Memorandum

HQASM 120/16.12 - P

Subject:	Date:
Role of Consultants in the Credible Fear Interview	[signed November 14, 1997]

To:
All Asylum Directors
All Supervisory Asylum Officers
All Asylum Officers

From:
Office of International Affairs
Asylum Division
[Joseph E. Langlois /s/ - see page 2]

The purpose of this memo is to provide additional guidance on the role of consultants during the credible fear interview in the context of expedited removal. We are developing further guidance on working with consultants and representatives, including guidance on the documents that may be released to them. That guidance will follow shortly.

The INS encourages the use of consultants by persons who are subject to expedited removal and have been referred for a credible fear interview. Consultation generally facilitates the credible fear process and helps to ensure that asylum seeker's claims are fully elicited. The role of the consultant in the credible fear interview is basically the same as the role of the representative in the affirmative asylum interview. While the asylum officer maintains control of the interview, the consultant and the asylum officer should share a cooperative role in developing and clarifying the merits of the applicant's claim. The consultant should generally be given the opportunity to make a statement at the end of the interview and to ask the applicant additional questions.

Pursuant to 8 C.F.R. § 208.30, applicants in the credible fear process are entitled to consultation with a person or persons of their choosing:

> The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. 8 C.F.R. §208.30(b)

"Consultant" is not defined in the INA or the regulations. The consultant may be a paid attorney, a *pro bono* attorney, a staff member at a non-government organization, a friend, a relative, or any other person

of the alien's choosing. The alien may have more than one consultant at the interview. However, the asylum officer may reasonably limit the number of consultants present during an interview based on available space considerations and to prevent disruption of the interview.

As noted above, the regulations governing the expedited removal process provide that, *in the asylum officer's discretion*, the consultant may make a statement or comment at the end of the interview. Therefore, the asylum officer has discretion to prevent the consultant from making a statement or comment. However, the asylum officer must have solid reasons to exercise discretion to disallow a consultant from making a statement or comment. Only in extremely unusual circumstances should the asylum officer exercise discretion to prevent the consultant from making a statement or comment.

Generally, the consultant should be allowed to make a closing statement, comment on the evidence presented, and/or ask the asylum seeker additional questions. This should be explained to the consultant and the applicant at the beginning of the interview. The asylum officer may place reasonable limits on the amount of time allotted to the consultant, if it appears that the consultant is using the time in an unhelpful or disruptive manner. It is appropriate for the consultant to clarify issues or statements that were made during the interview, to summarize the case and to make arguments regarding the merits of the case, and to ask additional relevant questions that have not been asked by the asylum officer. It is not appropriate for the consultant to reconduct the interview. The asylum officer must record the consultant's statements in the Q & A's, if the statements are material or relevant to the claim. In some cases, the asylum officer may find it necessary to ask the applicant additional follow-up questions based on issues or information presented by the consultant at the end of the interview. This should also be recorded in the Q & A's.

In most cases, the consultant should hold comments or questions until the end of the interview. In certain instances, however, it will be appropriate for the consultant to comment during the course of the interview to avoid confusion or misunderstandings. Such comments may be helpful and should not be discouraged. At the same time, it is important that the asylum officer retain control of the interview. If the consultant repeatedly interrupts or otherwise disrupts the interview, the asylum officer should ask the consultant to refrain from interrupting the interview and explain that the consultant will be given an opportunity at the end of the interview to ask questions and make comments. Absent unusual circumstances (for example when the asylum seeker has a mental disability), the consultant should not be permitted to answer for the applicant.

There may be times when the asylum officer needs to discuss certain issues with the consultant (e.g., the consultant's role). The asylum officer should ensure that what is discussed is translated to the applicant so that the applicant is aware of all that transpires during the interview.

As noted above, further guidance on this issue will be forthcoming. Please direct any questions you have regarding the role of the consultant during the expedited removal process to Charlie Fillinger or Lorraine Eide.

_____
Joseph E. Langlois /s/
Deputy Director