



## How to Prepare for an Individual Hearing: Different Practitioners' Perspectives

There isn't a cookie-cutter or formulaic method to how you should prepare for an individual hearing (aka merits hearing or individual calendar hearing (ICH)) in immigration court. It will depend on your advocacy and preparation styles and what works best for you, your organization, and/or firm. There are a lot of factors involved, from the size of your caseload, to the court's schedule, your organization's or firm's policies, and your working relationship with your client. Keeping in mind that there is no one size fits all method, we have gathered different perspectives<sup>1</sup> from practitioners regarding their experiences of preparing for individual hearings.

We hope this resource provides a helpful starting point for new attorneys to the field and pro bono attorneys, who have a case scheduled for an individual hearing, and perhaps it will give a couple of ideas for experienced practitioners. This resource will show you different preparation styles and help you think through how you can get organized and ready for your hearing.

If a child has an individual hearing scheduled in immigration court, the requested relief will likely be I-589 related relief (asylum, withholding of removal, and protection under the Convention Against Torture (CAT)) or adjustment of status. We kept that in mind when drafting this resource. While some information is generally applicable to individual hearings, it predominantly focuses on preparation for those two types of cases. The resource also assumes you are already at the individual hearing

### WHAT IS AN INDIVIDUAL HEARING?

The [Immigration Court Practice Manual](#) (aka OCIJ Practice Manual) generally explains an individual calendar hearing in Ch. 4.16(a): “[e]videntiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief.”

The manual goes on to say in Ch. 4.16(d): “parties should be prepared to:

- make an opening statement
- raise any objections to the other party's evidence
- present witnesses and evidence on all issues
- cross-examine opposing witnesses and object to testimony
- make a closing statement”

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<sup>1</sup> In creating this resource, we gathered and collected different perspectives from CILA attorneys, AILA members who responded to a listserv request, and some attorneys who previously contributed to a prior CILA training. We paraphrased some of the responses we received and tried not to include duplicative answers.

stage so if you have questions regarding where to file<sup>2</sup> the asylum application, when your client can adjust,<sup>3</sup> or if your client should adjust before USCIS or the court,<sup>4</sup> we advise you to reach out to CILA or check out other resources on those questions.

### Case Preparation: Planning Your Time

Timelines in immigration court vary widely. Depending on the case, sometimes you may only have a few weeks to prepare for a hearing or you may have a year or more. Both situations can bring their own challenges. If your case is short-set or if you come into a case later in the game, it may be a challenge to gather all of the supporting evidence you need quickly. If your case has been pending in immigration court for many years, sometimes it can be challenging to obtain older evidence, evidence gets stale, and/or sometimes it is hard to stay on top of the case and as in touch with your client as you should over the years.

Either way, it helps to have a system or plan of action in place for how you would like to work-up your case(s) to keep yourself on track. For example, your process can involve how you plan to develop the evidence in the case, how you plan to prepare your client and any other witnesses, and how you prepare yourself to represent your client in court. Then you can modify that plan to each individual case's particular needs and timeline. Different practitioners give their tips.

### What's your timeline: when do you start preparing?

- It depends on the court deadlines of course but start preparing as soon as you can. It never feels early enough!
- Sometimes it feels like there is a big break between filing the I-589 and the hearing but all of the time should be used developing your evidence, meeting with your client to work on a declaration, and connecting with experts.
- At least 2 months in advance, depending on the call-up date.
- For the hearing itself, I would begin preparing 4-6 weeks before to review the filing(s), get the file in order, schedule prep sessions, get the questions ready, and prepare a closing.
- I start preparing from the beginning of representation. When I am doing my full case review, I am also thinking about what evidence development we will need. I will make a

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<sup>2</sup> Consult CILA's resource *Asylum Law Under Attack: What is the impact on Unaccompanied Children?* for discussion regarding the "Lafferty Memo," "Kim Memo," and *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018) and CILA's resources *Overview of Designation as an "Unaccompanied [non-citizen] Child UAC* and *UAC Designation Flow Chart* posted on CILA's website under *Additional Resources*, <http://www.cilacademy.org/resources/additional-resources/>.

