensure that you have permitted the applicant an opportunity to explain prior to dismissing the applicant from the interview. In some cases, inconsistencies between the applicant's statements and COI may not be discovered until after the interview. In such a situation the nature of the discrepancy must be analyzed. In some cases, the circumstances may warrant a re-interview of the applicant. You should consult with your supervisor about how to proceed.

Lack of Country of Origin Information

With some claimed incidents or events there will be no corroborative objective evidence that the incident/event actually took place. This in itself would not be proof that the incident/event did not occur. The availability of information about an event might depend on the scale of the incident, the country situation, and the ability of the media or other organizations to report information. It may well be that the media is suppressed by the authorities in the particular country, and such incidents are purposely not reported.

Use Caution

Countries' circumstances can change rapidly, and the most recent COI may not reflect the current situation. Also, use caution in evaluating an applicant's lack of knowledge regarding events or organizations in his or her country. An applicant may be unaware of the clandestine activities of part of his organization due to a high level of secrecy within the organization or the applicant may be from a rural area to which news does not easily reach and the interviewee's viewpoint may be extremely localized. An applicant's

gender, level of education, and/or socioeconomic status may also play a role in the type of COI knowledge the individual has or can reasonably be expected to have. *See* RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications.*

Examples

The following are examples of substantial inconsistencies that may lead to a negative credibility determination if the applicant does not provide a reasonable explanation for the inconsistency. As you read them, determine whether these inconsistencies would be considered "internal" or "external:"

- The applicant testified that she was arrested and detained only once; however, she stated in her written application that she was arrested and detained twice and provided a detailed written description of each detention.

- 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.

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

- The applicant claimed that she suffered lasting economic harm and was unable to earn a livelihood because she received poor conduct grades in school on account of her religion. Examination of her school transcript indicated that she received high marks in conduct throughout her years in school.[19]

- The applicant stated that he had witnessed only his father's kidnapping, not his uncle's, but later stated that he witnessed both being kidnapped. He stated that he never saw his father again after the uniformed men took him away, but also stated that his father and his uncle were both paraded past his house. His mother's letter, introduced as evidence, conflicted with all of the applicant's versions of the story.[20]

3.1.4 Plausibility

[19] *Pop v. INS*, 270 F.3d 527, 531 (7th Cir. 2001).

[20] *Bojorques-Villanueva v. INS*, 194 F.3d 14, 16-17 (1st Cir. 1999).

The facts asserted by the applicant should be plausible. That is, they should conform to objective rules of reality. If it is not plausible that the events in the applicant's country occurred as the applicant described, then the claim properly may be found not credible. Keep in mind, however, that the reality in many countries may be quite different than in the United States.

Being improbable or unlikely is not the same as being implausible. Improbable things happen frequently. What may appear to be implausible in the United States may be very common in another country.[21] In determining whether an applicant's story is plausible you should take great care to avoid substituting your own subjective feelings about how the world works for an objective determination of whether the events described by the applicant could be possible. Do not rely on your views of what is plausible based on your own experiences, which are likely to be quite different from the applicant's. Additionally, it is important to recognize that exceptional events do occur.

The finding that aspects of an applicant's claim are implausible must be supported by evidence in the record and may not be based on your personal beliefs or opinions. Your "finding that an applicant's testimony is implausible may not be based upon speculation, conjecture, or unsupported personal opinion."[22] "Personal beliefs cannot be substituted for [the] objective and substantial evidence" necessary to support a plausibility/implausibility finding.[23]

If you determine that an applicant's testimony is not plausible, you should provide an explanation with specific and clearly articulated reasons for your determination.

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.

As explained by the Third Circuit, "[b]y requiring the [adjudicator] to tether a plausibility determination to evidence in the record, including evidence of country conditions or other contextual features, and rejecting speculative or conjectural reasoning, we ensure that there is a reasoned foundation to support the conclusion that the witness's testimony was objectively implausible."[24]

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[21] *See* Cordero-Trejo v. INS, 40 F.3d 482, 491 (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.")

[22] Elzour v. Ashcroft, 378 F.3d 1143, 1153 (7th Cir. 2004); Jishiashvili v. U.S. Att'y Gen., 402 F.3d 386, 393 (3d Cir. 2005).

[23] Bandari v. INS, 227 F.3d 1160, 1167 (9th Cir. 2000).

[24] Jishiashvili, 402 F.3d at 393.

When an applicant testifies in an interview to a material fact that seems implausible to you, always question the applicant closely about the details surrounding that material fact. If the applicant is able to provide a consistent and reasonable explanation of how the event occurred, that portion of the testimony is credible.

Examples/Practical Exercise

Read the following fact patterns. For each example, determine whether the statement is plausible or implausible. We will discuss in class.

1. The applicant claimed that, although she was detained at the county jail two miles from her brother's home, she watched, unaided by technology, from a jail window as the police entered her brother's home and arrested him.

   Plausible or implausible? _____
   Explain: _____

2. The applicant's claim indicated that she was pregnant with the same child for 16 months. When confronted with the implausibility of this, the applicant explained: "That is how we do it in my country."

   Plausible or implausible? _____
   Explain: _____

3. The applicant claimed that the Stalinist Courts in Switzerland had persecuted him.

   Plausible or implausible? _____
   Explain: _____

4. A prison guard risked a government career by accepting a bribe of a gold bracelet.

   Plausible or implausible? _____
   Explain: _____

5. The applicant claimed that "the Moroccan government commonly forced political dissidents to leave the country and to sign a document promising never to return (or, at least not for ten years)." A report from the State Department indicated that "[t]here are no known instances of enforced exile in Morocco and that the government offered self-imposed exiles amnesty starting in 1994."[25]

   Plausible or implausible? _____

[25] *See* Chebchoub v. INS, 257 F.3d 1038, 1043 (9th Cir. 2001).

Explain: _____

6. A university-educated man said he spoke Punjabi, Hindi, Bengali, and English, could not read or write Punjabi, although he claimed to have lived in Punjab and operated a business there for eight years.[26]

   Plausible or implausible? _____
   Explain: _____

3.1.5 Other Relevant Factors

Other relevant factors include demeanor, candor, and responsiveness. These factors apply only in asylum adjudications. When considering these, use the analytical framework in this lesson to determine if a credibility concern is material and relates to detail, consistency, and/or plausibility. *See* ASM Supplement – REAL ID and Other Relevant Factors for these additional factors that you may take into consideration in the asylum context.

3.2 Step Two: Determine if the Credibility Concern is Material

A fact is material if it would influence the outcome of the eligibility determination because it relates to a required legal element. *See* "Applicant's Burden" in RAIO Training Module, *Evidence*. Another way to say this is a fact is material if it goes to the heart of the claim. If there are inconsistencies found, are they material to the claim? Do they lead to a conclusion that the applicant's evidence is not credible? If the answer is no to both questions, there is no credibility concern.

In asylum claims, a credibility concern need not go to the heart of the claim. *See* ASM Supplement – REAL ID Act and "Other Relevant Factors."

3.3 Step Three: Inform the Applicant of Your Concern

Insufficient detail:	"Why can't you tell me more about…?"
Inconsistency within the testimony:	"Earlier in the interview you said X, now you are saying Y…"
Inconsistency between the testimony and other evidence:	"Your I-589 says X, now you are telling me Y…"
Implausibility:	"How is it possible that…?"

[26] *See* Malhi v. INS, 336 F.3d 989, 993 (9th Cir. 2003).

3.4 Step Four: Give the Applicant an Opportunity to Explain

The following are suggested phrases for eliciting an explanation:

"Help me understand . . ."

"Why is there a difference between what is on your application and what you told me today?"

"Please explain to me . . ."

"Who completed this form?"

3.5 Step Five: Assess the Reasonableness of the Explanation

To determine if an explanation is reasonable, you should apply the same factors that are used to make initial credibility determinations. Ask yourself whether the explanation is detailed, consistent, and/or plausible. If it is, then the explanation is reasonable and the applicant is credible on that point. If the explanation is vague or inconsistent with another part of the record or the applicant's testimony, or implausible in light of logic or country conditions, then it is not reasonable and a negative credibility determination is justified.

Examples

Examples of reasonable explanations, depending on the context, include:

- I am sorry, my memory is poor and I misspoke earlier.
- The date on the application is the date using the calendar from my home country and is different from the one used in the United States.
- When the police came to my house the first time, they did not arrest me, that is why I told you I have only been arrested once.

4 What May Not Be Considered in Making a Credibility Determination

There are a number of factors that should not be considered when making a credibility determination. The factors listed below are some of those; this is not an exhaustive list. 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 you to test the applicant's credibility further during the interview. None of the factors, however, can form the sole basis for finding that a claim is not credible.

4.1 An Officer's Views of a Country or Situation

You may have lived in or traveled in a particular country, or you may have formed opinions about a country based on the experiences of friends or associates. Although knowledge gained from such experiences or contacts may be useful in developing lines of questioning during the interview or when gathering additional reliable COI, such personal knowledge is not evidence and your decision cannot be based in any way on such personal opinions and views.

4.2 An Officer's Moral Judgment

Your 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. For 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.[27]

4.3 An Officer's Personal Opinion about How an Individual Would Act

Your opinion about how an individual would act in a given situation or that an applicant has not acted rationally is irrelevant to a determination of whether or not events occurred as the applicant described. The comparison of how an applicant acted in a given situation to how the 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 backgrounds or cultures. Additionally, people do not always act rationally. For example, it would be inappropriate to find an applicant not credible because the 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 officer to believe that the applicant acted in a manner that was unusual in light of the applicant's country and background, it is appropriate to ask the applicant about his or her behavior, in a non-adversarial, nonjudgmental 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 pamphlets. What led you to take this risk?"

4.4 Use of an Attorney

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 application or 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 consultation with an attorney.

[27] *Damaize-Job v. INS*, 787 F.2d 1332, 1337 (9th Cir. 1986).

However, if a statement made after receiving advice from an attorney contradicts an earlier statement made by the applicant, then you 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 a case.

4.5 Self-Serving Statements

"Self-serving" refers *only* to statements that serve no purpose and provide no evidence, such as the statement, "I never tell lies." You may disregard self-serving statements.

An applicant's own statement in support of his or her claim is generally not a self-serving statement and you must consider it. Almost all the statements an applicant makes at the interview are made in an attempt to obtain a benefit. The fact that a supporting statement is made by the person seeking the benefit is not an indication that the statement is not relevant, reliable or credible.

4.6 Delay in Filing the Claim

The fact that an applicant did not apply for asylum or refugee status as soon as possible does not mean that the applicant fabricated the claim. A genuine refugee may wait until he or she is in a safe country before making a claim, may be unaware of his or her eligibility for refugee status, and /or may be unaware of the procedures for obtaining refugee status. If it is relevant to the claim, it is important to ask why the applicant delayed in filing and assess the applicant's response.

4.7 Contact—Or Lack of Contact—with U.S. Embassy

The fact that an asylum or refugee applicant did not approach the U.S. Embassy in his or her home country is not necessarily relevant to a determination of whether or not events occurred as the applicant described. An applicant may have felt unsafe waiting in the country for the application to be processed, or may have believed that applying for a visa would have placed him or her at further risk. On the other hand, the applicant's ability to obtain a visa may present a legitimate line of questioning during the interview. However, unless that part of the testimony is materially inconsistent with the applicant's claim, it cannot form the basis for a negative credibility finding.

(Note: U.S. Embassies do not have authority to adjudicate claims for refugee or asylum status. They may refer cases to USCIS to make a refugee status determination, but they rarely do so.)

4.8 Failure to Apply for Refugee Status in a Third Country

The fact that an asylum or refugee applicant failed to apply for refugee status in a third country does not mean that the applicant lacks credibility. There may be many reasons why an applicant who fears persecution in his or her home country did not apply for protection in a third country, including economic, political, or family reasons. In such circumstances, it is important to ask the applicant why he or she did not apply in the third country and assess his or her answer.

4.9 Similar Claims

The fact that the applicant's claim is similar to other claims is not in itself determinative of credibility, because there are 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 source for a fabricated claim. You may come across some "boilerplate" applications that are identical (word for word) or unusually similar in content. The fact that one application is identical to another may not in itself form the basis for an adverse credibility determination but may alert the officer to look particularly closely at the credibility of the claim. You must provide the applicant with an opportunity to present the full claim and explain any discrepancies between the testimony and the application in order to determine whether the applicant's claim is credible.

The following are two types of "boilerplates" you may encounter in the asylum or refugee context:

Intra-proceeding similarities

In *Surinder Singh v. BIA*, the Second Circuit upheld an IJ's adverse credibility finding based, in part, on "the nearly identical language in the written affidavits allegedly provided by different people in India in support of Singh's applications."[28] Citing Singh in a later decision the Court stated, "...our case law on intra-proceeding similarities has firmly embraced the commonsensical notion that striking similarities between affidavits are an indication that the statements are 'canned.'"[29]

[28] *Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006).

[29] *Mei Chai Ye v. USDOJ*, 489 F.3d 517, 524-26 (2d Cir. 2007) ("We have repeatedly allowed IJs to take into account such " intra-proceeding" similarities because, in most cases, it is reasonable and unproblematic for an IJ to infer that an applicant who herself submits the strikingly similar documents is the common source of those suspicious similarities").

