Interpreting in Immigration Court and as an Analytical Linguist

Interactive Book and Workbook

(this book is only available to students registered in the Interpreting in Immigration Court and as an Analytical Linguist course)

Lecture 3

By Néstor Wagner
CONTENTS
Lecture 3

Definition of Icons used in this Interactive Book and Workbook 81

Lecture 3
Immigration Terminology (Letters D, E and F) 83
Immigration Proceedings
  Individual Calendar Hearings 89
  Video of Judge’s Decision and Rendition 100
Forms Referred by the Judge in Previous Hearing 117
Homework Assignment 119
Definition of Icons Used in this Interactive Book

Material discussed and explained in class.

Practice included in the onsite practices and/or interpreting laboratory.
(Practice can be heard if you click on this icon only while reading this manual in your website)

Video of a similar proceeding shown in class.
(Video can also be shown if you click on this icon only while reading this manual in your website)
Interpreting in Immigration Court
and as an Analytical Linguist

Lecture 3
Immigration Terminology
Translation and Explanation of Terms

**Denomination/Sect:** A religious group or community.

*Spanish Translation:* _______________________________.

**Department of Homeland Security (DHS):** DHS is comprised of three main organizations responsible for immigration policies, procedures, implementation and enforcement of U.S. laws, and more. These DHS organizations include United States Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Together they provide the basic governmental framework for regulating the flow of visitors, workers and immigrants to the U.S. USCIS is responsible for the approval of all immigrant and nonimmigrant petitions, the authorization of permission to work in the U.S., the issuance of extensions of stay, change or adjustment of an applicant's status while the applicant is in the U.S., and more. CBP is responsible for admission of all travelers seeking entry into the U.S., and determining the length of authorized stay, if the traveler is admitted. Once in the U.S. the traveler falls under the jurisdiction of DHS.

*Spanish Translation:* _______________________________.

**Department of Labor:** A cabinet level unit/ministry of U.S. Government that has responsibility for labor issues. It has responsibility for deciding whether certain foreign workers can work in the U.S.

*Spanish Translation:* _______________________________.

**Derivative Status:** Getting a status (visa) through another applicant, as provided under immigration law for certain visa categories. For example, the spouse and children of an exchange visitor (J Visa holder), would be granted derivative status as a J-2 Visa holder. Derivative status is only possible if the principal applicant is issued a visa.

*Spanish Translation:* _______________________________.

83
**Diversity Visa Program:** The Department of State has an annual lottery for immigration to the U.S. Up to 55,000 immigrants can enter the U.S. each year from countries with low rates of immigration to the U.S.

*Spanish Translation:* ________________________________.

**Documentarily Qualified:** The applicant has obtained all documents specified by the consular officer as sufficient to meet the formal visa application requirements, and necessary processing procedures of the consular office have been completed.

*Spanish Translation:* ________________________________.

**DOL:** U.S. Department of Labor. Hiring foreign workers for employment in the U.S. normally requires approval from several government agencies. First, employers must seek labor certification through the DOL. Once the application is certified (approved), the employer must petition the USCIS for approval of the petition before applying for a visa.

*Spanish Translation:* ________________________________.

**Domicile:** Place where a person has his or her principal residence. The person must intend to keep that residence for the foreseeable future. The sponsor of an immigrant must have domicile in the U.S. before the visa can be issued. This generally means that the sponsor must be living in the U.S. In certain circumstances, however one can be considered to have a domicile while living temporarily overseas.

*Spanish Translation:* ________________________________.

**Duration of Status:** In certain visa categories such as diplomats, students and exchange visitors, the alien may be admitted into the U.S. for as long as the person is still doing the activity for which the visa was issued, rather than being admitted until a specific departure date. This is called admission for "duration of status". For students, the time during which a student is in a full course of study plus any authorized practical training, and following that, authorized time to depart the country, is duration of status. The length of time depends upon the course of study. For an undergraduate degree this is commonly four years (eight semesters).
Normally the immigration officer gives a student permission to stay in the U.S. for "duration of status". Duration of Status (or D/S) is recorded on Form I-94, Arrival-Departure Record. The DHS U.S. immigration inspector at port-of-entry gives foreign visitors (all non-U.S. citizens) an Arrival-Departure Record, (a small white card) when they enter the U.S. Recorded on this card is the visa classification and the authorized period of stay in the U.S. This is either recorded as a date or the entry or D/S, meaning duration of status. The I-94 is a very important card to make sure you keep, because it shows the length of time you are permitted and authorized by the DHS to stay in the U.S.

**Spanish Translation:** _______________________________.

**DV:** See Diversity Visa.

**Spanish Translation:** _______________________________.

**Educational and Cultural Affairs:** The Bureau of Educational and Cultural Affairs (ECA) of the U.S. Department of State fosters mutual understanding between the people of the U.S. and the people of other countries to promote friendly, sympathetic, and peaceful relations. ECA administers a variety of exchange programs for non-U.S. secondary, undergraduate, graduate students and professionals, along with other duties.

**Spanish Translation:** _______________________________.

**ESTA:** Electronic System for Travel Authorization (ESTA) is a free, automated system that determines the eligibility of visitors (nationals from 35 participating countries) to travel to the U.S. without a visa under the Visa Waiver Program (VWP). A valid ESTA approval is required for all VWP travel to the U.S. ESTA applications may be submitted at any time prior to travel, though it is recommended travelers apply when they begin preparing travel plans.