<sup>3</sup> Check out CILA's [Quick Reference Guide – SIJ Status and EB-4 Immigrant Visa Availability](#).

<sup>4</sup> Read CILA's blog post [Adjusting Without Jurisdiction: A Cautionary Tale](#).



list of evidence needs that we will want to communicate with our client. I ask my client for any documentation that they have from the beginning. Depending on the age and competency of my client, I will also provide my client with a list of what evidence we still need to obtain.

- For asylum cases, I consider that some types of evidence take time to get such as forensic evaluations, country conditions expert statements, and/or expert statements to authenticate documents. Also, evidence can go stale if you get it too far in advance so you have to balance that with the time it will take to get the evidence. I like to start getting evaluations and experts set up about 4-6 months out from hearing, if possible. This also usually ensures that I have enough time to get the evidence we need from the client, which takes several follow-ups on average, and to get documents translated. Additionally, sometimes new events have happened in the client's home country, and it is necessary to update the client's declaration or new events have happened in the U.S., and the client is now eligible for an additional form of relief that we need to prepare.
- In my mind preparation starts with the declaration if there is one. That is when the story starts to come together, and we need to make sure it is authentic, consistent, fits our legal theory, etc.
- For any court cases, I prepare at least 90 days before the hearing, depending on the judge's deadlines and how long the case has been pending. Then, once I meet the supplemental filing deadline, I prep the client at least twice about a month before the individual hearing. For an adjustment of status case specifically, I prepare with at least 90 days in anticipation to see if the client needs to either get or update a medical or an I-864. To prep, have the client and attorney go through the application. Some sample questions to ask are: How did the person enter? When? How long have they been in the U.S.? When was the petition filed? When was it approved? If spousal, when did they marry? How long married? Whether they have paid taxes? Any previous orders of removal? Any arrests or encounters with the law?



- I set a task reminder 6 months prior to the merits hearing to pull the file and review it. I make sure biometrics will be current by the time of the hearing or I ask DHS to refresh (by email and mail). I review supporting documents, and I send the client an updated checklist. Two or three months prior, I review the application with the client and make any changes. I also ask the client to start thinking of possible witnesses.

## A FEW KEY RULES FROM THE IMMIGRATION COURT PRACTICE MANUAL

**DEADLINES:** The [Immigration Court Practice Manual](#) Appendix C provides an overview chart of court deadlines and where to find the rules in the manual. It is important to know that many times judges will give a different deadline of when you should submit evidence, which then supersedes the manual's deadline.

**FILINGS:** Generally, Ch. 3 of the Immigration Court Practice Manual covers what the court expects for filings with the immigration court including information regarding timeliness, service, number of copies, format, etc.

**TRANSLATIONS:** All documents filed with the immigration court must be in English. If a document is not in English, then it must be accompanied by a certified English translation. See Immigration Court Practice Manual Ch. 3.3(a) for further instructions. The Immigration Court Practice Manual Appendix G includes a Sample Certificate of Translation to follow as an example.

**CRIMINAL HISTORY CHARTS:** The Immigration Court Practice Manual Ch. 3.3(f) discusses documents regarding criminal convictions and Appendix M gives a sample criminal history chart.

**WITNESS LISTS:** Consult the Immigration Court Practice Manual Ch. 3.3(g) regarding what information you need to include in your witness list. Remember to file a motion for an interpreter if you need a different language interpreter for a witness.

**MOTIONS:** Ch. 5 of the Immigration Court Practice Manual covers important information regarding motions.



## Proving Your Client's Case

What are your best tips for developing the evidence?

