Psychological Assessment Protocol
For Asylum Applications in Federal Immigration Courts

By

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Abstract

The unique challenge posed to immigration authorities by asylum applications creates a demand for psychological evaluations to provide accurate assessment of asylum seekers and their claims of persecution. The psychological evaluation in asylum cases requires forensic psychology experts to become familiar with the terms and procedures used to adjudicate asylum applications, to understand the legal dilemmas faced by immigration authorities, and to know the standards governing the evidence provided by experts in federal courts. The protocol for psychological evaluations in asylum applications provides the court with evidence that demonstrates the validity of persecution claims made by asylum applicants and justification for the veracity of asylum seekers’ claims, based on professional psychological assessment. It calls for forensic psychology experts to maintain unbiased perspectives and avoid ethical pitfalls, as well as develop a study that considers the questions relevant to the dilemma faced by immigration authorities for each unique case. Careful selection of tools and procedures will guarantee valid information is collected, and the outcomes of evaluations and opinions that develop must be recorded in written reports, which offer clear recommendations for immigration authorities to consider.

Key Words: Asylum, Immigration, Psychological Assessment
Chapter 1 - Introduction

Historical Context

At the core of American values, canonized in the constitution and amendments that followed, are the rights of persons persecuted elsewhere in the world to find shelter and protection in this country. The United States of America was founded by pilgrims who crossed the Atlantic Ocean from Europe in search of a new land. While some immigrants came to America in search of opportunities for a better life, the majority left in the attempt to escape religious, ethnic, and political persecution in their homelands. Thus, the massive migration of new settlers from Europe to the North American continent in the late 17th century and throughout the 18th century was more of an 'exodus' from lives rife with bigotry and persecution in Europe, and much less a 'pilgrimage' to a better place to live (Marks, 1995; Nash, 1982).

The Middle East and Europe had, by that point in history, seen the rise and fall of civilizations, nations, and cultures that were technologically, militarily, and politically advanced compared to other parts of the world. These advances were the result of ongoing and progressive emergence of “conflict-based” societies and corresponding development of war technology. The driving force behind these massive and rapid developments was intense population pressure, as well as scarcity of resources more and more people had to share to live (Diamond, 1997; Scultz & Lavenda, 1998). With the availability of advanced means to carry out such inter-human conflict, and with increasing intensification of competition for limited resources, the ground in the Old World was ripe for persecution of those weaker and those less endowed. Hence, commensurate with the development of conflict-based civilizations was the increase in the prevalence of persecution of meeker, poorer, or less protected segments of populations, giving rise to the need to escape (Diamond, 1997; Scultz & Lavenda, 1998; Chirot, 2001)). And escape they did, by the hoards – mostly to the United States.

However, not all immigrants who came to the New World did so of their own will. The extensive transport of Africans to the American continent was no ‘pilgrimage’ or ‘exodus.’ The migration of tens of thousands of Africans was largely forced, and for the primary purpose of slave-trade and slave-labor in the U.S. (Connah, 1987; Morgan, 1975; Smedley, 1999). Interestingly, slave-trade and slave-labor in and of themselves are now recognized as forms of persecution, since the abolition of slavery by the 13th Amendment to the U.S. Constitution passed in congress on January 31, 1865. Consequently, being a victim of slave-trade or slave-labor anywhere in the world today would qualify an applicant as an asylum seeker in the U.S., as well.

The moral, sociological, and psychological transformation of American society that occurred in more than three hundred years of history since then was largely affected by these historical antecedents. The resultant legal expression of these early processes was in the shaping of American constitutional protections for foreign nationals who experience adversity in their countries of origin. In the late 1940's, however, soon after the end of World War II, the newly-created United Nations approved a convention spelling out specific rights and protections that nations should confer upon refugees and asylum seekers. At the time the U.N. was primarily concerned with the thousands of refugees in Europe who were driven from their homes during and after the war and had no country to protect them. Since then, the number of refugees – as well as the countries they are fleeing from – has increased. The United States ratified the U.N treaty on refugees and asylum seekers in 1968 and put its primary provisions into immigration law in 1980.

Legislative History of Asylum Laws

The right to seek and enjoy asylum from persecution is enshrined in Article 14 of the United Nations Universal Declaration of Human Rights. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol define who refugees are and establish their rights in the country of refuge. Altogether, 145 states, including the United States, have signed
either or both of these U.N. instruments. International human rights law, including Article 9 of the Covenant on Civil and Political Rights, prohibits arbitrary detention of refugees, requiring that any detention must be in accord with procedures established by law. Article 31(2) of the Refugee Convention limits ‘restrictions’ on the movements of refugees who enter territories illegally to “those which are necessary” (Frelick, 2005). Subsequent U.S. immigration rules regarding the processing of refugees escaping persecution follow the spirit of these humanitarian principles (McBride, 1999).