**Spanish Translation:** _______________________________.
**Exchange Visitor:** A foreign citizen coming to the U.S. to participate in a particular program in education, training, research, or other authorized exchange visitor program.

*Spanish Translation:* _______________________________.

**Exchange Visitor Skills List:** The Exchange Visitor Skills List (J Visas) is a list of fields of specialized knowledge and skills that are deemed necessary for the development of an exchange visitor's home country. When you agree to participate in an Exchange Visitor Program, if your skill is on your country’s Skills List you are subject to the two-year foreign residence (home-country physical presence) requirement, which requires you to return to your home country for two years at the end of your exchange visitor program, under U.S. law.

*Spanish Translation:* _______________________________.

**Family First Preference:** A category of family immigration (F1) for unmarried sons and daughters of American citizens, and their children.

*Spanish Translation:* _______________________________.

**Family Second Preference:** A category of family immigration (F2) for spouses, children and unmarried sons and daughters of lawful permanent residents.

*Spanish Translation:* _______________________________.

**Family Third Preference:** A category of family immigration (F3) for married sons and daughters of American citizens and their spouses and children. Before 1992 this was known as fourth preference (P-4).

*Spanish Translation:* _______________________________.

**Family Fourth Preference:** A category of family immigration (F4) for brothers and sisters of American citizens and their spouses and children. The American citizen must be 21 years of age or older before he/she can file the petition. Before 1992 this was known as fifth preference (P-5).

*Spanish Translation:* _______________________________.

86
**Federal Poverty Guidelines:** See Poverty Guidelines. The Department of Health and Human Services publishes a list every year giving the lowest income acceptable for a family of a particular size so that the family does not live in poverty. Consular officers use these figures in immigrant visa cases to determine whether a sponsor's income is sufficient to support a new immigrant, in accordance with U.S. immigration laws.

*Spanish Translation:____________________________.*

**Fiance(e):** A person who plans or is contracted to marry another person. The foreign fiance(e) of an American citizen may enter the U.S. on a K-1 visa to marry the American citizen.

*Spanish Translation:____________________________.*

**First Preference:** A category of family immigration (F1) for unmarried sons and daughters of American citizens and their children.

*Spanish Translation:____________________________.*

**Fiscal Year:** The budget year for the U.S. Government. It begins on October 1 and ends on September 30 of the following year.

*Spanish Translation:____________________________.*

**Following to Join:** A type of derivative visa status when the family member gets a visa after the principal applicant.

*Spanish Translation:____________________________.*

**Foreign Affairs Manual (9 FAM):** Foreign Affairs Manual Chapter 41 relates to nonimmigrant visas. Chapter 42 covers immigrant visas. 9 FAM Chapter 40 relates to visa ineligibilities and waivers.

*Spanish Translation:____________________________.*
**Fourth Preference:** A category of family immigration (F4) for brothers and sisters of American citizens and their spouses and children. The American citizen must be 21 years of age or older before he/she can file a petition. Before 1992 this was known as fifth preference (P-5).

*Spanish Translation*: _______________________________.

**Full and Final Adoption:** A legal adoption in which the child receives all the rights of a natural born, legitimate child.

*Spanish Translation*: _______________________________.
Immigration Proceedings

Individual Calendar Hearing

Application for Asylum and Withholding of Removal

Voluntary Departure Requested in the Alternative

Definition

Often the most significant hearings during removal proceedings will be the Individual Calendar Hearings. These hearings are evidentiary hearings where the individual in removal proceedings and the government will focus on contested/disputed matters and present their cases to an Immigration Judge. An individual calendar hearing may be scheduled at the first hearing, called Master Calendar Hearing.

Matters that are contested often include challenges to removability/deportability and applications for relief. At the Individual Calendar Hearings, the individual in removal proceedings has the ability to introduce evidence and call witnesses to support any claims for relief he/she may have. An individual in removal proceedings also has the ability to object to the government’s evidence and cross-examine the government’s witnesses.

After the individual in removal proceedings and the government have presented their cases, an Immigration Judge will either enter an oral ruling at the conclusion of the hearing or issue a decision at a later date.

Judge: Mr. Perez, you previously stated that Spanish is the language you speak and understand best. Is this still correct?

Respondent: Sí.

Judge: These proceedings will be interpreted today in the Spanish language. This is a continued removal hearing before me, Judge Alice Singh in the city of Miami, State of Florida on March 25th, 2014, in the matter of Juan Perez, case number A738928363.

Judge: Counsel, please state your appearances for the record.

Counsel: Alma Salazar representing the respondent in this matter, Mr. Juan Perez.

Judge: The interpreter today is Sal Melendez, who is the official interpreter for the Miami Immigration Court, who is providing simultaneous interpretation to the respondent today in court and need not be sworn in.

Judge: Mr. Perez, can you hear the interpreter clearly through the headphones?

Respondent: Sí.

Judge: Do you understand the interpreter?

Respondent: Sí.

Judge: If at any time, you have difficulty understanding the interpreter, please let me know immediately.

Respondent: Gracias.

Judge: Mr. Perez, you previously took an oath that the testimony you will provide in these proceedings will be the truth, the whole truth, and nothing but the truth, you are still under oath. Do you understand?

Respondent: Sí.

Judge: Please state your full name for the record.

Respondent: Juan Perez.