- For asylum cases (for cases regarding women, children, LGBTQ, or gender-based violence), request assistance from the [Center for Gender and Refugee Studies \(CGRS\)](#). They are a great resource for country conditions research and experts. I also like to do independent research for newspaper articles, etc.
- For asylum cases, meet with the client several times to develop a declaration/affidavit and complete the I-589. It is also important to gather a list of witnesses and spend time speaking to each. Finding a country conditions expert is always difficult. I would send 10 or so emails and usually only get a couple of responses back.
- Use an evidence matrix from the beginning to stay on top of the legal burdens and when the burdens shift, as well as the evidence you have or need to collect from folks in home country and what legal element the evidence supports. This will change and evolve as you learn more from your client over time and as you begin to develop trust.
- Talk with your client to develop the best evidence you can. Ensure they have given you every documentary piece of evidence that could support their story. If their story relates to a family member for instance, try to get

## Developing Evidence for an Asylum Case

### Common Forms of Evidence:

- Client's declaration
- Corroborating statements
- Forensic evaluations
- Medical records
- School records
- Country conditions articles and reports
- Country conditions experts

### Where do I get started with my country conditions research?

- Contact [CGRS](#)
- Search [refworld](#)
- Check out country specific reports from [Human Rights Watch](#) and [Amnesty International](#)
- View the Washington Office on Latin America (WOLA) and Temple University Beasley School of Law's [Annotated Table of Contents](#) with research on Honduras, El Salvador, and Guatemala
- Research news sources

### How do I find a country conditions expert?

- Contact CGRS
- Contact local professors who focus on the region of interest and related topics

### Where can I set my client up for a forensic evaluation?

- Contact [Physicians for Human Rights](#) to request a forensic evaluation.
- If you are in Houston and a HILSC member legal service provider, apply for a [stipend](#) for a mental health evaluation for a client.



identifying documents for those family members to have documentary evidence to link your client to those family members. Check your client's story by knowing the file and by conducting a FOIA.

- I think the client's declaration is really the key. If the client is able to write, I like to ask them to write out their story first, and when I get that from them, I begin to work it into a draft. I take my time with it, go over it many times, draw a visual timeline, translate it into their language, and really flesh out in my mind if it is a story that make sense in all aspects.
- Try to get an expert statement or a forensic evaluation to support your case. Professional statements can sometimes sway a judge or help protect your record.
- I ask my clients to bring me anything they have that will help support their story -- including reaching out to folks in home country to get documents/declarations. I like to have, if possible, at least one declaration out of the home country that corroborates what the client is saying.

## Preparing Your Client and Any Witnesses for Court

An individual hearing is when your client's case is set for a specific date and time, and your client has their day in court and an opportunity to be heard by the immigration judge so a decision can be reached in their case. Several attorneys share how they like to prepare clients for their merits hearing.

### How many client meetings does it take to prepare your client?

- For SIJ adjustment, I typically only had one client meeting unless it was a contested hearing. For a contested hearing, I had a few meetings because there was a potential inadmissibility issue, and we had to prep for discretion. For asylum hearings, I would recommend 3-5 meetings depending on the client's age, development, and the complexity of the case.
- My preference is to have 3 meetings: (1) to go over information such as logistics for the day of the hearing, *in absentia* warnings, other warnings re: honesty, etc. (again), what to expect for procedure, explain the room layout and who will be in the room, right to appeal and appeal process; (2) to prepare for testimony with a mock direct examination and example cross examination questions; (3) to finish any mock testimony and go over any other issues that may have arisen. Of course, sometimes you need more meetings, and sometimes time does not allow for three meetings so you have to do your best within the circumstances of the case.



- Three meetings, if possible, so there is time for one meeting to figure out the kinks, one to go poorly, and one to go great! This is separate from any meetings to work on and develop the declaration in asylum cases.