If you encounter a case where affidavits of nearly identical language are submitted in support of a claim, you should closely question the applicant about the preparation of the affidavits: who prepared them, if not known; under what circumstances; and how the people who signed the affidavits had knowledge of the content. The officer should point out to the applicant the extreme similarity in the documents and provide the applicant an opportunity to explain why they are so similar. Such questioning will inform you about the evidentiary weight to give to the affidavits and their impact on the overall credibility determination.

In refugee processing, it is unlikely that the applicant would submit an affidavit from a witness. Applicants' statements are taken by UNHCR and/or the RSCs and the applicants, except in exceedingly unusual circumstances, do not have assistance of counsel or others outside the program to aid in their case preparation.

Inter-proceeding similarities

The Second Circuit upheld an IJ's adverse credibility finding based on a comparison of striking similarities found in affidavits that were submitted separately in unrelated asylum applications.[30]

The court warned of the problems that such findings could entail, identifying four possible explanations for such similarities:[31]

- Both applicants may have inserted truthful information into a standardized template
- Different applicants may have employed the same preparer who wrote up both stories in their own rigid style
- The other applicant may have plagiarized the truthful statements of the applicant
- The similarities resulted from inaccurate or formulaic translations

The Court noted, favorably, the way the proceedings were handled, with the IJ "...meticulously follow[ing] certain procedural safeguards which, taken together, sufficiently addressed the dangers inherent in relying on inter-proceeding similarities."[32] The Court then went on to describe the procedural safeguards in detail. The court found that, in relying on inter-proceeding similarities, a trier of fact should:

1. Carefully identify the similarities

[30] *Mei Chai Ye v. USDOJ*, 489 F.3d 517 (2d Cir. 2007).

[31] *Id.* at 524.

[32] *Id.*

2. Consider the number and nature of the similarities to determine if,

    a. there is any likelihood that they are mere coincidence, or;

    b. it is plausible that different asylum applicants inserted truthful information into a standardized template or, for illiteracy reasons, conveyed it to a scrivener tied to an unchanging style, or;

3. the similarities are due to a common translator converting valid accounts into similar stories, or

    a. the applicant was an innocent victim of plagiarism.

4. Rigorously comply with procedural safeguards concerning notice,[33] by allowing the applicant meaningful opportunity

    a. to explain or contest the similarities;

    b. to investigate the possibility that her affidavit might somehow have been plagiarized; or

    c. to consider whether the seemingly similar affidavits might merely have been translated or recorded inaccurately or formulaically.[34]

In the refugee context, there are times when refugees may have similar claims, which may or may not give rise to a credibility concern. Refugees often have spent many years living in either camps or urban settings with other refugees from their country and may have heard that some stories 'work' for getting their cases approved. It does not mean, however, that the person sitting in front of you did not experience the claimed harm; you will need to elicit testimony to determine whether the applicant is credible.

Considerations

[33] *Id.* at 525 n.5 (explaining in greater detail the protections afforded by the notice requirements).

[34] *Id.* at 526, 527 n.9 (stating that "[t]here is nothing novel about our insisting on the application of heightened procedural protections to a context in which they are necessary to safeguard the integrity of the agency's fact-finding function."

Confronting an applicant about significant similarities between the applicant's and others' applications raises a number of issues that must be carefully handled, in close coordination with others in your chain of command, including supervisors, FDNS, and, in the overseas refugee processing context, the Refugee Affairs Division's Security Vetting and Program Integrity Branch.

First, the confidentiality of the applicant must not be violated. The Court in *Mei Chai Ye*[35] made clear that an applicant must be given meaningful notice of the similarities and full opportunity to offer an explanation of those similarities before an adverse credibility determination may be based on boilerplate considerations. This may require you to allow an applicant to examine portions of the other similar applications, which raises confidentiality issues. The confidentiality issues may be addressed through proper redaction of identifying information.

Second, confronting an applicant with the fact that other significantly similar applications have been submitted by other applicants could possibly jeopardize an on-going fraud investigation. In some cases, most often in the asylum context, DHS may be investigating a particular "boilerplate preparer" for prosecution. Thus, it is important that you first consult with your supervisor and the FDNS officer assigned to your office to ensure that the any ongoing investigation is not jeopardized.

Third, an applicant who does not speak English may submit an application in English that is very similar to other applications filed by other applicants, yet insist that the applicant completed it himself or herself. It would not be appropriate to base an adverse credibility solely on lack of truthfulness about the preparation of an application.36 However, such lack of candor may be appropriate to consider along with other relevant factors when evaluating credibility. While being untruthful about the identity of the person who prepared an application is not material to the actual claim, it may be another relevant factor to consider in the totality of circumstances. Being truthful about the preparation of an application is relevant to the applicant's knowledge of its contents and thus relevant to the overall credibility of the claim.

4.10 Claims That Differ

You may become familiar with certain types of claims originating from a particular country. However, the fact that a given claim may be different from other claims made by refugee applicants from the same country is not necessarily in itself determinative of

[35] *Mei Chai Ye v. USDOJ*, 489 F.3d 517, 524-26 (2d Cir. 2007).

[36] In the overseas refugee processing context, Resettlement Support Center staff who are under cooperative agreement with the Department of State assist the applicant with filling out application forms; as such, this does not apply to refugee applicants.

credibility. Human behavior is rarely consistent, and as a result, events in any given country cannot be expected to always be consistent.

4.11 COI Fails To Corroborate Claim

The fact that country condition information does not corroborate the applicant's claim is not necessarily determinative of credibility. In some instances, you may be the first to learn about a particular instance of 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 the country or areas of unrest. 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.

The instance in which COI does not corroborate the claim should not be confused with the instance in which COI is clearly and directly inconsistent with the claim. Where country conditions do not corroborate the claim, the country conditions simply fail to address or shed light on the applicant's situation. Where COI is clearly and directly inconsistent with the claim, COI might show the claim is not plausible. In some instances, the applicant's details may be inconsistent with COI because the applicant experienced or witnessed the event differently.

4.12 Ineligibility for Benefit

The fact that the applicant does not qualify for the benefit sought is not relevant to the credibility determination. For example, it is possible that an applicant for refugee status is truly and honestly afraid of future harm, but his or her fears are not objectively reasonable based on country information. Therefore, the applicant's testimony may be credible, but his or her fears are not well-founded.

5 Addressing Credibility at the Interview

The interview is the most important tool that you have in assessing credibility. Most of the direct evidence that you develop for each case will come during the interview. The most important thing to keep in mind during the interview is that it is your responsibility to elicit as much relevant information as you can.

5.1 Probing Credibility

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

5.1.1 Elicit general biographical information about the applicant at the beginning of the interview to establish a baseline

Such information should include 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 the applicant stopped working, and information about the applicant's schooling. General biographical information, contained in the application, provides a general picture of the applicant's life. You may then take the applicant's background into account when evaluating the type of information you expect the applicant to be able to provide.

Additionally, applicants who have fabricated asylum or refugee claims sometimes are not prepared for all of the basic background information elicited at the beginning of the interview and therefore may present this type of evidence truthfully. If an applicant has fabricated a claim, it may conflict with this general baseline biographic information, which may alert you that the claim is not genuine.

5.1.2 Listen carefully to what the applicant says

Only by listening carefully to the applicant's testimony can you determine whether it is consistent. You should also remain attentive to avoid missing information. If you miss information, you may be unclear about whether information related later in the interview is consistent with information related previously.

5.1.3 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 that form the basis of the asylum or refugee claim. For example, if the applicant claimed to have been a political leader who actively campaigned by giving speeches at rallies, you 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. Furthermore, if an applicant is fabricating a story, asking the applicant to provide greater detail can result in a higher probability of an inconsistency being discovered.

5.1.4 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 you ask 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, forgetful, or suffering from the effects of trauma might also become confused when having to explain events out of order. It is also helpful to elicit general baseline biographic information in

chronological order, as explained above, before eliciting information about the claim for asylum or refugee status. An applicant who is fabricating a claim may not be able to fit the claim in the chronology of the biographical information. When engaging in this practice, you must take particular care not to create confusion through unclear questioning; instead ensure that the applicant is aware of the precise time period or event about which you are questioning him or her.

5.1.5 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. You must exercise caution in assessing whether the two answers provided are actually inconsistent or whether the applicant is just providing additional detail that was not initially requested.

5.1.6 Develop a firm understanding of any discrepancy before asking the applicant to explain

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. Eliciting additional information surrounding an apparent discrepancy may clarify facts or create a stronger record of the discrepancy. The point is not to trap an honest applicant in a lie, but rather to carefully develop a record of relevant information that you will use to evaluate the applicant's eligibility. Therefore, when you notice one or more inconsistencies, it is important to have a firm understanding of those discrepancies before asking the applicant to explain them.

5.1.7 Take careful notes

Evidence of the reasons for a negative credibility finding must be documented in the interview notes. For asylum or refugee interviews, you must record all of your questions and the applicant's answers in a modified Q&A format (*see* RAIO Training module, *Interviewing – Note Taking*). If you have recorded the applicant's statements carefully, you 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 or did not say earlier in the interview. Finally, if there is a request for review of the decision, the reviewer must have a clear record in order to understand whether the credibility determination was made correctly.

5.1.8 Closely review documents submitted by the applicant

You should carefully examine the contents of any documents the applicant submits when he or she is still in your office, paying particular attention to names and dates. After the applicant has presented his or her claim, you 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 or biographical data.

However, you should keep in mind that sometimes applicants obtain false documents in order to leave their country to escape harm. Also, in some countries, it is easier for an individual to pay to get fraudulent civil documents than it is to get genuine documents. Possession of false documents, in itself, may not be a sufficient basis to make a negative credibility finding or to find an applicant ineligible for the benefit sought. In the asylum and refugee context, you must determine whether any discrepancies between documents and the applicant's testimony present inconsistencies that are material to the applicant's claim. When processing asylee/refugee following-to-join cases or family-based immigrant petitions, you may issue a request for evidence and suggest DNA testing when fraudulent documents are submitted to establish a parent-child relationship.

5.1.9 Provide the applicant an opportunity to address perceived credibility flaws

Raising a concern regarding a discrepancy does not always have to happen immediately. Sometimes the issue will resolve itself as the claim is developed. Raising each inconsistency immediately can stifle the flow of the interview and the applicant's train of thought. It may confuse the applicant, resulting in the appearance of a credibility issue when in fact none might exist. This could also make you appear skeptical or lacking in neutrality. You should find a way to make note of discrepancies during the interview. Later, at an appropriate time before the close of the interview, you should review all of the discrepancies noted and make sure they have been resolved. *See* RAIO Training module, *Interviewing – Eliciting Testimony*.

As noted above, you must provide the applicant an opportunity during the interview to explain any inconsistency, implausibility, or lack of detail that you discover. The applicant may have a legitimate reason for having related testimony that appears to contain an inconsistency, or there may have been a misunderstanding between you and the applicant. Similarly, there may be a reasonable explanation for a discrepancy or inconsistency between information on the application and the applicant's oral testimony. On the other hand, if the applicant does not offer a reasonable explanation after being given an opportunity to do so, you may make a negative credibility determination.

It is incumbent on you to have sufficiently reviewed the materials in the case file prior to the interview to be able to identify any inconsistencies in the course of the interview and confront the applicant with them at the time of the interview. Nonetheless, there may be some rare situations (for example when submitted documents are later discovered to be fraudulent) in which you discover a discrepancy or misrepresentation only after the interview. If the inconsistency is material and affects the outcome of the refugee or asylum case, every effort should be made to conduct a second interview. In some cases, a

second interview may not be possible. In this type of situation, you should request guidance from his or her immediate supervisor or team leader.

While current case law is silent on how to determine whether an explanation is reasonable, a technique you can employ to assist you in making such determinations is to apply the same factors that are used to make the initial credibility determination. Ask yourself whether the explanation is detailed, consistent, and plausible. If it is, then the explanation is reasonable and the applicant is credible on this point. If the explanation is vague, inconsistent with another part of the record or the applicant's testimony, or implausible in light of logic or country conditions, then it may not be reasonable and a negative credibility determination may be justified. In analyzing whether an explanation for an inconsistency is reasonable, you must be able to articulate specific and cogent reasons. You must also take into account the explanations provided by the applicant.

5.1.10 Remaining composed and professional, even if fraud is suspected

You should never argue with applicants. When you ask an applicant to explain the reasons for apparent inconsistencies, implausible statements, or lack of detail, the applicant may become defensive, evasive, and/or argumentative. However, you must remain professional at all times and not argue with the applicant or confront the applicant in a manner or tone that puts an applicant on the defensive. One effective way of doing this is to lead off confronting the applicant about an inconsistency by saying, "Help me understand..." In a non-adversarial manner, you 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.

Similarly, you should remain composed and you must avoid unprofessional body language. If you do not believe an applicant, you should not use body language to convey your disbelief. For example, you should not tap the desk impatiently, ask a rapid series of leading questions, shake your head or laugh in disbelief, or roll your eyes.

