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Striving for Credibility in the Face of Ambiguity: A Grounded Theory Study of Extreme Hardship Immigration Psychological Evaluations

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STRIVING FOR CREDIBILITY IN THE FACE OF AMBIGUITY: A GROUNDED THEORY
STUDY OF EXTREME HARDSHIP IMMIGRATION PSYCHOLOGICAL EVALUATIONS

A Dissertation

Presented to the Faculty of
Antioch University Seattle
Seattle, Washington

In Partial Fulfillment
Of the Requirements of the Degree
Doctor of Psychology

By

Susan Burke

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STRIVING FOR CREDIBILITY IN THE FACE OF AMBIGUITY: A GROUNDED THEORY
STUDY OF EXTREME HARDSHIP IMMIGRATION PSYCHOLOGICAL EVALUATIONS

This dissertation, by Susan Burke, has
been approved by the committee members signed below
who recommend that it be accepted by the faculty of the
Antioch University Seattle at Seattle, WA in partial fulfillment
of requirements for the degree of

DOCTOR OF PSYCHOLOGY

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ABSTRACT

STRIVING FOR CREDIBILITY IN THE FACE OF AMBIGUITY: A GROUNDED THEORY STUDY OF EXTREME HARDSHIP IMMIGRATION PSYCHOLOGICAL EVALUATIONS

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Psychological evaluations are frequently used in extreme hardship immigration cases in the United States. These evaluations are complex; they are inherently ambiguous, and they require extensive training and specialized knowledge. General guidance for mental health professionals is available from professional organizations, the federal government, and articles in the legal and mental health literature. However, there is a lack of detailed guidance, best practices, training, and supervision so many evaluators learn on their own. Unfortunately, this has resulted in assessment processes and evaluation reports that vary widely in terms of professionalism and quality which negatively impacts the vulnerable families seeking these services.

The purpose of this exploratory study is to identify current practices of immigration attorneys and mental health professionals engaged in producing psychological evaluations for extreme hardship cases. This study utilized classic grounded theory (Glaser & Holton, 2004) to analyze interviews of thirteen study participants and redacted psychological evaluations. Credibility was identified as the core variable for this study; it accounted for the greatest variance of behavior between the participants. In conceptualizing why participants sought credibility, the Grounded Theory of striving for credibility in the face of ambiguity arose. This

theory captures how struggles for human rights often evoke moral and ethical dilemmas regarding fairness and justice, which are integral values to the legal and mental health professions. However, the ambiguity and lack of external feedback inherent in extreme hardship evaluations necessitates the need for evaluators to create their own processes, rely on internal standards of excellence, and thus develop a sense of meaning for doing the work. Participants who were passionate about this work appeared to have successfully completed a meaning-making process (Park, 2010) and when positive meaning was not established, participants spoke of fatigue, burnout, poor work quality, and ultimately leaving this area of specialization. Recommendations include clarifying clinician qualifications, training, supervision, mentoring, and criteria to evaluate the quality of reports.

This dissertation is available in open access at AURA, <http://aura.antioch.edu/> and Ohio Link ETD Center, <https://etd.ohiolink.edu/etd>.

Keywords: Immigration, inadmissibility waiver, extreme hardship waiver, psychological evaluations, forensic evaluations, and extreme hardship, grounded theory

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CHAPTER I: INTRODUCTION

In 2016, there were an estimated 43.7 million individuals in the United States (U.S.) who were born in another country. Eleven million of these individuals were not authorized to be in U.S. either having overstayed their visa or entered the country illegally. However, many of these unauthorized immigrants have established lives in the U.S. As of 2015 almost nine million had lived in the U.S. for more than ten years (Baker, 2018), in 2016 eight million were working (Krogstad, Passel, & Cohn, 2018), and in 2010, 16.6 million people lived in mixed-status families (i.e. families with at least one unauthorized immigrant) (Center for American Progress, 2012).

Unauthorized immigrants have few options when seeking permanent residency status in the U.S. Generally, if they have a U.S. petitioner, they are required to leave the U.S. and apply for an immigrant visa at the U.S. consulate in their country of origin. However, when applying for a visa, they are subject to inadmissibility due to their prior time in the U.S. If the individual was unlawfully present in the U.S. for longer than six months but less than a year, they are barred from returning to the U.S. for three years (Immigration and Nationality Act [INA] of 1965, 8 U.S.C. § 212(a)(9)(B)(i)(I)). If an individual was in the U.S. for more than a year, they are barred from returning to the U.S. for ten years (INA of 1965, 8 U.S.C. § 212(a)(9)(B)(i)(II)). One form of relief available to some unauthorized immigrants in this situation is a form of inadmissibility waiver called an extreme hardship waiver.

To qualify for an extreme hardship waiver the applicant must have a qualifying relative, either U.S. citizen or Lawful Permanent Resident (LPR) spouse, parent, son, or daughter, depending on the type of waiver, and be able to demonstrate that the qualifying relative would

experience “extreme hardship” if they were to leave the U.S. with the applicant or stay in the U.S. without the applicant.

Psychological evaluations conducted by mental health professionals are often submitted in support of extreme hardship waiver applications (McLawsen et al., 2011; Scott, 2013). These psychological evaluations are highly complex endeavors that require a detailed knowledge of forensic psychological evaluations, working with immigrants, multicultural competency, selecting and conducting assessments appropriate for diverse populations, and writing forensic reports specifically for extreme hardship cases (Frumkin & Friedland, 1995). While there are no specific criteria for meeting legal standards (Federal Register, 1998), general professional guidelines and limited detailed guidance in the literature provide some assistance to mental health professionals conducting these psychological evaluations (Kamoo, 2010).

The purpose of this study is to identify current practices of immigration attorneys and mental health professionals engaged in producing psychological evaluations for extreme hardship cases. This study contributes to the field by providing original research on how attorneys and mental health professionals currently approach this complex process and provides recommendations for improvements in the future. It is my hope that this study will offer additional guidance for immigration attorneys and mental health professionals in conducting extreme hardship psychological evaluations.

Literature Review

As an introduction to immigration hardship psychological evaluations, this review provides a brief background on authorized and unauthorized immigrants in the U.S., followed by the process to become a U.S. citizen for unauthorized immigrants, and an overview of the extreme hardship waiver process. The review then explores the use of psychological evaluations in extreme hardship waivers and the professional expertise they entail. Lastly, guidance available to mental health professionals is reviewed as well as the empirical research currently available in the field.

Immigrants in the U.S.

According to the Pew Research Center, in 2017 the U.S. foreign-born population reached a record 44.4 million and accounted for 13.6% of the U.S. population. At that time, most immigrants (76%) were in the country legally; 45% were naturalized U.S. citizens, 27% were permanent residents, and 5% were temporary residents. Another 24%, or 11 million individuals, were unauthorized immigrants (Radford, 2019).

The majority of unauthorized immigrants were from Mexico (6.6 million), although many came from all over the world; 750,000 from El Salvador; 620,000 from Guatemala; 470,000 from India; 440,000 from Honduras; 370,000 from the Philippines; 320,000 from China; 230,000 from Korea; 170,000 from Vietnam; 150,000 from Ecuador; and 1.9 million from other countries (Baker, 2018). Over half of all unauthorized immigrants resided in four states: California (25%), Texas (16%), Florida (7%), and New York (5%) (Baker, 2018).

Most unauthorized immigrants either entered the U.S. without inspection or overstayed their visa (Baker, 2018). There are no official measures of how many people succeed in entering the U.S. without inspection, but authorities use the number of border apprehensions to gauge

illegal immigration. U.S. border apprehension rates peaked in FY 1986 and 2000 with 1.68 million apprehensions and have generally declined since totaling 404,000 in FY 2018 (U.S. Department of Homeland Security, 2019).

In FY 2017, there were 702,000 individuals in the U.S. who had overstayed their visa (U.S. Department of Homeland Security, 2019). Nonimmigrant visas allow individuals to remain in the U.S. for six months and the visa can be extended. The Visa Waiver Program allows individuals from select countries to stay in the U.S. for 90 days without a visa and without extension (U.S. Department of State, n.d.). Individuals who were granted a visa or visa waiver but did not exit the U.S. when their authorization expired are called overstayers.