Chapter 2 - What Are Persecution and Asylum?

Common Forms of Recognized Persecution by U.S. Immigration Law

What has come to be commonly known in public parlance as ‘Asylum’ invokes a variety of thoughts on why people coming to the U.S. are seeking protection from persecution in their countries of origin. The legal definition of asylum is a legal protection from deportation sought by non-U.S. citizens who enter the U.S., either legally or illegally, asking for refuge based on claims of persecution or fear of persecution in their home country. The common forms of asylum applications are based on the following:

1. Asylum from Political Persecution: In this category, protection is ordinarily offered to persons who expressed or otherwise acted upon unpopular or unacceptable political convictions to the regime ruling their country. Consequently, they find themselves pursued with predictable arrest or torture, or the threat of death to those expressing similarly unpopular political views or exhibiting similarly unpopular actions. An example is a Chinese dissident persecuted for voicing anti-government statements through computer-based social media.

2. Asylum from Exposure to Criminal Activity: In this category, protection is offered to persons who, because of their physical circumstances or occupations in their countries of origin, find themselves exposed to criminal activity. These circumstances usually involve illicit drug trafficking or inter and intra gang violence, etc., that directly endangers them and their loved ones. An example is a Brazilian public prosecutor who, after putting dangerous gangsters behind bars, was advised to leave the country for fear of violent retribution against her and her family.

3. Asylum from Religious Persecution: In this category, protection is ordinarily offered to persons who are being persecuted in their countries of origin due to their religious affiliations or religious practices. Typically, their practices or affiliations are deemed unacceptable and/or illegal in the countries they hail from. An example is members of the Bahai group who escaped the Islamic Republic of Iran because their religion was outlawed, or members of the Igbo in Nigeria persecuted for their Christian faith by the majority Muslim population.

4. Asylum from Persecution based on Sexual Orientation: In this category, protection is offered to persons who, because of their sexual orientation or sexual practices (also known by the acronym ‘LGBT,’ which stands for Lesbian, Gay, Bi-Sexual, and Trans-gender), are persecuted in their country of origin. An example is a lesbian from the Republic of Ukraine, who because of her sexual orientation is persecuted, harassed, and threatened.

5. Asylum from Racial Persecution: In this category, protection is ordinarily offered to persons who, because of their membership in a distinct racial group, are persecuted in their countries of origin. An example is members of the Tutsi in Rwanda who escaped genocide by the majority Hutu in the civil war there (Amnesty International, 2003; Prunier, 2001).

6. Asylum from Other Forms of Persecution: In this category, protection is offered to persons who do not fall into any of the other categories, but who are persecuted for other reasons in their countries of origin. An example is those who escape active recruitment into military duty or guerrilla membership by rival sides of a civil war in El-Salvador, Nicaragua, or Colombia.
An important distinction has to be made between refugees and asylum seekers. Although members of both groups have been essentially pushed out of their homelands due to persecution and abuse, they differ in their physical circumstances: refugees typically remain in the same region as their homeland, often in a neighboring country, while asylum seekers have come to reside in the U.S. Thus a person of Mexican citizenship who is escaping the drug-related violence of his or her homeland and crosses the border into the U.S. would be considered a refugee. Conversely however, the same set of circumstances may push a person of Colombian citizenship to escape drug-related violence in his or her homeland and travel to the U.S., but that person would be considered an asylum seeker by immigration authorities (Rempell, 2009).

**Legal Requirements for Asylum**

Central to the requirements for asylum is that the person(s) making the asylum application meet(s) the legal definition of persecution. As with many other aspects of Federal immigration law, the legal definition of persecution is a “moving target” defined and redefined by precedence (Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012). As such, the legal definition of persecution currently includes the actual experience of or the threat of torture and imprisonment, as well as serious threat of bodily harm and death. The legal definition of persecution currently excludes actual experiences of harassment or discrimination that do not result in demonstrable physical or emotional harm to the asylum seeker. Given that most physical signs of harm from persecution remain invisible through time, the psychological scars that persecution leaves behind become increasingly relevant for evidentiary purposes in legal proceedings. Furthermore, because the burden of proof to meet the legal definition of persecution is “demonstrable physical or emotional harm to the asylum seeker” (INS v. Stevic, 1984; INS v. Cardoza-Fonseca, 1987), the psychological evaluation is perhaps the only viable evidentiary vehicle by which to demonstrate the veracity of persecution.

