



# **Practice Guide**

## **Statements as Evidence: Drafting and Editing Declarations, Affidavits, and Letters**

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## Statements as Evidence: Drafting and Editing Declarations, Affidavits, and Letters

Written statements have the potential to be the most informative and critical pieces of evidence in establishing a prima facie case in immigration court and before United States Citizenship and Immigration Services (USCIS). They provide the factfinder with the subject's account and in some cases, may be the only form of evidence, apart from testimony, available in proving a client's case.<sup>1</sup> The primary goal of submitting statements to a tribunal is to provide evidence that proves or corroborates elements of a prima facie case for relief from removal or immigration benefit. The process of helping a client, witness, or expert draft or edit their statement calls for thoughtful and meaningful decision-making that must be tailored to the circumstances in each individual case. This practice guide offers considerations and tips to help practitioners when drafting or editing statements on behalf of clients, witnesses, and experts.<sup>2</sup>

### *Different Types of Statements: Affidavits, Declarations, and Letters*

Statements to a tribunal in the immigration context come in various forms that carry different weight before the eyes of the factfinder. An **affidavit** is a sworn statement made under oath and notarized.<sup>3</sup> An affidavit is written in the first person and generally lists facts of which the signatory knows first-hand. Because it must be sworn under oath and notarized, the contents of an affidavit are generally given a great deal of weight by a factfinder. Distinctly, a **declaration** is a first-person statement that *may* be sworn or made under oath. Affidavits and declarations are often conflated, but the difference between the two is that an affidavit is notarized<sup>4</sup> while a declaration is not notarized and can be either sworn under oath or unsworn.<sup>5</sup> It is important to note that a declaration carries the same weight as an affidavit if the declaration is made under oath.<sup>6</sup> As such, all declarations made in the immigration court context should generally be sworn for the purposes of this guidance.

**Letters** are statements, generally made by non-parties and in letter form, that support the applicant or respondent's case. Letters should be signed and dated. They carry less weight than affidavits and declarations because they are not sworn statements. However, they can still offer value. For example, for Provisional Unlawful Presence Waiver (I-601A), an applicant may choose to include a letter from a religious figure discussing the applicant's character, role in the community, and the nature in which they support their U.S. Citizen spouse. The Department of Homeland Security often argues that these statements are self-interested and should be given less weight; however, that should not dissuade an applicant or respondent from providing evidence of this nature if it serves their case.

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<sup>1</sup> See e.g., 8 CFR § 208.13(a); INA § 208(b)(1)(ii).

<sup>2</sup> These samples are demonstrative of the form that these statements take. Their content is fictional, abridged, and condensed.

<sup>3</sup> See: 28 USC §1746, See also: U.S. Dep't of Just., Immigration Court Practice Manual, Glossary, (2020). Available at: <https://www.justice.gov/eoir/page/file/1258536/download>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* Note that the statutory swearing language for affidavits and declarations is: "I declare (or certify, verify or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on..." [insert date], [insert signature]. *Id.*

<sup>6</sup> See: 28 USC §1746.

**Reports and Records** are narratives, forms, or studies typically made by experts in the regular course of their work. Examples include medical records or an NGO report studying a particular country's conditions. Reports and Records typically exist and are made available by an expert independent of the hearing or interview. Whereas declarations, letters, and affidavits are prepared for the purposes of the interview or hearing.

### *Applicants, Respondents, and Derivative Affidavits and Declarations*

When deciding what form, if any, a statement should take, the practitioner will want to give thought as to who is making the statement, the content the statement offers, and what element(s) of the relief it supports. The decision as to whether an **applicant**, **respondent**, or competent **derivative** (someone receiving the same benefits as the principal applicant or respondent via the principal's case), should provide a written statement is a case-specific determination made by the client with the informed guidance of their representation. It is commonplace to offer a client's written statement to the court for reasons such as demonstrating a consistent and credible account or even pursuing the option of limiting more detailed oral testimony of traumatic events. In some circumstances, a detailed credible written account can lead to a concession or stipulation by the Department of Homeland Security. Alternatively, some representatives may consider relying solely on the client's oral testimony because of limited time ahead of adjudication or to limit the chance of conflicting statements. In the case where a representative pursues a client's statement, affidavits and sworn declarations are presumed to carry weight because they are testimonial and made under oath. If the statement is made by an applicant, respondent, or a mature and competent derivative, a practitioner should consider employing an affidavit or declaration. While it is appropriate for a practitioner to take the lead in drafting an affidavit or declaration, the practitioner must work closely with applicants, respondents, and derivatives to accurately commit their experiences to a written statement.

Regardless of who drafts or edits the statement, the statement must be a faithful account of the subject's experiences that are relevant to the prima facie case at hand. Affidavits and declarations should be presented in the first person and be true to the voice of the speaker. This means, where possible, using the same terms and sentence structure employed by the subject. Where a practitioner has conducted a thorough interview of their client and begins the process of drafting the statement, the practitioner should be faithful to the kinds of terminology and turns of phrase that are employed by the subject. A practitioner should not interpret experiences on behalf of the client, but rather present the client's observations, feelings, and interpretations throughout the statement. Where content requires clarification, a practitioner can probe further in an interview to provide a sufficient written explanation in the way that a client would explain it while testifying. It is important to ensure content and a voice that is consistent with the subject's way of presenting information, so that a factfinder (who is always assessing credibility) will be neither consciously nor subconsciously impacted by minor discrepancies in word choice.