Unauthorized immigrants with established lives in the U.S. Many unauthorized immigrants have established lives in the U.S. with 80% living in the U.S. for more than ten years as of 2015 (Baker, 2018). The majority are working, with eight million employed as of 2016, which represents 4.8% of the overall U.S. workforce (Krogstad et al., 2018). As unauthorized immigrants establish lives in the U.S., their families include members of varying legal status, known as mixed-status families. In 2010, 16.6 million people lived in mixed-status families (i.e. families with at least one unauthorized immigrant) (Center for American Progress, 2012). In 2016, 5.6 million U.S. citizen children under the age of 18 were living with at least one unauthorized immigrant parent (Krogstad et al., 2018).

Unauthorized immigrants' path to permanent residency in the U.S. Unauthorized immigrants have few options when seeking permanent residency status in the U.S. Generally, they will be required to leave the U.S. and apply for an immigrant visa at the U.S. consulate in their country of origin. However, when applying for a visa, they will then be subject to the grounds of inadmissibility.

Grounds of inadmissibility. Visa applicants may be found inadmissible to the U.S. due to issues related to health, criminal activity, security, risk of becoming a public charge, field of work, past illegal entrance, immigration violators, documentation requirements, being permanently ineligible for citizenship, having been previously removed, as well as a variety of other particular circumstances (INA of 1965, 8 U.S.C. § 1182). Individuals who were previously found to be unlawfully present in the U.S. are inadmissible and subject to a bar from re-entering the U.S. for a period of time. If an individual was found to be unlawfully present in the U.S. for longer than six months but less than a year, and they leave the U.S. prior to removal proceedings, they will be barred from returning to the U.S. for three years (INA of 1965, 8 U.S.C. § 212(a)(9)(B)(i)(I)). If an individual was unauthorized in the U.S. for more than a year, they are barred from returning to the U.S. for ten years (INA of 1965, 8 U.S.C. § 212(a)(9)(B)(i)(II)). One form of relief available to some unauthorized immigrants in this situation is an inadmissibility waiver.

Inadmissibility waivers. If an individual is found to be inadmissible, they may apply for a waiver of inadmissibility. Waivers are available for inadmissibility based on: communicable disease of public health significance, vaccination exemption, physical or mental disorder and associated harmful behavior, membership in a Totalitarian Party, alien smuggling, being the subject of a civil penalty, temporary protected status (TPS) applicants, certain adjustment of statuses, VAWA self-petitioners who are subject to a permanent bar from re-entry, criminal history, fraud or misrepresentation, and unlawful presence (U.S. Department of Homeland Security. (n.d.). The waivers for criminal history, fraud or misrepresentation, and unlawful presence, referred to as extreme hardship waivers, are particularly applicable to unauthorized immigrants who previously resided in the U.S. and are the focus of this research study.

Extreme hardship waivers

Extreme hardship waivers require that the applicant have a qualifying relative, the ability to demonstrate extreme hardship to the qualifying relative, and that they warrant favorable discretion.

Qualifying relative. Each type of extreme hardship waiver indicates who is considered a qualifying relative. A qualifying relative for an unlawful presence waiver (INA of 1965, 8 U.S.C. § 212(a)(9)(B)(v)) or misrepresentation waiver (INA of 1965, 8 U.S.C. § 212(i)(1)) is limited to the applicant's U.S. citizen or LPR spouse or parent. The qualifying relative criteria for a criminal history waiver (INA of 1965, 8 U.S.C. § 212(h)(1)(B)), are more expansive and include the applicant's U.S. citizen or LPR spouse, parent, son, or daughter. If the applicant does not have a relationship with a qualifying relative, they are ineligible for an extreme hardship waiver.

Extreme hardship. The applicant must also be able to demonstrate extreme hardship to the qualifying relative. To qualify as extreme hardship, the level of hardship must exceed the expected difficulties one would foresee if the applicant's waiver was denied (Extreme Hardship of 2018). In *Ngai v. INS* (1984) established that the common consequences of denying admission do not warrant a finding of extreme hardship. Common consequences of denying admission may include: family separation, economic loss, difficulties of readjusting to life in the new country, the quality and availability of educational opportunities abroad, inferior medical support, and the ability to pursue a chosen employment abroad (United States Department of Homeland Security [USDHS], United States Citizenship and Immigration Services [USCIS], 2019). However, what specifically constitutes extreme hardship is not defined in the statutes or federal regulations (McLawsen et al., 2011). Regulations from other areas of immigration law, U.S. Citizenship and

Immigration Services (USCIS) guidance, and the limited case law that exists can be reviewed to clarify the legal definition of this term.

Suspension of deportation regulations. Case law regarding hardship waivers is limited, however other areas of immigration law require demonstration of extreme hardship (McLawsen et al., 2011). While prudent to avoid application of standards from one area or law to another, Hake (2005) argues that the hardship standards in U.S. immigration law, with the exception of the “exceptional and extremely unusual” standard used in suspension of deportation cases, are identical. Therefore, a cautious review of the explanation of extreme hardship in the federal suspension of deportation regulations (Extreme Hardship, 2018) may help inform hardship waivers. The hardship standards for suspension of deportation include

- (a) The age of the alien, both at the time of entry to the U.S. and at the time of application for suspension of deportation;
- (b) the age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;
- (c) the health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
- (d) the alien's ability to obtain employment in the country to which the alien would be returned;
- (e) the length of residence in the U.S.;
- (f) the existence of other family members who are or will be legally residing in the U.S.;
- (g) the financial impact of the alien's departure;
- (h) the impact of a disruption of educational opportunities;
- (i) the psychological impact of the alien's deportation;
- (j) the current political and economic conditions in the country to which the alien would be returned;
- (k) family and other ties to the country to which the alien would be returned;
- (l) contributions to and ties to a community in the U.S., including the degree of integration

into society; (m) immigration history, including authorized residence in the U.S.; and (n) the availability of other means of adjusting to permanent resident status. (para. 2)

USCIS factors and considerations. USCIS Policy Manual (USDHS, USCIS, 2019) also helps clarify extreme hardship by identifying the factors and considerations they utilize when evaluating a case:

Family Ties and Impact

- Qualifying relative's ties to family members living in the U.S., including age, status, and length of residence of any children.
- Responsibility for the care of any family members in the U.S., particularly children, elderly adults, and disabled adults.
- The qualifying relative's ties, including family ties, to the country of relocation, if any.
- Nature of relationship between the applicant and the qualifying relative, including any facts about the particular relationship that would either aggravate or lessen the hardship resulting from separation.
- Qualifying relative's age.
- Length of qualifying relative's residence in the U.S.
- Length of qualifying relative's prior residence in the country of relocation, if any.
- Prior or current military service of qualifying relative.
- Impact on the cognitive, social, or emotional well-being of a qualifying relative who is left to replace the applicant as caregiver for someone else, or impact on the qualifying relative (for example, child or parent) for whom such care is required.

Social and Cultural Impact

- Loss of access to the U.S. courts and the criminal justice system, including the loss of opportunity to request or provide testimony in criminal investigations or prosecutions; to participate in proceedings to enforce labor, employment, or civil rights laws; to participate in family law proceedings, victim's compensation proceedings, or other civil proceedings; or to obtain court orders regarding protection, child support, maintenance, child custody, or visitation.
- Fear of persecution or societal discrimination.
- Prior grant of U nonimmigrant status.
- Existence of laws and social practices in the country of relocation that would punish the qualifying relative because he or she has been in the U.S. or is perceived to have Western values.
- Access or lack of access to social institutions and structures (official and unofficial) for support, guidance, or protection.
- Social ostracism or stigma based on characteristics such as gender, gender identity, sexual orientation, religion, race, national origin, ethnicity, citizenship, age, political opinion, marital status, or disability.
- Qualifying relative's community ties in the U.S. and in the country of relocation.
- Extent to which the qualifying relative has integrated into U.S. culture, including language, skills, and acculturation.
- Extent to which the qualifying relative would have difficulty integrating into the country of relocation, including understanding and adopting social norms and established customs, including gender roles and ethical or moral codes.