6 SPLIT CREDIBILITY FINDING

In some cases, you may determine that part of the applicant's testimony is not credible, but that another part is credible. You should identify those parts of the testimony that were found not credible, explain why they were found not credible, and state whether they are relevant to the applicant's claim. You should also identify those parts of the claim that were deemed credible. In some instances, unexplained credibility concerns related to part of the applicant's testimony can be a basis for finding that the entire testimony is not credible.

Examples

- In a case involving a Christian from Pakistan, the IJ found credible the testimony that the petitioner was a Christian, but found not credible his account of incidents he claimed to have suffered in Pakistan on account of his religion. The IJ denied based on the adverse credibility finding. The petitioner filed a motion to reopen based on updated country reports that purportedly detailed increasingly harsh conditions for Christians in Pakistan. The BIA denied the motion on the ground that the proffered evidence did not address the IJ's original adverse credibility finding against the petitioner. The Second Circuit found that the new evidence may establish a well-founded fear despite the negative credibility finding on the past persecution claim. The court did not analyze the basis for the adverse credibility finding, only whether that testimony "necessarily infects related but essentially freestanding claims made by the same petitioner."[37] The court held that "an applicant may prevail on a theory of future persecution despite an IJ's adverse credibility finding as to past persecution, so long as the factual predicate of the applicant's claim of future persecution is independent of the testimony that the IJ found not to be credible."[38]

- Likewise, in a case involving an Ethiopian government crackdown on opposition sympathizers, the Seventh Circuit held that the applicant's claim of future persecution was "distinct from her evidence of past persecution concerning her detention and beating for participating in the AAPO."[39] According to the court, "[g]iven these distinct facts, the prior adverse finding need not undermine [the applicant's] theory of future persecution."[40]

- The Ninth Circuit has refused to rely on testimony regarding a subjective fear of future persecution because of an adverse credibility determination of the applicant's past persecution claim. The court held, "[w]e cannot rely on [the applicant's] testimony as establishing the subjective element [of the well-founded fear test], [] because the IJ and the BIA, with substantial basis in the record, found that the 'applicant's testimony [was] not worthy of credence."[41] The court, however, found the applicant's fear of future persecution to be genuine because of the substantial documentary evidence providing strong support for the objective component of the applicant's well-founded fear claim.[42]

[37] *Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006).

[38] *Id.*

[39] *Gebreeyesus v. Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007).

[40] *Id.*

[41] *Al-Harbi v. INS*, 242 F.3d 882, 890 (9th Cir. 2001).

[42] *Id.*

- A negative credibility determination with respect to a future persecution claim will not per se defeat an asylum claim where there is evidence of past persecution. In a Chinese forced sterilization case, the Fourth Circuit held that even though an applicant failed to credibly demonstrate a well-founded fear of future persecution, the IJ erred in failing to consider the applicant's claim of past persecution based on his wife's forced abortion. [43]

7 TOTALITY OF THE CIRCUMSTANCES

You must base your credibility determination on the totality of the circumstances in the claim, taking into account any cross-cultural misunderstandings that may have arisen, translation or language difficulties, trauma the applicant has suffered, the applicant's background, your time constraints and the difficulty in evaluating the behavior of a stranger. During your determination, you have a duty to remain neutral and unbiased.

7.1 Cross Cultural Misunderstandings[44]

7.1.1 Body language

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

Examples

- While indicating affirmation in the United States, nodding the head indicates negation in some other cultures. If you are insensitive to cultural differences, you might erroneously suspect that an applicant is lying when he 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 applicant may not maintain eye contact with you out of deference to or respect for a person in authority. You generally should not view this as a sign of evasiveness.

7.1.2 Customs

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

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[43] *Lin-Jian v. Gonzales*, 489 F.3d 182, 191-92 (4th Cir. 2007).

[44] *See* RAIO Module, *Cross-Cultural Communication.*

Example

A female 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, may cause the monk (and/or the interpreter) to reply to questions in a shaken manner, giving an impression that he is not being forthright.

7.1.3 Culturally-based perceptions

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

Examples

- Different cultures have different perceptions of and measurements of time. In some cultures, events are remembered not by specific dates, but in reference to seasons, religious holidays, or other important events. Even in cultures where time is measured by calendar, the applicant may be using a different calendar from 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 applicant from one of those cultures 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.

7.1.4 Interpreter's or applicant's English speaking ability, language, or dialect[45]

Usually, English is neither the applicant's nor the interpreter's first language. Therefore, their ability to speak and understand English may be limited.

Even if both the applicant and interpreter understand English, misunderstandings may arise from having learned English in another country. There may be nuances of American English with which they are not familiar.[46]

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[45] For additional information, *see* RAIO Module, *Interviewing: Working with an Interpreter.*

[46] *See* Senathirajah v. INS, 157 F.3d 210, 213 and 219 (3d Cir. 1998).

In some cases, the applicant and interpreter may not speak the same first language, or may speak distinctly different dialects of the same language. Using a language or dialect that one or both do not speak or understand fully will cause problems in the interpretation.[47]

Furthermore, the interpreter's and applicant's inexperience with interpretation and the interview process can create an obstacle to good communication. The applicant may speak too rapidly or explain too much at once, making it difficult for all information to be interpreted accurately. Likewise, an officer may ask several questions at once, speak too quickly or give a long explanation. These factors may lead to misunderstandings that, if unresolved, can adversely affect the credibility evaluation.

Examples

- An immigration judge ruled that an applicant was not credible due to inconsistencies in his testimony and failure to establish his identity. The Sixth Circuit ruled that the applicant was denied a fair hearing because the interpreter was incompetent. Although the interpreter was fluent in English and Fulani (the applicant's first language), he spoke a different dialect of Fulani than the applicant. An examination of the record indicated several instances of misunderstanding between the applicant and the interpreter.[48]

- An immigration judge found that a Guatemalan applicant was not credible. The U.S. Court of Appeals, Ninth Circuit, found that the record indicated that the K'iche' (Quiché)-speaking applicant did not understand some of the questions being interpreted for him. Although the interpreter was interpreting in K'iche', the applicant's answers to the IJ's questions indicated a lack of understanding. The interpretation problem was exacerbated by the aggressive questions from the IJ.[49]

- A Haitian applicant whose application stated that she lived with her father, was asked where she lived after her father was killed. She replied that she stayed with her relatives in Cap-Haitien. In Haitian Creole, there is one word that means both 'parent' and 'relative'—'paran.' The interpreter, however, interpreted the word as 'parents,' causing the officer to doubt the applicant's veracity.

- A Spanish-speaking applicant was asked why she did not immediately flee her country after being threatened. She replied that she could not, using the word

[47] *See Amadou v. INS*, 226 F.3d 724, 725 (6th Cir. 2000).

[48] *Id.*

[49] *Perez-Lastor v. INS*, 208 F.3d 773, 778-779 (9th Cir. 2000).

"embarazada" meaning that she was pregnant and could not travel. The interpreter stated that she was too "embarrassed" to travel.

7.2 Trauma from Flight and Past Persecution[50]

Many asylum and refugee 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; they may have difficulty remembering all of the events that occurred; and may exhibit other symptoms, such as an inability to maintain eye contact, loss of composure, anxiety, and suspicion of others. These factors can give the appearance that the applicant is not being forthright at the interview.

7.3 Submission of Fraudulent Documents

7.3.1 General Rule

Knowingly submitting a false document to prove a central element of an applicant's asylum claim may indicate lack of credibility. "Such fraud tarnishes the [applicant's] veracity and diminishes the reliability of [the applicant's] other evidence."[51]

7.3.2 Considerations

"Ordinarily, it is reasonable to infer that a respondent with a legitimate claim does not usually find it necessary to invent or fabricate documents in order to establish asylum eligibility. On the other hand, there may be reasons, fully consistent with the claim of asylum, that will cause a person to possess false documents, such as the creation and use of a false document to escape persecution by facilitating travel"[52] or lack of knowledge that the document is fraudulent.[53]

The Ninth Circuit agreed with the manner in which the BIA distinguished between the two types of uses of fraudulent documents and their different impacts on a credibility determination:

The BIA set forth a clear division between two categories of false document presentations: (1) the presentation of a fraudulent document in an asylum adjudication for the purpose of establishing the elements of an asylum claim; and (2) "the presentation of a fraudulent document for the purpose of escaping immediate danger from an alien's country of origin or

[50] *See* RAIO Module, *Interviewing Survivors of Torture and Other Severe Trauma.*

[51] *Matter of O-D-*, 21 I&N Dec. 1079, 1083 (BIA 1998).

[52] *Id.*

[53] *Corovic v. Mukasey*, 519 F.3d 90, 97-98 (2d Cir. 2008).

resettlement, or *for the purpose of gaining entry into the United States.*" (emphasis added)... The BIA concluded [in *Matter of O-D-*] that the applicant's presentation of the fraudulent documents, "submitted to prove a central element of the claim in an asylum adjudication, indicates his lack of credibility." The BIA then carefully distinguished such false presentations from those in the second category of cases. In the second category, the use of false documents to facilitate travel or gain entry does not serve to impute a lack of credibility to the petitioner. The BIA stated, "there may be reasons, fully consistent with the claim of asylum that will cause a person to possess false documents, such as the creation and use of a false document to escape persecution by facilitating travel." We [the Ninth Circuit] agree with the BIA's classifications.[54]

Note that for the submission of a false document to support a negative credibility finding, the evidence in the record must establish that the applicant ***knew*** that the document he or she submitted was fraudulent.[55]

Examples

- The Eighth Circuit upheld a negative credibility finding against an applicant from Haiti who "submitted fraudulent documents relating to a core asylum issue (i.e., that supporters of the former president killed his brother and he feared a similar fate), failed to provide a satisfactory explanation for having done so, and failed to present other credible documentary evidence to support his allegations of political persecution."[56]

- In a case involving an applicant who alleged to have been persecuted for writing newspaper articles critical of the Albanian government, the IJ "found that [the applicant] was not a credible witness because the [Forensic Document Lab] determined that the author attributions in the newspaper articles were added after publication and, in one of the papers, other text had been erased from the author name area on the page before [the applicant's] name had been added on top of it. Because the newspaper articles were so central to [the applicant's] asylum claim and because the articles were altered, the [IJ declined to believe [the applicant's] testimony."[57] The Seventh Circuit upheld the negative credibility finding that was based solely on the submission of these

[54] *Akinmade v. INS*, 196 F.3d 951, 955-56 (9th Cir. 1999).

[55] *See, e.g., Corovic v. Mukasey*, 519 F.3d at 97-98 (holding that when an applicant contests that he or she knowingly submitted a fraudulent document, the IJ must make an explicit finding that the applicant knew the document to be fraudulent before the IJ can use the fraudulent document as a basis for an adverse credibility determination).

[56] *Ambroise v. Gonzales*, 411 F.3d 932, 933 (8th Cir. 2005). *See also Kourski v. Ashcroft*, 355 F.3d 1038, 1039 (7th Cir. 2004); *Yeiman-Behre v. Ashcroft*, 393 F.3d 907, 912 (9th Cir. 2004); *Selami v. Gonzales*, 423 F.3d 621, 625 (6th Cir. 2005).

[57] *Hysi v. Gonzales*, 411 F.3d 847, 852 (7th Cir. 2005).

allegedly false newspaper articles.

7.4 Personal Background of the Applicant[58]

The level of education or sophistication of an applicant may affect his or her ability to articulate a claim. If you perceive that the applicant is having difficulty articulating a claim, you should review the baseline you established early in the interview to ensure that that you are asking questions appropriate to the applicant's level of involvement, age, history of trauma, or other element and inquire further into the applicant's background to determine if there are reasons, other than lack of credibility, that explain the applicant's inability to express the claim. A close review of the biographical data in the application may give you information that indicates the applicant's level of sophistication.

In questioning an asylum or refugee applicant whose claim is based on religion or membership in an organization, it is important to establish at what level the applicant participated. A mere member or supporter cannot be expected to have the same knowledge as a leader or intellectual in a movement. A clear distinction must be made between adherents and experts.[59]

7.5 Time Constraints

Time pressures are a reality for you. However, attempting inappropriately to rush an interview may cause you to lose focus, become impatient, and miss information related by the applicant. This could lead you to believe erroneously 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 to conduct in order to evaluate credibility accurately. You should follow your division's procedures in your interview.

7.6 Difficulty in Evaluating the Behavior of a Stranger

Generally, you will not have previously encountered the applicants you interview. First impressions of an applicant may be unreliable. Care should be taken to avoid misinterpreting the applicant's actions and words.

For example, an applicant's reticence and confusion in answering questions may indicate that the applicant is shy, did not understand your question, or fears authority figures,

[58] *See* RAIO Module, *Cross-Cultural Communication.*

[59] *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir.2006); *Cosa v. Mukasey*, 543 F.3d 1066, 1070 (9th Cir. 2008) ("Remarkably, the IJ set up a Bible quiz and an academic trivia contest as the foundation for the adverse credibility finding. Cosa claimed no expertise in Bible study or passages nor did she claim to have an intellectual's understanding of Millenism").

rather than indicate that the applicant is not telling the truth. An initial impression that an applicant is truthful because he or she can easily relate the claim may also be erroneous, because the applicant's fluency may be due to an outgoing personality rather than a credible story.

