



Asylum
Online Course

Module 4: Standards and Best Practices for Evidence

Hypotheticals

Faculty Response

Hypothetical A:

Your client's asylum application is based on his membership in an opposition political party. During her cross examination, the DHS attorney offers into evidence a copy of your client's credible fear transcript, which indicates that he told the asylum officer in his credible fear interview that he was not a member of any groups or organizations, as well as copy of a Chilean identity card bearing your client's name and photograph and asserts that the card is prima facie evidence that your client was firmly resettled in Chile. How would you respond?

Faculty Response:

Object to the admission of the Chilean ID card as untimely. DHS bears the initial burden to establish that an asylum applicant may be subject to the firm resettlement bar. Even if evidence that the applicant was issued a state ID by the government of a third country is sufficient to meet that burden, DHS has not complied with the requirement that documents be submitted at least 15 days before a scheduled hearing. As such, that evidence should be excluded.

Because the CFI transcript is rebuttal evidence offered to impugn the credibility of the client's testimony, it can be submitted at the merits hearing. As such, there does not appear to be a basis on which to object to its admission on timeliness grounds. You can, however, object to its admission because the maker (the asylum officer) is not available for cross-examination. And you can ask for a continuance, or at the very least a recess, to confer with your client in order to respond to the document.

Hypothetical B:

DHS has sent several of your client's original documents (a letter from the head of the political party of which he was a member describing his position in the party and the duties which that position entailed; a party membership card; and his birth certificate) to its Forensic Document Lab (FDL). On the callup date, DHS submits an FDL report which indicates that the birth certificate appears valid, but that both the letter and the card appear to have been falsified because the card does not conform to known samples and the paper on which the letter was written is 8 ½ x 11 inches whereas Haitian documents

*Please always consult your local and licensing bar rules on questions of ethics as the answer to these questions may vary by jurisdiction.



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are commonly issued on 8 ½ x 14 inch paper. DHS does not submit a witness list, and at the merits hearing does not propose to call the FDL analyst who authored the report to testify. How would you respond?

Faculty Response:

Object to the document's admission into evidence because the maker is not available for cross-examination. Also, don't assume that the FDL's conclusions are accurate. Request that the documents be returned to you and move for a continuance to allow you to arrange for your own expert forensic document analysis.

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