- Difficulty and expense of travel/communication to maintain ties between qualifying relative and applicant, if the qualifying relative does not relocate.
- Qualifying relative's present inability to communicate in the language of the country of relocation, as well as the time and difficulty that learning that language would entail.
- Availability and quality of educational opportunities for qualifying relative (and children, if any) in the country of relocation.
- Availability and quality of job training, including technical or vocational opportunities, for qualifying relative (and children, if any) in the country of relocation.

Economic Impact

- Economic impact of applicant's departure on the qualifying relative, including the applicant's or qualifying relative's ability to obtain employment in the country of relocation.
- Economic impact resulting from the sale of a home, business, or other asset.
- Economic impact resulting from the termination of a professional practice.
- Decline in the standard of living, including due to significant unemployment, underemployment, or other lack of economic opportunity in the country of relocation.
- Ability to recoup losses or repay student loan debt.
- Cost of extraordinary needs, such as special education or training for children.
- Cost of care for family members, including children and elderly, sick, or disabled parents.

Health Conditions and Care

- Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment.
- Psychological impact on the qualifying relative due to either separation from the applicant or departure from the U.S., including separation from other family members living in the U.S.
- Psychological impact on the qualifying relative due to the suffering of the applicant.
- Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of humanitarian protection.

Country Conditions

- Conditions in the country of relocation, including civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm.
- Temporary Protected Status (TPS) designation.
- Danger Pay for U.S. government workers stationed in the country of nationality.
- Withdrawal of Peace Corps from the country of nationality for security reasons.
- Department of State (DOS) Travel Warnings or Alerts, whether or not they constitute a particularly significant factor. (Section D)

USCIS particularly significant factors. Additionally, USCIS (USDHS, USCIS, 2019) details Particularly Significant Factors that are more specific than the general factors in the previous section and, “often weigh heavily in support of finding extreme hardship” (Section E).

These factors include:

- If a qualifying relative was previously granted Iraqi or Afghan Special Immigrant Status, T (Trafficking) Nonimmigrant Status, Asylum, or Refugee Status.
- If the qualifying relative or related family member is disabled.
- If the qualifying relative is an Active Duty member of any branch of the U.S. armed forces.
- Cases where a qualifying relative would relocate to a country or region that the DOS has recommended against travel or that U.S. citizens depart.
- If caregiving or income-earning responsibilities of the applicant’s children will be substantially displaced.

Factors are considered cumulatively. USCIS considers all extreme hardship factors cumulatively (USDHS, USCIS, 2019). This means that while individual factors in a particular case may not meet the criteria for extreme hardship, they may meet the standard when the cumulative impact of all the factors are considered.

Discretion. Meeting the statutory and regulatory requirements for an extreme hardship waiver does not guarantee approval of the application. Once extreme hardship has been established, the USCIS officer determines if the applicant has demonstrated that he or she deserves a favorable judgment. The USCIS officer determines if positive factors (i.e. family relationships) outweigh any negative factors (i.e. criminal history and/or moral character) (USDHS, USCIS, 2019).

Case law regarding extreme hardship. Case law has also contributed to the definition of extreme hardship. As previously noted, to be considered “extreme,” the hardship must exceed that which is usual or expected (Extreme Hardship, 2018; *Hassan v. INS*, 1991; *Cervantes-Gonzalez*, 1999/2001). Extreme hardship need not be unique (*L-O-G- v. INS*, 1996), nor is the standard as demanding as the statutory “exceptional and extremely unusual hardship” standard that is generally applicable to non-lawful permanent resident cancellation of removal (INA of 1965, 8 U.S.C. § 1229b; *Andazola-Rivas*, 2002; *Monreal-Aguinaga*, 2001).

Burden and standard of proof. The waiver applicant has the burden of proof to demonstrate, by a preponderance of evidence, that the qualifying relative would suffer extreme hardship if their waiver is denied (INA of 1965, 8 U.S.C. § 212(a)(9)(B)(v)). To meet the preponderance of evidence standard the evidence must show that the probability of extreme hardship would result more likely than not (*Chawathe*, 2010).

Separation versus relocation. While the USCIS Policy Manual (USDHS, USCIS, 2019 at Vol. 9, Part B, Ch. 4(B)) states that, “an applicant is not required to show extreme hardship under both scenarios,” experts recommend establishing extreme hardship in both situations and state that failure to do may result in a denial (ILRC, 2018; Scott, 2009). Therefore, the applicant should establish extreme hardship if the waiver is not granted and the qualifying relative: (a) separates from the applicant and remains in the U.S., or (b) relocates abroad with the applicant.

Providing evidence of extreme hardship. In addition to the waiver form, filing fee, qualifying relative letter, criminal records, and translations of any documents not in English, a waiver packet must also include compelling evidence (Scott, 2013). The burden of proof lies with applicant to demonstrate extreme hardship and that they merit a favorable exercise of discretion. Evidence must prove (a) the positive impact the applicant’s presence has on the

qualifying relative, (b) the extreme hardship the qualifying relative would likely face if they remained in the U.S., (c) the extreme hardship the qualifying relative would likely experience if they move abroad, (d) address any aggravating factors in the applicant's history, and (e) that the applicant warrants a favorable exercise of discretion (Scott, 2009). Additionally, it is imperative not only to provide multiple types of evidence to support each claim but to ensure that all pieces of evidence are complimentary and cohesive (Scott, 2009).

Scott (2009, 2013) suggested that evidence used for extreme hardship waivers can be generally categorized as (a) professional/expert opinions, (b) quasi-professional opinions, (c) lay letters from disinterested parties, (d) lay letters from interested parties, (e) records, (f) photos, and (g) articles. Professional and expert opinions include letters from doctors, psychologists, accountants, and other experts. While their professional credentials lend credibility, they may not know the applicant or qualifying relative particularly well and they are paid which may be interpreted as a source of bias. Quasi-professional opinions are letters submitted by individuals who have some training in counselling such as clergy, peer counselors, or others supportive service providers, but do not have a relevant license. While the depth and breadth of their understanding of the applicant or qualified relative may be limited, their training is recognized, and their testimony is generally not paid for, precluding suspicion of possible bias. Lay letters from disinterested parties may be requested from employers, co-workers, teachers, landlords, or fellow parishioners. “The positives of the letters are that the person usually has no obvious reason to lie for the case, yet the person has some knowledge of the hardships he/she is describing. The negative are that (a) clients often don’t want such parties to be so intimately involved in the client’s personal business, and (b) the people writing the letters don’t always know enough about the client’s personal life to provide a high level of detail” (Scott, 2013, p.

13). Interested parties include family and friends whose inherent bias is a concern but their day-to-day contact with the qualifying relative will provide a detailed view of the situation. Medical, psychological, financial, educational, or employment records are excellent unbiased sources of past information. The connection between records and possible future extreme hardship to the qualifying relative must be made explicit. Photos may increase understanding of the impact of a medical issue or living conditions in applicant's home country. However, while impactful and unbiased, like records, the relationship between the image and potential extreme hardship must be made overt. Articles are supportive, unbiased, pieces of impersonal testimony on topics such as medical conditions or issues related to country conditions that require explicit connection to the case and qualifying relative.

Aggravating factors. Scott (2013) argues the following list of issues represent aggravating factors in a waiver case. Each should be carefully evaluated and evidence submitted to explicitly demonstrate their resolution.

- Criminal history must be addressed and rehabilitation proven. This applies to any crimes committed from minor incidents to major aggravating factors such as domestic violence, sex offenses, or multiple instances of drinking and driving.
- Past prior applications for immigration benefits should be described and demonstrated to be legitimate.
- Avoiding past deportation orders is considered a substantial aggravating factor.
- Misrepresentation or fraud particularly involving providing false information during any part of the immigration process related to the current case. The number and severity of misrepresentation issues have a cumulative impact on the case.
- If a waiver for the type of violation committed has since been eliminated by Congress.