While drafting the statement, a practitioner should keep in mind the elements of the prima facie case and whether the client's affidavit or declaration independently proves each one. A statement need not address every element of the case where other evidence is available. However, a practitioner should review the statement to determine which elements are adequately

captured in the statement and to identify additional evidence to collect in support thereof. Reviewing the statement should also help the practitioner verify whether the practitioner's interviews with the client have comprehensively addressed the relevant attributes of the client's experience, or whether more detail or information is needed. Similarly, a practitioner should explore any discoverable facts that are harmful to a client's case as well as anticipate the case's weaknesses and consider strategies of addressing those harms or weaknesses in the client's statement.

If an interpreter is used during client interviews, the interpreter should be encouraged to use word-for-word interpretation (rather than summarize) and the statement should be faithful to the language used in interpretation. Where a client is comfortable, it is helpful to use different interpreters over multiple meetings to have a well-developed impression of a client's word choice and sentence structure. This may also have the added benefit of allowing the client to practice with different interpreters, which is especially important for those whose cases are pending in immigration court, where a professional interpreter is provided by the court. When it is time for the client to review and sign their statement, the statement can be read to the client in their language and certified by an interpreter.<sup>7</sup> Alternatively, the statement can be translated into a statement written in the client's language and the client can sign the translated statement. In that case, the statement would then be submitted to the factfinder along with an English translation, certified by a translator.<sup>8</sup> Both a certified oral interpretation or certified written translation are acceptable before the Immigration Court.<sup>9</sup> When possible, a written translation is preferable to an oral translation because it gives a literate client the opportunity to review their statement both prior to and after signing, although many practitioners rely solely on an oral interpretation and the interpreter's certificate for the adjudicator.

### *Witnesses Declarations and Letters*

There are multiple types of **lay witnesses**, or witnesses who do not qualify as experts in the area in which they provide evidence. Lay witnesses generally should limit any opinion testimony to those rationally based on their perception and those helping to clarify the witness's testimony.<sup>10</sup> Importantly, lay witnesses should not give opinions on matters requiring technical, scientific, or specialized expertise that they do not possess, for example, whether or not the applicant/respondent has met his/her burden of proof or qualifies for relief.<sup>11</sup> There are multiple

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<sup>7</sup> An interpreter certification should state that the affidavit or declaration has been read to the individual in a language that the individual understands, and that the individual understood it before signing. It should also state that the interpreter is competent to translate the language of the document, and that the interpretation was true and accurate to the best of the interpreter's abilities. For example, the last statement of the statement could read: "An interpreter read this statement to me in Spanish. I understood what she was saying and agree that the contents are my intended statement." The interpreter's subsequent statement could read "I, Janice Doe, certify that I faithfully orally interpreted this statement into Spanish to Josefina Do on June 19, 2022, prior to her signing the document. She verified to me that she understood my interpretation. I certify that I am competent to interpret the language of this declaration from English to Spanish." The statement should be followed by the interpreter's dated signature, her printed name, and her contact information. *See*: U.S. Dep't of Just., Immigration Court Practice Manual §3.3(a), (2020). Available at: <https://www.justice.gov/eoir/page/file/1258536/download>

<sup>8</sup> *Id.* at §3.3, Appendix H.

<sup>9</sup> *Id.*

<sup>10</sup> *See*: Fed. R. Evid. 701.

<sup>11</sup> *Id.*

types of lay witnesses. Some cases rely on the statements or corroboration made by **eyewitnesses** or **outrcry witnesses**. An eyewitness is someone who was present or observed an element of the client's case and offers testimony or a statement about what they witnessed to corroborate the client's account. An outcry witness is an individual who was present in the aftermath of a critical and relevant event and can offer a statement or testimony as to what they observed. For example, in the context of a U visa case, if a client confides in a confidant after being sexually assaulted, the confidant could subsequently make a statement describing what the client told her as well as what she observed during her interactions with the client in the hours, days or months following the sexual assault. One observation could be the client's sudden withdrawal from attending social activities when, before the assault, she loved to attend neighborhood parties and gatherings. This information can be used to corroborate the client's account as well as the substantial mental or physical harm caused by the assault, which is an element of the relief. Eyewitness and outcry witness accounts form an important part of establishing a prima facie case. As such, where possible, declarations or affidavits are preferred to letters. Letters are, of course, preferable to a lack of corroboration.

Letters are more commonly employed in the case of **character witnesses**, who are non-parties that attest to the good moral character of a respondent or applicant. For these witnesses, it is common for statements to take the form of a letter because the probative value of their statements is generally not as high as it is for other types of statements (although declarations and affidavits are certainly options to consider if the character witness statement supports elements of a prima facie case). It's worth noting that if there are facts that undermine a client's character, a character witness may have the ability to discuss and mitigate those negative facts in their own statement. If, for example, a client previously committed a low-level crime in the past, a character witness can discuss the client's growth and rehabilitation since the crime took place.

In some cases, a witness may produce a statement solely for the purpose of showing how a document was produced. This type of witness is referred to as a **chain of custody witness**. For example, if a piece of evidence, such as a police report, was surreptitiously removed from Cuba and brought to the United States, a factfinder may inquire as to how the document was made available. In this example, the individual who produced the police report may provide a sworn declaration describing how they were able to procure and deliver the document. Chain of custody statements should generally take the form of a sworn statement (i.e., an affidavit or declaration) in order to carry more weight in the eyes of the tribunal.