7.7 Duty to Be Neutral and Unbiased

Your duty is to adjudicate claims in a neutral manner, free of personal opinions, preferences, and biases. If you are not neutral, as you are required to be, this lack of neutrality may result in erroneous decisions, including erroneous credibility determinations. Lack of neutrality can affect the way you view evidence, the way you make a decision, and how you treat an applicant. You should avoid conjecture based on your personal world-view, known approval or denial rates, or your perceptions of fraud in previous cases. Your personal views cannot substitute for actual evidence in the record.

For example, you may have learned that the human rights conditions in country X are among the worst in the world. If you feel that all applicants from there are deserving of refugee or asylee status, you are not adjudicating the case in a neutral manner. This bias should not lead you to overlook inconsistencies in an application from country X or to forget to inquire about mandatory bars, for the applicant before you might not be eligible for protection.

On the other hand, you may have just interviewed several applicants from country X and found them not credible. You cannot assume that all applicants from that country are fabricating their claims. If you do, you have breached your duty to be a neutral adjudicator. Lack of neutrality may cause you to deny otherwise eligible applicants based solely on the country of origin or type of claim presented.

8 Investigating Credibility Issues – Some Tools To Use in Evaluating Credibility Flaws

Maintaining your role as a neutral adjudicator can be difficult. As discussed above, your own personal baggage and your own subjective opinions could affect profoundly the outcome of your credibility analysis. Below are four effective aids you can use to help you remain neutral.

1. Except When/Especially When
2. Parallel Universe Thinking
3. Doubting and Believing Scale

4. Temporarily Set aside Decision Making[60]

8.1 Except When / Especially When

This is a particularly useful tool when you are basing your decision in whole, or in part, on a generalization. If you are trying to explain your reasons for an adverse credibility determination and you find yourself saying to yourself, "Everybody knows..." you are probably engaging in a generalization of some sort. You need to examine that generalization, try to test it, and, if necessary, narrow it.

You test a generalization in three stages:

- Articulate your generalization.
- Add "except when" and brainstorm as many different circumstances as you can.
- Add "especially when" and brainstorm as many different circumstances as you can.[61]

Examples

- A generalization that is used quite often in credibility determinations is *falsus in uno falsus in omnibus*, or false in one thing, false in all things. Stated in plain English, this generalization means: If an applicant has lied about one thing, it is probable that he or she is lying about everything. Ask yourself: How true is this generalization? Post-REAL ID Act, several circuit courts have addressed the issue of *falsus in uno, falsus in omnibus*. The First Circuit has applied this concept and noted, in dicta, that the REAL ID Act endorses it.[62] The Seventh Circuit has rejected the application of this concept, stating:

> The immigration judge failed to distinguish between material lies, on the one hand, and innocent mistakes, trivial inconsistencies, and harmless exaggerations, on the other hand. In effect, he applied the discredited doctrine of *falsus in uno, falsus in omnibus* (false in one thing, false in all things), which Wigmore called "primitive psychology," and in a characterization that we endorsed, an "absolutely false maxim of life."[63]

[60] This is generally not an option in refugee processing, and is subject to case processing time limitations within other divisions.

[61] D. Binder & P. Bergman, *Fact Investigation: From Hypothesis To Proof* (West Pub., 1984).

[62] *Castañeda-Castillo v. Gonzales*, 488 F.3d 17, 23 n.6 (1st Cir.2007).

[63] *Kadia v Gonzales*, 501 F.3d 817, 821 (7th Cir. 2007) (citations omitted).

The Second Circuit has also addressed the issue of *falsus in uno*, but has addressed it using the "Except When/Especially When" analysis. The Second Circuit applied the concept, affirming the immigration judge's adverse credibility determination based on the applicant's submission of a single fraudulent document to prove the nexus element of his claim. In affirming the IJ decision the court looked more closely at the generalization, in order to conform to circuit precedents and identified five exceptions to the general rule, none of which applied in the case before it.[64] The five situations where *falsus in uno* will generally not apply, as identified by the Second Circuit are as follows:

- A finding that an applicant submitted false evidence does not excuse the assessment of evidence that is independently corroborated.[65]
- The presentation of fraudulent documents that were created to escape persecution may actually tend to support an individual's application.[66]
- False evidence that is wholly ancillary to the alien's claim may, in some circumstances, be insufficient by itself to warrant a conclusion that the entirety of the alien's uncorroborated material evidence is also false.[67]
- A false statement made during an airport interview, depending on the circumstances, may not be a sufficient ground for invoking *falsus in uno*. Aliens may "not be entirely forthcoming" during the initial interview due to their perception that it is "coercive" or "threatening," particularly aliens who may have a well-founded fear of government authorities in general.[68]
- An alien's submission of documentary evidence that the alien does not know, and has no reason to know, is inauthentic, is no basis for *falsus in uno*.

The court engaged in a process similar to "Except When/Especially When" and in doing so crafted a rule that clearly limits the application of the general rule. The "Except When" analysis will help you to find the limits of a generalization and you can use the "Especially When" analysis to help narrow an overly broad generalization.

[64] *Siewe v. Gonzales*, 480 F.3d 160, 170 (2d Cir. 2007).

[65] *Poradisova v. Gonzales*, 420 F.3d 70, 77 (2d Cir.2005).

[66] *Lin v. Gonzales*, 445 F.3d 127, 132-33 (2d Cir.2006).

[67] *Zhong v. USDOJ*, 461 F.3d 101, 123 (2d Cir. 2006).

[68] *Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir.2005).

8.2 Parallel Universe Thinking[69]

Parallel Universe Thinking is a process in which you set aside your judgment or disbelief of an applicant's statement or behavior in order to brainstorm on what possible reasons, *in a parallel universe,* might cause a person to actually do what the applicant claimed. This is a tool that helps you overcome your own cultural biases and apply what you have learned about cross-cultural/inter-cultural communications problems. It helps you understand behavior and asks you to brainstorm alternative explanations for the applicant's behavior that you might find initially puzzling or annoying. This tool requires that you suspend your certainty regarding realities you may not yet fully comprehend. It requires that you engage in constructive ignorance, reminding yourself about how much you do not know about the applicant, before rushing to judgment. You must try to understand the applicant's world and behavior as *the applicant* understands it.

The goal of "Parallel Universe Thinking" is to avoid jumping to conclusions based on your own cultural biases and recognize that other possible explanations exist. You might find yourself in a position of disbelieving something an applicant tells you about what he or she did, or what was done to him or her, because "people just don't act that way." When you find yourself having such a thought, ask yourself if you were in a "parallel universe," what are some possible explanations for the statement or behavior? Employing the tool of Parallel Universe Thinking will help you understand whether there might be a credible explanation for an applicant's statement or behavior that you might have misunderstood based on cultural or personal bias.

8.3 Doubting and Believing Scale[70]

There was a case of two asylum officers who worked in the same office, under the same supervisor, and who had radically different grant rates—one over 50% and the other under 10%—even though they interviewed the same pool of applicants. When the supervisor was asked why the disparity, he answered, "One officer expects every applicant to be truthful and the other expects every applicant to lie."

Most people tend to be either "doubters" or "believers" as part of their general outlook on life. Whichever tendency is characteristic of you, it will affect your credibility determinations. One way you can control for your natural tendencies is to subject each case to systematic doubting and believing.

Methodological doubting and believing is a form of critical thinking. Usually critical thinking is thought of as a process in which ideas or information are analyzed through

[69] Bryant and Peters, *Five Habits of Cross Cultural Lawyering, reprinted in* Race, Culture, Psychology, and Law 57-59 (Kimberly Holt Barrett & William H. George eds., 2004).

[70] Peter Elbow, *Embracing Contraries: Explorations in Learning and Teaching* (Oxford, 1986).

systematic skepticism, subjecting everything to question and accepting nothing on its own. Most people, even those who tend to be believers, are comfortable with critical thinking as an exercise in skepticism. It is harder to play "the believing game"[71] in which you try to be as welcoming as possible to every fact the applicant asserts, actually trying to believe him or her. The purpose of methodological believing is to find the hidden virtues in the applicant's claim—a mirror image of methodological doubting, where the goal is to discover the flaws. You should try to engage in both methods in order to evaluate a claim completely. It is important to know yourself and have some idea of where you tend to fall on the believing/doubting spectrum. If you tend to be a doubter, you should put more effort into methodological believing. If you tend to be closer to the believing end of the scale you should put more effort into methodological doubting.

8.4 Temporarily Set Aside Decision Making

If you feel distracted by a behavior or characteristic of the applicant or the applicant's attorney, rather than allowing this immaterial or irrelevant factor to affect your decision-making, you might try this tool. Within reasonable limits, set aside the case and come back to it when the distracting characteristic has faded from your memory. Rely on your notes and reach your decision from the record before you. One BIA Member wrote that reviewing the written record in a case was a "substantial, and much underrated, advantage" that insulated the BIA from "the almost inevitable, and often distracting, frustrations and extraneous factors that could accompany such personal interaction . . ."[72] Because RAIO officers work under significant time constraints that support the goals and integrity of our programs, setting aside a such a case must not interfere with the decision making timeframes established by your office. Speak with your supervisors so that you understand your office policy. This method is generally not available to Refugee Officers engaged in refugee processing overseas, unless they need further guidance from Headquarters.

9 Conclusion

Assessment of credibility is an evidentiary determination. There is no moral component to credibility; the issue is to determine what evidence is reliable enough on which to base your decision.

10 Summary

[71] Peter Elbow, *The Believing Game and How to Make Conflicting Opinions More Fruitful* http://scholarworks.umass.edu/context/peter_elbow/article/1001/type/native/viewcontent

[72] *Matter of A-S-*, 21 I&N Dec. 1106, 1114 (BIA 1998)(Schmidt, dissenting).

A methodological approach to credibility breaks the evaluation of credibility down into three determinations.

- Internal consistency— whether the material facts are internally coherent and consistent with facts asserted by the applicant through his or her production of evidence
- External consistency— whether material facts are consistent with independent evidence such as COI or other sources that may be introduced by the applicant or you, the adjudicator
- Plausibility— whether the facts asserted by the applicant conform to the objective rules of reality

Credibility analyses should be based on factors such as consistency, detail, and plausibility. You may also consider, in the totality of the circumstances, other factors such as demeanor, candor, and responsiveness; inaccuracies or falsehoods; and any other relevant factor, but you should not base the credibility determination on these factors alone.

Credibility analyses should not be based on such factors as:

- Your moral judgment
- Your personal opinion about how an individual would act
- The fact that applicant's testimony supports his or her application.
- Delay in filing the claim
- Contact— or lack of contact— with the U.S. Embassy
- The fact that the applicant's story is similar to other claims
- The fact that the applicant's story differs from other claims
- The fact that COI fails to corroborate the claim
- The fact that a refugee or asylum applicant's fear does not appear to be well-founded

In the asylum and refugee context, the interview is the most important tool you have in assessing credibility. There are various techniques you can employ to test for credibility, but the most important technique is to conduct as thorough an interview as possible. The

more detail you elicit, the better your credibility determination will be. During the interview you should address with the applicant any concerns you have about the applicant's credibility and give the applicant an adequate opportunity to respond to your concerns and attempt to answer them.

PRACTICAL EXERCISES

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1.

2.

ADDITIONAL RESOURCES

1.

2.

SUPPLEMENTS

RAD Supplement

Inadmissibility under INA §212(a)(6)(C)

A principal applicant who lies to obtain, or attempt to obtain, a benefit for himself or herself, or for an unqualified family member, may be inadmissible under INA §212(a)(6)(C). In order to invoke this provision:

1. the misrepresentation must be willful
2. there must be evidence of the lie or misrepresentation (such as DNA findings or contradictory testimony).

General inconsistencies will usually lead to a finding that the applicant is not credible rather than inadmissible under INA §212(a)(6)(C).

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. RAIO Combined Training Course – Credibility Training Module
2. RAIO Combined Training Course – Evidence Training Module

ADDITIONAL RESOURCES

1.
2.

SUPPLEMENTS

ASM Supplement

No Presumption of Credibility

You must evaluate credibility in every case. The INA states, in pertinent part, that: "There is no presumption of credibility."[73] An applicant must establish his or her credibility as a component of meeting his or her burden of proof. The statute further requires that you consider "the totality of the circumstances, and all relevant factors,"[74] when making a credibility determination.

[73] INA § 208(b)(1)(B)(iii).

[74] *Id.*

ASM Supplement

REAL ID Act – "Totality of the Circumstances, and All Relevant Factors"

The REAL ID Act[75] added a section on credibility to the INA.[76] Congress' purpose in adding guidance concerning credibility and corroboration to the INA was to "...bring clarity and consistency to evidentiary determinations by codifying standards for determining the credibility of applicant testimony, and determining when corroborating evidence may be required."[77] The REAL ID Act took effect on May 11, 2005, and applies to applications for asylum filed on or after that date.[78]

The major provisions of the REAL ID Act that pertain to credibility are as follows:

- The requirement that the adjudicator consider the "totality of the circumstances, and all relevant factors;"
- A listing of factors that an adjudicator **may** consider in making such a determination;
- Clarifying that unlike prior holdings in some circuit courts, credibility flaws do not need to "go to the heart of the claim."[79]

Because the REAL ID Act drew upon existing case law, pre-REAL ID Act case law is still relevant and will be cited to throughout this supplement.

