

# PROTECTING THE CHILD: FILING AN ASYLUM APPLICATION FOR A CHILD IN REMOVAL PROCEEDINGS

Moderator:

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Unaccompanied Children Fellow, Advocates for Basic Legal Equality, Inc.

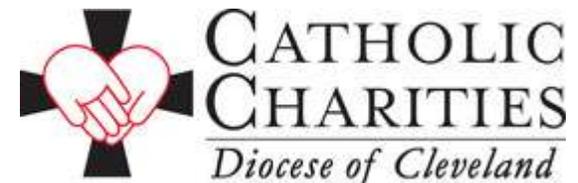
Presenters:

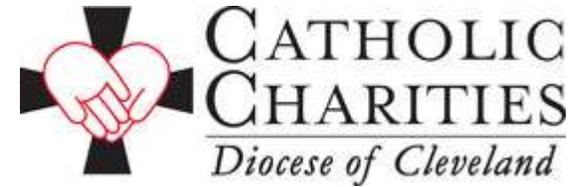
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Catholic Charities Diocese of Cleveland

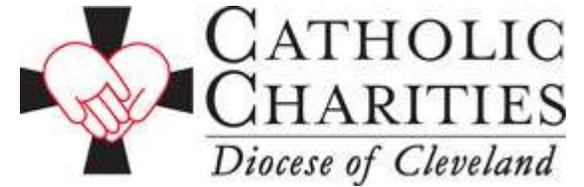




## Topics:

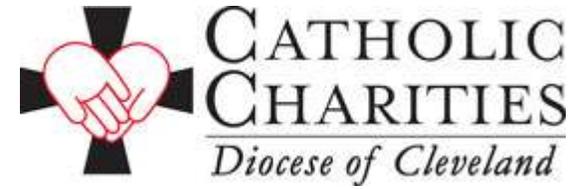
- Required asylum forms for an Unaccompanied Alien Child (UAC) in removal (immigration court) proceedings,
- Where to file the forms,
- What to include as supporting evidence, and
- The basics of the adjudication process.

# Summer of 2014: A storm on the horizon

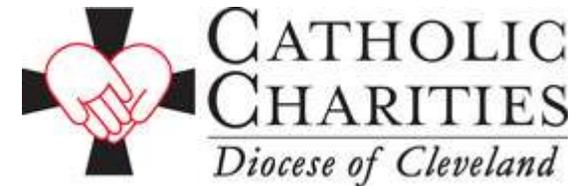




Children detainees sleep in a holding cell at a U.S. Customs and Border Protection processing facility in Brownsville, Texas. | AP Photo



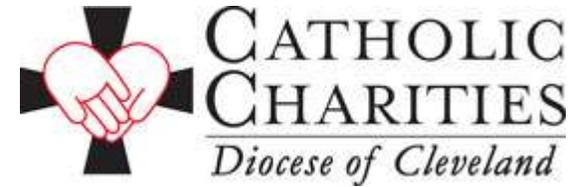
# Refugee Children in Ohio



- Many leave home country and travel to the United States without their parents;
- Others travel north alone to be reunited with their parents in the US;
- The number of children under the age of 13 seeking safety in the United States has increased.

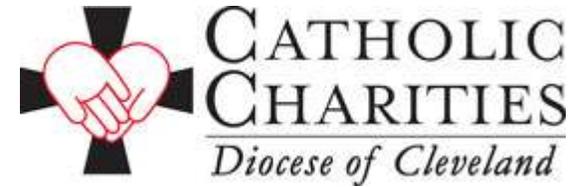


# Refugee Children in Ohio



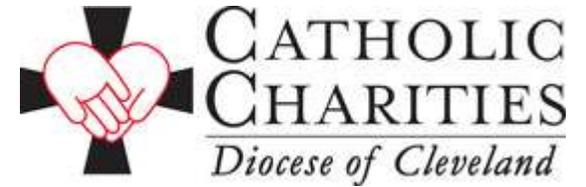
- From October 1, 2013 - July 31, 2015
  - 1,011 unaccompanied immigrant children have sought safety in Ohio.
  - Family units have also sought safety in Ohio (numbers are unclear)