- If the petitioner spouse or fiancé(e) had previously filed for a spouse/fiancé(e) either as the petitioner or the beneficiary and that relationship did not appear to be legitimate.
- It is an aggravating factor if the qualifying relative participated in the events leading to the unauthorized immigrant's ground of inadmissibility such as falsifying documents, smuggling, or serving as a co-defendant in a criminal trial for the unauthorized immigrant.
- Public records that bring the moral character of the qualifying relative into question, such as outstanding tax liens, unpaid child support, restraining orders, multiple civil suits, or excessive traffic tickets.
- Repeat violations of the Visa Waiver Program.
- It may be assumed that the hardship would not be extreme, if the qualifying relative is from the same country as an adult unauthorized immigrant and were to return to the country they originally came from.

Aggravating factors do not prevent approval, but the more aggravating that exist, the more extreme hardship one must show in order for the waiver to be approved (Scott, 2013). Once the waiver packet is complete, it is ready to be submitted.

Submitting an extreme hardship waiver. Individuals apply for extreme hardship waivers by submitting a USCIS Form I-601 or Form I-601a. Applicants submit Form I-601 after applying to the local consulate for an immigrant visa. USCIS adjudicates the application and if denied applicants may appeal the decision or file a Motion to Reconsider or Reopen (MTR) the decision (USDHS, USCIS, n.d.). Generally, applicants must remain outside the U.S. while the waiver application is pending. Waiver applications can take many months to adjudicate and may require additional processing before a visa can be issued. Scott (2013) reported that applicants

find the process extremely difficult due to the time they must spend outside the U.S., which includes family separation and lost income while their application is processed.

Applicants whose ground of inadmissibility is only unlawful presence, may apply for a provisional waiver by submitting Form I-601a (USDHS, USCIS, 2016). Submitting a provisional unlawful presence waiver, does not change the immigrant visa process. The applicant first pays for their visa and then the Form I-601a is submitted while the applicant is in the U.S. Even if the waiver is approved, the applicant is required to depart the U.S. for an immigrant visa interview with a U.S. consular officer abroad (USDHS, USCIS, 2016). Scott (2013) reports that, “Applicants who are able to participate will most likely spend only a few days to a few weeks abroad instead of many months” (Provisional Waiver section, para.1). If the waiver is denied, the applicant may refile the application. However, unlike waivers for inadmissibility, provisional waiver applicants may not file MTR nor appeal a denial (Scott, 2013).

The Use of Psychological Evaluations in Extreme Hardship Waivers

Psychological evaluations conducted by mental health professionals are a form of professional testimony often submitted in support of extreme hardship waiver applications (McLawsen et al., 2011; Scott, 2013). They provide a valuable method for describing and explaining the impact that separation or relocation may have on a qualifying relative. Mental health professionals utilize clinical interviews and psychological assessments to provide data on factors contributing to the qualifying relative’s experience of extreme hardship as well as circumstances surrounding aggravating factors.

A clinical interview provides a detailed history on topics such as mental health, physical health, family system, immigration experience, nature of family ties in U.S. and abroad,

community ties, financial situation, academic achievements, aspirations, opportunities, sources of support, language ability, and cultural identity (Cervantes, Mejía, & Mena, 2010).

The clinician may substantiate information gathered in the clinical interview through a review of related documents such as medical records, school records, third-party declaration, and country condition reports. Furthermore, the information obtained through the clinical interview and collateral information may be augmented with objective data obtained through psychological assessments.

Psychological assessments may be used to objectively assess the qualifying relative's moral, cognitive, and psychological health (Stutman & Brady-Amoon, 2015). Clinicians use psychological assessments to assess a wide variety of constructs and provide objective data about cognitive functioning including intellectual ability and neurological impairment; academic achievement; psychological diagnoses including anxiety, depression, and posttraumatic stress disorder; forensic concerns such as malingering; and personality factors that may increase an individual's susceptibility to factors related to extreme hardship.

Expertise necessary to conduct psychological evaluations for extreme hardship waivers. These psychological evaluations are highly complex endeavors that are often completed under tight deadlines (Kamoo, 2010) by mental health professionals with diverse educational backgrounds, professional credentials, and experience in the field. Regardless, the evaluator must have a detailed knowledge of complex topics such as conducting forensic psychological evaluations, working with immigrants, multicultural competency, selecting and conducting assessments appropriate for diverse populations, as well as the skills necessary to create an accurate and compelling forensic psychological evaluation specifically for extreme hardship cases (Frumkin & Friedland, 1995).

Guidance from Professional Organizations, the Federal Government, and Research

Professional organizations such as the American Psychological Association (APA) and the federal government provide general guidelines for mental health professionals. These guidelines offer critical foundational knowledge, but alone, do not prepare mental health professionals for extreme hardship evaluations. Thankfully, scholarly literature in this field has been growing in recent years and provides greater detail on what extreme hardship evaluations entail. This section reviews each of these sources of guidance and describes what this study hopes to add to the field.

Guidance from the APA Ethical Principles of Psychologists and Code of Conduct.

The Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the EPPCC; APA, 2017) includes the ethical standards of Competence and Assessment, which particularly relate to extreme hardship evaluations. The Competence standard instructs psychologists to practice within the boundaries of their competence, ensure the competence of their services related to issues diversity, that forensic psychologists familiarize themselves with judicial or administrative rules governing their roles, and that psychologists oversee delegated services such as those provided by interpreters (APA, 2017).

The Assessment standard instructs psychologists to “base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings” (APA, 2017, p.12).

Psychologists are also instructed to use assessment methods that are appropriate to an individual’s language preference and competence. Additionally, psychologists must use instruments whose validity and reliability have been established for the person being assessed or describe the strengths and limitations of test results when validity and reliability have not been

established (APA, 2017). Finally, the Assessment standard instructs psychologists account for various factors such as characterological, situational, personal, linguistic, or cultural differences that might affect the accuracy of their interpretations (APA, 2017).

Guidance from the APA Specialty Guidelines for Forensic Psychology. The Specialty Guidelines for Forensic Psychology (hereinafter referred to as the SGFP; APA, 2013) are informed by the EPPCC (APA, 2017) and were established to improve the quality of forensic psychological services (APA, 2013). Unlike the mandatory EPPCC standards, the SGFP are aspirational guidelines for professionals (APA, 2013). In the context of a forensic practitioner, such as when providing psychological evaluations for extreme hardship cases, the SGFP suggests that mental health professionals serve as *examiners* who assess an individual's functioning and report their findings to the attorney (APA, 2013). The Responsibility guideline states, "Forensic practitioners strive to be unbiased and impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact" (APA, 2013, p. 9).

The Competence guideline is particularly applicable, recommending that examiners obtain, maintain, and communicate their competence accurately. Competence includes, a reasonable level of knowledge of the legal and professional standards, laws, rules, and precedents; awareness of the scientific foundation of their opinions; possible influence of personal biases; and effect issues of diversity may have on services rendered (APA, 2013). The SGFP Assessment guideline aligns with the mandates in the EPPCC Assessment standard and recommends consideration of a number of factors that are applicable to the forensic context. Specifically, SGFP recommends that evaluators, when working in a forensic context, maintain a focus on legally relevant factors, consider consequences of using a clinical diagnosis, evaluate

strengths and limitations of traditional assessment procedures, consider how interpretations of results may differ, document all data considered, and keep accurate records (APA, 2013).

Guidance from the APA Task Force on Immigration Report. The Task Force on Immigration Report (hereinafter referred to as the TFIR; APA, 2012) provides information on why people immigrate, discrimination immigrants encounter, the process of adaptation, unique challenges immigrant populations face, and assessment considerations, which includes a specific section on forensic settings. In terms of assessment, the TFIR (APA, 2012) highlights the cultural, linguistic, and environmental factors that must be assessed to ensure the proper selection of tests and interpretation of results. Without culturally sensitive assessment planning, assessment findings may be inaccurate due to lack of exposure to cultural norms, secondary language difficulties, and the additional time needed to process information presented in secondary languages (APA, 2012). As a result, the true needs of the individual may not be addressed or they may be under- or over-pathologized (APA, 2012). At the heart of this issue is the lack of developed and norm-referenced tests for immigrant populations and procedures that lack a contextual and ecological approach (APA, 2012). In the forensic setting, the same linguistic and cultural issues apply including a “lack of standardized translations, absence of appropriate normed standards for specific populations, and psychologists who are not linguistically or culturally familiar with their clients” (APA, 2012, p. 51).