Totality of the circumstances

The statute requires that you consider "the totality of the circumstances, and all relevant factors," when making a credibility determination.

The U.S. Supreme Court has held that to properly consider the totality of the

[75] REAL ID Act § 101(a)(3)(B), codified at INA § 208(b)(1)(B).

[76] Guidance on credibility was added to both section 208 (INA § 208(b)(1)(B)(iii)) and to section 240 of the INA. The credibility amendment to section 240 applies to all applications for relief from removal before the IJ, which would include adjudication of waivers of inadmissibility.

[77] H.R. REP. NO. 109-72, at 165 (2005).

[78] MICHAEL JOHN GARCIA, MARGARET MIKYUNG LEE, AND TODD TATELMAN, CONG. RESEARCH SERV., RL32754, IMMIGRATION: ANALYSIS OF THE MAJOR PROVISIONS OF THE REAL ID ACT OF 2005 (2005).

[79] *See* INA § 208(b)(1)(B)(iii).

circumstances, "the whole picture... must be taken into account."[80]

To make an accurate credibility finding based upon the totality of the circumstances, you must elicit and analyze all relevant circumstances, including the ***individual circumstances of the applicant.*** When Congress enacted the statutory language covering asylum credibility determinations, it said the following:

> [A]lthough [the statute] would allow an adjudicator to base an adverse credibility determination on any of the factors set forth therein, such a determination must be reasonable and take into consideration the individual circumstances of the specific witness and/or applicant. While the [adjudicator] is not required to state expressly that [he or she] has considered each factor in assessing credibility, Congress expects that the [adjudicator] will describe those factors that form the basis of the [decision].[81]

In discussing the proper approach to credibility determinations, the Third Circuit similarly stated the following:

> [An adjudicator's] overall credibility determination does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements. Where, as here, the asylum applicant has presented testimony that was for the most part quite detailed, internally consistent, materially in accord with his asylum application, and accepted by the [adjudicator], and there is supportive evidence of general country conditions and some corroborative documentation of the applicant's testimony, the [adjudicator] is not justified...in concluding that the applicant is not credible based on a few equivocal aspects not logically compelled by the record or by reason or common sense.[82]

Consistent with this approach, the Ninth Circuit viewed the "totality of the circumstances" analysis as imposing the requirement that an Immigration Judge

[80] *United States v. Cortez*, 449 U.S. 411, 417 (1981) (using "totality of the circumstances" to determine whether there was sufficient cause for police to stop a person).

[81] H.R. REP. NO. 109-72, at 167 (2005).

[82] *Jishiashvili v. U.S. Attorney General*, 402 F.3d 386, 396 (3d Cir. 2005) (pre-REAL ID case that, while examining whether the testimony was "materially in accord with" the asylum application, took an approach of looking at the record as a whole, consistent with the REAL ID Act "totality of the circumstances and all relevant factors" approach).

"not cherry pick solely facts favoring an adverse credibility determination while ignoring facts that undermine that result."[83] In *Shrestha v. Holder*, the court underscored the need to present "a reasoned analysis of the ***evidence as a whole***" and not selectively examine evidence in determining credibility.[84] The court concluded that the REAL ID Act imports a "rule of reason" into the assessments governing credibility determinations, in which the analysis must take into account the individual circumstances of the applicant and recognize that the "normal limits of human understanding and memory may make some inconsistencies or lack of recall present in any witness's case."[85]

The Seventh Circuit also noted that inconsistencies must be considered "against the backdrop of the whole record, as one factor in the overall credibility determination."[86] In concluding that no such examination of the record had occurred in *Hanaj v. Gonzales*, the court stated, "[t]he IJ cannot selectively examine evidence in determining credibility, but must present a reasoned analysis of the evidence as a whole."[87]

The Ninth Circuit indicated that a credibility determination fails to consider the totality of the circumstances and is in contravention of the REAL ID Act's text if it ignores the applicant's explanation for a perceived inconsistency and other relevant evidence on the record that sheds light on whether there is, in fact, an inconsistency.[88]

Factors that an adjudicator may consider

The BIA has held that the factors listed in the REAL ID Act relevant to credibility determinations were chosen because they were "identified in case law" and therefore help provide a "uniform standard for credibility."[89] The relevant factors that an adjudicator may consider in making a credibility determination have been

[83] *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010).

[84] *Shrestha*, 590 F.3d at 1040 (second emphasis added) (quoting *Hanaj v. Gonzales*, 446 F.3d 694, 700 (7th Cir. 2006).

[85] *Id.* at 1044-1045.

[86] *Hanaj v. Gonzalez*, 446 F.3d 694, 700 (7th Cir. 2006) (quoting *Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

[87] *Id.* at 700.

[88] *Shrestha*, 590 F.3d at 1044.

[89] *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007) (quoting H.R. REP. NO. 109-72, at 166-167 (2005).

used in previous precedent decisions. The list included in the statute allows an adjudicator to consider any of the following in making a credibility determination. This list is not exhaustive:

> The consistency between the applicant's or witness's written and oral statement;
>
> The internal consistency of each such statement;
>
> The consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions);
>
> The inherent plausibility[90] of the applicant's account;
>
> Any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim;
>
> Candor or responsiveness of the applicant;
>
> Demeanor;
>
> Any other "relevant" factor.[91]

While not specifically mentioned in the statute, a ***lack of detail*** is another factor that should be considered in making a credibility determination.[92] In order to rely on "lack of detail" as a credibility factor, however, Asylum Officers must pose questions regarding the type of detail sought.

An omission may constitute an inconsistency that forms the basis for an adverse credibility finding. The Ninth Circuit has stated, however, that omissions are generally "less probative of credibility than inconsistencies created by direct contradictions in evidence and testimony."[93]

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[90] Determinations related to the implausibility of the applicant's statements must be based on evidence in the record and not the result of speculation, conjecture, or personal opinion. *Elzour v. Ashcroft*, 378 F.3d 1143, 1153 (10th Cir. 2004) (citations omitted).

[91] INA § 208(b)(1)(B)(iii).

[92] *See Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987) ("The alien's own testimony may in some cases be the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear."); *see also Shrestha*, 590 F.3d at 1040 ("Even though lack of detail is not expressly listed as a factor that may be considered, the pre-REAL ID Act practice of looking to the level of detail of the claimant's testimony to assess credibility, remains viable under the REAL ID Act as a relevant factor.").

[93] *Lai v. Holder*, 773 F.3d 966, 971 (9th Cir. 2014) (holding that two omissions from the asylum application regarding the detention of a fellow church member and the arrest of the applicant's wife, did not support an adverse credibility finding).

While the statute does explicitly identify demeanor and lack of candor as factors relevant to credibility determinations, note that there do not appear to be precedent decisions that support an adverse credibility determination based ***solely*** on demeanor or lack of candor. Rather, the courts have considered the cumulative effect of factors such as demeanor or lack of candor to strengthen adverse credibility determinations that also included inconsistencies, lack of plausibility, and/or lack of detail. Demeanor, candor and responsiveness are discussed further below.

When a factor may be inappropriate for the credibility determination is discussed in the "What May Not Be Considered in Making a Credibility Determination" section of the RAIO Training Module, *Credibility*.

Credibility flaws do not need to "go to the heart of the claim"

Under the INA as amended by the REAL ID Act, Asylum Officers may base a credibility determination on inconsistencies, including omissions, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim,"[94] as long as they are ***relevant*** to the evaluation in light of the ***totality of the circumstances***.[95]

At least one commentator has indicated that the legislative history makes clear Congress did not intend to give adjudicators license to deny claims on credibility grounds based on flaws that bore no relevance to the claim.[96] Another commentator adds that even if an adjudicator considers using minor, tangential inconsistencies as a basis for an adverse credibility finding, the adjudicator is constrained by the "totality of circumstances" requirement and still must provide a ***specific and cogent reason*** for his or her action.[97] The commentator notes, "[o]n the face of a record which contains probative, corroborated, and consistent testimony, this may well become impossible to do. There are few satisfactory reasons capable of explaining

[94] INA § 208(b)(1)(B)(iii).

[95] *See Chen v. US Att'y Gen.*, 463 F.3d 1228, 1231 (11th Cir. 2006); *Xu Xia Lin v. Mukasey*, 534 F.3d 162, 163 (2d Cir. 2008) ("[I]n evaluating an asylum applicant's credibility, an IJ may rely on omissions and inconsistencies that do not directly relate to the applicant's claim of persecution as long as the totality of the circumstances establish that the applicant is not credible.").

[96] Marisa Silenzi Cianciarulo, *Terrorism And Asylum Seekers: Why the REAL ID Act Is a False Promise*, 43 HARV. J. ON LEGIS. 101, 135 (2006).

[97] James Feroli, *Credibility, Burden Of Proof, and Corroboration under the REAL ID Act*, 09-06 Immigr. Briefings 1, June 2009.

how a tangential inconsistency which has no link to the heart of the claim, can outweigh powerful and consistent evidence which does."[98]

In *Xiu Xia Lin*, the Second Circuit looked to the cumulative effect of "collateral or ancillary" inconsistencies and omissions in assessing the applicant's credibility, stressing that the credibility factors must be evaluated in the totality of the circumstances.[99]

The Fourth Circuit has also clarified the effects of the REAL ID Act on credibility determinations: "[a]s the provision's language makes evident, an IJ's adverse credibility determination need no longer rest solely on those matters fundamental to an alien's claim for relief under the INA."[100] The court emphasized, however, that this more "flexible" approach to credibility assessments "does not alter the underlying methodological requirement that an Immigration Judge provide 'specific, cogent reason[s]' for making an adverse credibility determination in a given case."[101]

Make certain that whatever flaws you may identify are related to a matter at issue in the asylum adjudication and that your credibility determination is based on specific and cogent reasons, taking into account the totality of the circumstances. As noted above, the language of the REAL ID Act underscores the need for Asylum Officers to make explicit credibility determinations.[102]

Definition of "relevant factors"

A factor is relevant if it is "logically connected and tending to prove or disprove a matter in issue."[103] In the asylum context, relevant factors would, then, be any evidence that tends to prove or disprove such things as:

- Is the applicant who he or she purports to be (e.g., personal identity, nationality)?
- Has the applicant been harmed or does he or she fear harm?

[98] *Id.*

[99] *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2nd Cir. 2008) (citations omitted).

[100] *Singh v. Holder*, 699 F.3d 321, 329 (4th Cir. 2012).

[101] *Id.*

[102] *See* INA § 208(b)(1)(B)(iii).

[103] Black's Law Dictionary (10th ed. 2014).

- Did the applicant file his or her asylum application within a year after entering the U.S.?
- Did the persecutor target the applicant on account of one of the protected characteristics?
- Was the applicant actually a member of the group for which he claims to have been targeted for persecution?
- Is the applicant subject to any mandatory bars?

The consistency or inconsistency of the applicant's statements - internally, between statements, or in comparison to other evidence in the record - may be relevant to the credibility determination. The relevance of any inconsistencies, inaccuracies and falsehoods will depend on their relation to the applicant's asylum claim. As noted by the Seventh Circuit, "inconsistencies that do not relate to the basis of the applicant's alleged fear of persecution are less probative than inconsistencies that do."[104]

As previously noted, the INA as amended by the REAL ID Act allows reliance on inconsistencies, inaccuracies and falsehoods that do not go to "the heart of the applicant's claim," if they are "relevant" to the claim in light of the totality of the circumstances.[105] The Ninth Circuit also stated that "[u]nder the REAL ID Act, even minor inconsistencies that have a bearing on an [applicant's] veracity may constitute the basis for an adverse credibility determination."[106] It stressed, however, that determinations that rest largely on mischaracterizations of the applicant's testimony and credibility factors that are "manifestly trivial" have no bearing on the applicant's veracity.[107]

Examples:

An applicant claims he was detained because he participated in a demonstration protesting election irregularities. He also claims to be an accountant. His participation in the demonstration is relevant because it has a

[104] *Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

[105] *See* INA § 208(b)(1)(B)(iii).

[106] *Ren v. Holder*, 648 F.3d 1079, 1089 (9th Cir. 2011).