# Refugee Children in Ohio



- Unaccompanied Children with an attorney succeeded in a defense to stay in the United States **73%** of the time.
  - However, children without an attorney only succeeded **15%** of the time.
  - <http://trac.syr.edu/immigration/reports/371/>



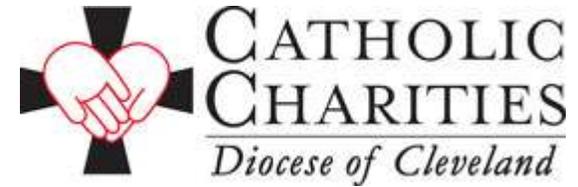


# Basics of Asylum Law for Unaccompanied Alien Child (UAC)

## Definition of UAC

- Has no lawful immigration status in the United States;
- Under 18 years of age; and
- Does not have a parent or legal guardian in the United States or does not have a parent or legal guardian in the United States who is available to provide care and physical custody.

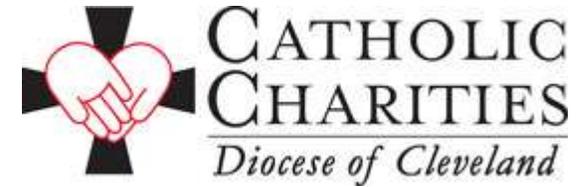
6 U.S.C. § 279(g)(2)



## Once designated a UAC...

- A child is designated a UAC by Office of Refugee Resettlement (ORR) at the time of entry to USA.
- Once designated UAC, different rules apply for filing the asylum application.
- If designated UAC and the child then turns 18 in the USA, they are still considered a UAC for asylum filing purposes.

# Overview of Asylum Process for UAC



## STEP 1: Arrest at border/ referral to immigration court

Catholic Charities obtains continuance of removal hearing through 'Friend of the Court' Program. Child then seeks attorney for representation.

## STEP 2: ATTORNEY INTERVIEWS CLIENT

Interview your client in detail to determine factual basis and strategy

## STEP 3: : Attorney continues removal hearings while asylum application filed

HOLD court proceedings while asylum application is filed and processed through USCIS

## STEP 4: Prepare Asylum Application

Prepare asylum application with required forms and supporting documents

## STEP 5: Apply to USCIS

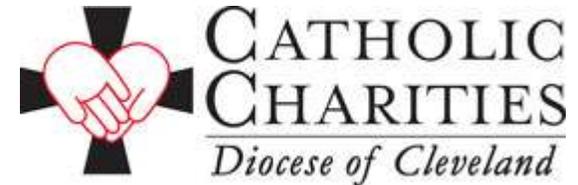
Attorney submits affirmative asylum application to USCIS

## STEP 6: Attend USCIS Asylum Interview

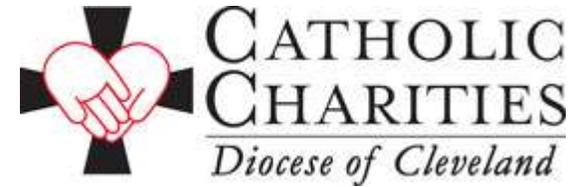
## STEP 7: USCIS Decision

USCIS grants affirmative asylum or case is referred to Immigration Judge for second chance

# Asylum for Children



- **USCIS has jurisdiction** over UAC's application for asylum, even where the child is in removal proceedings. TVPRA § 235(d)(7)
- The same refugee definition applies to children; however, that definition should be applied from the perspective of a child. In effect, **lesser burdens and standards apply to children in various respects.**
- Children are given a liberal benefit of the doubt
- Threshold of harm is lower for children than for adults
  - **View harm from the perspective of the child; consider developmental issues. There are also child-specific forms of persecution (e.g., recruitment/conscription of a minor).**
- Persecution of family members (based on family group/kinship ties) is relevant.