Asylum applications are subject to stringent review procedures by adjudicators in the Department of Homeland Security and in the Department of Justice, and to rigorous background and security checks. Additionally, asylum decisions are discretionary, meaning that the immigration judge weighs all the evidence and other factors and decides purely on the basis of his or her judgment in each case. That said however, each decision is handed down within a framework of law and judicial opinions interpreting the law, which form the basis for existing precedence within Federal immigration laws (Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012). Judicial discretion notwithstanding, the Department of Justice has denied over 80% of asylum applications in the past few years, indicating that the requirements for asylum are ordinarily difficult to meet. The difficulty lies largely in the patent absence of evidentiary materials that could support the asylum application, leaving many applicants without sufficient resources to make their cases before immigration authorities.

Current immigration law excludes from asylum protection persons who have committed criminal offenses, either in the U.S. or elsewhere – those who pose threats to national security, and have committed either “war crimes” or “crimes against humanity.” Asylum laws also generally exclude persons who fled their homes due to civil wars, generalized violence, those subject to criminal prosecution in their countries of origin, and those raising terrorism concerns. Fleeing civil wars and generalized violence, however, could meet the criteria for inclusion under the asylum protection umbrella if one or more of the designations are met below.

To win legal protection from being deported, asylum seekers must:

1. At the time of the asylum application reside in the United States and outside their country of origin.
2. At the time of the asylum application be afraid of persecution.
3. At the time of the asylum application be harmed or fear harm by government (police, army) or others (militias, gangs) that the government or law enforcement in the country of origin are unable or unwilling to control.
4. At the time of the asylum application be affected by at least one of several defined conditions delineated above (i.e., political, race, religion, nationality, social group, etc.).

5. At the time of the asylum application must be considered not a dangerous person who would be excluded from asylum protections if deemed dangerous to U.S. society.

The Process of Asylum Application

The process of asylum application is generally divided into two distinct tracks, which are distinguished by the timing and type of contact the asylum seekers have with immigration authorities. Often times however, these two tracks also confer upon the applicants two predictably differing outcomes. The first track typically involves an asylum seeker who had been intercepted upon entry into the U.S. in the port of entry or near the U.S. border, and is screened for eligibility by immigration inspectors. In what has been legally authorized since 1996 and has come to be known as “expedited screening,” an interview with the asylum seeker is conducted by low-level immigration inspectors. This process is meant to identify and immediately remove individuals who are not eligible to come into and remain in the U.S. Because the law does not require the presence of an interpreter in these interviews, many asylum seekers have been unfortunately turned away, in violation of immigration law and in violation of their basic human rights. The vast majority of asylum seekers in this track are typically turned down and immediately deported, often with dire consequences to their lives and well-being.

The second track typically involves an asylum seeker who had entered the U.S. without being intercepted upon entry and filed an application for asylum with immigration courts subsequent to his or her presence on U.S. soil. In what is commonly known as “defensive application,” the applicant typically has no legal status in the U.S., and for most asylum seekers, a hearing before an immigration judge is the first contact with the federal government. A variation of the defensive application is when the asylum seeker presents himself in the U.S. consulate or U.S. embassy in another country. There, technically-speaking, the space inside the U.S. consulate or inside the U.S. embassy is considered sovereign U.S. territory within another country’s borders. Of this category, approximately 20,000 - 30,000 applications are approved each year.

The process by which the United States grants asylum is further complicated by the fact that it takes place in two different federal agencies. One is the U.S. Citizenship and Immigration Services (USCIS), located in the Department of Homeland Security. The other is the Executive Office for Immigration Review (EOIR), located in the U.S. Department of Justice. Both entities reference the same constitutional protections for asylum seekers and rely on legal precedence established in Federal Immigration courts (Schaefer, 2012).

The Primary Legal Dilemma in Adjudication of Asylum Applications

The primary dilemma that asylum applications present to immigration authorities involve the question of veracity of the claims of persecution made by asylum applicants. For the most part, persons seeking asylum in the U.S. have left their homelands in haste. Consequently, they are often without sufficient or even adequate identification, let alone other materials that could support their claims of persecution in their countries of origin. Subsequently, immigration judges adjudicating asylum applications are often faced with the vexing question of whether to believe or not to believe asylum applicants’ accounts of events leading up to the escape.

What further complicates matters for immigration judges is the fact that the majority of persecution cases go undocumented and are in fact purposefully hidden from public view by perpetrators. Consequently, asylum applicants tend to be unable to acquire the necessary documentation of illegal arrest or unlawful detention, because there are no documents ever created. Likewise, persons who experienced physical
torture and obtained medical care after their release are unable to obtain medical records of their care because medical providers are afraid to produce incriminating evidence, lest they be persecuted too. Evidence of illegal anti-government political activity is often destroyed by government agents and other law-enforcement units, leaving no trace.