### How would you describe your style or method when preparing a client and/or witness(es) for testimony?

- Review the declaration with your client first. Make sure they remember. Explain, simply, to the client what we need to prove, what the judge will be looking for, both positive and negative.
- Write an outline before you start practicing and use it each time you practice, make changes as you learn from prior practice sessions. The practice is just as much for you as it is for the client. The repetition of questions will also make your client feel comfortable and like they know what they can expect. Use different interpreters for practice sessions in case so you can flag any translation issues on words that may have different cultural contexts. Also, remember to use an interpreter even if you have previously spoken directly with your client in the language they are most comfortable using because you want to simulate what it will be like in court.
- I do a dry-run going through my direct examination questions with my clients and any witness(es) so they know what to expect. I try to listen well during these sessions so I know how to best phrase my questions. I do not provide answers. If my client says something that is confusing or if it is clear they do not understand what I am asking, then we talk about those types of things. I remind them of what we have in our evidence. Genuine, honest testimony in the client's own words is what I am aiming for.
- It helps to have a colleague play the role of the trial attorney (TA) and ask the tough questions, so if possible, I like doing client/witness preparation on a team. This gives the client the sense of what cross examination and redirect feels like. If the client has criminal history or other negative factors, practicing cross examination becomes even more important.
- I draft the questions ahead of time and use them as a guide when preparing the client. As I prepare the client, I make changes and move questions around to ensure the testimony is developed chronologically. Sometimes I give the client a copy of the questions with their answers, depending on how they are at testifying.
- I think client/witness preparation is key, and I like to take my time with it, so that when we walk into the courtroom, it feels somewhat familiar to my client/witness, but at the same time, they understand what is going on and are not simply following instructions—because that can make the testimony seem staged. I focus not on telling them what to



say (other than the truth), but on what we are trying to communicate overall. I think clients testify best if they are comfortable so taking the time to let them know what they can expect in advance of hearing day can make a difference for your client and sometimes for the results of the hearing.

## Tips to Help You Prepare for Court Day

What does your hearing binder/folder look like? What are you sure to have on hand at the hearing?

- I use the file and tab the court submission and other helpful documents.
- I take everything but the kitchen sink. I keep all documents from the record filed in one section, any relevant law in another, and anything else I may need to reference in yet another section.
- I bring my case matrix for quick reference including page #s of documents where I can find the evidence in case the judge asks or if I want to highlight evidence in my closing. "The war is won before the battle begins." Do not forget to tab and number your copy of the evidence so you can look at the same version the judge is looking at. Highlight key paragraphs on country conditions and/or the declaration. Post it notes and pens for writing notes to my client. Tissues. Water. Dress warm.
- Binder of the exhibits already submitted to the court and the client file. List of direct examination questions, declaration in native language (in case I need to refresh my client's recollection), notes for opening or closing, pad of paper to jot down questions for redirect, and a co-counsel to take notes.
- In addition to the client file, I take a hearing binder with the following documents: one pager of notes (main pieces of information and the procedural history so I have important dates readily available); talking points addressing case strengths and any anticipated challenges; copy of my E-28; criminal history chart; client and any witness(es) direct examination questions tabbed; any expert(s)' CV(s); relevant portions of law that I may need; copy of my brief marked up; general list of objections; and a closing statement. I also have a separate file with original evidence in case requested by the immigration judge.

Do you have any tips for someone who is scheduled for their first individual hearing?

- Find a local practitioner and ask them if you can observe an individual hearing or two with them before your first hearing. It is even better if you observe the same immigration judge that you are scheduled before, but try to observe at least one individual hearing beforehand. This will help you know what to expect and will likely ease some of your nerves. If you cannot observe an individual hearing with the judge you are scheduled to



go before, then observe master calendar hearings with your judge. You can learn a lot about a judge, what speaks to them and what does not work, their style, etc. by observing court.

- It is all about preparation. Take your time. Think about what points you really need to make. Chat with the DHS attorney prior and see if they will stipulate to anything. You can email the DHS duty attorney email and find out who the attorney will be that day.
- Try and find an expert witness. Experts can make a big difference in cases!
- You will feel like you need to rush. Try to tell yourself to slow down. You are not wasting anyone's time. If you need a short break to gather your thoughts or to let your client gather their thoughts, do not be afraid to ask for it. Asylum merit hearings especially can be very intense. You will be less nervous if you have adequately prepared. Take an outline of all that you want to cover, and use it. Craft an opening and a closing, regardless of whether the judge will let you give an opening. It will help you think about what you need to get done during the hearing.

## Lessons Learned

Despite all of the preparation in the world, surprises happen in court and mistakes happen too. Do your best to be prepared and diligent in your representation. Remember your ethical obligations. Learn from the lessons learned in your court practice and from other practitioners' experience.

Could you share a lesson learned (maybe the hard way) or a tip passed on from a colleague or judge?