Some witnesses may offer chain of custody, eyewitness, and character evidence all in the same statement. When deciding which form a statement should take, a practitioner should weigh the value and importance of the statement to proving or corroborating elements of the case. Where the importance is high, a practitioner should try to obtain statements that carry the most weight or are deemed more trustworthy by the tribunal. More specifically, declarations and affidavits are generally preferable, but if obtaining a sworn statement is impractical or a lower priority, one can consider submitting a letter.

## WITNESSES IN IMMIGRATION CASES



- An eyewitness is someone who was present or observed an element of the client's case and can corroborate the client's claim, such as a neighbor who saw and heard the client's physical and emotional abuse at the hands of the client's partner.
- An outcry witness is a person who was present in the aftermath of a critical and relevant event, such as a close friend who the client confided in about the torture the client suffered by police.
- A character witness is a person who is not a party and can confirm the client's good moral character, such as the client's coworker of five years.
- A chain of custody witness is someone who obtains a document on behalf of the client and describes to the adjudicator how the document came into their possession and how they delivered the document to the client, such as the client's sister who went to the police department to get the relevant police report in the client's case.

### Expert Declarations, Letters, and Reports

Some cases, such as fear-based claims, may require statements from experts. An **expert** is generally a disinterested party who possesses extensive professional knowledge, skill, experience training, or education in a particular subject area and offer expertise that is both reliable and relevant to the case, such that they are able to offer an informed opinion on elements of the case.<sup>12</sup> Experts have the ability to provide authoritative broad and technical factual statements as well as offer opinions on the ultimate issue a judge is trying to decide, should they possess the expertise to speak to the ultimate issue.<sup>13</sup> The weight that a factfinder will give to an expert's testimony is based on both the persuasive and probative value of the testimony.<sup>14</sup> Different types of experts can offer different types of support to a case. Experts are often academics, physicians, or certified mental health practitioners, but they can have any profession so long as they meet the legal definition of an expert as defined above.<sup>15</sup> Other examples of experts include journalists, individuals who direct or work for non-governmental organizations, researchers, politicians, or clergy. The goal of expert testimony is to corroborate or provide evidence to support the client's case and to give an evaluation of the client's particular situation.

<sup>12</sup> See: *Matter of J-G-T*, 28 I&N Dec. 97 (BIA 2020).

<sup>13</sup> See: Fed. R. Evid. 704.

<sup>14</sup> *Id.*

<sup>15</sup> See: *Matter of J-G-T*, 28 I&N Dec. 97 (BIA 2020).



That can be done in a variety of ways, such as using country condition experts, psychological experts, and medical experts.<sup>16</sup>

**Country condition experts** have expertise to speak to specific conditions on the ground in another country. They often corroborate patterns, practices, attitudes, and behaviors that impact the client. Country condition experts are frequently utilized in fear-based cases, especially where corroborating written country condition reports are not generally available. For example, in a Convention Against Torture case for a political activist fleeing Uganda, a political science professor whose research focuses on the practices of authoritarian regimes in Sub-Saharan Africa and on the Museveni regime's practices for political suppression may be very helpful. This expert may be able to speak to the general conditions and treatment of political activists in Uganda, the consistency of the respondent's account relative to similarly situated individuals, and/or likely outcomes if the respondent were to be sent back to Uganda.

Another commonly employed expert is a **psychological expert**. Psychological experts offer insight into a client's mental health which can both corroborate prior events or make clear any impact that a client's mental health may have on memory, consistency, or difficulty in providing oral testimony. For example, in a VAWA case, a psychological expert may offer testimony as to the impact that domestic abuse had on the applicant and how she struggles to discuss the abuse without exhibiting post-traumatic stress responses or symptoms. This content could be used to demonstrate not only that abuse occurred, but how the applicant may comport herself in any subsequent interviews exploring the abuse. For example, where trauma has impacted a client's memory or how she presents information, a psychological expert can discuss the diagnoses and mechanisms by which trauma impacts how the client remembers and presents information. Similarly, a psychological expert can offer insight into a qualifying relative's mental health or wellbeing, if relevant. For example, in a Cancellation of Removal application, a psychological expert may offer testimony as to how a client's US citizen child with bipolar disorder would be exceptionally impacted by her father's removal.

Just as psychological experts may corroborate the impact of an event, **medical experts** can corroborate any cognitive or physical impediments that a client navigates as well as any physiological evidence that a certain event took place. For example, in an asylum case, a medical expert can provide a statement attesting to any scars or ongoing injuries deriving from a violent form of persecution such as sexual assault or torture are consistent with the manner in which the client describes the incident.

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<sup>16</sup> N.B. Some general expert witness declarations are made available to applicants and respondents via resources such as University of California at Hastings' Center for Gender & Refugee Studies (<https://cgrrs.uchastings.edu/>). These general declarations, prepared for broad use in multiple cases, are often given the weight of reports as opposed to declarations because the experts are often unavailable for cross-examination.

## EXPERTS IN IMMIGRATION CASES



### *Working with Experts<sup>17</sup>*

A practitioner will want to include the client in the strategic decision-making of whether to employ an expert to support their case. While some experts offer their testimony *pro bono*, others may charge nominal, hourly, or flat fees for their services. Furthermore, more sophisticated clients may have input on organizations to contact or even potential experts. Regardless, if a practitioner believes that an expert is a necessary component in supporting a client's case, they should educate and explain to the client the goal(s) of an expert's testimony and how the expert can support the client's matter. In selecting an expert to support a client's case, a practitioner should conduct an interview with the potential experts, and review their Curriculum Vitae (CV), to determine their level of expertise on the relevant element or elements of the case. The practitioner will want to understand the expert's position and any information the expert will need to provide a statement.