An example is an applicant caught while demonstrating with thousands of Iranians in the Green Revolution of June 2009 in Tehran. He was taken to an undisclosed prison, the name of which he did not know, was held without charges for approximately one month, during which he was tortured and beaten. His family obtained his release in exchange for a very steep bribe that was paid in cash through an intermediary to some internal security forces (possibly the revolutionary guards) chief. There was no record to be found of his arrest, no account of his torture, and no documentation of the terms of his release from prison. Also, there were no medical records of the extensive care he received upon his release, all done in the privacy of his home. The only evidence that remained was in his mind. Specifically, his experiences of incarceration and torture left indelible memories that formed the foundation for his post-traumatic stress syndrome, which, in the end, his only evidence.

Chapter 3 - The Function of Psychological Evaluations in Asylum Proceedings

Federal Immigration Court Legal Proceedings in Asylum Hearings

Unlike other legal proceedings, hearings in federal immigration courts tend to be more constrained and involve an immigration judge, an attorney representing the federal government, and sometimes an attorney representing the asylum seeker (Immigration Court Practice Manual, 2010; Office of the Federal Register, 2010). The burden on the immigration judge is managing the legal proceedings in court and rendering rulings for each case. Both attorneys (applicant and government) argue before the judge their respective points of view on each case. The role of the forensic psychology expert in federal immigration courts is to assist the immigration judge in the determination of the case by answering the typical referral questions for which expertise has been sought:

1. To **ascertain** to the extent possible, the validity of persecution claims made by the asylum petitioner.

2. To **justify** the veracity of the asylum petitioner’s claims based on a professional assessment of the psychology of the asylum seeker (Vaisman-Tzachor, 2012).

The federal immigration judge will render a decision that will take into consideration important factors presented by the forensic psychology expert about the psychological states and about the psychological traits of the asylum applicant which are directly relevant to persecution claims. The judge will further consider the motives of the asylum applicant (i.e., either seeking protection, or seeking advantage) in leaving his country and migrating to the U.S. Particularly, the immigration judge is likely interested in the forensic significance of the assessment findings (i.e., psychological traits; emotional states, and motives for migration) of the asylum seeker in ascertaining the veracity of claims of persecution (Cervantes et. al, 2010; Frumkin & Friedland, 1995).

In sharp contrast to considerations regarding hardship to persons other than the applicant, as common in other immigration court proceedings (cancellation of removal, exception to inadmissibility, etc.), the focus in asylum proceedings is on the hardship that would befall the asylum applicant himself (Vaisman-Tzachor 2003; Vaisman-Tzachor 2012). Consequently, the evaluation by the forensic psychology expert that would follow will focus only on the asylum seekers psychology and nobody else. Therefore, the question of whether the applicant is afraid for his life, should he be forced to return to his country of origin, is relevant in this evaluation. An equally important question is whether the asylum applicant is suffering from a psychotic process (which could explain the fears of being returned as based on a paranoid delusion, rather than based on a threatening reality).
Ultimately, the immigration judge will render a decision about a case based on the anticipated harm that the asylum applicant is expected to suffer if the application is refused. Henceforth, it is the task of the forensic psychology expert to also anticipate consequences of a removal order, based on information obtained in the evaluation from the asylum seeker and corroborated by other sources. This presents the forensic psychology expert with a demand to become substantially informed in the conditions in the place from which the asylum applicant arrived. Consultation with experts in the fields of political science, sociology, criminology, historians, and clergy would be most beneficial in many situations. Thus, adherence to scientific methodology, following a tried protocol, and making reasonable efforts to corroborate the information from other sources would go a long way to meeting the challenge. Adherence to this protocol would also likely increase the predictive validity and reliability of the information the forensic psychology expert presents to the immigration court (Ackerman, 1999; Weiner & Hess, 2006; Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012).

**Federal Rules of Evidence**

Federal rules of evidence (FRE) are the standards by which all testimony, including psychological testimony, is admitted into evidence in legal proceedings at federal immigration courts. These rules sometimes conflict with specific state rules of evidence in civil or criminal proceedings, and demand that the forensic psychology expert be familiar with requisites (American Bar Association, 2010; Weiner & Hess, 2006; Buckles, 2003). Interestingly, federal rules of evidence are, by definition, consistent with professional standards of care for psychologists and as such, are intuitively acceptable to most readers. They are based on two essential premises, subsumed under the rulings that gave rise to their existence in precedence:

1. **1923 Frye Test of Evidence**, which posits that the scientific principle or discovery upon which testimony offered in federal immigration courts relies, is widely accepted and well recognized in the respective scientific community.