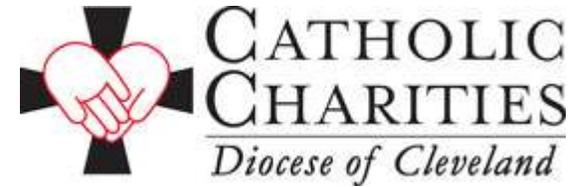


# Definition of Refugee

Children, like adults, must meet the definition of a refugee:

“Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

8 U.S.C. § 1101(a)(42)



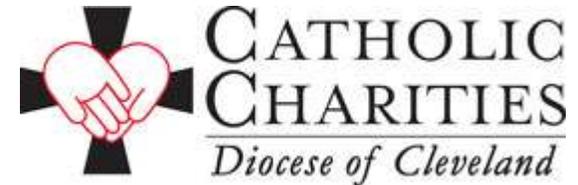
# Asylum – Key Elements

1. Past “persecution” or well-founded fear (WFF) of “persecution”
2. On account of (“nexus”)
3. At least one of the five protected grounds
  - race,
  - religion,
  - nationality, or
  - membership in a particular social group, or
  - political opinion.
4. By a State actor or a private actor the government is “unable or unwilling” to control

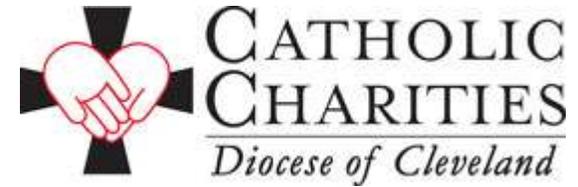
# Persecution

- “Persecution” is a broad term not defined by statute
- Defined on case by case basis
- Can be one traumatic event, or a pattern: sexual or physical harm or threat of sexual or physical harm

# Well-Founded Fear (WFF)



- **Well Founded Fear of Persecution**
  - **SUBJECTIVE COMPONENT:** objectively reasonable *and* requires a showing that the applicant's fear is genuine.
  - **OBJECTIVE COMPENENT:** requires a showing that the fear is reasonable based on country conditions
- **Well Founded Fear for Children**
  - Children **are not** to be expected to articulate their fears in the same manner as adults.
  - Guidelines advise that **very young children may be incapable of expressing fear to the same degree or with the same level of detail as an adult.**
  - Further, the INS Guidelines suggest that **"children's testimony should be given liberal `benefit of the doubt' with respect to evaluating a child's alleged fear of persecution."**



## “Humanitarian” asylum

- Where there is no WFF, “humanitarian” asylum may be available where past persecution was
  - “severe and atrocious” or
  - reasonable possibility of “other serious harm”

# Protected Grounds

- The child's fear must be shown to be "on account of" one of 5 protected grounds:
  - Race
  - Religion
  - Nationality
  - Membership in a particular social group (PSG)
  - Political opinion
- Nexus = "on account of"
  - The child can have mixed motives for their fear, but the protected ground must be at least one central reason for the persecution.

**Slide 19**

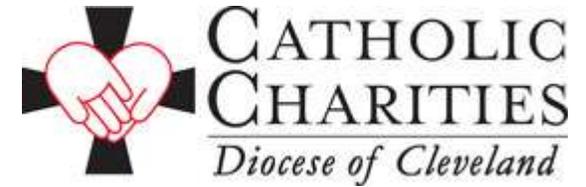
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**J2**

i think this is a duplicative slide to one other one we have? or it should be moved up:?

JPeyton, 9/30/2015

# Suggested PSGs



Membership in a nuclear family / kinship ties

Adolescent (indigenous) (female/male) lacking family protections

Guatemalan/Honduran/El Sal woman unable to leave a domestic/marital relationship

Former gang member

Street children in Guatemala

Indigenous female opposed to child marriage

Social activist / promoter

Families who bear witness to murders committed by gang members and/or testify against murders from gangs

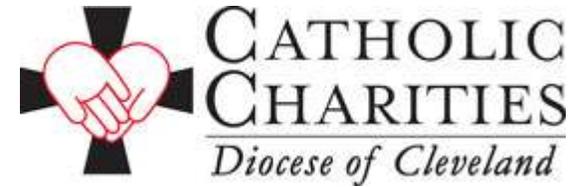
Sexual orientation (or perceived sexual orientation)

