

# PSYCHOLOGICAL EVALUATIONS

---

## *A Critical Tool For Immigration Cases*

Presented by: *Daniela Carrion, Esq.*

DANIELA.CARRION@LINESCHFIRM.COM

**LINESCH FIRM**  
EMPLOYMENT LAW | IMMIGRATION LAW

# ARE EVALUATIONS REQUIRED?

- NO. But they are critical evidence in support of an individual's application for relief from removal.
- A mental health assessment provides the adjudicator, the USCIS and/or the Immigration Court the necessary information to determine the mental state of the applicant or its USC spouse.
- In hardship cases, an applicant must show that if he/she is removed, that it would cause an extreme hardship on the relative who is a USC or LPR.
- In some cases the mental health evaluation is the most important evidence in the case, especially when proving substantial physical or mental abuse as a result of victimization.

# Questions to ask the lawyer before doing an evaluation?

- Where is the petition being presented/filed?
- What relief is being sought?
- What evidence is the lawyer most relying on?
- Ask for all affidavits the lawyer will include with the petition.
- Ask for a description of the relief and its elements and where does the evaluation fall in.

# IMMIGRATION CASES THAT BENEFIT FROM A PSYCHOLOGICAL EVALUATION

- Extreme Hardship Cases - Waivers
- Spousal Abuse (VAWA)
- U-VISA
- Cancellation of Removal
- Asylum
- T-VISA : Trafficking Victim Protection Act

# EXTREME HARDSHIP - WAIVERS

- Used for immigrants who are considered inadmissible to the U.S.
- Inadmissibility means the immigrant did something which would not allow him to enter the U.S. legally.
  - Unlawful entry – 3 year /10 year/ permanent bars
  - Certain crimes
  - Visa overstay then try to re-enter
- USCIS/ U.S. Consulate has the discretion to admit certain inadmissible individuals into the U.S.

# EXTREME HARDSHIP - WAIVERS

- If the immigrant is inadmissible and has legal relief available through a USC or LPR spouse/ child/ parent then a waiver may be available to overcome admissibility.
- ALL WAIVERS MUST PROVE THAT FAILING TO ADMIT THE IMMIGRANT INTO THE U.S. WOULD CAUSE EXTREME HARDSHIP TO THE USC/LPR IMMEDIATE RELATIVE.
- HARDSHIP TO THE IMMIGRANT THEMSELVES IS NOT USUALLY CONSIDERED.

# EXTREME HARDSHIP – WAIVER CONSIDERATIONS

- WHAT WILL HAPPEN TO THE USC/LPR SPOUSE, CHILD OR PARENT.
  - Hardship must exceed the average hardship of separation/ denied waiver.
- Two main scenarios to consider: If the non-citizen will be residing outside the U.S. then the qualifying family member must choose between:
  - Remaining in the U.S. and be separated from their family member; or
  - Relocate to a foreign country with the non-citizen
- FAILURE TO SHOW EXTREME HARDSHIP WOULD BE GROUNDS FOR DENIAL.

# EXTREME HARDSHIP – WAIVER EVALUATIONS

- IMPORTANT SUBJECTS TO COVER IN EVALUATIONS:
  - The effect on the USC family without the non-citizen?
  - Explore all aspects of life, holidays, regular days, any extraordinary support by non-citizen.
  - Is the qualifying family member diagnosed with a mental health disorder, what kind of treatment is needed?
  - How is that exacerbated by the non-citizen not being there?
  - What kind of treatment is the qualifying member receiving and will need in the future?
- EVALUATIONS PLAY A MAJOR ROLE ON DECIDING WHETHER A WAIVER WILL BE APPROVED OR NOT.



# CANCELLATION OF REMOVAL FOR NON-PERMANENT RESIDENT

- ADJUDICATOR: IMMIGRATION JUDGE
- ELIGIBILITY: Must be in removal proceedings, have lived in the United States for 10 years or more, must have good moral character, and their removal would result in exceptional and extremely unusual hardship to their USC/LPR spouse, parent, or child, and they are deserving of a favorable exercise of discretion from the Immigration Judge.
- May also qualify if they have been battered or subjected to extreme cruelty by their USC parent or spouse or if the foreign national is the parent of a USC child and the child has been subjected to extreme cruelty in the U.S by USC spouse/ parent.

# CANCELLATION OF REMOVAL FOR NON-PERMANENT RESIDENT EVALUATION

- ALWAYS INCLUDE YOUR COMPLETE CV WITH EVALUATION –  
Lawyer must prove the person is qualified to render advice.
- Interview all USC family members
- Review affidavits before evaluation
- Ask the lawyer if they have a template they would like you to use, if not short concise paragraphs with clear subheadings and numbered.
- Look for a diagnosis on the USC, and explain it in depth if possible.
- Explain recommended treatment in detail.
- If prescription then what will the effects be.