Guidance from the APA Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations. The Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (hereinafter referred to as the GPSELCDP; APA, 1993) provides aspirational guidelines that are intended to inform all aspects of psychological service delivery, not just psychotherapy. The GPSELCDP

(APA, 1993) lists skills mental health professionals need to conduct multicultural assessments and interventions as well nine guidelines with illustrative examples to assist practitioners who work with populations that are ethnically, linguistically, and culturally diverse. While all the guidelines are pertinent to evaluators conducting extreme hardship evaluations, some particularly helpful suggestions include:

- Providing informed consent in writing, in the language understandable to the client, along with oral explanations.
- Considering the validity of a given assessment and interpreting resulting data in view of the individual's cultural and linguistic characteristics. Psychologists are aware of the test's reference population and possible limitations of such instruments with other populations.
- Assessing the level and quality of acculturation to American society regardless of length of stay in the U.S.
- Helping a client determine whether a 'problem' stems from racism or bias in others so that the client does not inappropriately personalize problems (i.e. 'healthy paranoia').
- Clarifying the services and the role of the service provider as well as expectations of the client prior to intervention.
- Respecting clients' spiritual beliefs and values, including attributions and taboos, since they affect world view, psychosocial functioning, and expressions of distress.
- Interacting in the language requested by the client and, if this is not feasible, making an appropriate referral. If a referral is not possible, service providers offer the client a professional translator with cultural knowledge. When no translator is available, then a trained paraprofessional from the client's culture is used as a translator/culture broker.

Service providers do not retain the services of translators/paraprofessionals that may have a dual role with the client.

- Considering the impact of adverse social, environmental, and political factors in assessing problems and designing interventions (e.g. Low income may be associated with such stressors as malnutrition, substandard housing, and poor medical care; and rural residency may mean inaccessibility of services. Clients may resist treatment at government agencies because of previous negative experiences).
- Acknowledging relevant discriminatory practices at the social and community level that may be affecting the psychological welfare of the population being served.
- Awareness of sociopolitical contexts in conducting evaluations and providing interventions; they develop sensitivity to issues of oppression, sexism, elitism, and racism (e.g. An upsurge in the public expression of rancor or even violence between two ethnic or cultural groups may increase anxiety baselines in any member of these groups. This baseline of anxiety would interact with prevailing symptomatology). (APA, n.d.)

Guidance from the APA Multicultural Guidelines: An Ecological Approach to Context, Identity, and Intersectionality. The Multicultural Guidelines: An Ecological Approach to Context, Identity, and Intersectionality (hereinafter referred to as the Multicultural Guidelines; APA, 2017) are aspirational, practitioner-focused guidelines with a framework based on Bronfenbrenner's ecological model. For each guideline, there is a detailed introduction/rational, and applications to practice, research, and consultation section. All the guidelines are applicable to evaluators conducting extreme hardship evaluations with diverse populations. The Multicultural Guidelines (APA, 2017) are:

- Guideline 1. Psychologists seek to recognize and understand that identity and self-definition are fluid and complex and that the interaction between the two is dynamic. To this end, psychologists appreciate that intersectionality is shaped by the multiplicity of the individual's social contexts.
- Guideline 2. Psychologists aspire to recognize and understand that as cultural beings, they hold attitudes and beliefs that can influence their perceptions of and interactions with others as well as their clinical and empirical conceptualizations. As such, psychologists strive to move beyond conceptualizations rooted in categorical assumptions, biases, and/or formulations based on limited knowledge about individuals and communities.
- Guideline 3. Psychologists strive to recognize and understand the role of language and communication through engagement that is sensitive to the lived experience of the individual, couple, family, group, community, and/or organizations with whom they interact. Psychologists also seek to understand how they bring their own language and communication to these interactions.
- Guideline 4. Psychologists endeavor to be aware of the role of the social and physical environment in the lives of clients, students, research participants, and/or consultees.
- Guideline 5. Psychologists aspire to recognize and understand historical and contemporary experiences with power, privilege, and oppression. As such, they seek to address institutional barriers and related inequities, disproportionalities, and disparities of law enforcement, administration of criminal justice, educational, mental health, and other systems as they seek to promote justice, human rights, and access to quality and equitable mental and behavioral health services.

- Guideline 6. Psychologists seek to promote culturally adaptive interventions and advocacy within and across systems, including prevention, early intervention, and recovery.
- Guideline 7. Psychologists endeavor to examine the profession's assumptions and practices within an international context, whether domestically or internationally based, and consider how this globalization has an impact on the psychologist's self-definition, purpose, role, and function.
- Guideline 8. Psychologists seek awareness and understanding of how developmental stages and life transitions intersect with the larger biosociocultural context, how identity evolves as a function of such intersections, and how these different socialization and maturation experiences influence worldview and identity.
- Guideline 9. Psychologists strive to conduct culturally appropriate and informed research, teaching, supervision, consultation, assessment, interpretation, diagnosis, dissemination, and evaluation of efficacy as they address the first four levels of the Layered Ecological Model of the Multicultural Guidelines.
- Guideline 10. Psychologists actively strive to take a strength-based approach when working with individuals, families, groups, communities, and organizations that seeks to build resilience and decrease trauma within the sociocultural context. (APA, 2017, pp. 4-5)

Guidance from the Council of National Psychological Associations for the Advancement of Ethnic Minority Interests' Psychological Treatment of Ethnic Minority Populations. The Psychological Treatment of Ethnic Minority Populations (hereinafter referred to as the PTEMP; Council of National Psychological Associations for the Advancement of

Ethnic Minority Interests [CNPAAEMI], 2003) describes the importance of cultural competence, diversification of the U.S., health disparities of minorities in the U.S., and lists the knowledge and skills required to provide culturally competent services. Additionally, the PTEMP (CNPAAEMI, 2003) provides aspirational guidelines for service providers working with Asian, African, Latino/Hispanic, and Native American populations. For example, the chapter on recommendations for working with Latino/Hispanic populations includes sections on the Latino population in the U.S., myths and misinformation, inadequacies in traditional mental health care, culture-specific views of mental health and healing, oppression and racism as mental health issues, and delivery of culturally competent care to Hispanic populations. Guidance of interest to extreme hardship evaluators includes the tendency for Hispanics to not seek mental health care and instead seek assistance from primary care providers for psychosomatic symptoms; issues with using assessments normed on English-speaking populations with Anglo-American values; culture-bound psychological syndromes (e.g. *nervios*, *ataque de nervios*, and *susto*); oppression and racism resulting in distrust, lack of empowerment, and adverse psychological functioning; and issues regarding lack of bilingual service providers and the use of translators.

Guidance from the federal government. The guidance provided by the federal government takes the form of a U.S. Citizen and Immigration Services (USCIS, 2019) Policy Manual and a report from the Surgeon General's Mental Health: Culture, Race and Ethnicity (2001).

The USCIS Policy Manual (USCIS, 2019) is organized into volumes, many of which are relevant to extreme hardship waivers, including Volume 8: Admissibility and Volume 9: Waivers. The Admissibility Volume details all admissibility requirements including which requirements a waiver may be submitted for. The Waivers Volume includes a chapter on

Extreme Hardship Waivers that details the purpose of the waivers, USCIS policy, adjudication process, qualifying relatives, extreme hardship considerations and factors, determination, and discretion (see the Unauthorized Immigrants Path to Permanent Residency in the U.S. section of this paper for further details.) The USCIS Policy Manual (USCIS, 2019) provides information that evaluators may find helpful in preparing to conduct extreme hardship evaluations.

The Surgeon General's report on Mental Health: Culture, Race, and Ethnicity (hereinafter referred to as the MHCRE; U.S. Department of Health and Human Services [DHHS], 2001). The purpose of the MHCRE (DHHS, 2001) is to examine mental health disparities, provide evidence for the need of mental health services and delivery of those services, and propose means of reducing mental health disparities. This report details

Guidance from professional literature. Despite the complexity and potential legal ramifications of these psychological evaluations, there are no published original research studies on extreme hardship evaluations. The few published articles that do exist are perspective pieces from the legal and mental health fields. Both fields provide guidance on topics discussed in prior sections of this paper, including the statutory requirements and judiciary process (Carbonell, 2004; Hake 2005; Immigration Legal Resource Center [ILRC], 2016; Marquez & Quinn, 2016; Scott, 2009; Scott & Cannon, 2007; Wiebe & Brenes, 2011) as well as the importance of multicultural training when conducting extreme hardship evaluations (Aranda, 2016; Barrett, 2004; Carbonell, 2004; de las Fuentes, Ramos Duffer, & Vasquez, 2013; Stutman & Brady-Amoon, 2011 & 2015). This section highlights guidance provided by the mental health and legal fields regarding the overall assessment process, initial contact with the client, referral question, clinical interview, assessment strategy, tone of report, and report structure.