# Age as a PSG

- UNHCR Guidelines: though age changes over time, it is immutable characteristic that is socially visible
- “Youth,” without more has been rejected by US Courts. But consider:
  - “Young Albanian women who live alone” (*Cece v. Holder*, 7th Cir.)
- Remains unresolved

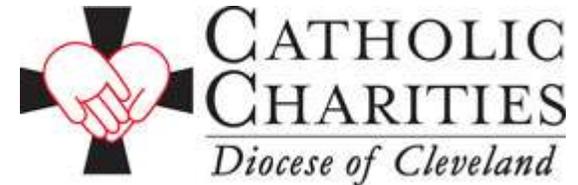


# Gang Resisters/Former Gang Members



- Notoriously negative area of asylum law
  - “Gang resisters” consistently struck down as PSG
- Consider if “mixed motive” for targeting by gangs
  - Religion?
  - Family ties?
- Hope springs eternal!
  - *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4<sup>th</sup> Cir. 2015) PSG is “membership in a nuclear family”

# Nexus Requirement and Internal Relocation



## Nexus Requirement

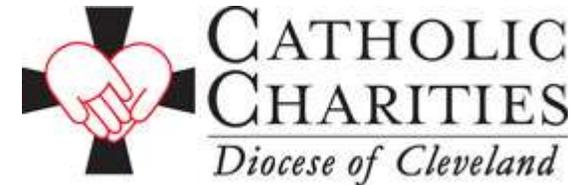
- Child may have a limited understanding or information about why they were targeted.
  - Use other evidence to prove this.
- Relevance of objective evidence:
  - To show the status of children in society and in family
  - To show levels of certain type of harm against children or subgroups children
- Testimony of knowing adults can support finding of nexus (parents, country conditions experts, etc.)
  - Gather affidavits, letters, or use as witnesses

## Internal Relocation

- Not eligible for asylum if can reasonably and safely relocate to another part of the country.
  - *8 C.F.R. §208.13 (b)(1)(i), (b)(1)(ii), (b)(2).*

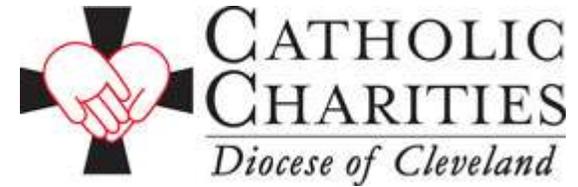
Can child relocate to avoid persecution?

- Safe relocation?
- Reasonable relocation?
  - Presumed unreasonable where government is persecutor
  - Generally *not reasonable to expect a child to relocate (AOBTC ¶ 42)*
  - Consider age, familial ties, mental health, medical condition, language issues, race/ethnicity issues, gender issues, means of survival
  - Gather evidence to show not reasonable for *this child applicant*



# Timely filed applications

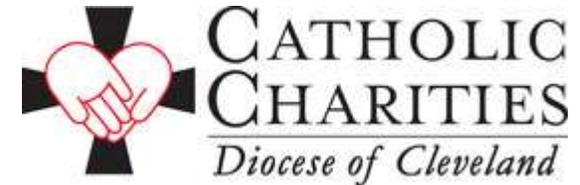
- **Timely** = one year from date of last arrival in U.S., unless:
  - Changed circumstances in home country → well founded fear; or
  - Extraordinary circumstances (including legal disability e.g., age of minority)
- Ordinarily, a UAC is excepted from the one year deadline; however, it is disputed whether the UAC abandons their UAC status when reunified with a parent and therefore no longer is excepted



## Some other bars to asylum...

- Previously filed application;
- Firm resettlement;
- Gang membership may be seen as national security threat;
- Serious nonpolitical crime (outside of US) – typically used against gang members
- Frivolous = deliberately false or fabricated.
  - Frivolous finding = permanent bar to any immigration benefit

And remember, asylum is **discretionary** (so be nice!)