# CANCELLATION OF REMOVAL TESTIFYING

- CREDENTIALS ALWAYS FIRST – Unless lawyer and OCC agree to establish that you are qualified to render opinion.
- Ask the Lawyer to provide you in writing the questions you will be asked, and for a prep call.
  - Discuss your answers
  - Discuss any weaknesses you would expect in cross
- DO NOT ANSWER OUTSIDE THE SCOPE OF YOUR EXPERTISE.

# SPOUSAL ABUSE - VAWA

- ADJUDICATOR: USCIS.
- ELIGIBILITY: The Violence Against Women Act (VAWA) allows undocumented immigrant spouses, children or parents of a USC/LPR to apply for a green card without the abusers knowledge.
- ELEMENTS: Must show that he/she has suffered battery/ extreme cruelty at the hands of the USC/LPR relative with whom he/she has resided.

# SPOUSAL ABUSE – VAWA EVALUATION

- Provide as much information in regards to the trauma and cruelty suffered.
- Discuss potential credibility issues– IMPORTANT.
- Read affidavit.
- If there are any police reports, discuss them and refer to them.
- Explain why some things may be difficult for victim to talk about.
- Explain their background as much as possible.
- Details on the treatment, prescriptions...etc.

# U-VISA

- ADJUDICATOR: USCIS
- ELEMENTS: U Nonimmigrant status (U-VISA) is set aside for victims of certain crimes, who have suffered long term mental or physical disorders and are helpful to law enforcement officials in the investigation or prosecution of the criminal activity; the crime must have been committed within the U.S. or violate a U.S. law. Unlike VAWA, the reporting of these cases is necessary.

# U-VISA EVALUATION

- Read the affidavit.
- Read the police report.
- Read the U-VISA Certification.
- Ask lawyer what holes need to be filled:
  - If the immigrant took a while to report the crime, why could that be?
  - Describe all effects of the crime with as much as detail as possible.
- IMPORTANT – Must prove that mental disorder will need long-term treatment and have infinite effects.

# ASYLUM

- ADJUDICATOR: USCIS / IMMIGRATION JUDGE
- ELEMENT : Immigrant must prove that they are seeking protection in the U.S. because they have suffered persecution or fear that they will suffer persecution because of their race, nationality, membership to a particular social group, or political opinion. Must prove that they have a “well founded fear” of future persecution in their home country.
- The most important aspect is the immigrant’s own testimony!



# ASYLUM EVALUATION

- Read the affidavit.
- Read the I-589 (Asylum Application).
  - Identify their protected trait.
- Request as much information from the lawyer.
- Explore effects of past persecution - a petition may be granted if you can prove that the past persecution was extreme.
- Explore how their fear or future fear has any present effect on their mental health.
- Be ready to testify if necessary.
- Affidavit.

# T- VISA

- ADJUDICATOR: USCIS or IMMIGRATION JUDGE
- ELEMENTS: The Victims of Trafficking and Violence Protection Act (TVPA) protects survivors who were lured with false promises of employment or a better life. Must demonstrate that he/she has suffered extreme hardship or would suffer extreme hardship if removed.
- EVALUATION IS CRUCIAL TO WINNING A CASE.

# T- VISA EVALUATION

- Read all police reports.
- Ask lawyer what the T-VISA is based on:
  - Extortion/ Labor trafficking/ Sex Work Trafficking
- Ask what the problem areas are and explore those.
- This report needs to go into extreme detail as to the trafficking, its effects, long-term care, and thorough analysis of hardship.
- Be ready to testify.

# THE AFFIDAVIT / EVALUATION

- Number and length of session in which you met the client.
- Connect observations to diagnosis.
- How PTSD affects client(s) in everyday life. HUMANIZING.
- Why you ruled out malingering (faking it).
- Attorney communication.

# HOW TO CONDUCT A BETTER EVALUATION

## THINGS TO DO:

- Be careful about facts – getting the facts wrong undermines your client’s credibility. Judges will use any breach in credibility to show the entire story lacks credibility.
- Show your work:
  - How was the diagnosis reached, name the tools techniques utilized?  
Likely relationship to past stated?
- Neutral/clinical tone.
- Must sell yourself as an expert. Great CV, always start with brief introduction and your qualifications.

# HOW TO CONDUCT A BETTER EVALUATION

## THINGS NOT TO DO:

- Don't advocate or make any moral judgments
- Don't try to use any legal terms of art.
- Don't discuss country conditions!
- Do not recitate the facts unless completely relevant.
- If previous abuse or criminal history is not relevant DO NOT DISCUSS IT.

# QUESTIONS?

*DANIELA CARRION, ESQ.*

DANIELA.CARRION@LINESCHFIRM.COM

700 BEE POND ROAD, PALM HARBOR, FL 34683

OFFICE: (727) 786-0000

**LINESCH FIRM**  
EMPLOYMENT LAW | IMMIGRATION LAW