<sup>17</sup> For further information on working with experts and lay witnesses, see: Webinar: Mechanics of Immigration Court, Part 2: Corroboration, Preparing Witnesses, and Working with Experts, held by the American Bar Association's Commission on Immigration (Feb 22, 2022) (available at <https://www.youtube.com/watch?v=PPN9NLS0MY4&t=120s> and <https://www.youtube.com/watch?v=YV6mCQfczzo>).



After selecting an expert, a practitioner will have to disclose confidential information about the client's case. This can only be done with the explicit permission of the client.<sup>18</sup> Similarly, in some instances, experts will request to view the client's statement and/or interview the client. This decision should be made alongside and with the express consent of the client.<sup>19</sup> A best practice is to have the client sign a release of confidential information and to have the expert sign a confidentiality statement protecting the client's confidential information.<sup>20</sup> It can also be very helpful to have the expert speak directly with the client about his or her case before preparing the expert declaration.

It is important for practitioners to be direct in communicating the timeframe within which they would like to receive the first draft of the statement and setting the expectation that there may be suggested revisions of the statement as more information becomes available in the case. Being transparent with an expert regarding expectations at the start of an engagement is more likely to yield a smooth drafting process. Potential testimony at an individual hearing should be discussed, if applicable.

Experts will often draft their own statement, as opposed to clients who frequently work with their representatives in the drafting process. The forms that the statements take are often contingent on the type of expert and their preferences for or against sworn statements. Because experts are, by definition, well-versed in their subject matter, suggested edits to an expert document should be made with transparency and deference to an expert's expertise. Practitioners, however, should be well-versed in the law impacting their client and ensure that the expert's testimony is relevant and does not undermine or contradict the client's case. If any facts of the case are included, a practitioner should review them to ensure consistency with any evidence or other statements made by the client or other witnesses.

### *Statements by Country Condition Experts*

Ideally, country condition experts produce sworn declarations which discuss: (1) the credentials that render them experts on the subject matter; (2) well-cited, relevant information that makes an element of the client's case more or less likely; (3) any corroborative information; and (4) an expert opinion regarding the client's case (for example, the likelihood that the client will be persecuted upon return to the home country). In lieu of a sworn declaration, some experts prefer to produce a report that is more common to the work that they produce in their profession. Sworn declarations will generally carry more weight with a factfinder, given their testimonial nature; however, reports still have noteworthy value, especially if the expert is available to offer in-person testimony.

If the expert is not available to provide in-person testimony, or the court has not allowed for a telephonic appearance, it is best practice to ask the expert to produce a sworn declaration rather than a report.

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<sup>18</sup> See: Model Code of Pro. Conduct r. 1.6 (Am. Bar Ass'n, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> A sample consent to release information is appended to this guide.

When in high demand, country condition experts often reuse content in their statements and may include information that is not relevant to the specific client. It is important for practitioners to review expert statements carefully for relevancy and suggest removal of any superfluous information.

### *Statements by Medical and Psychological Experts*

Similarly, medical and psychological experts may produce sworn declarations, clinical records, letters, or reports. Sworn statements remain preferable to letters, records, or reports, but the form that these statements take is often contingent on the expert's preferences and availability to produce tailored content. Medical and psychological experts will need to present any diagnoses, methodology, and underlying facts supporting the diagnoses. It is common for medical and psychological experts to report the client's account of their experiences as presented to the expert by the client. Practitioners should carefully review the statements for any new or contradictory information.

### *Tips, Considerations, and Potential Issues when Drafting Declarations or Affidavits*

#### *Goals of an Affidavit or Declaration*

The primary goal of any statement is to provide the factfinder with information that is relevant to the prima facie case, meaning that the information tends to prove one or more elements of the case.

Affidavits and declarations of the client or witnesses are inappropriate venues for legal argument; however, statements can still be persuasive in nature. Statements should provide a clear and truthful description of the facts as experienced by the subject of the statement, as well as the impact that those experiences had on the subject. In doing so, the statement provides the factual basis for legal arguments that are presented in a brief or argued in court.

In addition, personal statements have the power to create an emotional response in the reader, whether it is sympathy, trust, or care. A reader is more likely to engage with the respondent or applicant on a personal level when the statement faithfully employs a subject's voice, provides a clear statement of the facts, and, where possible, provides sensory details that are true to the subject's experiences.

#### *Structuring a Respondent or Applicant's Statement*

It is important for a personal statement to be structured in a clear and cohesive manner. There are a variety of ways in which this can be accomplished, depending on the subject of the statement and the drafter's stylistic preferences. In general, however, there are specific practice tips that should be considered to make a statement more accessible and persuasive to the reader.

A client's sworn declaration or affidavit should contain the title of the document at the top of the first page.<sup>21</sup> The sworn statement must include the swearing language, the subject's signature, and the date of signing.<sup>22</sup>

The introductory paragraph of a statement commonly takes one of two forms. The first form is a paragraph or series of paragraphs offering biographical and background information about the client. For example: "My name is Tiffany Farfale. I was born on June 19, 1976, in my hometown of Rome, Italy. I hold Italian and Swiss citizenship." Another way to structure an introduction is to call the reader's attention to the purpose of the client's application or claim. "My name is Tiffany Farfale. I am requesting cancellation of removal because my U.S. Citizen son, Antonio Farfale, is blind and reliant on my care." The subsequent paragraphs can then provide background information.

