Relief in Immigration Court

How to build your case and prepare for trial

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Topics Covered

- Document gathering
- Expert witnesses
- Affidavits
- Witness preparation
- Ethical issues

Evidence

- Set expectations with your client
- Outline your elements and start gathering evidence from day one
  - Country conditions evidence
  - Witness statements
  - Third party records
  - FOIA requests/criminal records

Relaxed Rules of Evidence

- Evidence must be **material** and **relevant** to any issue in the case. 8 C.F.R. §§ 1240.7(a), 1240.46(b)

- Standard for admitting evidence is "whether the evidence is probative and its admission is fundamentally fair." Matter of Velasquez, 25 I&N Dec. 680, 683 (BIA 2012)

Hearsay

Hearsay is admissible. 8 C.F.R. §§ 1240.7(a), 1240.46(b); Olabanji v. INS, 973 F.2d 1232, 1234 (5th Cir. 1992)

- Evidence must be evaluated for fundamental fairness and probity
- IJ must evaluate the reliability of the documents
- Should make witness available for cross-examination or explain unavailability

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Expert Evidence

- Expert may offer her opinion in a case if she has "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue" and if her methods and testimony are sufficiently reliable. Fed. R. Evid. 702.
- Courts "may give different weight to the testimony, depending on the extent of the expert's qualifications or based on the other issues regarding the relevant, reliability and overall probative value of the testimony…." Matter of D-R-, 25 I&N Dec. 460 n. 13.

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