2. **1993 Daubert Standard**, which posits that testimonial evidence offered to federal immigration courts is deemed admissible when reached with reasonable degree of psychological certainty, which would be above 50%, or better than chance (Weiner & Hess, 2006; Buckles, 2003).

Emanating from federal rules of evidence are specific demands for particular disposition on the part of the forensic psychology expert. This is true when selecting the instruments and procedures to be used in order to extract relevant information from asylum seekers and when presenting information to the court. The selection of psychological tests therefore must be from those commercially available; the tests’ reliability must be considered; the tests must be relevant to the legal issue/s before the court; their administration must be done in the standard fashion; the tests must be applicable to the population (by norms) and for the purpose being used; preference should be given to objective tests, and even more so to those instruments that incorporate response style (validity scales) into their scoring and interpretation scheme (Babitsky, Mangraviti & Babitsky, 2006; Weiner & Hess, 2006; APA, 1991; APA, 1985).

**Chapter 4 - The Evaluation Protocol**

**Fashioning an Assessment Protocol**

At the core of the psychological evaluation of an asylum applicant is the attempt to recreate the emotional and mental state of the person at the time in which he or she was persecuted, threatened, tortured, or abused in his country of origin. To that end, the interview is an essential part of the evaluation process in that it seeks to approximate those states of mind. Particularly important are observations made at the time the applicant’s narrative describes events that led to the person fleeing, experiencing persecution, or other related accounts. Attention to details of the story and to the emotional responses, at the time of the interview, to those details may help establish the approximate emotional state at the time of persecution. Clearly, the greater the correspondence between the
emotional responses and the nature of experiences described the greater credibility the asylum seeker garners in the eyes of the evaluator. For example, an asylum seeker describing the witnessing of her husband’s execution would be expected to manifest the horror and anguish of the situation in her emotional reactions during the interview.

Equally important is the establishment of an assessment process that illuminates the veracity of the claims made by the applicant for asylum. Critical to this question is the congruence between the various aspects of the person’s presentation during the assessment process. For instance, if a person claiming persecution reports having left dear family members behind but does not show emotional signs of sadness and longings for those left behind, then his claims may raise suspicion. Consequently, the narrative of the asylum seeker must be compared with objective measures of corresponding emotional states. Since most asylum seekers experienced significant loss in leaving all they had and all that was valuable to them behind, they should exhibit sadness and depression. Given that most asylum seekers experienced serious threats of harm, corresponding levels of anxiety should be noted as well.

Additionally, the evaluation must address the subjective fear the asylum applicant experiences when considering a forced return to his country of origin. The legal definition of an asylum seeker specifically demands that the person applying for asylum must fear for his or her life if returned. These fears, however, must not only be measured by an objective process (such as tests measuring state anxiety) in and of themselves, but also considered against a backdrop of an objective assessment of the reality-testing capacity of the person seeking asylum (with tests that measure personality characteristics and function). Together, these measures hold the promise of representing a reliable and coherent image of the realities that the asylum applicant may be facing. For example, an asylum seeker indicated that she had made plans and secured necessary provisions to commit suicide in the event that she was ordered to return back to her country, because she was convinced that she would be subjected to torture there.

Furthermore, the evaluation must consider the unique circumstances of each asylum applicant, which differ from other immigration applicants in motivation for migration. Asylum seekers left their country of origin against their will, and not because they wanted to live in the U.S. Consequently, the evaluator would not expect to observe hope and optimism in a sincere asylum seekers evaluation, compared to others who came of their own volition. By and large, asylum seekers exhibit hopelessness, depression, and pessimism associated with their forced presence in the U.S. For example, an asylum seeker who, shortly after arriving into the U.S., began to abuse alcohol and became depressed would be largely more credible than a person who immediately upon arrival went on a shopping spree. The psychological evaluation must therefore illuminate such aspects of the person’s psychological presentation and history that would lend greater credence to claims of persecution. Those same aspects must be contrasted, however, with other objective circumstances of the asylum seekers life in the U.S. Those whose circumstances are better in the U.S. may exhibit less hopelessness and pessimism, but may instead exhibit dread of losing what little relief from fear they have gained.