Judge: Mr. Perez, the attorney seated next to you has entered an appearance in your case. Do you want him to represent you in these proceedings?

Respondent: Sí.

Judge: Where are you currently living?

Respondent: 385 Noreste de la 191, en Miami, Florida

Judge: You are being provided with a blue change of address form. If you do move at any time during these proceedings, you must complete a change of address form and file it with the court within five days of moving. Do you understand?
Respondent: Sí.

Judge: We are here today because the respondent denied the allegations and charges included in the Notice to Appear, when we had the master calendar hearing back in January 2014. Counsel, I want to ensure that you have advised the respondent of the difference between pre-conclusion and post-conclusion voluntary departure. I also want to ensure that the respondent is not seeking pre-conclusion voluntary departure, is this correct?

Counsel: That is correct, Your Honor.

Judge: Counsel for the government, are the necessary biometric checks completed and current?

US Government: Yes, Your Honor.

Judge: Then we may proceed. At this point, we have the following exhibits marked and admitted into the record:
Exhibit 1 – Notice to Appear
Exhibit 2 – The respondent’s criminal background obtained from the Criminal Courts in Miami, Florida.
Exhibit 3 – An affidavit from the respondent’s criminal attorney.
Exhibit 4 – An affidavit from the respondent’s priest.
We also have an application for cancellation of removal, Form EOIR-40, which was filed by the Respondent. I will now provide the Respondent with the cancellation application contained in the court’s record of proceedings for his review.

Respondent: Gracias.

Judge: Sir, have you seen this document prior to today?

Respondent: Sí.

Judge: What is it?

Respondent: Es el documento que preparó mi abogado para cancelar mi expulsión.

Judge: At the time this document was prepared, were you able to read and write in English?

Judge: Did your attorney or the person that assisted you in preparing the application explain the entire contents of the application to you in your native language?

Respondent: Sí. Una de sus secretarias me lo tradujo.

Judge: Do you know the contents of this application?

Respondent: Sí.

Judge: Are the statements made in the application true and correct?

Respondent: Sí.

Judge: Did you provide the supporting documents filed with the application?

Respondent: Sí.

Judge: Do you believe that the documents provided with your application are true and correct?

Respondent: Sí.

Judge: Please turn to the last page of the application. Is that your signature that appears on this application?

Respondent: Sí.

Judge: Please stand and raise your right hand. Do you swear or affirm that the contents of this application, including the documents submitted in support of the application, are true to the best of your knowledge?

Respondent: Sí.

Judge: Then please sign with your full, true name.

Respondent: Aquí tiene.

Judge: I am now signing the application as well to establish that the respondent acknowledged knowing the contents of the application, and that they are true.

Judge: Government counsel, any objections to admission of this application?

US Government: No objections, Your Honor.
Judge: I will mark and admit the application as Exhibit 5.

Judge: Counsel for Respondent, do you have any other documents you would like to offer into the record at this time?

Counsel: No, Your Honor.

Judge: Any objections?

Counsel: No, Your Honor.

Judge: Does the government have any other documents to offer into the record at this time?

US Government: No, Your Honor.

Judge: Any objections?

US Government: No, Your Honor.

Judge: Counsel, any opening statement?

Counsel: Yes, Your Honor. Thank you.

Counsel: From his earliest memories as a small child in El Salvador, until he fled to the United States at the age of sixteen, Juan suffered substantially. He endured severe and constant physical and emotional child abuse by his biological father, and from the age of thirteen, Juan withstood constant recruitment attempts and physical and verbal harassment by the Mara Salvatrucha (“MS”) gang. His father beat, berated, and belittled him and members of the MS gang severely beat him repeatedly, and even killed his best friend. Juan continues to fear both his father and the MS gang, and according to a licensed psychologist who evaluated him, he exhibits psychological and physical symptoms consistent with a child who has suffered severe physical and emotional child abuse, and also repeated violent physical and verbal attacks by a criminal enterprise.

Based on past persecution by his father and also on past persecution by the MS gang, Juan is entitled to a presumption of a well-founded fear of future persecution in El Salvador by groups that the government is unable or unwilling to control. This brief will demonstrate that Juan’s father persecuted him in El Salvador because Juan was a member of his father’s nuclear family. It will also demonstrate that the MS gang persecuted Juan because he was part of a small group of adolescents who opposed gangs. As there is no evidence of changed country
conditions, this presumption is irrefutable. Juan is further entitled to a favorable grant of asylum based on his well-founded fear of further physical and emotional abuse and harassment from both his father and the MS gang. If he is forced to return to El Salvador, Juan will likely suffer more beatings and emotional abuse from his father and more violent physical attacks and possibly death at the hands of the MS gang.

Juan Perez has demonstrated both past persecution and a well-founded fear of future persecution on the basis of his membership in three particular social groups and his political opinion and he has further demonstrated that he is unable to relocate within El Salvador to avoid this persecution. His application for asylum and withholding of removal should therefore be granted.

Thank you, Your Honor.

Judge: Ms. Rizzo, anything before the examination in chief for the respondent?

US Government: Your Honor, the US Government would like to ratify the allegations and charges filed in the Notice to Appear. We believe that the crimes committed by the respondent on February 18, 2010, are indeed aggravated felonies that require the immediate removal of the respondent. As the Court knows, receiving stolen property and grand theft are both aggravated felonies according to Immigration and Naturalization Act of 1952, Section 101(a)(43)(G).