[107] *See id. See also Ai Jun Zhi v. Holder*, 751 F.3d 1088, 1092 (9th Cir. 2014) (concluding that "no reasonable fact-finder could have determined that the discrepancy in dates was anything but an utterly trivial discrepancy that under the totality of the circumstances [has] no bearing on [the applicant's] veracity.") (internal quotations omitted).

direct bearing on whether he is at risk of persecution on account of a political opinion, whereas his occupation may be irrelevant unless it is connected to an issue of asylum eligibility (e.g., applicant was persecuted because he was employed as an accountant for a political party). A misrepresentation on a peripheral matter may have greater relevancy, however, if the ancillary misrepresentation was one of many discrepancies in the applicant's testimony and these credibility problems indicate that the applicant has a "propensity to dissemble," or conceal the truth.[108]

An applicant claims he suffered past persecution while serving in the Honduran Army on account of his familial ties to known military deserters. The applicant's motivation in volunteering for military service is not relevant to his claim of past persecution. "What matters to [the applicant's] claim is whether he was persecuted on account of his familial ties once he became a soldier, not why he joined the Honduran army in the first place ... There is no logical connection between [the applicant's] reasons for enlisting and his claims of mistreatment while he served. Given the controlling questions of this case, such facts do not constitute a valid, cogent reason for a negative credibility finding."[109]

Evidence related to the applicant's demeanor, candor and responsiveness when testifying in support of his or her asylum application is relevant to a final credibility finding.[110] However, keep in mind that other factors (culture, effects of past trauma, interpretation problems) may impact the weight that the applicant's demeanor, candor and responsiveness will be given in the final credibility calculation.

Effect of accumulation of credibility flaws

An accumulation of credibility flaws that do not relate to the basis of the applicant's claim may be added together to find the applicant not credible, if it can

[108] *See* Toure v. Ashcroft, 400 F.3d 44, 48 (1st Cir. 2005) (holding that, in addition to major inconsistencies in her claim, the applicant's false testimony under oath in her husband's hearing "fairly illustrated her propensity to dissemble under oath" and was relevant to the applicant's credibility in her own case).

[109] Torres v. Mukasey, 551 F.3d 616 (7th Cir. 2008) (internal quotations omitted).

[110] INA § 208(b)(1)(B)(iii).

be established that they show the applicant's propensity to dissemble, such that the rest of the applicant's testimony is untrustworthy.[111]

Misrepresentation as to identity

Identity as to citizenship or nationality or statelessness is a critical element of an asylum claim because asylum eligibility is based on harm or feared harm in the country of citizenship, nationality or, if stateless, country of last habitual residence.[112] Misrepresenting identity during an asylum adjudication in a way that misrepresents one's country of citizenship or nationality or that indicates one is stateless is relevant to the claim. Where the applicant cannot provide a reasonable explanation for this misrepresentation, this factor "***significantly undermines***" the applicant's overall credibility.[113]

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

ASM Supplement

Demeanor, Candor, and Responsiveness

While these factors may be taken into account, they are often unreliable and should be used sparingly because of cross-cultural factors, effects of trauma, and the nature of non-adversarial interviews.

[111] *Balogun*, 374 F.3d at 504; *Toure*, 400 F.3d at 48; *Laurent v. Ashcroft*, 359 F.3d 59, 64 (1st Cir. 2004); *see also Pan v. Gonzalez*, 489 F.3d 80, 86 (1st Cir. 2007).

[112] *See* INA §§ 208(b)(1)(B)(i); 101(a)(42)(A).

[113] *Matter of O-D-*, 21 I&N Dec. 1079, 1083 (BIA 1998). An asylum applicant's presentation of an identification document found to be counterfeit by forensic experts, in the absence of an explanation or rebuttal, also indicates an overall lack of credibility regarding the entire claim.

Demeanor

Demeanor means a person's outward manner of expression or behavior. It is not simply what a person says, but the way in which the person says it. Demeanor can include an individual's tone of voice, facial expressions, and gestures.[114]

Cultural differences and effects of trauma can make it difficult for the adjudicator to read non-verbal signals accurately. The circumstances of an asylum interview, including the use of an interpreter, should be taken into account when considering an applicant's demeanor as part of the overall credibility determination. The Seventh Circuit noted the difficulty of using demeanor as an indicator of honesty or deception in the asylum context:

> The applicant for asylum normally bases his claim almost entirely on his own testimony, and it is extremely difficult for the judge to determine whether the testimony is accurate. Often it is given through a translator, and even if the applicant testifies in English, as a foreigner his demeanor will be difficult for the IJ to "read" as an aid to determining the applicant's credibility.[115]

1. Limitations of demeanor as a credibility factor

An applicant's demeanor may be considered in evaluating credibility, but conclusions about credibility that are based on demeanor should be made with caution, and in the context of the entire record. As case law indicates, demeanor should generally not be the exclusive basis for a credibility finding.

Generally, using demeanor as a method of determining credibility is extremely limited by the many factors that you must consider as part of the "totality of the circumstances."[116] Although the REAL ID Act specifically mentions demeanor as a factor appropriate to consider in assessing credibility, it is important to remember that the statutory provisions on credibility in INA § 208, added by the REAL ID Act, were intended to codify previous court decisions. There do not appear to be published court decisions prior to enactment of the REAL ID Act that affirmed an adverse credibility determination based solely on demeanor. In cases involving demeanor, the courts considered it as a factor in conjunction with other perceived

[114] West's Encyclopedia of American Law, edition 2. 2008. The Gale Group, Inc.

[115] *Djouma v. Gonzales*, 429 F.3d 685, 687 (7th Cir. 2005).

[116] *See* Totality of the Circumstances section.

inconsistencies and contradictions.

Compare two pre REAL ID Act decisions: *Matter of A-S-*, in which the BIA upheld an adverse credibility determination based partly on demeanor, [117] and *Matter of B-*, in which the BIA reversed the IJ's decision because the credibility determination was based entirely on demeanor. [118] In *Matter of A-S-*, the BIA explained that the "Immigration Judge's reasonable determination that the [applicant's] very halting and hesitant manner of testifying indicated deception [was] bolstered by the Immigration Judge's full range of specific and cogent credibility findings."[119] The other credibility findings included vague testimony, lack of detail, and significant inconsistencies and omissions regarding the dates of key events in his claim.[120]

In *Matter of B-*, the BIA found that the applicant's tendency while testifying to look at the wall behind the interpreter or down at the table, instead of at the IJ, was not necessarily an indication of deception.[121] Instead, the applicant's behavior could indicate he was concentrating on the question that was being interpreted to him. The BIA explained it considered the demeanor issue "within the context of the whole record" and noted the record showed the applicant appeared to be listening carefully to the questions and asking for clarification of questions several times before responding. [122] His testimony was also consistent throughout examination and cross-examination, and consistent with his application.[123]

In sum, where there are no credibility flaws concerning consistency, detail and plausibility, demeanor alone will not suffice to support an adverse credibility determination.

2. Cultural assumptions

Cultural assumptions regarding what forms of body language suggest a lack of

[117] *Matter of A-S-*, 21 I&N Dec. 1106, 1111 (BIA 1998).

[118] *Matter of B-*, 21 I&N Dec. 66, 70 (BIA 1995).

[119] *Matter of A-S-*, 21 I&N Dec. at 1111.

[120] *Id.* at 1109-11.

[121] *Matter of B-*, 21 I&N Dec. at 70.

[122] *Id.*

[123] *Id.*

truthfulness may not be held by all cultures from which refugee and asylum applicants originate.

In properly analyzing an applicant's demeanor, the Seventh Circuit said that adjudicators must avoid:

> [I]nsensitivity to the possibility of misunderstandings caused by the use of translators of difficult languages such as Chinese, and relatedly, insensitivity to the difficulty of basing a determination of credibility on the demeanor of a person from a culture remote from the American, such as the Chinese. Behaviors that in our culture are considered evidence of unreliability, such as refusing to look a person in the eyes when he is talking to you, are in Asian cultures a sign of respect.[124]

In Anglo-American cultures, people who avert their gaze when answering a question, or seem nervous, may be perceived as untruthful. In other cultures, however, body language does not convey the same message. In certain Asian cultures, for example, people will avert their eyes when speaking to an authority figure as a sign of respect. This is a product of culture, and is not necessarily an indicator of credibility.

3. Effects of trauma

The psychological or physical trauma suffered by some asylum applicants may affect an applicant's demeanor in a way that may otherwise signal a lack of truthfulness.

The Asylum Gender Guidelines ("Considerations for Asylum Officers Adjudicating Asylum Claims from Women") describe the difficulties inherent in judging the demeanor of asylum applicants, male or female:

> The demeanor of traumatized applicants can vary. They may appear numb or show emotional passivity when recounting past events of mistreatment. Some applicants may give matter-of-fact recitations of serious instances of mistreatment. Trauma may also cause memory loss or distortion, and may cause other applicants to

[124] *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005) (citations omitted); *see* RAIO Training Module, *Cross-Cultural Communication*, for a more detailed discussion of cross-cultural factors that may impede communication at an interview.

block certain experiences from their minds in order not to relive their horror by the retelling.[125]

Example:

The applicant in *Ilunga v. Holder* was deemed not credible by the IJ because he appeared "uncomfortable" while testifying.[126] Ilunga countered that it was normal for a victim of torture to appear uncomfortable given his experiences. The BIA disagreed with Ilunga and affirmed the IJ's decision. The Fourth Circuit reversed the negative credibility determination explaining that the BIA's decision "manifest[ed] a basic misunderstanding of the human condition."[127] In reviewing the record, the court determined that Ilunga not only suffered "vicious abuse, leaving both body and mind scarred by the experience[,]" but was diagnosed with PTSD as a result of the abuse, and when "[f]orced to revisit the trauma at the immigration hearing, Ilunga specifically testified about being raped by prison guards and subjected to other forms of sexual abuse."[128] The court concluded that "[f]or the BIA to dismiss the potential impact of such torture on Ilunga's testimonial disposition is unsettling . . . the ability to testify in a cool and collected manner about an experience of torture would arguably raise greater credibility concerns."[129]

4. Use of an interpreter

The use of an interpreter in an interview can also create situations in which it is difficult to completely understand an applicant's demeanor.[130]

[125] Phyllis Coven, INS Office of International Affairs. *Considerations For Asylum Officers Adjudicating Asylum Claims From Women.* Memorandum to INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995); *see also Fiadjoe v. U.S. Attorney General*, 411 F.3d 135, 154 (3d Cir. 2005) (quoting favorably the Gender Guidelines); *and Marouf v. Lynch*, 811 F.3d 174, 185 (6th Cir. 2016) (holding that "[a]n inability to accurately recall the date when a traumatic event occurred is not particularly probative of a witness's credibility when alleging traumatic persecution, because such traumatic persecution itself may cause the witness difficulty in recalling details of the incident.").

[126] *Ilunga v. Holder*, 777 F.3d 199, 212 (4th Cir. 2015).

[127] *Id.*

[128] *Id.*

[129] *Id.* at 212-213.

[130] *See, e.g., Amadou v. INS*, 226 F.3d 724 (6th Cir. 2000) (finding that the IJ's adverse credibility determination, including reference to the applicant's dispassionate demeanor when testifying, was flawed due to incompetent

Please be cognizant that the interpreter's and applicant's inexperience with interpretation and the interview process can be an impediment to good communication.

Candor or Responsiveness

"Candor" is "the quality of being open, sincere and honest."[131] The ability and willingness of an asylum applicant to respond to all the questions asked of him or her and to do so in a direct and forthright manner may be a relevant positive consideration in making a credibility determination.

An applicant who is found to be evasive in responding to questions, or who fails to respond at all, may have this considered as a negative factor in a credibility determination based upon the totality of the circumstances in the case. Similar to demeanor, case law indicates lack of candor should generally not be the exclusive basis for an adverse credibility determination.

1. Considerations

In deciding whether an applicant has testified with candor and in a responsive manner during an asylum interview, you have the difficult task of determining certain issues, such as "whether a question that may appear poorly worded was, in fact, confusing or well understood by those who heard it; whether a witness who hesitated in a response was nevertheless attempting truthfully to recount what he recalled of key events or struggling to remember the lines of a carefully crafted 'script;' and whether inconsistent responses are the product of innocent error or intentional falsehood."[132]

Where an applicant uses an interpreter to translate questions and responses, apparently evasive or unresponsive answers by the applicant may instead indicate translation problems or interpreter incompetence. [133]

The applicant may also appear evasive or unresponsive as a result of past

interpretation); *and Ilunga v. Holder*, 777 F.3d at 207-208 (holding that an inconsistency cannot be relied upon when "there is a strong indication it results from translation errors or language-based misunderstanding, particularly when it is belied by an extensive record of otherwise consistent statements and corroborating evidence").

[131] Merriam-Webster's Advanced Learner's English Dictionary, Merriam-Webster, Inc., 2008.

[132] *Zhang v. US DOJ*, 386 F.3d 66, 73 (2d Cir. 2004).