Overall assessment process. Multiple authors describe the overall assessment as a review of collateral materials relevant to the referral question, a comprehensive clinical interview, and testing with appropriate objective and/or projective assessments selected to address the referral question (Cervantes et al., 2010; de las Fuentes et al., 2013; Evans 2004; Kalmbach & Lyons, 2006; Kamoo, 2010; Stutman & Brady-Amoon, 2011; Vaisman-Tzachor, 2003). If required by the referral question, evaluators may also gather socio-political information about the applicant's community of origin (de las Fuentes et al., 2013).

Initial contact with client. The initial contact with a potential client provides the opportunity for the evaluator to gather and share critical information. Clients must agree to unique aspects of forensic evaluations and evaluators must determine if they are qualified to conduct the evaluation. Pertinent issues include the type of immigration case, timelines, and demographics of the qualifying relative such age, country of origin, length of time in the U.S., preferred language, and degree of literacy in preferred language to determine if accommodations need to be made (de las Fuentes et al., 2013). The evaluator informs the potential client of fees, payment policies, limits of confidentiality in forensic evaluations, that the assessment does not guarantee a particular outcome, an overview of the assessment process, time required, and schedules a tentative initial meeting that will be confirmed pending consultation with her attorney (Ackerman, 2013; Carbonell, 2004; de las Fuentes et al., 2013; Kamoo, 2010; Stutman & Brady-Amoon, 2011; Wiebe, 2011).

Referral question. Evaluators contact the referring attorney prior to meeting with the qualifying relative to clarify the referral question that the evaluation is intended to answer (Barrett, 2004; de las Fuentes et al., 2013; Stutman & Brady-Amoon, 2011). The referral question enables the evaluator to determine if a psychological evaluation can answer the question

and if the evaluator is qualified to complete the evaluation (Barrett, 2004; de las Fuentes et al., 2013). From a legal perspective, Wiebe and Brenes (2011) also emphasize the importance of a clear referral question because it is foundational to the evaluation process and report; the evaluator must determine and explicitly describe the relationship between symptoms they discover, legally relevant events in the case, and case strategy.

Clinical interview. An extreme hardship waiver requires that the applicant have a relationship with a qualifying relative. The financial, physical and emotional nature of the relationship must be documented (Vaisman-Tzachor, 2012). Therefore, the interview should include questions regarding the quality of the relationship between the applicant and qualifying relatives, the applicant's roles in the home and family life, the applicant's contributions to qualifying relatives and family (i.e. financial, transportation, educational, caregiving, etc.), shared activities, and any unusual circumstances (de las Fuentes et al., 2013; Vaisman-Tzachor, 2003). Additionally, the evaluator should request official documentation supporting the information gathered during the clinical interview such as medical records, employment records, school records, marriage certificates, and birth certificates (Vaisman-Tzachor, 2012).

De las Fuentes et al. (2013) recommend that the evaluators' clinical interview explore the qualifying relatives pre- and post-migration story. Pertinent topics include a thorough history of, Their life prior to immigration (including education and work histories, social status); rationale and goals for immigration; immigration decision-makers and the process of decision-making; who and what was left behind; who migrated and why; the migration story; how and why was the community into which they settled chosen; length of time in the United States; children born in the U.S.; family that subsequently migrated to join the evaluatee; preferred language; fluency (oral and written) in preferred language and in

English; work and educational experiences in country of origin and in the U.S.; post-migration change in social status; access to community resources; and adaptation and acculturation to the U.S., including stress related to acculturation and/or oppression (p. 311).

Assessment strategy. Evaluators must take many variables into account when creating and conducting an assessment battery for an extreme hardship evaluation. Guidance provided by the legal and mental health fields includes adhering to the federal rules of evidence and recommended psychological assessments.

While not legal standard, Vaisman-Tzachor (2012) advises as a best practice that evaluators select assessments that, in addition to meeting ethical guidelines (APA, 2017), also meet the federal rules of evidence (FRE). “FRE are the standards by which all testimony, including psychological testimony, is admitted into evidence in legal proceedings at federal immigration courts” (Vaisman-Tzachor, 2012, p. 47). FRE are based on two essential premises:

- The Frye Standard is a test to determine the admissibility of scientific evidence. It states that expert opinion based on a scientific principle or discovery is admissible when the technique is widely accepted and well recognized as reliable in the relevant scientific community (Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)).
- The Daubert Standard is a test to determine the admissibility of expert witness testimony. Vaisman-Tzachor (2012) draws on the work of Weiner, Hess, and Buckles, who say that testimonial evidence is, “admissible when reached with reasonable degree of psychological certainty, which would be above 50%, or better than chance” (as cited on p. 47; *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993)).

To meet their ethical obligations (APA, 2017) as well as the FRE standards, evaluators must select validated and reliable testing measures to objectively assess the client and provide greater credibility to their findings (Ackerman, 2013; Butcher, 2015; de las Fuentes et al., 2013; Kamoo, 2010; Stutman & Brady-Amoon, 2011; Vaisman-Tzachor, 2012; Wiebe, 2011). Some of the recommended psychological assessments include:

- To assess personality, Butcher (2015), de las Fuentes et al. (2013), and Vaisman-Tzachor (2012) recommended the Minnesota Multiphasic Personality Inventory-2 (MMPI-2; (Graham, 1993) or the Millon Clinical Multiaxial Inventory-IV (MCMI-IV; Millon, Grossman, & Millon, 2015).
- To assess psychological functioning, the Beck Depression Inventory-II (BDI-II; Beck, Steer, & Brown, 1996) was frequently recommended (Ackerman, 2013; Butcher, 2015; de las Fuentes et al., 2013; Stutman & Brady-Amoon, 2011). Similarly, the Beck Anxiety Inventory (BAI; Beck & Steer, 1993) was commonly referenced as well (Ackerman, 2013; de las Fuentes et al., 2013; Stutman & Brady-Amoon, 2011). Finally, Butcher (2015) utilizes the State Trait Anxiety Inventory (STAI; Spielberger, Gorsuch, Lushene, Vagg, & Jacobs, 1983), Vaisman-Tzachor (2012) referenced the Edinburgh Motor Assessment (EMAS), and Ackerman (2013) utilizes the Children's Depression Inventory-2 (CDI-2; Kovacs, 2011), Primary Care Evaluation of Mental Disorders (PRIME-MD; Spitzer, Williams, Kroenke, Linzer, DeGruy, Hahn, Brody, & Johnson, 1994), Trail Making Test (TMT; Reitan & Wolfson, 1985), and Montreal Cognitive Assessment (MoCA; Nasreddine, Phillips, Bédirian, Charbonneau, Whitehead, Collin, Cummings, & Chertkow, 2005).