# Other Forms of Relief to Think About

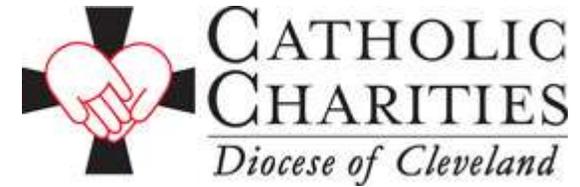
- **Withholding:**

- An application for asylum is automatically considered to be an application for withholding of removal.
- The applicant must prove that his or her life or freedom would be threatened in the proposed country of removal on account of his or her race, religion, nationality, membership in a particular social group or political opinion.
- The applicant may rely on credible testimony alone

- **Convention Against Torture:**

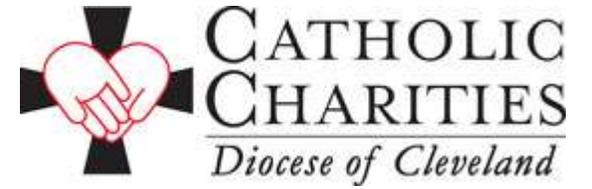
- Even if an individual is not eligible for asylum or withholding of removal he or she may be eligible for relief under the Convention Against Torture (CAT)

NOTE: On the Asylum application there are two boxes to check off for this form of relief.



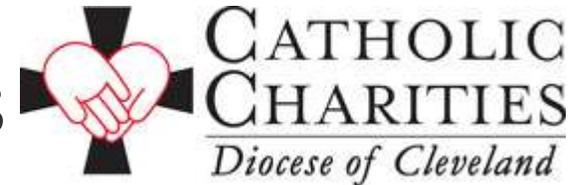
# Working with children

- Consider your source:
  - with very young clients, may need responsible adult to relate story, prepare statement and attend interview AND
  - Required sensitivity may be time consuming
- Pick up your room, eat your vegetables and call your attorney
- Child is still the client



# The Asylum Application

# Required Forms and Documents



I-589 Application for  
Asylum and  
Withholding of  
Removal

1 passport photo of  
Applicant

Copy of Applicant's  
birth certificate with  
certified English  
translation

Copy of Applicant's  
complete passport  
or other form of ID  
(if available)

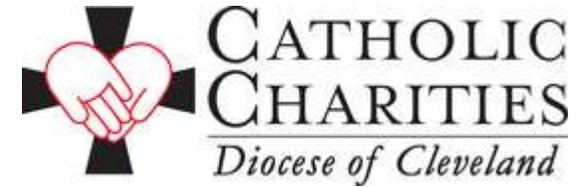
Affidavit/declaration  
from Applicant

Corroborative  
Evidence

Brief in Support of  
Application for Asylum

Office of Refugee  
Resettlement release  
document

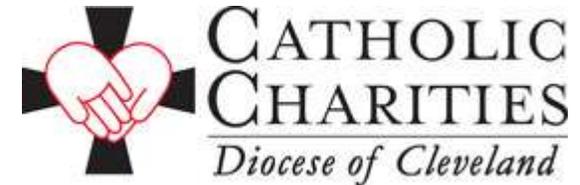
G-28, Notice of  
Appearance



# I-589, Application for Asylum and Withholding of Removal

- Found at USCIS website ([www.uscis.gov](http://www.uscis.gov))
- Check website for where to file, and required copies!
  - The UAC must include documentation from the Office of Refugee Resettlement

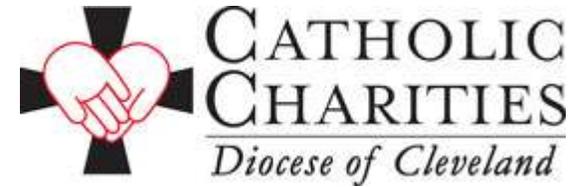




# The Story

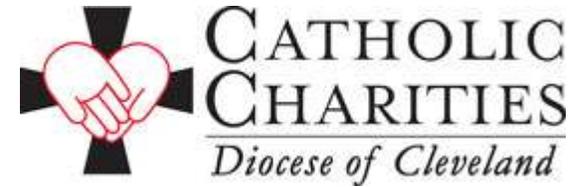
- Detailed Affidavit/Declaration
- Discuss significant events, such as examples of persecution against applicant or applicant's family or friends, and describe in great detail
- Why the applicant left their home country and why they fear returning
- The more detailed, relevant facts and supporting documents you are able to include, the stronger the application will be