[133] *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000); *Zahedi v. INS*, 222 F.3d 1157, 1166-67 (9th Cir. 2000); *Giday v. Gonzales*, 434 F.3d 543 (7th Cir. 2006).

trauma, which may cause memory loss or distortion, or may cause the applicant to block certain experiences from his or her mind in order not to relive their horror by the retelling.[134]

2. Documenting instances of evasive or unresponsive behavior

A determination that the applicant was evasive or unresponsive during the interview can be difficult to substantiate. You can provide support for such a finding where instances of evasive responses or failure by the applicant to respond to questions are documented in the record. Your notes from the interview must contain the questions asked and the applicant's response or lack of response.[135]

Your notes are the record of the asylum interview and must contain documented instances of evasiveness or unresponsiveness for an adverse credibility finding on either ground. In *Baljit Singh v.Ashcroft,* the Ninth Circuit said that to support an adverse credibility finding based on unresponsiveness, the BIA "must identify particular instances in the record where the [applicant] refused to answer questions asked of him" and further indicated that "[a] general statement that the [applicant] was 'unresponsive' to questions is insufficient."[136]

The following example illustrates how you can document evasiveness or unresponsiveness in the interview notes:

Q: When were you arrested?
A: long time ago
Q: How old were you at the time?
A: I'm not sure, sometime in my twenties.
Q: When in your twenties?
A: Maybe late twenties.
Q: What year was it that you were arrested?
A: (no response)
Q: Was your son born then?
A: Maybe, I don't remember

[134] *Zubeda v. Ashcroft*, 333 F.3d 463, 476 (3d Cir. 2003).

[135] *See Nigussie v. Ashcroft*, 383 F.3d 531, 537 (7th Cir. 2004) (stating that the IJ's observation - that Nigussie's demeanor at the evidentiary hearing was "evasive" and therefore indicated a lack of credibility - could not be fully appreciated based on the cold record).

[136] *Baljit Singh v. Ashcroft*, 301 F.3d 1109, 1114 (9th Cir. 2002); *see also Jibril v. Gonzales*, 423 F.3d 1129, 1137 (9th Cir. 2005) (explaining that IJs should explicitly describe in their opinions any demeanor findings that rely on non-verbal factors).

Q: Can you give me a more specific idea of when it was?
A: How can I remember! It was around 7 years ago. (App. raised voice, sighed)
Q: Do you have any problems with memory?
A: No (Answer given after a long pause).
Q: Is there any reason why you can't provide me with information regarding when your arrest took place?
A: That's all I remember.
Q: Do you understand your interpreter?
A: Yes

Example:

Lack of candor/responsiveness found to support negative credibility finding

While testifying in support of his asylum claim, the applicant in *Aramjit Singh v. Gonzales* "tended to return to a recitation of the story contained in his application for asylum, ... had trouble answering direct questions which did not come directly from facts contained in his application, ... [and] corrected himself on several occasions." In addition, his testimony was found internally inconsistent and implausible.[137]

In *Wang v. INS*, the applicant's evasive answers to questions regarding an inconsistency in his testimony provided further support for an adverse credibility determination based on internal inconsistencies and inconsistencies with supporting documents.[138] The applicant claimed to have been targeted for sterilization in China in Dec. 1989, after the birth of his second child, but other evidence in the record showed his child was not born until 10 months later. When given the chance to explain this inconsistency, the applicant gave the following evasive answers:

Q: If officials wanted to sterilize either you or your wife after the birth of your second child it could not have been on December 7, 1989, can you explain this?
A: Well, according to Chinese law one child is enough for the family.
Q: But the second child hadn't already been born.
A: Well, they say one is enough for you.

[137] *Aramjit Singh v. Gonzales*, 413 F.3d 156, 160 (1st Cir. 2005).

[138] *Wang v. INS*, 352 F.3d 1250, 1256 (9th Cir. 2003).

Q: Are you now saying that they attempted to sterilize you before your wife gave birth to the second child?
A: Yes.
...
Q: [A]ccording to the birth certificate your second child wasn't even born yet, at the time of this demand in December of 1989.
A: Yeah, but they allow you to have one.[139]

In *Afful v. Ashcroft,* the applicant was found not credible as a result of her false testimony regarding her entry date into the U.S., her failure to inform her representative or anyone else about her use of a false passport to enter the U.S., and her evasive and contradictory testimony when asked to explain these actions.[140] In affirming the Immigration Judge's decision, the BIA determined that these findings were supported by the record, which showed that the Immigration Judge had to ask Afful questions repeatedly before she answered, and that the Immigration Judge had to direct Afful on numerous occasions to tell the truth.[141]

In another case, the Second Circuit upheld an IJ's negative credibility finding that was based upon numerous discrepancies in dates and details of the applicant's claim, the inherent implausibility of certain parts of his testimony, and the applicant's lack of candor and responsiveness.[142] In part, the IJ said that the applicant "appeared to be an individual who tried to memorize a claim and was repeating it back, rather than testifying in a respons[iv]e or a spontaneous manner about experiences that actually occurred."[143]

Example:

Lack of candor/responsiveness found not to be supported by the record

The applicant's behavior in *Matter of B-,* which included having to ask several times for questions to be clarified before answering them, was

[139] *Id.*

[140] *Afful v. Ashcroft*, 380 F.3d 1, 5 (1st Cir. 2004).

[141] *Id.*

[142] *Gao v. U.S. Attorney General*, 400 F.3d 963, 963-64 (2d Cir. 2005).

[143] *Id.* at 963.

believed by the IJ to be a sign of evasiveness, but was found by the BIA to be an inadequate basis for the IJ's negative credibility finding.[144] The BIA found that the applicant's "requests for clarification appear to have been conscientious attempts to provide the information sought by the questioner rather than attempts to evade answering."[145]

In another case, the IJ found the applicant's testimony not credible because it was evasive, general and inconsistent. The Ninth Circuit refused to uphold the judge's decision because a review of the record showed that the applicant "tried to give specific dates but was often hampered by his reliance on the translator to convert those dates from the Islamic to Christian calendar."[146] The record showed that the applicant tried to overcome this problem by noting how much time passed between the events he was describing.[147] The Court noted that "[w]hile it is true that these answers might be frustrating to one trying to make a clear timeline, since they were relational rather than fixed dates, these answers are by no means evasive."[148]

Example:

Applicant's candor/responsiveness can support an overall positive credibility finding

In rejecting a trial attorney's argument that an applicant was not credible, the BIA noted in *Matter of Pula* that "[t]he IJ found the applicant credible after observing his demeanor and listening to his testimony for 8 hours over a period of 2 days."[149] The BIA concluded, "[i]n view of the detail, consistency, and candor of the applicant's lengthy testimony, we do not find that his credibility is impeached by the minor discrepancies in his written application, which was prepared with the assistance of interpreters."[150]

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[144] *Matter of B-*, 21 I&N Dec. 66, 70 (BIA 1995).

[145] *Id.*

[146] *Zahedi v. INS*, 222 F.3d 1157, 1166 (9th Cir. 2000).

[147] *Id.*

[148] *Id.*

[149] *Matter of Pula*, 19 I&N Dec. 467, 470 (BIA 1987).

[150] *Id.* at 472.

Plausibility

"Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on .... the inherent plausibility of the applicant's or witness's account[.]"[151]

Example:

The applicant in *Xiu Ying Wu* claimed that three family-planning officials visited her home and, upon confirming she was unmarried, forced her to terminate her pregnancy.[152] In support of her application, the applicant provided a 'Family Planning Birth Control Operation Certificate stating an abortion had been performed, the receipt from the fines she paid to the family-planning office, and a letter from her employer discharging her for violation of China's family-planning laws. In immigration court, DHS countered with the 2007 China Profile of Asylum Claims and Country Conditions (Country Profile) and other documentary evidence.[153]

Relying in part on the Country Profile, the IJ found the applicant not credible because her story was implausible. However, the Eleventh Circuit reversed the negative credibility determination, holding that it can do so if it is "based solely on speculation and conjecture."[154] The court added that "[i]n the absence of evidence to support it, an IJ's bald assertion that a given account is implausible does not necessarily make it so[;] [t]hus, and though the substantial evidence standard greatly constrains our examination of the IJ's findings, even its yoke does not bind us where, as here, the IJ's conclusion fairly appears to have been invented out of whole cloth."[155]

Regarding country reports, the court emphasized that "***blind reliance***" on State Department reports, without more, may be insufficient to satisfy the requirement that an adverse credibility determination be supported by specific, cogent reasons.[156]

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[151] INA § 208 (b)(1)(B)(iii).

[152] *Xiu Ying Wu v. U.S. Atty. Gen.*, 712 F.3d 486, 489 (11th Cir. 2013).

[153] *Id.* at 490.

[154] *Id.* at 494 (internal quotations and citations omitted).

[155] *Id.*

[156] *Id.* at 495 (emphasis added) (*quoting Xia v. U.S. Att'y Gen.*, 608 F.3d 1233, 1240 (11th Cir. 2010) (relying on a State Department report and other factors in finding the applicant not credible). *But see Singh v. Lynch*, 802 F.3d

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Corroboration

The REAL ID Act amended the INA with regard to corroborative evidence. The statute provides that the applicant's testimony may be sufficient to sustain his burden of proof without corroboration if it "is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.[157] To give effect to the plain meaning of the statute and each of the terms therein, an applicant's testimony must satisfy all three prongs of the "credible, persuasive, and...specific" test in order to establish his or her burden of proof without corroboration.[158]

An asylum applicant may establish eligibility with testimony alone. However, if you, as the trier of fact, determine that other evidence is needed to corroborate the otherwise credible testimony of the applicant, you should request the evidence and the applicant must either: 1) provide the evidence; or 2) provide a reasonable explanation as to why he or she cannot provide the evidence.[159] Failure to produce the required evidence or a reasonable explanation of why it cannot be produced is a failure of proof.[160]

972, 974 (9th Cir. 2015) (holding that the IJ and the BIA could base a credibility determination on the inherent implausibility of the applicant's testimony and the consistency of that testimony with the background evidence in the record).

[157] INA § 208 (b)(1)(B)(ii); *see also* *Rapheal v. Mukasey*, 533 F.3d 521, 527 (7th Cir. 2008); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007).

[158] *See* RAIO Training Module, *Evidence - Asylum Division Supplement*, at 42-43.

[159] *See* INA § 208 (b)(1)(B)(ii); *see Ai Jun Zhi v. Holder*, 751 F.3d 1088, 1095 (9th Cir. 2014) (holding the IJ erred because she did not give notice to the applicant that he was required to provide corroborative evidence and also failed to give the applicant an opportunity to explain why or if the evidence was unavailable).

[160] *See* the RAIO Training Module on *Evidence*, for a more detailed discussion of corroboration and the appropriate considerations for determining when a request for corroboration is reasonable.

If requesting that the applicant provide corroborating documents, there is no requirement that such corroboration be in the form of affidavits or other sworn documents.[161]

1. Credibility and failure of proof

   The BIA has indicated that a failure of proof - lack of specificity or lack of corroboration – is usually considered as part of the burden of proof analysis, not as part of the credibility determination. As the BIA said,

   > there may be instances in which an [adjudicator] finds an applicant to be credible, but finds that she has failed to meet her burden of proof. For example, it may be that an applicant's testimony is plausible in light of general country conditions information, but that it is overly general. In such a case, we would find that the applicant had failed to meet the required burden of proof, but an adverse credibility determination would not be appropriate.... A failure of proof is not a proper ground per se for an adverse credibility determination.[162]

   Nonetheless, while lack of specificity or corroboration are factors normally considered to be part of the burden of proof analysis, an applicant's success or failure in providing specific testimony or corroborating documents can be cited as a factor in the credibility determination, especially in conjunction with other relevant credibility factors, such as consistency, demeanor, candor, and responsiveness. In addition, the submission of false documents may also be a relevant factor in a credibility determination, when considered as part of the totality of the circumstances.

   Thus, you "can base a credibility determination on the lack of corroborating evidence if [you] also encounter[] inconsistencies in testimony, contradictory evidence, or inherently improbable testimony."[163]

[161] Zuh v. Mukasey, 547 F.3d 504, 509 (4th Cir. 2008) ("We recognize that sworn affidavits may often deserve greater weight than simple letters. But no statute or case law suggests that documents at immigration hearings must be sworn.").

[162] Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997).

[163] Esaka v. Ashcroft, 397 F.3d 1105, 1110 (8th Cir. 2005). *But see* Chen v. Gonzalez, 434 F.3d 212, 221 (3d Cir. 2005) (stating that the corroboration analysis should remain separate from the credibility analysis: "It might seem intuitive that a lack of corroboration could cast doubt on the veracity of a witness's testimony, even a witness whose story was delivered with an appealing demeanor, internally consistent, and not inherently improbable ... However, it

However, you must explain why the lack of corroboration or the lack of a reasonable explanation for why the applicant cannot provide the corroborating evidence is relevant to the credibility determination in the totality of the circumstances.

The Eighth Circuit upheld a negative credibility decision against an asylum applicant because of a lack of detail in the applicant's testimony, his failure to adequately explain his previous act of bigamy, implausibility, and his failure to provide any corroboration. In reaching its decision, the Court said:

> The lack of corroborating evidence alone does not mean [the applicant] was not credible. However, in combination with other factors, the dearth of documentation does undermine his credibility ... [A] lack of corroboration, especially from "friendly" sources in this matter, combined with the other credibility issues, raises substantial doubts about [the applicant's] story.[164]

2. Sufficiency of non-testimonial evidence

Though likely rare, it is possible for an applicant to succeed in establishing eligibility for asylum by submitting significant corroborating documentation that establishes the elements required for asylum eligibility, but be found not credible as to aspects of his or her testimony. The adjudicator would therefore consider the credible aspects of the evidence presented to establish eligibility for asylum, and weigh the relevance of non-credible testimony against positive factors in making the credibility determination.[165]

For instance, the Ninth Circuit upheld the negative credibility finding

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is clear that the BIA's own rule requires a credibility determination to be independent of an analysis of the sufficiency of an applicant's evidence.").