Content in the body of the statement can be organized in a variety of ways. Most commonly, practitioners will organize content in chronological order. This is contingent on the subject's ability to present and recall the information consistently in a generally chronological order, which may not be possible for every client. Consider, for example, a survivor of years of domestic abuse with countless incidences in which she was attacked by her partner. If she is unable to recall the dates or order in which particular attacks occurred, then a chronological organization may not be the best way to structure her statement.<sup>23</sup> One alternative, in this case, would be to recount the worst incidents of abuse in order of severity. Alternatively, some statements are organized by elements of the case. This is particularly effective when representing children<sup>24,25</sup>

Statements often include headers in bold or italics as a tool to direct the reader's attention to a particular event and the organization of the content. Headers can additionally be used as an opportunity to persuade the reader. Consider, for example, a header titled *The March 8, 2015 Attack*. An alternative, and perhaps a more persuasive title could be *On March 8, 2015, I was attacked and beaten by members of the Tamil Tigers*. The subsequent content would describe the attack in more detail.

### *Level of Detail*

Narratives and persuasive writing benefit from favoring the use of demonstrative (or "showing") language and observations to language that interprets behaviors and feelings (or "telling" language). Telling language tells the reader what they should know while showing

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<sup>21</sup> For information on the formatting of affidavits and declarations, review the Department of Justice's Immigration Court Practice Manual available at: <https://www.justice.gov/eoir/page/file/1258536/download>

<sup>22</sup> *Id.*; 28 USC. §1746.

<sup>23</sup> In some instances, a practitioner can work with a client to create a generalized timeline of events by framing timing around life events, for example the birth or ages of one's children at the time of an event, a season, or a natural disaster.

<sup>25</sup> For further information on responsibly and ethically representing children in immigration matters *See*: Children's Immigration Law Academy (CILA) Pro Bono Guide: Working with Children and Youth in Immigration Cases, ABA Children's Immigration Law Academy (2021), available at: <https://cilacademy.org/wp-content/uploads/2021/10/2021-CILA-Pro-Bono-Guide.pdf>.

language exposes the reader to descriptive statements, leading them to what they should understand. Consider, for example, the impact of using descriptive language when describing the first time that a couple met. Telling language may be: “I met my wife at a party. Seeing her that first time, I felt so nervous. I thought she was the most beautiful person I had ever met.” Showing language might be: “The first time I ever saw Renata was at a party at my cousin Cynthia’s home. I was helping Cynthia by setting the table when she asked me to go downstairs to help her friend parallel park in front of her building. I wasn’t happy about it, but I walked down the four flights of stairs from Cynthia’s unairconditioned apartment. When I opened the front door, I saw a petite woman leaning against the hood of a red Peugeot. She was wearing big black sunglasses and bright orange lipstick. When she saw me, she smiled a big white smile. ‘Are you Cynthia’s cousin?’ she asked me. My mouth suddenly felt dry, and my heart was pounding. I just nodded at her. ‘I’m Renata,’ she said and tossed her keys gently toward me. I fumbled for them, and they fell on the ground. She chuckled and apologized for throwing them. ...When we walked into the apartment building together, Renata took off her sunglasses. I had never seen eyes as green as hers...”

In both instances, the reader discovers that the applicant met their wife at a party, that they felt nervous, and that they found their future wife beautiful. While the first description is matter of fact and asserts facts and feelings, the second description relies on sensory details to pull the reader into the experience of how the applicant felt when they met their wife. Furthermore, the second scenario employs quotation where possible. This immerses the reader in the account, rather than retelling the account as a distant series of events or feelings. For practical reasons, the use of sensory details should be employed at salient events in the client’s account rather than throughout the statement. An attorney will want to avoid including irrelevant details that do not lend themselves to the client’s credibility, character, or other elements of the case.

The use of sensory details can be a powerful tool in eliciting an emotional response from the reader. The level of detail that a practitioner should employ in helping a respondent or applicant draft their declaration or affidavit will vary based on the client’s recollection, presentation, and consistency. A client can only report details that they remember and of which they are certain. Furthermore, if for mental health or cognitive reasons a client struggles to be consistent with details of an event, it is unadvisable to draft a statement that a client may later contradict. Assuming that a client’s inconsistent reporting of their account is not a result of dishonesty, an attorney will consider the potential harms of including high levels of detail in the affidavit or declaration. If a client is more likely to be vague during their oral testimony or present information that is inconsistent with the details in the account, offering a statement with high levels of detail can needlessly create credibility concerns on the part of the adjudicator. As such, a practitioner will make case-by-case decisions as to the levels of detail to include in a particular statement.

In some instances, clients may struggle to offer details when describing traumatic events. In a case where a client can recall and offer sensory details to describe traumatic events, the practitioner should be aware of the psychological impact of delving deeply into traumatic memories. This should also be weighed against the possibility that a detailed, written, testimonial statement of a particularly traumatizing event, such as a sexual assault, establishes the elements of a case and may incentivize a factfinder or opposing counsel to take the incident as fact, rather

than require the client to provide oral testimony before the tribunal. Explaining these competing priorities to a client can also give a client insight as to the basis of the practitioner's questioning and the potential effect on the extent of their future testimony.