# Corroborative Evidence



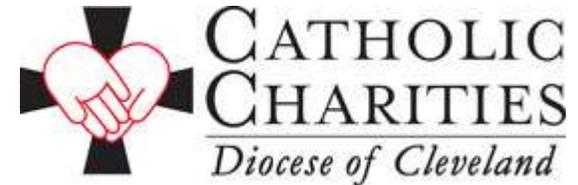
- REAL ID mandates applicants provide supporting evidence that is reasonably available
- Written sworn statements to establish who you are and what happened to you
  - Fact witnesses (friends/family) who witnessed persecution or effects;
  - A medical and/or a psychological expert to evaluate prior persecution; and
  - A country-condition expert

# Corroborative Evidence



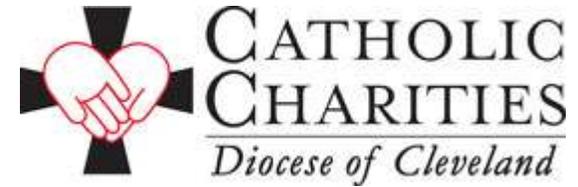
- Country Conditions from Home Country
  - Amnesty International Reports
  - Human Rights Watch Reports
  - U.S. Department of State Country Reports
  - UNHCR reports
  - Other reputable sources
- Supporting medical records, police reports, birth/marriage/death certificates, photographs

# Brief in Support of Asylum Application



- Concise legal memorandum explicitly stating the arguments for applicant's eligibility for asylum.
- Outline arguments for fear of persecution/past persecution
- Protected ground (define the particular social group!)
- Nexus

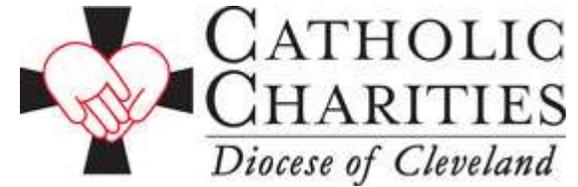
# Assembling and Mailing the Application



- Cover letter to identify principal applicant and derivatives, and to summarize documents.
- Use section dividers (colored pieces of paper for USCIS; tabs for EOIR)
- Check instructions: if sending to USCIS, multiple copies required. Court does not require multiple copies, but you must serve ICE counsel

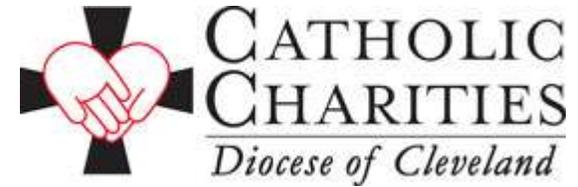
## Now We Wait...





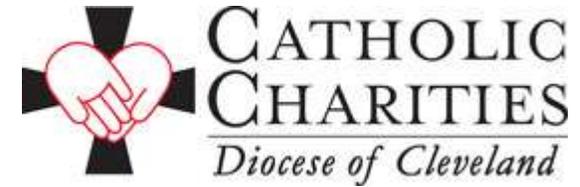
# USCIS Notices

- In about two weeks:
  - Receipt notice (on ½ sheet of blue paper)
- In several weeks:
  - Biometrics Notice
- Who knows?
  - Interview Notice



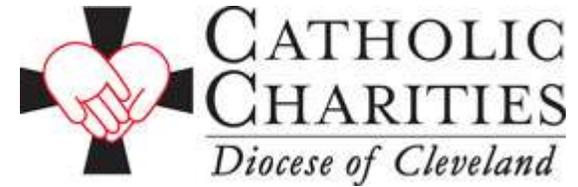
# Biometrics Appointment

- Applicant provided specific time frame to have biometrics (fingerprints and photo) collected at local USCIS office
- Applicant should bring appointment notice and a valid photo identification (if available)
- A guardian may attend this appointment even if the guardian is undocumented