- To assess trauma, de las Fuentes et al. (2013) utilize the Trauma Symptom Inventory-2 (TSI-2; Briere, 2011) and the Butcher (2105) recommends the Harvard Trauma Questionnaire (HTQ; Mollica, Caspi-Yavin, Lavelle, Yang, Chan, Pham, Ryan, & de Marneffe, 1991), the Hopkins Symptom Checklist 25 (HSCL-25; Mollica, Wyshak, de Marneffe, Khuon, & Lavelle, 1987), and the Hopkins Symptom Checklist 90 (HSCL-90; Lipman, Covi, & Shapiro, 1979).
- To assess the relationship between the applicants and the qualifying relatives, Vaisman-Tzachor (2012) utilizes the Parent Awareness Skills Survey (PASS; Bricklin, 1990) and the Perception of Relationship Test (PORT; Bricklin, 1989), Parenting Stress Index-3 (PSI-3; Abidin, 1995), Relationship Report Cards, and Double Blind Family Observations, and Projective Drawings. In terms of projective drawings, de las Fuentes et al. (2013) and Stutman and Brady-Amoon, (2011 and 2015) describe using the Rotter Incomplete Sentences Blank, 2nd edition (RISB-2; Rotter, Lah, & Rafferty, 1992), House-Tree-Person, (HTP; Buck, 1948), Kinetic Family Drawing (KFD; Burns & Kaufman, 1970). Additionally, while not designed to diagnose mental health disorders (Evans, 2007), the Rorschach Inkblot Test and other projective assessments can generate hypotheses or support findings that may be validated through other aspects of the evaluation (de las Fuentes et al., 2013), though they are generally not used in forensic evaluations.
- To assess psychological resources and strengths, Vaisman-Tzachor (2012) recommends intelligence measures such as the Wechsler Adult Intelligence Scale-IV (WAIS-IV), Wechsler Intelligence Scale for Children-V (WISC-V), or the Kaufman Brief Intelligence Test-2 (KBIT-2), and the inquiry into the history of accomplishments and demonstration

of effective coping. Additionally, de las Fuentes et al. (2013) note that because of language fluency and educational attainment, non-verbal intelligence assessments such as Raven's Progressive Matrices or the General Ability Measure for Adults (GAMA) may be appropriate.

- To assess malingering, Stutman and Brady-Amoon (2011) recommend the Morel Emotional Numbing Test (Morel, 1998) or the Structured Inventory of Malingered Symptomatology (Rogers, Bagby, & Dickens, 1992) and Butcher (2015) recommends the MMPI-2 (Graham, 1993). However, de las Fuentes et al. (2013) references the work of Correa, Rogers and Hoersting who were unable to find any literature supporting the use of single objective measures of malingering with immigrants or minority groups (p. 313). As a result, de las Fuentes et al. (2013) aligns with researches they reference including Guriel-Tennant and Fremouw; Ingram, Dowben, Froelich, and Keltner; Melton, Pettila, Poythress, and Slobogin; and Resnick,

who advise that the best options available for assessing malingering with that immigrants and other minorities, is a combination of collateral information, evaluation of consistency across measures, careful interpretation of validity scales within measures, and findings from the clinical interview" (p. 313).

Tone of report. Fundamental to writing an effective report is understanding that the evaluator's role is to provide expert information to aid a legal decision maker – not to determine if the waiver should be granted or denied (Stutman & Brady-Amoon, 2011; Wiebe, 2011). Additionally, the evaluator must recognize pressures inherent in forensic evaluations and maintain an objective and neutral stance in the report (de las Fuentes et al., 2013; Evans, 2007). "If a professionally neutral stance is not maintained, the psychologist may be perceived as

biased, trying to win the case or advocate on the client's behalf (Vaisman-Tzachor, 2012). This is often a difficult position for psychologists to maintain because many spend the great bulk of their time engaged in counseling and psychotherapy, an intrinsically client-centered pursuit" (Stutman & Brady-Amoon, 2011, p. 377).

Additionally, if the evaluator uncovers information that is unfavorable to the case or does not support the attorney's claim, they are advised to notify the attorney and/or refuse to continue the evaluation (de las Fuentes et al., 2013; Vaisman-Tzachor, 2012)

Structure of report. The report is a multi-part document that includes sections regarding (a) sources of information (Ackerman, 2013; Kamoo, 2010; Vaisman-Tzachor, 2012), rationale for evaluation procedures and assessment selection (Vaisman-Tzachor, 2012), and the referral question the report addresses (de las Fuentes et al., 2013; Vaisman-Tzachor, 2012), (b) qualifying relative's history and current status (Ackerman, 2013) (b) applicant's impact on qualifying relative/family and consequences of separation, (c) feasibility of relocating to the applicant's country of origin including both positive and negative consequences (Stutman & Brady-Amoon, 2011) (d) summary of impressions, conclusions, presence or absence of significant psychological sequela or the risk of such sequela, diagnosis, and recommendations for treatment, if any (Ackerman, 2013; Stutman & Brady-Amoon, 2011; Vaisman-Tzachor, 2012). "The report must carry the reader through the evaluation process and onto the inevitable conclusions and recommendations in a logical and simple manner" (Vaisman-Tzachor, 2012, p. 51; Wiebe, 2011). Finally, de las Fuentes et al. (2013) described sharing a draft of the report with the attorney for their feedback with the understanding that substantial findings will not be altered without additional information.

While guidance is provided by professional organizations, the federal government, and the professional literature, there remains a high degree of variability in process, professionalism, content, writing style, and organization of extreme hardship evaluations. Cervantes et al. (2010) relays feedback from families involved in extreme hardship cases who have experienced, “inconsistent evaluations by unscrupulous evaluators, incomplete evaluations that do not address basic criteria relevant to the issue...” (Cervantes et al., 2010, p. 283).

One means of contributing to the existing research is to collect evidence of current practices from professionals engaged in this work. This study seeks to identify current practices of experienced immigration attorneys and mental health professionals in the hope of furthering the development of best practices specific to extreme hardship evaluations.

CHAPTER II: METHODS

Selecting a research approach involves careful consideration of the interplays between the researcher's research philosophy, the research design, methods, problem, and intended audience (Creswell, 2014). The purpose of this section is to identify and make connections between my research philosophy and the specific research methods utilized in this study. I will explain the progression from my research philosophy, design, strategy, and method of data-analysis.

Research Philosophy – Post-Positivism

Qualitative research stresses the importance of articulating the philosophical foundation upon which a study is based. Philosophical beliefs involve ontology (the nature of reality), epistemology (how can reality be known), axiology (the role of researcher values in the research process), rhetorical structure (use of language), and methodology (the research procedures) (Creswell, 2014; Denzin & Lincoln, 2011; Ponterotto, 2005). These beliefs and perspectives guide the formulation of the research question, the data collection method, the analysis method, and the findings (Creswell, 2014; Denzin & Lincoln, 2011; Ponterotto, 2005).

Post-Positivist Ontology

Post-positivists believe that while an objective reality exists, it can be known only imperfectly (Phillips & Burbules, 2000; Ponterotto, 2005). Many truths exist about even the most mundane of situations, and often the researcher's task is to determine which of the many true statements are relevant to the problem being investigated (Phillips & Burbules, 2000). Post-positivists also acknowledge that researchers and participants will have relative perspectives of their experience, which does not necessarily diminish the truth of the matter, compromise objectivity, or lead to subjectivity (Phillips & Burbules, 2000).

Post-Positivist Epistemology

Knowledge is conjectural – absolute truth can never be found. Thus, evidence is always imperfect, fallible, and all theory is revisable. The scientific community, a critical component is post-positivist research, provides assent on what is considered evidence or competent procedures. Post-positivist subjects of study include observable phenomena as well as inferential, unobservable phenomena such as human beliefs or desires, subatomic particles, quantum phenomena, and black holes. Regarding interpretive research in particular, Phillips and Burbules (2000) provide criteria that identify how it meets the canons of post-positivistic science:

- Researchers using interpretative methods are expected to offer evidence to verify their interpretations.
- Interpretation must be proven; it must endure the search for refuting evidence.
- Providing some items that support an interpretation is insufficient; demonstrating a lack of refuting evidence is more compelling.
- Interpretations are judged by what they tell us about the objects or events under examination.
- All interpretive researchers should consider threats to validity in their research.

Post-Positivist Axiology

Post-positivists acknowledge the role of values in the research process (Phillips & Burbules, 2000; Ponterotto, 2005). Values can be identified as external, extrascientific, or epistemologically irrelevant (convictions not intrinsic to research) or internal, intrascientific, or epistemologically relevant (convictions intrinsic to research) (Phillips & Burbules, 2000). Extrascientific values may influence what a researcher studies, but that does not mean they necessarily influence how research is conducted. Research whose internal workings have been

significantly influenced by external values is poor science and may involve disastrous consequences. Phillips and Burbules (2000) go on to argue that

Epistemically relevant, internal values-values like dedication to the pursuit of truth, openness to counter evidence, receptiveness to criticism, accuracy of measurements and observations, honesty and openness in reporting results, and the like. These values foster the epistemic concerns of science as an enterprise that produces competent warrants for knowledge claims. In short, these relevant values are constitutive of scientific inquiry; that is, without them scientific inquiry loses its point (p. 850).