### *A Lawyer's Role in the Drafting and/or Editing of Statements and the Ethics of Reconciling Inconsistencies*

It is common practice for immigration attorneys to aid clients and witnesses in the drafting and/or editing of statements to the tribunal. Bearing in mind an attorney's ethical responsibilities to show candor to the tribunal, an attorney should never help to construct evidence that they know to be false or misleading.<sup>26</sup>

The process of helping a client draft their affidavit and declaration often begins with extensive interviewing of the client and collecting the entire account as pertinent to the prima facie case. Alternatively, the practitioner may consider asking the client to write down their account in their own words as a starting point for subsequent interviews. This option, if appropriate to the client, may also give the practitioner insight into the client's voice. When taking the steps to subsequently draft the affidavit or declaration, it is common for a practitioner to have further clarifying questions when committing the client's statement to writing. When drafting the statement, the practitioner should be faithful to the account as described by the subject of the statement. It is important for the practitioner to produce a clear and cohesive statement that addresses the elements of the client's case.

When compiling evidence, both testimonial and documentary, the practitioner should assess what elements of the case have or can be proven or corroborated by which piece of evidence. The practitioner should take great care to verify that all the evidence provides a clear, consistent, and cohesive account with a unified theory of the case. Providing detail lends itself to positive credibility findings and eliciting an emotional response from the reader. But if a statement is internally inconsistent, contradicted, or undermined by other statements or evidence in the record, the factfinder will be likely be concerned about the credibility of the applicant or respondent.

Inconsistencies between evidence can happen for a myriad of reasons: human memory is flawed and diverse across humans,<sup>27</sup> trauma may impact the recall and interpretation of events,<sup>28</sup> eyewitnesses may have different physical perspectives, and, in the worst-case scenario, a party may be exaggerating or untruthful with respect to events. An attorney ethically cannot offer evidence that they know to be false.<sup>29</sup> That being said, given the myriad of reasons that inconsistencies can exist, one need not assume that inconsistencies are a result of dishonesty. A

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<sup>26</sup> See: Model Code of Pro. Conduct r. 3.3 (Am. Bar Ass'n, 2020).

<sup>27</sup> Michael Greshko, *Human memory: How we make, remember, and forget memories*, National Geographic (Mar. 4, 2019), available at <https://www.nationalgeographic.com/science/article/human-memory>

<sup>28</sup> See: Deryn Strange and Melani K.T. Takarangi, *Memory Distortion for Traumatic Events: The Role of Mental Imagery*, 6 Front Psychiatry 27 (2015).

<sup>29</sup> See: Model Code of Pro. Conduct r. 3.12 (Am. Bar Ass'n, 2020).



best practice when confronted with an inconsistency in the evidence is to discuss the matter with the client to understand the cause for the inconsistency and how to ameliorate it.

For example, consider a scenario where a client's declaration states: "I was arrested on January 10, 1991 . . .", and the client's parent states: "My daughter was arrested on January 15, 1991." In this case, the practitioner should ask the client to clarify how she knows she was arrested on January 10 and why she thinks her parents suggested it was 5 days later. The client may be able to investigate further into the discrepancy and offer an edit to the statements to make them more accurate and consistent. Alternatively, both parties may insist that an arrest occurred in January and that they are each certain of the date of arrest. Presuming there is no alternative documentary evidence to corroborate either date, the parties may consider whether to describe the arrest period as "Around mid-January 1991." Inconsistencies with respect to dates are particularly common and should not necessarily inspire alarm in a practitioner. However, a practitioner should be concerned with the veracity of the statements submitted to a tribunal and should ameliorate any inconsistencies when possible.

**SAMPLE CLIENT DECLARATION**  
**Condensed and Abridged**

**DECLARATION OF JANE DOE IN SUPPORT OF ASYLUM**

I, Jane Doe, swear under penalty of perjury under the laws of the United States that the following is true and correct to the best of my knowledge. I file this statement in support of my application for asylum.

1. My name is Jane Doe and I am a Dikimbe citizen of Montvert. I fled Montvert because my husband, an appellate judge, planned to kill me and there was no one who could keep me safe. During our three-year marriage, my husband, repeatedly beat and raped me. In the months before I fled with my daughter Sofia, the violence became worse and worse. I reported the abuse only once to the local authorities, but they did not investigate the violence. They only informed my husband, which exposed me to the worst violence of my life. I decided to escape when he threatened to kill me and brought home a gun.

**I grew up in the Dikimbe community where I faced discrimination**

2. I was born on March 1, 1985 in the Dikimbe region of Montvert. My parents, Francois Do and Francoise Do were gentle throughout my upbringing. My father worked as a teller at a local bank. My mother raised me and my younger sister, Tatiana before Tatiana passed away from severe pancreatitis in 1994. After Tatiana passed, my mother went through a deep depression and was largely absent from my daily life. My father encouraged me to focus on my studies in primary and secondary school so that I may one day attend university. I remember a few nights that he would stay up alongside me and help me complete my math homework.

3. People generally regarded me as a beautiful child. My honey-colored eyes and lighter black complexion drew a lot of attention, both wanted and unwanted. Once when I was seven, I walked to the bank where my father worked, The National Bank of Montvert, to bring him his lunch. I was met by the bank's supervisor when I arrived to the empty lobby ahead of the metal doors where withdrawals and deposits were made. The supervisor was a short, bald, portly man and he smelled like cigarettes. "Why are you here, child? What do you want?" he boomed in a loud voice. He put his hand on my shoulder. I stammered that I was Francois Do's daughter and that I had come to bring him his lunch. The supervisor told me that I'd better come with him to his office and he took my hand in his. As he started to pull me, my heart pounded. I didn't know what he was going to do, but I had a feeling it was nothing good. As we got closer to a door to the left of the lobby, I yanked my hand back with all the force I had. "I don't want to go with you!" I shouted with a shaking voice. I turned to run back to the exit door as I heard him say "keep running, you little Dikimbe whore." I never walked into my father's bank again.