[164] *Ombongi v. Gonzalez*, 417 F.3d 823, 826 (8th Cir. 2005); *see also Zhao Lin Chen v. Holder*, 531 F. App'x 364, 369 (4th Cir. 2013) ("A lack of detail and generalized testimony can be both a factor in assessing whether an applicant has satisfied his or her overall burden of proof and a factor in considering the credibility of an applicant's testimony. While the two analyses are distinct, they do sometimes overlap.").

[165] *See Camara v. Ashcroft*, 378 F.3d 361, 369 (4th Cir. 2004) (though the court upheld the IJ's adverse credibility finding, the Fourth Circuit remanded the case back to the BIA for review because the applicant had also submitted independent documentary evidence that could establish past persecution and the IJ completely ignored it).

entered against an Iraqi who claimed past persecution at the hands of the Hussein regime.[166] The court found the applicant eligible for asylum and withholding, however, as a result of the significant documentary evidence in the record establishing he would be viewed as an opponent of the regime and persecuted upon his return to Iraq because he was part of a group of Iraqis airlifted by the American government out of Iraq. The court held that "[t]here is, in short, substantial, non-testimonial, evidence in the record of the significant danger that [the applicant] and others involved in the American airlift would face if deported to Iraq, evidence from which no reasonable person could conclude otherwise."[167]

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Consular Consolidated Database

Since October of 2006, Asylum Officers have had authorized access to the Department of State's Consular Consolidated Database (CCD). The CCD holds selected history and outcome information concerning immigrant and nonimmigrant visa applications processed by consular officers at visa issuing posts worldwide. This can be a powerful tool for you to use at the time of the interview. There are a few caveats in using CCD information both during the interview and in the assessment.[168]

1. Confidentiality – visa application information is considered confidential.[169] You should keep in mind the distinction between information contained in the CCD that has been supplied by the applicant (which may be revealed to the applicant) and information that comes from official sources (such as comments added by consular officials, which may not be revealed to the applicant). Some types of information contained in the CCD that **may** be revealed to the applicant include:

[166] *Al-Harbi v. INS*, 242 F.3d 882 (9th Cir. 2001).

[167] *Id.* at 894.

[168] Langlois, Joseph, INS Office of International Affairs, *Asylum Division Access to the Department of State's Consular Consolidated Database and Use of Consular Affairs Visa Data in Asylum Adjudications*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: October 6, 2006).

[169] Langlois, Joseph, INS Office of International Affairs, *Disclosure of Consular Affairs Visa Data in Asylum Adjudications*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 24 January 2008).

the fact that the applicant applied for a visa,

the fact that the applicant was present at a U.S. Embassy or Consulate in a particular location on a particular date,

the fact that the applicant presented a particular document to the consular officer as part of the visa adjudication process,

the fact that the applicant was issued or refused a visa, or

any biographical information such as name, date of birth, address available in the CCD record as provided in a visa application (for example, the DS-156 form).

2. You must never refer to the CCD by name during the interview or in the written assessment. When confronting an applicant with contradictory information found in the CCD, you should refer to the information in general terms such as, "government records indicate...", or "our records show...". If CCD information is referenced in the assessment, you should refer to "Department of State records".

3. Contradictions between CCD information and an applicant's asylum testimony, both in the application and the interview, will often raise the issue of fraud. You should follow the appropriate established procedures when this issue is raised.

For more information on the use of the CCD please refer to, Langlois, Joseph. INS Office of International Affairs. *Disclosure of Consular Affairs Visa Data in Asylum Adjudications*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 24 January 2008).

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Legal Analysis -- Is the Credibility Factor Relevant in View of the Totality of the Circumstances?

A proper credibility assessment requires that you first identify which factors are

present in the case that may impact the credibility determination in the totality of the circumstances. As outlined by the statute, the factors that may be relevant to the credibility determination include the following:

- the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made),
- the internal consistency of each such statement,
- the consistency of such statements with other evidence of record(including the reports of the Department of State on country conditions),
- the inherent plausibility of the applicant's account,
- any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim,
- the demeanor, candor, or responsiveness of the applicant, or
- any other relevant factor.

Once you have identified which credibility factors are relevant to the applicant's asylum claim, you must then weigh their relevance under the totality of the circumstances standard, and make an explicit credibility determination.

Effect of credibility flaws that are deemed irrelevant:

If a non-credible assertion is irrelevant and the claim is approvable on credible facts, the assertion that is irrelevant and not credible does not generally lead to a finding of ineligibility. The asylum claim must be evaluated based on the totality of the circumstances and all the relevant evidence.

Effect of false statements that are relevant:

An unexplained, relevant, credibility flaw defeats that portion of the claim related to the credibility flaw. If the applicant has not provided additional credible evidence sufficient to establish eligibility for asylum, the applicant will be found not credible and referred or denied.

Split Credibility:

There may be cases where a relevant part of the testimony is found not credible, but the credible parts of the testimony are sufficient to establish asylum eligibility.

You must evaluate the nature of the credibility flaw in context with the entire record of information.[170]

For further guidance on split credibility decisions, see the section of the ASM supplement - **Credibility Analysis in the Assessment or NOID.**

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Credibility Analysis in the Assessment or NOID

A credibility determination must be made in every asylum case and must be reflected in each assessment or NOID.[171]

1. **Positive Credibility Finding**

   If you determine that the applicant's claim is detailed, consistent, and plausible, then you need only make a brief statement in the assessment indicating that the applicant was found credible.

   The credibility determination should be placed after the summary of the facts. For example: "The applicant's testimony was detailed, consistent, and plausible. Therefore, it is found credible."

2. **Negative Credibility Finding**

   The written explanation of a negative credibility finding must reflect the following six-step analytical framework derived from existing statutory guidance and case law. This framework is intended to provide a methodological approach to the written analysis of credibility determinations. The following are the required steps which should be identifiable in the written analysis of credibility. Factors identified

[170] *See* *Matter of O-D-*, 21 I&N Dec. 1079, 1082 (BIA 1998) (where the BIA considered the significance of a counterfeit identity card and birth certificate in the "context of the [applicant's] claim as to particular vulnerability to persecution in a particular country.").

[171] *See* 8 C.F.R. § 208.19.

should be analyzed using these steps:

- Step 1: Identify the type of credibility factor (for example, lack of detail, inconsistency, plausibility, or other relevant factor).
- Step 2: Provide the evidence of the lack of detail, inconsistency, plausibility or other relevant factor.
- Step 3: Provide the applicant's explanation or lack of explanation for each factor.
- Step 4: Address if the explanation is reasonable for each factor, and explain why.
- Step 5: Explain how each factor is relevant to the applicant's claim.
- Step 6: After analyzing all identified factors, consider the totality of the circumstances – both positive and negative – and determine if the applicant's testimony is credible.

The REAL ID Act requires Asylum Officers to consider the totality of the circumstances and all relevant factors in applying this analytical framework to negative credibility determinations. Applying the totality of the circumstances involves examining both positive and negative credibility factors.

a. 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.

Inconsistencies

If the testimony was inconsistent, then the assessment or NOID must identify the parts of the testimony that were found to be inconsistent. It must 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 changed her testimony again and stated she was at the hospital when she was arrested. The applicant explained that she had forgotten where she was when she was arrested, but affirmed that the hospital was the correct location. This explanation is not found to be reasonable. The applicant only testified to one arrest and the three locations she identified were substantially different. It would be reasonable to expect someone to correctly identify whether such an arrest took place at a parent's home, a market, or a hospital if that arrest had taken place.

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 relevant detail concerning his claim 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 provide details as to how he received the pamphlets, where he distributed them, or the type of information the pamphlets contained. When asked, he did not give any explanation as to why he was unable to provide these details. This lack of explanation is not reasonable because an applicant who has firsthand experience in an activity that took place on a daily basis should be able to provide a description of what that activity entailed.

Implausibility

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. This explanation of the circumstances of his escape is not reasonable as there is an absence of objective evidence to support that such magical powers exist, and the applicant provided no other explanation for his ability to escape.

b. Relevance

After you identify the factor that you found not credible and explain the reason(s), you must then explain why the non-credible factor is relevant to the asylum claim.

Example:

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

c. Totality of the Circumstances

After analyzing all identified factors, you must consider the totality of the circumstances and determine if the applicant's testimony is credible.

Example:

The applicant testified that he was imprisoned and beaten because of his ethnicity and refusal to engage in combat when he was conscripted into the military. He provided detailed testimony regarding the reasons why he was opposed to fighting, as well as his time in detention and subsequent incidents of harassment. He was unable, however, to name with particularity the orders to engage in combat to which he had consciously objected, stating generally that it was the order to "bear arms" and "participate in war." While the applicant's testimony was vague regarding certain aspects of his claim, he presented testimony concerning his beliefs and incidents of harm that was quite detailed, internally and externally

consistent, and corroborated by documentary evidence. Therefore, the applicant's testimony was found credible under the totality of the circumstances.

Example:

The applicant testified that he was a Falun Gong practitioner and that he owned an internet bar and video rental store in China. He downloaded information on Falun Gong and distributed it to members of his community. As a result, the police raided his video rental store, and detained and beat him for four days.

The applicant's testimony was found not credible because it presented internal inconsistencies and was inconsistent with other evidence in the record.

The applicant's testimony contained inconsistencies related to the number of people he practiced Falun Gong with, whether he practiced Falun Gong with his family, the date he opened his internet bar, where exactly he downloaded the Falun Gong materials, whether the police seized the CDs from his store at the time of his arrest, as well as numerous other inconsistencies.

[Full analysis must specifically address at least one of the factors that form the basis of the adverse credibility finding]

The applicant testified that he downloaded Falun Gong materials from the internet using a computer at his store, which was consistent with the statement in his written affidavit. Later in the interview he testified that all the materials were downloaded using a computer at his mother's house. When asked for an explanation for this inconsistency the applicant stated that he did not remember making the earlier statement and that the information in the affidavit was incorrect because there were no computers at his store. The applicant's explanation is not reasonable as his initial testimony was provided in response to an open ended question asking him to describe how he downloaded materials. This is relevant to his claim that he was arrested and harmed because he downloaded and distributed Falun Gong materials.

Given the numerous inconsistencies and the lack of reasonable explanations for his inability to testify consistently, the applicant's testimony is found not credible under the totality of the circumstances.

3. Split Credibility Finding

As discussed in the RAIO *Credibility* training module, you may determine that part of the applicant's testimony is not credible, but that another part is credible. You must identify those parts of the testimony that were found not credible, explain why they were found not credible, and assess the reasonableness of the applicant's explanation when given an opportunity to explain the credibility flaw. You must also state how they are relevant to the applicant's claim. When making a split credibility determination, the assessment must also separately identify those parts of the claim that were deemed credible.

A split credibility analysis requires that you determine what effect the non-credible portions of the testimony have on the applicant's overall eligibility. For instance, an applicant may be credible concerning issues relevant to his/her past persecution, but not credible concerning issues relevant to establishing that a mandatory bar does not apply.

Example:

The applicant claims he was persecuted because he was an active member of an opposition political party in country X and because he belongs to a minority ethnic group. The applicant's testimony that he belonged to the opposition party is not credible. However, the applicant credibly established membership in the minority ethnic group. Country conditions reports show that members of the ethnic group are subject to a pattern or practice of persecution.

General Considerations

Avoid confusing the credibility analysis with the analysis of other legal elements of the claim.

Well-founded Fear: A determination about an applicant's credibility should be distinguished from his/her claim of well-founded fear. For example, 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.

Return to country of persecution: Generally, the fact that an applicant has returned

to the country of persecution, after having arrived safely in the U.S. or a third country, is considered part of the analysis of well-founded fear. Some circuit courts have upheld adverse credibility findings that have been based, in part, on the applicant's return to the country of persecution.[172] However, you should be very careful when considering a return to the country of persecution as part of the credibility analysis.

As stated by the Seventh Circuit, "[a] proposition that *any* voluntary return to one's home country renders any claim regarding past and future persecution incredible would be far too broad a proposition to serve as a working rule for assessing an alien's testimony."[173]

Examples:

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.

Appropriate

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

The applicant's ability to remain safely 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.

The assessment or NOID should contain a firm credibility finding.

You must avoid making a tentative 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."

Your personal opinions should be absent from the written credibility

[172] *Loho v. Mukasey*, 531 F.3d 1016, 1018-1019 (9th Cir. 2008); *Tarraf v. Gonzales*, 495 F.3d 525, 530, 534 (7th Cir. 2007); *Jean v. Gonzales*, 416 F.3d 87, 89, 91 (1st Cir. 2006).

[173] *Tarraf v. Gonzales*, 495 F.3d at 534.

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.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

There are no IO Supplements

REQUIRED READING

1.

2.

ADDITIONAL RESOURCES

1.

2.

SUPPLEMENTS

IO Supplement
Module Section Subheading