Lastly, it is important to note that most persons seeking asylum have been psychologically traumatized by persecution, which may have included exposure to or experiences of one or more of the following: torture, intimidation, physical and/or sexual violation, unlawful incarceration, harassment, assault and/or battery, rape, disfigurement, severe deprivation, intense fear, etc. Consequently, the most common psychological configuration in asylum seekers is Trauma in all its manifestations (Acute Stress Disorder, Posttraumatic Stress Disorder, Panic Disorder, Generalized Anxiety Disorder, Severe Major Depressive Disorder, etc.). While the assessment protocol calls for an objective evaluation of Post-traumatic Stress Disorder, Anxiety, and Depression (by tests which measure and document such conditions), it must also be cast against the psychological makeup of the person applying for asylum (Vaisman-Tzachor, 2012). Differing personality dimensions (such as psychological hardiness), coping styles (either more or less effective), and emotional expression propensities (such as externalizing or internalizing) would likely present an entirely different behavioral coloration of post-traumatic distress.
Areas of Inquiry Commonly Studied Are

1. Forensic Interviews: These are designed to elicit – from the person seeking asylum and others who were present or know the person seeking asylum – a detailed account of the circumstances that led to fleeing the country and seeking asylum. Interviews that generate a reliable storyline about what happened are important in guiding the evaluation process further. For example, a husband and wife who escaped from Venezuela offered identical accounts of events leading up to their escape, thereby increasing their credibility. Important aspects of these interviews are the observations made by the evaluator about the types of emotional responses spontaneously generated by the respondents to events described in the interviews. For example, one would expect that a homosexual man who escaped China after having been brutally beaten while in custody would emote when describing his ordeal.

2. Collateral Information: Newspaper clips and articles, photographs, personal letters, and other documents and artifacts may shed light on a particular situation, or give further credence to the claims made by the applicant. Media accounts of events or circumstances in the country where the applicant for asylum hails can help corroborate claims of persecution. These may be used to generate in the evaluator a contextual understanding of the circumstances the applicant is fleeing from. These may also assist in establishing greater veracity to the story the applicant is telling, if somehow corroborating claims. For example, media accounts of terrorist acts against the Nigerian minority Christians by the Islamist terrorist group “Boko Haram” may give credence to a Nigerian Christian woman escaping persecution by the majority Muslims in her country.

3. Psychological Tests: Of particular importance are tests that can illuminate some common psychological processes typical to persons fleeing their countries against their will.

   These will ordinarily involve tests that measure depression and anxiety as the most common emotional sequella of unwanted departure from one's country of origin. Equally important are tests that measure Post-traumatic Stress Syndrome, especially those instruments that can also help distinguish between particular types of trauma-inducing events (i.e., sexual trauma, physical trauma, emotional abuse, etc.). To the extent that these tests reliably measure the proximate source and time of traumatic events, they are helpful in either corroborating or dispelling a particular applicant's account. Thus, an asylum seeker who only recently escaped persecution would show psychological signs of acute distress. Conversely, an asylum seeker who had been away from his country of origin for an extended period would present symptoms consistent with more chronic distress.

4. Coherence: Key to the evaluation process is a sincere attempt to be as coherent as possible in all tests and interviews. The greater the consistency between the findings on all the various psychological measures, other evidence, and the story told by the asylum seeker, the greater the credibility of his or her claims. An asylum applicant who claimed she was subjected to torturous clitoridectomy was also able to show a gynecological report confirming the existence of scars of said procedure. These consistencies are important in the sense that the evaluation protocol is designed to help determine the veracity of the asylum applicant’s claims, and to establish the truthfulness of his or her story overall.

The Result of the Assessment

The assessment of an asylum seeker must result in established professional opinions about (1) the motivation of the asylum seeker to come to the U.S. (whether for protection or for gain); (2) the validity of the fear the asylum applicant is expressing (whether real or imaginary); (3) the veracity of the claims of persecution (whether substantiated or refuted); (4) the evidence of psychological sequella of persecution in the applicant’s presentation (whether posttraumatic syndrome is palpable and to what extent); and (5) the potential consequences to the applicant of an order to return to the country fled from (whether dire or not).
As previously mentioned, asylum decisions are left to the subjective discretion of judges who rely, among other factors, on precedence at immigration courts (Hing, 2004; Vaisman-Tzachor, 2012). Thus, as of the time this article is written, the jury is out on whether the validity of fear the asylum applicant is expressing; the veracity of the claims of persecution; and the potential consequences to the applicant of returning to his or her country of origin are a “legal” matter (hence, in the purview of the federal immigration authorities) or a “psychological” matter (hence in the purview of the forensic psychology expert).