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**I met my husband, Jean Doe following my winning the Ms. Montvert pageant. We had a whirlwind romance up until I got pregnant, and he felt obligated to marry me.**

10. My beauty put me at risk, but it also protected me from the struggles of being a Dikimbe woman. At age 17 I entered the Ms. Dikimbe Beauty Contest which saw competitors from the entire Dikimbe region of Montvert. I remember I wore a beautiful floor-length gown with light blue sequins and spaghetti straps. My father borrowed the dress from his sister Franchesca. She was married to a

wealthy man and could afford such a dress. The dress fit like a glove and I felt like a princess as I walked onto the stage. I won the Ms. Dikimbe Beauty Contest that night, and was named, Ms. Dikimbe 2002. I was automatically entered into the Montvert Beauty Pageant. A Dikimbe woman had never won the Ms. Montvert Beauty Pageant. We are generally not regarded to be beautiful and the winners are usually women from the Akambe tribe. Despite taunts from my Akambe competitors who called me “Dikimbe Trash” or asked me who I slept with to get into this contest, a miracle happened to me in that pretty blue gown. I was named Ms. Montvert 2001. I had never felt so beautiful.

11. That night, after the pageant, I was leaving the backstage area to walk home when a very tall man in a tailored suit approached me. He looked to be in his 30s. I felt nervous, but many organizers and competitors were still coming in and out of the theater so I knew I wouldn’t be alone with a stranger. I remember what he first said to me, he said, “Hello, I don’t wish to pester you, I only wish to tell you that you are a vision, and I am delighted that you have won this pageant.” I was immediately comforted by the fact that he spoke in a soft voice, despite his large muscular physique. He did not try to touch me and did not stand too close to me. We spoke for a while backstage, and he told me that he was a judge in the Akambe province. He asked if I would accompany him for dinner that evening. I wanted to, so I accepted. He seemed kind and gentle. He made me feel safe. This was the start of my romance with Jean Doe.

12. In the time that we dated, Jean was a loving partner. He never discussed my being Dikimbe even though he was Akambe. He introduced me to his family and friends. We went out to the nicest restaurants in Montvert. One night he drove me the top of a dark lookout point. We watched the twinkling lights of the city of Rompart below as he took my hand and told me “I love you, Jane. I will always love you.” We secretly moved in together after a month of knowing each other.

13. I was pregnant shortly thereafter. Jean took the news well at first. He was concerned about my wellbeing and what people would think of me if they knew that I had had sex before marriage. I did not care. I was in love. But Jean insisted we get married, so we did on my eighteenth birthday.

14. It was after our daughter, Sofia was born, that Jean began to change. It started with words. He would call me fat and said no one would find me beautiful anymore. Then, he started saying that I was a Dikimbe snake who had trapped him in marriage and fatherhood.

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**If I am returned to Montvert, Jean will surely find me and kill me.**

54. If I am sent back to Montvert, I know that Jean will find me and kill me. He raped and beat me for years. After I reported him to the police, he subjected me to the most violent rape and beating of my life. He told me he would kill me. Then he bought a gun. Jean is a man who always gets what he wants and now he wants me dead.

*Jane Doe*

Jane Doe

May 12, 2022

Date

# Washboro University

Professor Angelica Maisonneuve, Professor of Gender Studies  
492 College Avenue, Washboro, Virginia 20001  
(e) [amaisonneuve@washboro.edu](mailto:amaisonneuve@washboro.edu); (p) 202-555-9823

## **EXPERT DECLARATION OF DR. ANGELICA MAISONNEUVE**

1. My name is Dr. Angelica Maisonneuve, I am a dually appointed Professor of Gender Studies and African Studies at Washboro University in Washboro, Virginia. I am writing this declaration in support of Ms. Jane Doe's application for asylum and at the request of her attorneys. In my expert opinion, given Ms. Doe's experiences in her home country of Montvert, if Ms. Doe is returned to Montvert, law enforcement will likely deny her aid and protection from her husband's severe domestic abuse.

## **QUALIFICATIONS**

2. I earned my PhD. in Gender Studies from the African Gender Institute at the University of Capetown in 2011. After completing my post-doctoral fellowship in Gender Studies at Yale University in 2012, I accepted a position as an Assistant Professor of Gender Studies at Washboro University where I have continued my research since. I have attached my curriculum vitae to this declaration for reference.
3. My research focuses on gender norms and roles in Sub-Saharan Africa. During my PhD fieldwork in 2009, I spent one year in Montvert interviewing upper middle-class women of the Dikimbe tribe on their assumed roles in marital relations. This research was critical in my dissertation: *Sexual Politics and Marriage in the Dikimbe Upper Middle-Class*. I have since published over 20 articles in leading Gender Studies journals on gender roles in Sub-Saharan Africa. Ten of these articles speak specifically to women in Montvert.

## **PREPARATION AND MATERIALS REVIEWED**

4. In preparation for drafting this declaration, I reviewed Ms. Doe's affidavit, I-589 application for asylum, and 2018 asylum interview's officer notes. I further interviewed Ms. Doe for over eight hours over the course of two meetings in March of 2022.