Judge: Thank you, Ms. Rizzo. I would like to hear from the respondent now. Are there any witnesses for the respondent in the courtroom at this time?

Counsel: Yes, Your Honor. We have the respondent’s former probation officer in the courtroom.

Judge: Any motion to sequester?

US Government: Motion to sequester, Your Honor.

Judge: Sir, please wait outside until called in. Thank you.

Judge: Mr. Perez, please take the witness stand. Counsel, you may begin with the examination.

Counsel: Mr. Perez, when did you come to the United States?

Counsel: Where did you come from?


Counsel: Who did you come to the United States with?

Respondent: Vine con mi madre.

Counsel: What about your father? Did he also come with you?

Respondent: No. Yo me fuí de Centeno porque mi padre me quería matar y porque la Mara Salvatrucha me la tenía jurada. Mi madre me dijo que si seguía viviendo en Centeno mi vida corría peligro.

Counsel: Why did your father want to kill you?

Respondent: Desde que nací, mi padre me pegaba. Especialmente cuando él estaba borracho. Se enloquecía y comenzaba a pegarme a mí y a mi madre. Destruió todas las cosas que estaban en la casa.

Counsel: What did your mother do about it?

Respondent: Mi madre nos enviaba a la casa de una vecina hasta que mi padre se calmara. Cada vez que llegaba de la casa de la vecina, veía a mi madre con golpes en la cara y en el cuerpo. Pobrecita ella tan abnegada a sus hijos.

Counsel: Do you have any siblings?

Respondent: Tengo dos hermanos y tres hermanas.

Counsel: Where are they?

Respondent: Todos se fueron a vivir a México y yo con mi madre fuimos los únicos que vinimos a los Estados Unidos.

Counsel: When was the first time your father hit you?

Respondent: Desde que recuerdo. También le digo que cuando mi padre me llevaba a trabajar a la cosecha, muchas veces me pegaba porque decía que yo era un haragán. Me pegaba en el trabajo y luego me seguía pegando en la casa.

Counsel: What about your experiences with the MS gang?
Respondent: Cuando cumplí 13 años, me metí con la Mara Salvatrucha y comencé a ascender en los rangos de la pandilla hasta que uno de los pandilleros se la agarró conmigo porque yo no quería matar a un ex pandillero que se había cambiado de bando para la pandilla contraria. Desde ese momento, toda la pandilla se volcó en mi contra. Desde ese entonces me empezaron a seguir y me amenazaron de muerte.

Counsel: When did your mother realize that you had to leave El Salvador?

Respondent: Cuando tenía 16 años, la pandilla mató a mi mejor amigo, Héctor Morales. Creo que lo mataron porque no le quisieron decir dónde estaba yo escondido. Una vez llegaron a mi casa y balearon todo. Gracias a Dios ni mis padres ni mis hermanos y hermanas estaban en la casa. En realidad mis hermanos y hermanas se habían ido a México con un tío nuestro.

Counsel: When you arrived in the United States, did you see any doctor?

Respondent: Sí. Me llevaron a ver a un psicólogo de la escuela porque tenía como ataques de pánico.

Counsel: Do you know what was wrong with you?

Respondent: Sí. Me dijeron que estaba trastornado y muy tensionado por lo que había pasado desde mi niñez. Me dieron unos medicamentos para mis problemas de ansiedad pero no me ayudaron mucho.

Counsel: Why do you say that the medication did not work?

Respondent: Porque hasta hora sigo temblando, me agarran fuertes dolores de cabeza y comienzo a llorar sin motivo. Además la muerte de mi madre empeoró todo.

Counsel: When did your mother pass away?

Respondent: Hace 3 años. Murió de un ataque cardíaco. Desde ese momento estoy solo pero estoy seguro que si quisiera volver a El Salvador me matarían.

Counsel: What about going to México with your siblings?

Respondent: Mis hermanas y hermanos no tienen comunicación conmigo. Yo no sé dónde están. No tengo ni idea dónde viven.
Counsel: Did you get into any legal trouble here in the United States?

Respondent: Sí. Me arrestaron hace 3 años por agredir a un policía. Esto pasó unos días después de la muerte de mi madre. Perdí el control y agredí al policía que me había parado para hacerme una infracción de tránsito.

Counsel: Were you given probation?

Respondent: Sí. Mi ex-oficial está en el pasillo. Creo que va a declarar a mi favor.

Counsel: Ok. Thank you, Mr. Perez. I have no further questions.

Judge: Any cross?

US Government: Thank you, Your Honor. You mentioned that you are not in contact with your siblings who currently reside in México, is that correct?

Respondent: Sí.

US Government: What about your uncle? Do you know where he is?

Respondent: No.

US Government: Did you check with any of your family members in El Salvador as to the address or telephone number of any of your siblings or your uncle?

Respondent: No. Yo no sé dónde están mis familiares en El Salvador. Sé que mi padre murió atropellado por un automóvil hace unos 5 años. El resto de mi familia se mudó y no tengo idea dónde viven.

US Government: Are you currently working, sir?

Respondent: De vez en cuando hago unas chambitas para sobrevivir.

US Government: How are you going to support yourself if you are granted asylum in this country?

Respondent: Una vez que me den los papeles, yo voy a poder trabajar porque voy a ser legal en este país. Ahora no consigo nada porque no tengo papeles.

