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Affirmative Asylum – An Update

The following is an update to the November 21, 2022, blog post about my experience representing an Afghan refugee seeking Affirmative Asylum.

Under ordinary circumstances, decisions are issued within two weeks of the Asylum Interview. However, after the U.S. pulled out of Afghanistan and evacuated thousands of Afghan citizens, the pace of the Affirmative Asylum process slowed to a crawl due to the high number of cases. On April 18, **215 days after her interview**, my client received notice of the decision and I am happy to report she was approved for asylum!

I had asked my client to be on the lookout for the notice of the decision to arrive in the mail. While driving home from the office, I noticed a text from her with pictures of documents and a request for me to explain what they meant. After quickly reading the Asylum Approval notice and breathing a tremendous sigh of relief, I called her and gave her the good news. And as I sat in the parking lot of doggy day care, openly weeping tears of joy and relief, I was reminded of the incredible journey she has traveled to get to this point. I am so proud to have played a part in helping her. She won, she is safe, and she can now begin planning for her future. Without a doubt, this was the most rewarding work I have ever done. I am so very happy for her.

Afghanistan

In August of 2021, the U.S. ended a 20-year war when it exited Afghanistan and Taliban forces entered Kabul, regaining control of the country. The Taliban conducted door-to-door searches and targeted killings of government employees, journalists, health care workers, and women judges, in retaliation for supporting the former Afghan government. After the Taliban seized the border crossings, Kabul Airport was the only secure route out of Afghanistan. Thousands of Afghans rushed

to the airport to evacuate. The U.S. airlifted over 120,000 people from Kabul, many of which were affiliated with foreign governments. Before the takeover, Afghanis provided services to foreign governments in exchange for high profile jobs and much needed income. The Taliban consider working for any government, especially the U.S. government, a treasonous act.

The evacuees were flown to U.S. Air Force bases in Qatar and Germany where they were vetted and screened. Camps were established as temporary housing in Virginia, Texas, Wisconsin, and New Jersey. Nashville became home to more than 500 Afghan refugees in January 2022, at which time Vanderbilt University and Tennessee Justice for Our Neighbors (TJFON) joined forces to find pro bono attorneys to represent the refugees in the affirmative asylum process. Spencer Fane was invited to participate in the endeavor and attorney June Santiago (Denver) and I volunteered.

In May 2022, volunteer attorneys were provided a training deck along with news articles detailing Taliban atrocities. I completed the training materials and then I completed them a second time for good measure. Piece of cake, right? Not long afterwards, attorneys were assigned cases and the work began. We had less than four months to learn how to be asylum lawyers and file the applications.

Following the arrival of the refugees in Nashville, TJFON conducted interviews and collected documents necessary to prove identities of the applicants. When I was assigned my case, I received a TJFON file on my client. I learned she spoke Dari (the variety of the Persian language spoken in Afghanistan), and she was a 24-year-old polio vaccinator affiliated with the former Afghan government and the United Nations. Prior to the Taliban takeover, it was reported that Taliban forces were killing polio vaccinators across Afghanistan. My client's supervisors informed her the Taliban issued edicts forbidding the employment of women, and requiring all women wear the hijab and travel with a male chaperone. When she fled Afghanistan, she left her family, her fiancé, her career, and her home. She arrived at Fort Bliss, Texas where she resided in a refugee camp until she was relocated to Nashville, Tennessee.

Affirmative Asylum

According to the United States Citizenship and Immigration Services (USCIS) website, there are seven steps to affirmative asylum.

Step 1: Arrive in the U.S.

Applicants must be present in the U.S. to apply for asylum.

Step 2: Apply for Asylum

Communicating with my client was challenging. We had a language barrier complicated by cultural differences, as Afghan women are not accustomed to sharing personal information. With the help of translator services, translator apps, and hours of texting and telephone calls, we put her case together. I gathered details of her experiences, and researched country conditions for supporting documentation. Together, we drafted and finessed her affidavit and application because it had to be 100% accurate. Inconsistencies in the documentation can affect the applicant's credibility. On August 11, 2022, we filed the application with USCIS in New Orleans.

Step 3: Fingerprinting and Background/Security Checks

Step 4: Receive an Interview Notice

On August 23, 2022, we received notice the interview would take place via video conference on September 15, 2022, in Nashville. Applicants are allowed to bring their attorney and they are required to bring a translator if they do not speak English. Through the Tennessee Language Center, we booked a Dari speaking translator. He met us in Nashville the day before for a mock interview, and the morning of the interview at the USCIS Field Office.

Step 5: Interview

The interview took place at the USCIS Nashville field office. The purpose is to determine if the applicant meets the definition of a refugee and evaluate the applicant's credibility and eligibility. The officer questions the applicant about why they want asylum, why are they fearful to go to their home country, are there any issues that would bar them from eligibility. Did they or their family ever give the Taliban anything of value? My client worked part-time in the ER of several hospitals.

The officer asked if she gave medical treatment to a member of the Taliban. Typically, the officer will ask if the applicant sends money to family in Afghanistan, and did the family use the money to pay for utilities such as water and electricity. The question infers the applicant indirectly supported the Taliban because the utilities are owned by the Taliban. During the interview, attorneys are not allowed to question their client or mitigate the applicant's responses. The attorney may submit a short closing statement or submit the closing in writing.

Step 6: Asylum Officer Makes Determination on Eligibility and Supervisory Asylum Officer Reviews the Decision

The officer reviews the interview transcripts and the submitted materials to determine if the applicant is eligible for asylum, if they meet the definition of a refugee, and if they are barred from asylum. A supervisory asylum officer reviews the asylum officer's decision to ensure it is consistent with the law.

Step 7: Receive Decision

Prior to the influx of Afghan refugees, affirmative asylum decisions were issued in two weeks. Now, USCIS advises the decision may take six months.

While we wait, my client continues to work at Walmart. She is taking English classes because she wants to work in health care again. The education and training she received in Afghanistan do not qualify her to work as a nurse in the U.S.

I worry for her and her future. It is the kind of worry that keeps me awake at night. If the USCIS does not find her eligible or credible, she will have an opportunity to appear before an immigration judge to plead her case. If she loses, she will be forced to return to Afghanistan where she will face certain punishment for residing in the U.S. and abandoning her country. The thought of removal is terrifying…absolutely terrifying.

When I agreed to represent an Afghan refugee, I needed something to engage in. I was excited for the opportunity to be energized by meaningful work. Affirmative asylum is the most satisfying work I have done, and I hope I have the opportunity to take another asylum case. It was invigorating. I encourage my colleagues to consider representing a pro bono client in an asylum matter. It sounds like a cliché,

but it changed me. I learned a lot about Spencer Fane and the sincerity of our core values. I learned that communication is more than spoken words, and every client deserves our best efforts. Most importantly, I learned it is easy to talk about making changes and standing up for what you believe. Putting your words into action requires more than talking about it. It took courage to flee her country, her culture, and her family. Her courage inspired me.

This blog was drafted by Diane Minear, an attorney in the Spencer Fane Overland Park, Kansas, office. For more information, visit www.spencerfane.com.