




FEB 28 2014

HQRAIO 120/9.15b

Memorandum

TO: Asylum Office Directors / Deputy Directors  
Supervisory Asylum Officers  
Quality Assurance/Training Asylum Officers  
Asylum Officers

FROM: John Lafferty  
Chief, Asylum Division 

SUBJECT: Release of Updated Asylum Division Officer Training Course (ADOTC)  
Lesson Plan, *Credible Fear of Persecution and Torture Determinations*

This memorandum announces the release of a revised version of the ADOTC Lesson Plan, *Credible Fear of Persecution and Torture Determinations*, dated February 28, 2014 (the revised Credible Fear Lesson Plan) and describes the major changes in the lesson from previous versions.

I. Background

Credible fear referrals to the Asylum Division in fiscal year (FY) 2013 surpassed total receipts for credible fear referrals over the five-year period from FY 2007 to FY 2011 and rose from FY 2012 by more than 250%. In light of the increased allocation of resources devoted to credible fear adjudications and the attention on these adjudications, the Asylum Division undertook a comprehensive review of the previous credible fear lesson plan, which was most recently revised on March 7, 2013 and last underwent significant changes on April 14, 2006. As part of this review, we met with representatives from each Asylum Office and shared draft versions of the revised Credible Fear Lesson Plan with U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection. Attached is the revised Credible Fear Lesson Plan, dated February 28, 2014. The lesson plan is also available electronically through the Asylum Division's Enterprise Collaboration Network ("ECN") site at:

<http://ecn.uscis.dhs.gov/team/raio/PerMgt/Training/Lesson%20Plans/Forms/ASYview.aspx>.

## II. The Revised Credible Fear Lesson Plan

Because revisions were made throughout the revised Credible Fear Lesson Plan, this memorandum will not describe all the changes from previous versions. The significant changes to the lesson plan focus on three major areas.

First, the revisions to the lesson plan seek to reinforce the Asylum Division's interpretation of the statutory "significant possibility" standard as requiring that the applicant "demonstrate a substantial and realistic possibility of succeeding."<sup>1</sup> In light of concerns that the application of the "significant possibility" standard has lately been interpreted to require only a minimal or mere possibility of success, the revised Credible Fear Lesson Plan clearly states that a claim that has no possibility or only a minimal or mere possibility does not meet the "significant possibility" standard.

Second, the revised Credible Fear Lesson Plan incorporates substantive updates to the Refugee, Asylum and International Operations Combined Training Lesson Plans (RAIO Lesson Plans) from recent years and examines the application of this guidance to credible fear determinations. The revised Credible Fear Lesson Plan is not meant to be viewed in isolation; Asylum Officers must continue to refer to the latest applicable RAIO Lesson Plans for the most recent guidance on determining asylum eligibility. The revised Credible Fear Lesson Plan, however, adopts the analytical framework of various RAIO Lesson Plans to ensure that credible fear of persecution determinations apply the correct substantive law through the "significant possibility" lens. For example, *Section VII. Establishing a Credible Fear of Persecution* now discusses separately the issues of Past Persecution and Well-Founded Fear of Persecution. Both sub-sections follow their RAIO Lesson Plan equivalent as viewed in the credible fear context. This provides the opportunity to discuss areas of law that were omitted from previous versions of the lesson plan, such as the role of internal relocation in the well-founded fear of persecution analysis.

Finally, the revised Credible Fear Lesson Plan modifies guidance on credible fear of torture screenings to hue more closely to the regulations implementing the Convention Against Torture (the Convention or CAT).<sup>2</sup> Asylum Officers screening for viable CAT claims must now consider all the elements of the Convention definition of torture, such as consideration of the issues of custody and control, and lawful sanctions as falling outside of the definition; these were previously omitted from the credible fear analysis. Moreover, the severity and specific intent requirement is modified to reflect the Convention definition: an act must be specifically intended to inflict severe physical or mental pain or suffering. Previous versions of the lesson plan required only that the feared offender intend to take some action that would result in serious harm to the applicant. The modifications also describe when mental pain or suffering can constitute torture. Instruction involving the Convention's state action requirement is expanded to detail when a public official acts in an official capacity and to shed further light on the issue of acquiescence. Lastly, the revised Credible Fear

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<sup>1</sup> Joseph E. Langlois, Asylum Division, Office of International Affairs, *Increase of Quality Assurance Review for Positive Credible Fear Determinations and Release of Updated Asylum Officer Basic Training Course Lesson Plan, Credible Fear of Persecution and Torture Determinations*, Memorandum to Asylum Office Directors, et al. (Washington, DC: Apr. 17, 2006).

<sup>2</sup> 8 C.F.R. §§ 208.16 -.18.

Lesson Plan instructs that the regulatory requirement that internal relocation be considered when evaluating the possibility of future torture is applied to credible fear determinations. These modifications to how relief under CAT is analyzed in the credible fear context do not change the “significant possibility” standard or alter the screening function of the credible fear process. The intention, rather, is to focus on the “significant possibility” standard, taking into account regulatory requirements for CAT claims.

### III. Implementation

The revised Credible Fear Lesson Plan is effective immediately. Headquarters staff will travel to each Asylum Office to provide training on the revised Credible Fear Lesson Plan. This lesson plan will also be used at the upcoming ADOTC. Furthermore, we will examine whether any conforming changes to the ADOTC Lesson Plan, *Reasonable Fear of Persecution and Torture Determinations* and the Credible Fear Determination Checklist are necessary and issue a revision to those documents as appropriate.

Please contact the Asylum Division Quality Assurance Branch Chief and/or email the Asylum QA – Credible Fear mailbox if you have any questions.

Attachment (1): ADOTC Lesson Plan, Credible Fear of Persecution and Torture Determinations