US Government: No more questions, Your Honor.
Judge: Anything else from the respondent?

Counsel: No, Your Honor.

Judge: Mr. Perez, you may step down. Counsel, any other witness?

Respondent: Yes, Your Honor. We call officer Ramos to the stand.

Judge: Mr. Ramos, please take the witness stand. Do you swear or affirm that the testimony you are about to give in this case shall be the truth, the whole truth and nothing but the truth?

Witness: I do.

Judge: Counsel, you may begin the examination of Officer Ramos.

Counsel: Thank you, Your Honor. Mr. Ramos, were you the probation officer assigned to Department 8 in the Miami Courthouse on April 15th, 2010?

Witness: Yes.

Counsel: Do you recall talking to Mr. Perez, the respondent in this matter?

Witness: Yes, I do.

Counsel: In what capacity do you know him?

Witness: Mr. Perez was granted probation in an assault case. He was convicted and he was placed on a 24 month probation period.

Counsel: What can you tell this Court about his behavior during those 24 months?

Witness: He was very polite and he always complied with all the terms and conditions of his probation.

Counsel: Did he comply with all the terms and conditions of his probation?

Witness: Yes.

Counsel: Did you notice anything unusual about his behavior?

Witness: Yes. Often he had panic attacks and crying spells. The Criminal Judge already mentioned in the sentencing report that he was under psychological treatment. In fact, one of the conditions of his probation was to attend monthly sessions with a County paid psychiatrist.
Counsel: Did he do that?

Witness: He did. In fact, a few months before his probationary period ended, Mr. Perez was cured of his panic attacks. At least, that is what the latest report from the psychiatrist indicated.

Counsel: Thank you, Mr. Ramos. I have no more questions, Your Honor.

Judge: Any cross?

US Government: No questions, Your Honor.

Judge: Mr. Ramos, you may step down. Any other witness for the respondent?

Counsel: No more witnesses. The respondent rests.

Judge: Does the government have any rebuttal evidence or witnesses it wishes to introduce?

US Government: No witnesses, Your Honor.

Judge: The evidentiary portion of this hearing is now closed. Does either party wish to make a closing argument?

Counsel: No, Your Honor.


Judge: We will go to a separate tape for the oral decision.

Judge: The respondent is a 25 year old, single, male, native and citizen of El Salvador. The United States Department of Homeland Security (DHS) has brought these removal proceedings against the respondent under the authority of the Immigration and Nationality Act (the Act). Proceedings were commenced with the filing of the Notice to Appear (NTA) with the Immigration Court. Exhibit 1.

The respondent admits as alleged in the Notice to Appear that he committed the crimes listed therein. He denies that he is removable as charged under the Convention Against Torture. On the basis of the respondent’s admissions and concession, and the conviction records and other records admitted into evidence, the Court finds that the respondent’s removability has been established.

The respondent declined to designate a country of removal, and El Salvador was directed by the Court upon recommendation by the
Government. The respondent applied for relief from removal in the form of asylum under section 208(a) of the Act. Applications for asylum shall also be considered as applications for withholding of removal under section 241(b)(3) of the Act. The respondent also requests withholding of removal under the Convention Against Torture. The respondent seeks voluntary departure under section 240B(b) of the Act in the alternative.

The respondent in this case has satisfied the requirement of showing by clear and convincing evidence that he applied for asylum within one year of his last arrival Title 8 C.F.R. § 1208.4(a)(2). At the time of filing, the respondent was also advised of the consequences of knowingly filing a frivolous application for asylum. Title 8 C.F.R. § 1208.18.

The respondent's Form I-589 application for asylum is contained in the record as Exhibit K. Prior to admission of the application the respondent was given an opportunity to make any necessary corrections and then swore or affirmed before this Court that the contents of the application, as corrected, were all true and correct to the best of his knowledge.

The application was forwarded to the State Department for comment. The response is included in the record as Exhibit L.

Judge: STATEMENT OF THE LAW.

The burden of proof is on the respondent to establish that he is eligible for asylum or withholding of removal under section 241(b)(3) or relief under the Convention Against Torture.

A. Withholding under section 241(b)(3) of the Act

To qualify for withholding of removal under section 241(b)(3) of the Act, the respondent’s facts must show a clear probability that his life or freedom would be threatened in the country directed for deportation on account of race, religion, nationality, membership in a particular social group or political opinion. See INS v. Stevic, 467 U.S. 407 (1984). This means that the respondent’s facts must establish it is more likely than not that he would be subject to persecution for one of the grounds specified.

B. Asylum under section 208 of the Act

To qualify for asylum under section 208 of the Act the respondent must show that he is a refugee within the meaning of Section 101(a)(42)(A) of the Act. Section 208(a) of the Act. The definition of refugee includes a requirement that the respondent demonstrate either that he suffered past
persecution or that he has a well-founded fear of future persecution in his
country of nationality or, if stateless, his country of last habitual residence
on account of one of the same five statutory grounds. The alien must
show he has a subjective fear of persecution and that the fear has an
objective basis. The objective basis of a well-founded fear of future
persecution is referred to in the regulations as a “reasonable possibility of
suffering such persecution” if the alien were to return to his home country.
Title 8 C.F.R. § 1208.13(b)(2). The objective component must be
supported by credible, direct, and specific evidence in the record. De Valle
ev. INS, 901 F.2d 787 (9th Cir. 1990). The alien must also be both unable
and unwilling to return to or avail herself of the protection of his home
country because of such fear. Finally, an applicant must also establish that
he merits asylum in the exercise of discretion.