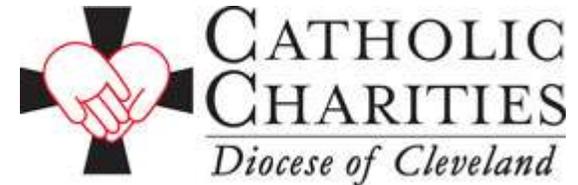
# Interview

- Each asylum office schedules location of appointments based on geography
- Interviews can be several hours away at asylum office (e.g., Chicago, Newark) or asylum office will ride circuit ride to local USCIS office (Cleveland)
- Rule of thumb: asylum office interviews happen quicker than circuit rides
- May not have a lot of notice of the interview
- Guardian/parent may attend even if the guardian is undocumented



# What to bring to interview?

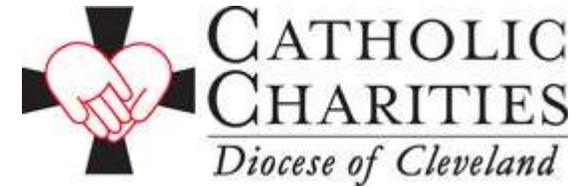
- Applicant
- Competent interpreter with valid US legal status
- Passport or national ID card if in applicant's possession
- Originals of all documents
- Bottle of water and snacks if permitted (you may be waiting a while!)