- Opposing counsel will try to throw you off guard, by objecting or doing something else like that. It is strategic. Do not let them throw you off your line of questioning. Remember what you were asking and why. You can find a different way to ask the

## Tips to Protect the Record

- File written motions so you get a written decision.
- Brief issues.
- Prepare talking points in advance so you feel ready.
- Review trial advocacy skills. Have a cheat sheet for objections and appropriate responses to government objections.
- If you think about anything, state it while in the court, even if you did not draft a motion or brief for it.
- Stick to your client. Do not give in.



question. The judge will often start questioning the witness, interrupting your flow, messing around with your plan. It is ok, you can go back, and you can ask questions to your witness to clarify/counteract what the judge asked.

- Double check all of your evidence to ensure you have translations and proper translation certificates; otherwise, your evidence will not be admitted. Double check all of your documents to ensure they copied well—that they are not too faded. If the judge and/or TA cannot read it, then it is not going to help your case and likely will not be admitted into evidence.
- If you have to file anything after the filing deadline because of an emergent issue, bring extra copies to court because it is likely the copies you filed have not made their way to the immigration judge or TA yet. Make sure you filed a motion for late filing along with the documents. This should not be the usual, but emergent situations do arise.
- I wish that I had a better grasp of what rules governed immigration court before I went. Immigration court is not like any court you may have been in before. The federal rules of evidence and procedure are not binding which can work to and against your advantage. Know that the immigration judge can ask your client questions and that credibility is huge.
- Watch out for impeachment evidence. The filing deadlines do not apply to impeachment evidence, so even though the TA has had it for a while, he/she can surprise you with it. You need to be specific with dates where you can, but in two cases I worked on, I think our specificity made providing impeachment evidence easier. Do not back down just because of the surprise—argue it is not impeachment evidence or that it should be given very little weight because of your inability to question the creator of the record, etc. Also, know you can still win despite the presentation of impeachment evidence.
- One of the best tips I have been given is when looking for what to establish during a direct examination for a potential form of relief, look at the Judge's Bench Book<sup>5</sup> to see what they are looking for. For example, look to see what elements must be met for a type of relief and tailor questions around those elements.

## Tips That Have Led to Your Success and Kept You Going in Challenging Times

Could you share what has helped you have success in your cases?

- Preparation, organization, and thorough briefing. Do not be afraid to fight even if it feels like the cards are stacked against you.

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<sup>5</sup> See *Immigration Judge Bench Book (Archived)*, EOIR, <https://www.justice.gov/eoir/archived-resources>.



- Being overprepared. You want to be the one that knows the file the best in the room. You want to try all avenues to develop the evidence, to make sure your client feels ready, and that you are ready for oral argument. When you are preparing your evidence package, make it look nice. You want the information to be organized and very readable. Judges have a lot of cases before them. You will want to make it as easy as you can for the judge to grant your case. (I know the odds are often stacked against us, so work with what you have. You cannot change the facts or the law.)

## ONE TIP THAT IS UNIVERSAL

**While practitioners approach individual hearings differently, there is at least one tip that everyone should keep in mind. As attorneys, it is important to know the relevant laws and, when preparing for court, that also means knowing local court rules.**

**Familiarize yourself with the substantive law in your case, as well as the [Immigration Court Practice Manual](#), which is part of the EOIR Policy Manual and can be found on the Executive Office for Immigration Review (EOIR) website, so you can get ready for immigration court. This resource only featured some of the information found in the Manual.**

- I think the key really is building a good relationship with your client, and in my cases, that always seemed to be facilitated by taking our time with the declaration. That was really the foundation of the case, and in working through it, I could truly learn my client's story, be compelled by it, let them know I understood it and that they could trust me, and ultimately that I would zealously advocate for them.
- My father was a refugee who came here and always taught me that you always have to work 110% harder than everybody. So my advice to you is if you are struggling with an asylum case is to work as hard as you possibly can for your client, do as much as you can, paper the judge as much as you can. Do not forget that even if you lose at the immigration court level, there is always an appeal. I was an appellate attorney for a while, and I learned that the best way to overturn a case is by documentation, to show that the judge messed up. That is the best case for your client so document everything, paper, do your legal memos. Show the courts that you mean business.
- Persistence and a willingness to look outside of tradition or look outside of the law, and just see the kid . . . and a strong belief in what our asylum law is supposed to do for people and, for children in particular, that is what made the difference.