In evaluating a claim of future persecution the Immigration Judge does not
have to require the alien to provide evidence he would be singled out
individually for persecution if the alien establishes that there is a pattern or
practice in his home country of persecution of groups of persons similarly
situated to the applicant on one of the five enumerated grounds, and that
the alien is included or identified with such group. 8 C.F.R. §
1208.13(b)(2).

An alien who establishes he suffered past persecution within the meaning
of the Act shall be presumed also to have a well-founded fear of future
persecution. The presumption may be rebutted if a preponderance of the
evidence establishes that, since the time the persecution occurred,
conditions in the applicant’s home country have changed to such an
extent that the applicant no longer has a well-founded fear of being
persecuted if he were to return. An alien who establishes past
persecution, but not ultimately a well-founded fear of future persecution,
will be denied asylum unless there are compelling reasons for not
returning him which arise out of the severity of the past persecution. 8
C.F.R. § 1208.13(b)(1); see also Matter of Chen, 20 I&N Dec. 16 (BIA
1989).

The well-founded fear standard required for asylum is more generous than
the clear probability standard of withholding of removal. INS v. Cardoza-
Fonseca, 480 U.S. 421 (1987). We first, therefore, apply the more liberal
“well-founded fear” standard when reviewing the respondent’s application,
because if he fails to meet this test, it follows that he necessarily would fail
to meet the clear probability test required for withholding of removal.

C. Withholding / Deferral of removal under the Convention Against Torture

In adjudicating the request for relief under the United Nations Convention
Against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment ("Convention Against Torture") I have applied the regulations of Title 8 C.F.R. Part 1208, particularly sections 1208.16, 1208.17, and 1208.18.

Among the important tenants of this law are the following:

Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Title 8 C.F.R. § 1208.18(a)(1).

To constitute torture, the “act must be directed against a person in the offender’s custody or physical control.” 8 C.F.R. § 1208.16(a)(6). The pain or suffering must be inflicted “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). “Acquiescence” requires that the public official have prior awareness of the activity and “thereafter breach his or her legal responsibility to intervene to prevent such activity.” 8 C.F.R. § 1208.18(a)(7). Torture is an “extreme form of cruel and inhuman treatment” and does not include pain or suffering arising from lawful sanctions. 8 C.F.R. §1208.18(a)(2) and (3).

In order to constitute torture, mental pain or suffering must be “prolonged.” 8 C.F.R. § 1208.18(a)(4). It also must be caused by or resulting from intentional or threatened infliction of severe physical pain or suffering, threatened or actual administration or application of mind altering substances or similar procedures, or threatened imminent death. These causes or results can be directed towards the applicant or another.

The applicant for withholding of removal under the Convention Against Torture bears the burden of proving that it is “more likely than not” that he or she would be tortured, as defined in the regulations, if removed to the proposed country of removal. Title 8 C.F.R. § 1208.16(c)(2). In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including:

(i) Evidence of past torture inflicted upon the applicant;
(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
(iv) Other relevant information regarding conditions in the country of removal.
VOLUNTARY DEPARTURE

Pending before this court is also the respondent's request to depart the United States without expense to the Government in lieu of removal under section 240B(b) of the Act. To qualify for voluntary departure, the respondent must establish that he has been physically present in the United States for a period of at least one year immediately preceding the date the NTA was served; he is, and has been a person of good moral character for at least 5 years immediately preceding such application; he is not deportable under section 237(a)(2)(A)(iii) or 237(a)(4) of the Act; he establishes by clear and convincing evidence that he has the means to depart the United States and intends to do so; and he shall be required to post a voluntary departure bond. In addition, the respondent must be in possession of a travel document that will assure his lawful reentry into his home country.

Discretionary consideration of an application for voluntary departure involves a weighing of factors, including the respondent's prior immigration history, the length of his residence in the United States, and the extent of his family, business and societal ties in the United States.

There are no other issues raised by the DHS that will further negatively affect the respondent's eligibility for this minimal form of relief. The Court finds the respondent statutorily eligible and deserving of this relief in the exercise of discretion. Accordingly, the following order(s) are entered:

ORDERS

IT IS HEREBY ORDERED that the respondent’s application for asylum be denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States to El Salvador, or in the alternative to Mexico, on the charges contained in the Notice to Appear.

IT IS FURTHER ORDERED that the respondent’s application for withholding of removal under section 241(b)(3) of the Act to El Salvador be denied.

IT IS FURTHER ORDERED that the respondent be granted voluntary departure, in lieu of removal, and without expense to the United States Government on or before May 15th, 2014.
IT IS FURTHER ORDERED that the respondent shall post a voluntary departure bond in the amount of $5,000 with the Department of Homeland Security on or before March 20th, 2014.

IT IS FURTHER ORDERED that, if required by the DHS, the respondent shall present to the DHS all necessary travel documents for voluntary departure within 60 days.

IT IS FURTHER ORDERED that, if the respondent fails to comply with any of the above orders, the voluntary departure order shall without further notice or proceedings vacate the next day, and the respondent shall be removed from the United States to El Salvador on the charges contained in the Notice to Appear.