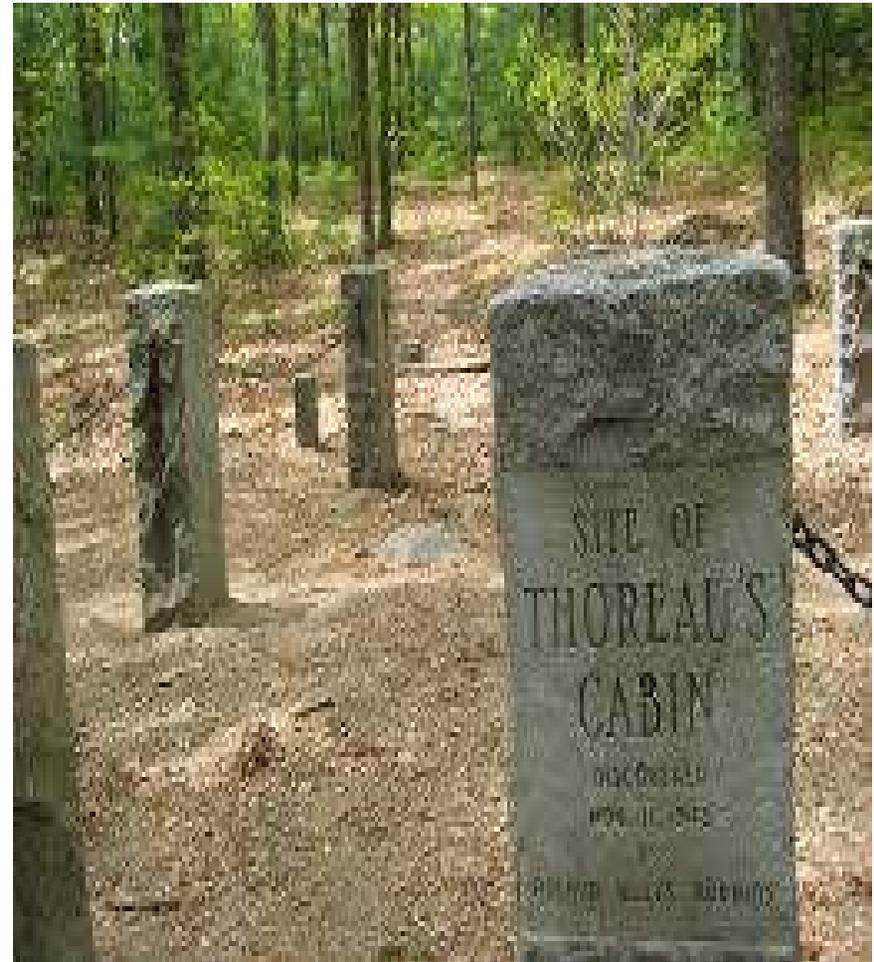
# Pre-interview client prep

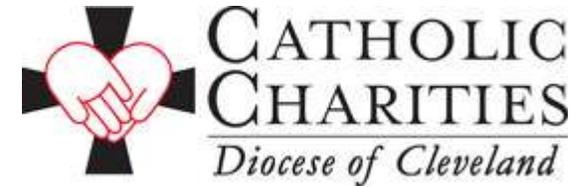
- Review complete I-589 for accuracy
- **EMPHASIZE**
  - that if the Applicant does not understand the interpreter, say something
  - that if the Applicant does not understand the question, speak up
  - that if the Applicant does not know the answer, say I DON'T KNOW and don't guess
- Tell the truth, tell your story, include criminal or police involvement or why police/other responsible adults would not help

# Shhhh...Enjoy the silence!



- Listen to the question
- Answer the question
- Stop talking





# What will happen at interview?

- Non adversarial open ended
- Complete review of biographical portion of form (first four pages), then question and answer session
- Asylum officer (AO) will screen for trafficking/safety at home
- Monitor will be called on speakerphone to keep the interpreter honest for Q&A
- AO will ask questions, attorney has limited involvement during interview
- Attorney is provided an opportunity at end of interview to argue case, define PSG, or ask clarifying questions

## Post-Interview

- Almost always, decision will be issued in writing to Applicant and copy to attorney of record
- The amount of time it takes for a decision on your case varies from case to case
- Very difficult to contact asylum office to check on status due to confidentiality laws

# Asylum Approved!

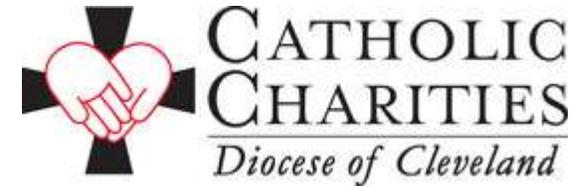
- Asylum approved by USCIS. YAY!
  - *Still need to terminate court case.*
- Child is an asylee, eligible for benefits, and may apply for green card (permanent residency) after one year.



# Referred to Immigration Judge

- Written notice of referral sent to Applicant and attorney, physical case file is returned to Court
- New hearing notice will issue to attorney only for master calendar (preliminary hearing)
- May need to file new copy of the same asylum application at that master calendar hearing
- Case will be scheduled for an individual hearing





# What happens at Immigration Court?

For specific guidance on immigration court, please review:

The Catholic Legal Immigration Network (CLINC)  
offers a free webinar:

“Overview of Representing Children in Removal  
Proceedings”

<https://cliniclegal.org/civicrm/event/info?id=276&reset=1>



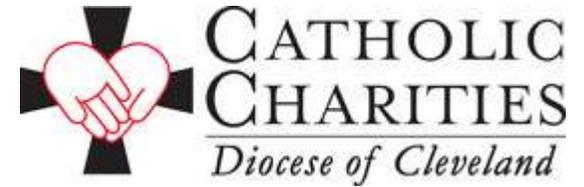
# Additional Resources

- For guidance on successful strategies and arguments, please access the Immigration Advocates Network's webinar:

“Children’s Asylum: Legal Theories and Volunteer Opportunities”

<http://www.immigrationadvocates.org/probono/>

- Free webinars available through the Immigration Advocates Network for Pro Bono Attorneys ([www.immigrationadvocates.org](http://www.immigrationadvocates.org)):
  - Asylum Step by Step: Corroboration and Testimony (2/5/14)
  - Introduction to Asylum Law (12/5/13)
  - Asylum Step by Step: Getting the Story Out (9/25/13)



Attorneys interested in accepting a *pro bono* children's asylum case should contact:

**Vilmarie Perez, Paralegal**  
**Catholic Charities Diocese of Cleveland**  
**[vperez@ccdocle.org](mailto:vperez@ccdocle.org)**  
**216-939-3735**