The obligation of the forensic psychology expert in federal immigration courts asylum proceedings is nevertheless to offer unequivocal opinions about the matters studied in terminology relevant to the court. Hence, the outcome of the psychological evaluation will result in assertive opinions that serve as an evidentiary foundation for the decision whether to grant or deny an asylum application – not an opinion of whether the asylum should or should not be granted by the immigration judge (Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012).

Chapter 5 - Report on the Findings

The culmination of the psychological evaluation process will be in the presentation of the findings to the appropriate immigration authorities. There are essentially two ways in which the forensic psychology expert is likely to be expected to present the results of the psychological evaluation: (1) a written report; (2) in-person testimony in court. Ordinarily, the appointing attorney requesting the evaluation will instruct the forensic psychology expert about what is expected in each case. There are, however, many good reasons for the production of a written report at the end of a forensic psychological process for federal immigration authorities. The first and most obvious is that there are many instances in which there is not going to be a hearing held in the matter evaluated, and the decision is going to be made by a judge, sometimes far away from the place where the evaluation was physically held. At other times, while a court hearing may be held in the asylum case, the legal proceedings may exclude in-person testimony for other reasons. In these instances, the written psychological evaluation report is all that can be offered.

There are other good reasons for a psychological evaluation report to be submitted, even in cases where a court hearing is going to be held in the matter of an asylum application. It is quite common for cases that had been adjudicated in federal immigration courts, and where a decision was rendered, to be later appealed by either the federal government or by the applicant. The appeal process is usually initiated by the party that did not prevail in the lower court and is seeking redress, based on a variety of reasons: legal, technical, etc. (INS v. Ventura, 2002). Whatever the reasons may be, the hearings held in an immigration case at the Federal Circuit Court of Appeals are always without expert in-person testimony. Therefore, in order for the opinions and recommendations offered by the forensic psychology expert to be heard or even considered at the appellate court level, it is essential that a written report be introduced into evidence at the lower, federal immigration court hearing first (Yardun-Hunter, 2011).

There is yet one more important reason to insist that the impressions and opinions developed by the forensic psychology expert during the evaluation process be recorded in a comprehensive written report, and that the report be submitted into evidence to federal immigration court: when the forensic psychology expert is called upon to testify, the opposing counsel will attempt to limit the scope and weight of the testimony of the forensic psychology expert by limiting the questions to only those necessary to attempt to discredit the expert. Consequently, it is very likely that oral testimony given by the forensic psychology expert in any hearing in federal immigration court would fail to encompass the breadth and importance of the findings and recommendations offered by the expert in any given case. If in addition to verbal testimony there is no accompanying document that expands on the opinions and offers adequate justifications for the opinions of the expert, the ruling judge may disregard the recommendations of the psychological evaluation or may not give them the appropriate weight in the final deliberations.
Contents of the Report

The written report must contain all the information considered by the forensic psychology expert, be it from documents, interviews, observations, or psychological testing. Additionally, all professional considerations in reaching impressions, opinions, and recommendations must be included. Because the written report is going to assist the court in its deliberations and the appointing counsel's questioning during in-person testimony, it must also contain the study questions (i.e., what did the forensic psychology expert attempt to answer in conducting the evaluation). There should be a section justifying the selection of certain study instruments and procedures in conducting the evaluation, given that the audience for which the report is written may not be familiar with the utility of particular inventories, nor will the audience have the understanding of the predictive validity of certain psychological tests. Moreover, the readers of the written report of a psychological evaluation for asylum application are not going to necessarily make the connections to infer the relevance of the findings the expert has collected to the questions of the case being adjudicated (Weiner & Hess, 2006).

Questions to be Answered

The forensic psychology expert must provide the reader of the written psychological evaluation report clear answers to the following questions:

1) What is being studied and why?

2) What measures had been used to study the study questions?

3) What was the rationale for the use of the selected measures?

4) What kinds of answers are expected to be gleaned from the tests and procedures?

5) What was observed in the persons evaluated (descriptive)?

6) What was revealed about the persons evaluated (inferential)?

7) What kinds of conclusions did the expert reach, and why (conclusive)?

8) What recommendations are being made based on the conclusions reached?

The language in the written report must be straightforward and devoid of jargon and professional colloquialisms that are likely to be confusing to readers not trained in psychology. Instead, the narrative in the written report must carry the reader through the evaluation process and onto the inevitable conclusions and recommendations in a logical and simple manner. Written reports submitted as evidence, in federal immigration courts, that are relevant and explanatory are likely to be well-received by immigration judges and attorneys and are likely to spare the forensic psychology expert agonizing hours of cross-examination on the witness stand.