WARNING TO THE RESPONDENT: Failure to depart as required means you could be removed from the United States, you may have to pay a civil penalty of $1000 to $5000, and you would become ineligible for voluntary departure, cancellation of removal, and any change or adjustment of status for 10 years to come.

Also, if you fail to depart as required, and then fail to comply with the removal order, you could also be fined $500 for each day of noncompliance. Section 274D of the Act (for 212 and 237).

In addition, if you are removable for being deportable under section 237 of the Act, and you fail to comply with your removal order, you shall face additional fines and/or could be imprisoned for up to 4 and in some cases up to 10 years.

Judge: Mr. Perez, you have heard my oral decision. I have denied your applications for withholding of removal. Do you understand my decision?

Respondent: No.

Judge: Counsel will you waive further explanation of the decision?

Counsel: Yes, Your Honor.

Judge: Mr. Perez, your attorney will provide detailed information to you about the Court’s decision following the hearing. Counsel for the Respondent, do you wish to waive or reserve appeal?

Counsel: Yes, Your Honor.

Judge: Counsel for the Respondent, at this time the Court is providing you with an appeal packet.
Judge: Mr. Perez, your attorney has taken an appeal packet, which consists of a notice of appeal, request for fee waiver, and a change of address notification form to the Board of Immigration Appeals. You are also being provided an EOIR-41, a form providing you with a notice of your appeal rights, which is written in both English and Spanish.

Judge: Let me explain your appeal rights at this time as detailed in the form EOIR-41. First, you have the right to appeal my decision to the Board of Immigration Appeals if you feel my decision is incorrect. Do you understand?

Respondent: Sí.

Judge: You must state the basis for your appeal on the notice of appeal, which was provided to your attorney, and mailed to the Board of Immigration Appeals. Do you understand?

Respondent: Sí.

Judge: Second, in order to file an appeal, you must include the $110 filing fee or use the request for a fee waiver, if you cannot afford to pay the $110 appeal filing fee. The fee waiver request form is included in the packet of materials provided to your attorney. Do you understand?

Respondent: Sí.

Judge: Third, you must file your appeal with the Board of Immigration Appeals no later than 30 days from today’s date. Thus, your appeal must be received by the Board on or before April 25th, 2014, or the Board may reject your appeal. Do not mail your notice of appeal on the 30th day, as it will not reach the Board of Immigration Appeals, which is located in Falls Church, Virginia, in a timely manner. Do you understand?

Respondent: Sí.

Judge: Finally, if you file a notice of appeal with the Board of Immigration Appeals in a timely manner, the Department of Homeland Security may not remove you while your appeal is pending. Do you understand?

Respondent: Sí.

Judge: Do you have any questions about anything I’ve said so far?
Respondent: No.

Judge: Any questions from either counsel?

US Government: No questions, Your Honor.

Counsel: Your Honor, may the Court consider voluntary departure based on the circumstances of the case?

Judge: US Government?


Judge: Based on the evidence submitted in Court, including the oral testimony of Mr. Ramos, this Court will grant the privilege of voluntary departure to Mr. Juan Perez.

Judge: Mr. Juan Perez, do you promise to this Court that you will leave the United States voluntarily on or before the date set by the Field Office Director of the Department of Homeland Security?

Respondent: Sí.

Judge: Sir, the Court has granted you the privilege of voluntary departure. This means that you must leave the United States on or before the date provided to you by this court or by any date granted to you by the Field Office Director of the Department of Homeland Security. You must also post the voluntary departure bond set by the court within seven days of today's date. If you fail to leave the United States by either of these dates, then you will be ordered removed and deported from the United States. If this happens, your voluntary departure bond will be breached, and you will be subject to civil penalties of between $1,000 and $5,000. Additionally, if you fail to timely depart the United States and are ordered removed, you will become ineligible for certain forms of relief, such as voluntary departure, cancellation of removal, adjustment of status, or change of status for a period of 10 years. Do you understand the consequences of failing to depart voluntarily as you have promised?

Respondent: Sí.

Judge: Mr. Perez, do you understand everything I have said to you today?

Respondent: Sí.

Judge: Do you have any questions about anything I have told you today?

Respondent: No.
Judge: Anything from either party?

US Government: No, Your Honor.

Counsel: No, Your Honor.

Judge: There being nothing further, this matter is concluded. I will now provide you with a written memorandum of my oral decision. Thank you. We are adjourned.
Key Terminology for Individual Hearing

Below please find the key terminology for the script on the Individual Hearing, shown on the previous pages.

The respondent denied the allegations and charges included in the Notice to Appear

Spanish Translation:
_________________________________________________
_________________________________________________
_________________________________________________
_________________________________________________

I want to ensure that you have advised the respondent of the difference between pre-conclusion and post-conclusion voluntary departure.

Spanish Translation:
_________________________________________________
_________________________________________________
_________________________________________________
_________________________________________________

I also want to ensure that the respondent is not seeking pre-conclusion voluntary departure.

Spanish Translation:
_________________________________________________
_________________________________________________
_________________________________________________
Are the necessary biometric checks completed and current?

Spanish Translation: ______________________________________________
_______________________________________________.

I will now provide the Respondent with the cancellation application contained in the court’s record of proceedings for his review.

Spanish Translation: ______________________________________________
_______________________________________________.
_______________.

The supporting documents filed with the application.

Spanish Translation: ______________________________________________
_______________________________________________.