- Preparation and immersion in the type of case being tried—it can be exhausting but that is what has worked for me in representing my clients. Becoming well acquainted with the country conditions, the governing parties within the country if the asylum is based on political opinion for example, and understanding the key players, who was their persecutor, and what were their motives. This is also beneficial to help the judge understand the conditions of the country—in-school demonstration in the U.S. is not the same as an in-school demonstration in a different country like Cameroon, and you should be able to distinguish the two before a judge if he/she is trying to make such reasoning on the record.
- It is also a great idea to connect clients to community resources if they have a long time to wait for their hearing because their ability to be present (physically, emotionally, psychologically, without inadmissibility issues) may also depend on their connection to their community and basic needs.
- Figure out what it is in the case that persuades you and speaks to you and try at every possible level to figure out how you can bring someone else to your point of view. It may be the TA, it may be the judge, it may be the Board, it may be a social worker. Think about what it is that motivates you and figure out a way to make your theory more precise, more compelling, and keep trying. Find a way to open the door.

### What keeps you going in this work during challenging times?

- Over the years, there were so many people that I was compelled by and I decided to assist that I never thought would win and did. Of course, there were others I thought should win and did not. I think the theme here is that when you feel compelled by someone, whether or not the law fits the situation, it is often worthwhile to help them present their story because if you are compelled by them, someone else may be.
- As lawyers we have super powers that average men and women do not have. That is an incredible gift and responsibility. We have to use it. We have to use our law degrees, honestly for the good fight and for democracy.
- I think that you never know what might happen. I know we are in a really tough time right now, and it seems like every case will get denied. If you look at the statistics for the Houston asylum office or the Houston immigration court or any immigration court in Texas, you feel like there is no hope. But I think what young attorneys have to remember, and something I have to remind myself too, is that the people adjudicating the cases, are just that, they are people just like us, they have good days and bad days. They



sometimes will decide to grant a case and you do not even realize why, so it is really important to try because you never know what case could win and also you never know what case might benefit others, might be taken up on appeal and be a great case later on in terms of case law.

- I hang on to the victories, whether big or small, to push me to keep fighting. Also, another thing that my boss always tells me is that "they're better with us than without us."
- We are certainly in very difficult times for asylum seekers, but it has always been difficult. We are just in a very unique time. There is also an out-sized amount of interest in immigration and support. I think the advice I would give to young attorneys struggling with asylum cases is you are making a difference by what you are doing. You have to look at your victories in a cumulative. I sort of see each asylum case as a little battle in the overall war, the war against immigrants that has been happening for a very long time.
- You cannot save the world by yourself. You have to trust that there are other people along the way that are trying to do the same thing. Regardless of that, you really have an important role to play. Your work matters.

## Self-Care Tips

- Remember you have a specific role. You are not the judge. Know you cannot control everything that will happen on hearing day. You can only do your best in your specific role.
- Take the rest of the day off after a merits hearing if you can and call a relative or friend.
- Listen to National Immigration Project's [podcast](#) with ten self-care reminders.
- Consider reading lawyer, author, and mindfulness instructor Jeena Cho's [blog](#) or her [articles](#) featured in the *ABA Journal*. Her writings discuss topics such as meditation, mindfulness, and stress management.

**Thank you to the attorneys who contributed to this resource and made it possible!** If you are in Texas and have any case-specific questions leading up to your individual hearing, feel free to reach out to CILA for [technical assistance](#). Also, if you have another tip on how to prepare for an individual hearing that we could add to our resource, let CILA know about it. Email: [cila@abacila.org](mailto:cila@abacila.org).

**\*\*\*This is not legal advice. This is for informational purposes only and should not substitute your own research, analysis, judgment, and decision making. This is not comprehensive or representative of the absolute way to practice. We simply wanted to provide ideas to consider in your preparation.\*\*\***