Chapter 6 - Ethical Considerations

The question of ethics in the process of conducting a forensic psychological evaluation for an asylum case comes up frequently, because the typical appointment of a forensic psychology expert is done by the attorney representing the asylum seeker. It is therefore easy to understand that some may view the position of the forensic psychology expert as inherently biased and therefore unethical. Some have even likened it to becoming a “gun-for-hire,” and attorneys cross-examining experts at federal immigration courts frequently raise this very question as well.

Although the ethical question does present the forensic psychology expert with a challenge, it also directs the evaluator's disposition in each case assessed. The obligation of the forensic psychology expert is to study the truth about the psychological aspects of the asylum case, regardless
of referral source. It is never the role of the forensic psychology expert to offer opinions about legal matters regarding the case. Thus, the forensic psychology expert must offer opinions regarding the psychology of the persons involved and recommendations for consideration by the court, not opinions about how to decide on a case.

An Illustrative Example

A young woman of Peruvian background applied for asylum based on a claim of persecution by gangsters who were remnants of the 1980’s “Cendero Luminoso” (Shining Path, in Spanish) guerrillas in her native land. While the forensic evaluation revealed characteristic substantial posttraumatic sequella in the woman's psychological presentation, the details of her story did not necessarily add up as well. The investigator obtained opinions from experts who stated that the region from which the woman came was poor, but otherwise unaffected by gang activity, which was more concentrated in other areas of the country. Follow-up interviews revealed the woman suffered childhood physical and sexual abuse at the hands of her own family (hence the posttraumatic sequella revealed in the psychological study). She subsequently conceded that she came to the U.S. to distance herself from her family, but not necessarily in fear of persecution back home. The evaluation was stopped and the referring attorney was provided with the information, which made it impossible to support an asylum application for this woman. It was clear that while the asylum seeker had very good reasons to move as far as she could from her abusive family; it was not possible to substantiate the claim of persecution necessary to support her application for asylum in the U.S.

Careful assessment of the facts in any case and meticulous study of the psychological evidence the forensic psychology expert collects will help the expert avoid ethical pitfalls. Furthermore, avoiding becoming personally invested in the outcomes of any given case will prevent becoming biased. Lastly, it is often the case that forensic psychology experts may prefer certain measures and procedures, which can lead, over time, to the application of the same evaluation protocol for each case, regardless of the different circumstances and questions it posits. To the extent possible, the expert must “tailor” the evaluation protocol for each distinct case based on the questions offered by circumstances, not by preference (Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012; Weiner & Hess, 2006).

Conclusion

The protocol for psychological evaluations of asylum cases for federal immigration courts is an extension of other, previously published protocols by the author (Vaisman-Tzachor, 2003; Vaisman-Tzachor, 2012). As with its predecessors, the current assessment scheme has been widely accepted by federal immigration authorities and tried in resolution of many asylum applications over the years. The current article proposes a comprehensive set of recommendations for conducting psychological evaluations for asylum applications to assist immigration authorities in rendering decisions in such matters. This assessment scheme offers a conclusive set of guidelines for the forensic and investigative process involved. It calls upon the forensic psychology expert to be familiar with the terms used in immigration courts, to understand legal dilemmas that asylum cases present to immigration authorities, and to know federal rules of evidence. It also calls upon the forensic psychology expert to maintain an unbiased perspective to avoid ethical pitfalls and develop an evaluation study that considers the questions relevant to the asylum case before immigration authorities for each unique case. Further, it calls upon the forensic psychology expert to carefully select tools and procedures that will ensure the information collected in the study is valid, and that the results obtained are relevant to the questions presented by the judicial system. Finally, it calls upon the forensic psychology expert to record the outcomes of the evaluation and the opinions that were developed from it in a written report, which will offer clear recommendations to immigration authorities to consider.
References


INS vs. Ventura. (2002). 537 U.S. Supreme Court, 12.


About the Author

Reuben Vaisman-Tzachor, PhD, FACFEI, DABPS, FAPA, was born in Israel. He obtained his doctorate in clinical psychology from Alliant International University, California School of Professional Psychology in Los Angeles. He is currently an adjunct professor of clinical and forensic psychology at The Chicago School of Professional Psychology in Los Angeles. He is a Fellow of the American College of Forensic Examiners International, a Diplomate of the American Board of Psychological Specialties, a Fellow of the American Psychotherapy Association, and is certified in Homeland Security Level III. He has conducted numerous studies and published on a diverse number of topics ranging from human-animal interaction, to psychological evaluations in federal immigration courts to psychological profiles of terrorists, to name but a few. He currently owns and directs the Counseling Center of Santa Monica—A Psychological Corporation, which is a private practice organization in Santa Monica, California.
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