## **CONDITIONS FOR UPPER MIDDLE-CLASS WOMEN OF THE DIKIMBE TRIBE**

5. Prior to the 20<sup>th</sup> century, the Dikimbe tribe of what is now Montvert was classified as a matriarchal society, which notably is not a society in which men are subordinate to women.<sup>30</sup> Mothers and motherhood were traditionally revered and values including nurturing, appreciation for nature, and mutual respect between men and women. Women

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<sup>30</sup> Darlene Khat, *The History of Dikimbe Women*, 9 Journal of Gender Studies 34, (Mar. 3, 2001).

held roles as priestesses and the spiritual leaders of the society. Property and inheritance traveled through the female line. Women enjoyed sexual agency with multiple partners and without stigma in the community. Marriage as a social construct did not exist.<sup>31</sup>

6. In the wake of sixty years of French colonial rule and the introduction of Christianity in Montvert, the Dikimbe Tribe was unrecognizable with respect to its matriarchal and sexually liberal roots. Since WWII, Women's roles were strictly relegated to traditional patriarchal gender norms.<sup>32</sup> Women generally do not hold jobs or receive a complete education beyond informal training of domestic tasks. Marriage, child-rearing, and maintenance of the home are the central roles that women play in society.
7. Rates of domestic violence are reported to be remarkably high across socio-economic classes in post-colonial Montvert. While recent efforts have been made by the Clafoutis Administration to legislate against physical abuse in the form of beatings, the law does not presently recognize marital rape or sexual assault as criminal offenses.<sup>33</sup> Further, prosecution of perpetrators of domestic violence is nearly non-existent due in part to entrenched patriarchal views and corruption in all-male police forces, prosecutors, and the judiciary.

**PARTICULAR RISKS TO MS. JANE DOE AS THE SURVIVING WIFE OF JOHN DOE, AN APPELLATE JUDGE**

8. Ms. Doe's account detailing the failure of local police to investigate her husband's physical and sexual abuse as well as their steps to, instead, inform him of her reporting are consistent with the attitudes and behaviors pervasive to the Dikimbe region and Montvert in general. Furthermore, Judge Doe's status as a "reputable" and wealthy man in the patriarchal society makes him untouchable by members of lower wealth, class, or gender. Ms. Doe is notably less educated, comes from a lesser-known family, and is a woman.
9. Given my expertise in this area I can conclude with a high amount of certainty that if Ms. Doe were returned to Montvert, she would not enjoy the protection of the police and would remain in danger of physical and sexual violence or even death at the hands of her well-connected and capable husband.

I, Angelica Maisonneuve, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

*Angelica Maisonneuve*

Angelica Maisonneuve

May 10, 2022

Date Executed

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<sup>31</sup> *Id.*

<sup>32</sup> Faustus Killjoy, *Post-Colonial Rule in Montvert*, Heyville Publishers, (2011).

<sup>33</sup> Angelica Maisonneuve, *Marital Rape in Southern Sub-Saharan Africa*, 9 Gender 29, (Jul. 2, 2017).



**SAMPLE CHARACTER WITNESS LETTER**

May 23, 2022

U.S. Immigration and Citizenship Service  
Arlington Asylum Office  
1525 Wilson Blvd, Ste 300  
Arlington, VA 20598

Dear Officer:

I am writing this letter in support of Jane Doe's application for asylum. Jane has been a member of our congregation at the Crescent Baptist Church since 2018, and I have served as her pastor since that time. She is a remarkable woman of the highest moral values and is a role model to women in our community.

Crescent Grove Church was first established in 1902 as a non-denominational Christian house of worship to serve the community in Westwood, Virginia. Our Christ-centered fellowship preaches the values of love, worship, ministry, and service.

Jane joined our congregation soon after moving to Westwood, Virginia, in March of 2018. She attended one of my sermons around that time and approached me afterward to inquire as to how she may serve our community. Since then, she has become a regular fixture at the church, attending bi-weekly sermons, volunteering at service events such as food and clothing drives, supervising evenings at our shelter for women and children, teaching children's bible study (ages 4-5), and spreading the word of Jesus Christ. Jane is a remarkably devout individual who has committed herself to living her life in accordance with Christian values.

During one of our many discussions, Jane told me of her lifelong membership at the Church of Willow Valley in her home country of Montvert as well as the suffering she endured in her home country. She told me that over the course of ten years she was both sexually and physically battered at the hands of her husband, a judge in the city of Cielbleu in the Akambe region. She fled to the U.S. with her ten-year-old daughter, Marine, to protect herself and her child from further abuse.

In a relatively short time, Jane has become a luminary and a model of service in our community. She is a wonderful mother, congregant, and neighbor. She is deserving of permanent status in the U.S. and certainly makes our community a safer place. If you have any questions regarding this letter, please do not hesitate to contact me.

Yours in Christ,

*Joseph Damon*

Pastor Joseph R. Damon

May 23, 2022

Date

**CONSENT TO RELEASE/EXCHANGE**  
**CONFIDENTIAL INFORMATION**

Client Name: \_\_\_\_\_ Birthdate: \_\_\_\_\_

**I hereby request and authorize:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**to release/exchange information with:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**The specific information I consent to release relates to:**

**For the purpose of:** \_\_\_\_\_

I understand that this authorization expires 180 day (6 months) after the signature date.  
Furthermore, I understand that I may revoke this consent at any time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date