Any objections to admission of this application?

Spanish Translation: ______________________________________________
_______________________________________________.

109
He endured severe and constant physical and emotional child abuse by his biological father.

Spanish Translation: 

Juan withstood constant recruitment attempts and physical and verbal harassment by the Mara Salvatrucha (“MS”) gang.

Spanish Translation: 

His father beat, berated, and belittled him

Spanish Translation: 

Juan is entitled to a presumption of a well-founded fear of future persecution in El Salvador by groups that the government is unable or unwilling to control.

Spanish Translation: 
Juan is further entitled to a favorable grant of asylum based on his well-founded fear of further physical and emotional abuse and harassment from both his father and the MS gang.

Spanish Translation: ____________________________
__________________________
__________________________
__________________________
__________________________.

Juan Perez has demonstrated both past persecution.

Spanish Translation: ____________________________
__________________________.

He is unable to relocate within El Salvador.

Spanish Translation: ____________________________
__________________________.

His application for asylum and withholding of removal should therefore be granted.

Spanish Translation: ____________________________
__________________________.
Aggravated felonies that required the immediate removal of the respondent.

**Spanish Translation:**

Toda la pandilla se volcó en mi contra.

**Spanish Translation:**

He was placed on a 24-month probation period.

**Spanish Translation:**

Crying spells.

**Spanish Translation:**

County paid psychiatrist.

**Spanish Translation:**
Authority of the Immigration and Nationality Act (the Act).

Spanish Translation: ________________________________________________

__________________________________________.

Convention Against Torture.

Spanish Translation: ________________________________________________

The Court finds that the respondent’s removability has been established.

Spanish Translation: ________________________________________________

__________________________________________.

The respondent applied for relief from removal in the form of asylum under section 208(a) of the Act.

Spanish Translation: ________________________________________________

__________________________________________.
The respondent also requests withholding of removal under the Convention Against Torture. The respondent seeks voluntary departure under section 240B(b) of the Act in the alternative.

Spanish Translation: ___________________________________________

_____________________________________________

_____________________________________________

_____________________________________________

I have denied your applications for withholding of removal.

Spanish Translation: ___________________________________________

_____________________________________________

Counsel for the Respondent, do you wish to waive or reserve appeal.

Spanish Translation: ___________________________________________

_____________________________________________

An appeal packet.

Spanish Translation: ___________________________________________

114
A notice of appeal, request for fee waiver, and a change of address notification form to the Board of Immigration Appeals.

Spanish Translation: __________________________________________________________

________________________________________________________

________________________________________________________

________________________________________________________.

Filing fee.

Spanish Translation: __________________________________________________________.

In a timely manner.

Spanish Translation: __________________________________________________________.

You must also post the voluntary departure bond set by the court within seven days of today’s date.

Spanish Translation: __________________________________________________________

________________________________________________________

________________________________________________________

________________________________________________________.
If you fail to leave the United States by either of these dates, then you will be ordered removed and deported from the United States.

**Spanish Translation:**  

_____________________________________________  

_____________________________________________  

_____________________________________________.

A written memorandum of my oral decision.

**Spanish Translation:**  

______________________________________________________.
NOTICE TO RESPONDENTS
GRANTED VOLUNTARY DEPARTURE

You have been granted the privilege of voluntarily departing from the United States of America. The Court advises you that, if you fail to voluntarily depart the United States within the time period specified, a removal order will automatically be entered against you. Pursuant to section 240B(d) of the Immigration and Nationality Act, you will also be subject to the following penalties:

1. You will be subject to a civil penalty of not less than $1,000 and not more than $5,000; and
2. You will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change of nonimmigrant status.

The Court further advises you that:

You have been granted pre-conclusion voluntary departure.

1. If you file a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. §§ 1240.26(b)(3)(iii), (e)(1).
2. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of $3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).
You have been granted post-conclusion voluntary departure.

1. If the Court set any additional conditions, you were advised of them, and were given an opportunity to accept or decline them. As you have accepted them, you must comply with the additional conditions. 8 C.F.R. § 1240.26(c)(3).

2. The Court set a specific bond amount. You were advised of the bond amount, and were given an opportunity to accept or decline it. As you have accepted it, you have a duty to post that bond with the Department of Homeland Security, Immigration and Customs Enforcement, Field Office Director within 5 business days of the Court’s order granting voluntary departure. 8 C.F.R. § 1240.26(c)(3)(i).

3. If you have reserved your right to appeal, then you have the absolute right to appeal the decision. If you do appeal, you must provide to the Board of Immigration Appeals, within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if you do not submit timely proof to the Board that the voluntary departure bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii).

4. If you do not appeal and instead file a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. §§ 1240.26(c)(3)(iii), (e)(1).

5. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of $3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).
Homework Assignment

You must be connected to the internet to complete the following assignment

- Go to Lecture 3, in the Interactive Book and practice all the scripts available.

  Look for the icon. It indicates that the script is actually spoken on a digital file and that you can practice with it.

- Go to Lecture 3, in the Interactive Book and watch all the videos available. Make sure you interpret them as you watch them. Look for the icon. It indicates that a video is available for that subject matter.

You do not need to be connected to the internet to complete the following assignment

- Study all the immigration terminology, abbreviations and forms covered in this lecture.

- Make sure you know how to interpret each of the immigration proceedings and the immigration advisements.