These rules do not require researchers to be value-free but highlight the possible clash that may exist between some values that researchers hold as individuals and the internal values involved in the research effort (Phillips & Burbules, 2000). The research community acts to safeguard this critical aspect of the research endeavor. Science is a communal activity and researchers must justify their argument to the research community and expose their work to criticism. The community examines the methods and conclusions for errors, assumptions, values, and biases (Phillips & Burbules, 2000). To serve this purpose and to ensure social equity, research communities strive to be fully representative and open (Phillips & Burbules, 2000).

Post-Positivist Rhetorical Structure

The language post-positivists use to present their procedures and research results flows from their epistemological and axiological stance (Ponterotto, 2005). As such, results are presented in context utilizing the voice of the participant (Lincoln & Guba, 1985).

Post-Positivist Methodology

The process and procedures that post-positivists use flow from their ontology, epistemology, and axiology (Ponterotto, 2005). Because all evidence is fallible and our

observations are theory-laden, post-positivism emphasizes multiple measures or observations, and the need to use triangulation to clarify the issue. While objectivity is never achieved, triangulation allow the research to approach it. Thus, objectivity is not the characteristic of an individual but of the scientific community who criticizes each other's work (Trochim & Donnelly, 2006).

The philosophical positions of post-positivism support research that takes place in the natural setting and utilizes the researcher as an instrument, qualitative methods, purposive sampling, inductive data analysis, grounded theory, emergent design, and idiographic interpretation (Lincoln & Guba, 1985). These characteristics naturally lead to a qualitative research design and a grounded theory research strategy.

Research Design – Qualitative

The purpose of this section is to describe philosophical foundations of qualitative research and the synergy between the purpose of this study, post-positivism, and a qualitative research design.

Characteristics of Qualitative Research

Qualitative research is an empirical method of collecting, analyzing, and observing or interpreting data (Ponterotto, 2005). Qualitative researchers study the meanings people ascribe to phenomena. The researcher is a key instrument in the collection of a holistic account of the issue that holds the participants' meaning of the situation as primary. They may utilize numerous data sources such as field notes, interviews, observations, documents, photographs, recordings, or memos. Qualitative researchers utilize complex deductive as well as inductive or “bottom up” data analysis to establish patterns or themes in the data (Creswell, 2012). “The final written report or presentation includes the voices of participants, the reflexivity of the researcher, a

complex description and interpretation of the problem, and its contribution to the literature or a call for change” (Creswell, 2012, p. 44).

Rationale for a Qualitative Design in Immigration Hardship Evaluations

The philosophical foundations and strengths of qualitative research align with the researcher’s philosophical assumptions and the purpose of this study.

Qualitative and post-positivism share many philosophical assumptions. Ontologically, both qualitative research and post-positivism acknowledge multiple views of reality – there is no single absolute truth. Epistemologically, qualitative research’s focus on subjective evidence from participants aligns with post-positivism’s embrace of studying inferential, unobservable phenomena. Furthermore, both qualitative research and post-positivism embrace the perspective that research is value-laden and that biases are present (axiological assumptions). Finally, the use of open-ended questions, nonnumeric data analysis, inductive and deductive logic, studying a topic in context, and utilizing an emerging design are methodologically supported by both qualitative research and post-positivism canons of scientific research (Creswell, 2012).

This study will leverage numerous strengths of qualitative research design to fulfill the purpose of this study. Qualitative research is a useful design when a problem needs to be *explored* (Creswell, 2012). The field of immigration hardship psychological evaluations calls for exploration due to the lack of existing research and specific guidance currently available. Furthermore, the creation of these evaluations is a complex process that involves variables that are not easily quantifiable or measurable.

Qualitative research is an excellent design when a complex or detailed understanding of an issue is needed (Creswell, 2012). In-depth discussions with attorneys and mental health

professionals are needed to understand the process of creating a psychological evaluation for an immigration hardship case and begin the process of establishing current practices.

Qualitative research also empowers individuals through sharing their experience (Creswell, 2012). The purpose of this study is to understand a complex process from the perspective of the individuals who are intimately involved in it.

Finally, qualitative research helps “develop theories when partial or inadequate theories exist for certain populations and samples or existing theories do not adequately capture the complexity of the problem we are examining” (Creswell, 2012, p. 48). This tenet of qualitative research is central to the purpose of this study, which also led to the selection of grounded theory as the research strategy.

Research Strategy – Classic Grounded Theory

Background on Grounded Theory

Grounded theory was developed in the 1960’s by two American sociologists who came from vastly different methodological backgrounds, Anselm Strauss and Barney Glaser (Creswell, 2012; Charmaz, 2014). Anselm Strauss received his B.S. in Biology in 1939 from the University of Virginia and his M.A. and Ph.D. in sociology from the University of Chicago in 1942 and 1945 (Baszanger, 1998). Strauss’ education at University of Chicago took place when their sociology department was, “associated with down-to-earth qualitative research, a less than rigorous methodology, and an unintegrated presentation of theory” (Glaser & Strauss, 1967, p. 7). Meanwhile, Barney Glaser received his B.A. degree from Stanford University in 1952 and his Ph.D. from Columbia University in 1961 (Kenny & Fourie, 2014). Unlike University of Chicago, Columbia University’s sociology department was recognized for its methodological rigor

exemplified by “Merton’s middle-range theory and Lazarsfeld’s quantitative methodology” (Glaser & Strauss, 1967, p. 7).

In 1960, as the Director of the Department of Social and Behavioral Science at the University of California, San Francisco (UCSF), Strauss recruited Glaser to join his research team examining the experience of dying in hospitals (Birks & Mills, 2011). It was during this research project that Glaser and Strauss formulated grounded theory (Birks & Mills, 2011). Shortly after the publication of their results in *Awareness of Dying* (Glaser & Strauss, 1965), they published *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Glaser & Strauss, 1967).

During this period in the U.S., social science research was dominated by quantitative research based on “positivistic conceptions of scientific method and knowledge [that] stressed objectivity, generality, replication of research, and falsification of competing hypotheses and theories” (Charmaz, 2014, p. 6). To Glaser and Strauss (1967), this overemphasis on theory verification and lack of theory discovery failed to reduce the “embarrassing gap between theory and empirical research” (p. 7). They created grounded theory to provide researchers systematic strategies for the discovery of theory based on empirical research, particularly qualitative research (Glaser & Strauss, 1967; Charmaz, 2014).

Glaser and Strauss both wrote further expositions about grounded theory in the 1970’s and early 80’s, but differences of opinion on how grounded theory should be applied resulted in a split into Straussian and Glaserian (Classic) paradigms in the late 1980’s. In 2000, Kathy Charmaz introduced a third paradigm, Constructivist grounded theory. The following section highlights key differences between Straussian, Glaserian (Classic), and Constructivist grounded theory.

A defining feature of classic grounded theory is the premise that the methodology enables the inductive emergence of a conceptual theory from the data. The theory emerges from the data – it is not forced in any way. The researcher does not know in advance what will be found and does not presume what will be relevant (Glaser & Holton, 2004). “The mandate is to remain open to what is actually happening and not to start filtering data through pre-conceived hypotheses and biases to listen and observe and thereby *discover* the main concern of the participants in the field and how they resolve this concern” (Glaser & Holton, 2004, para. 44). As such, the Classic analyst refrains from reviewing the literature prior to the study because the study should be guided by what the data reveals not preconceived notions about the substantive area of study. Similarly, inherent procedures such as theoretical sampling, coding, constant comparison analysis, and collecting a large breadth of data from many different sources are employed to diminish the effects of the researcher’s personal biases or interpretations on the emerging theory (Glaser, 2002).

Straussian grounded theory focuses on validation criteria and a systematic approach. It replaced the original precept of the emergence of a theory from data with a highly analytical and prescriptive framework for coding, intended to deduce theory from data methodically. In line with this approach, Straussian methodology also challenged the tenet of abstaining from literature prior to embarking on the study. Glaser and Holton (2004) argue that Straussian procedures force data into preconceived categories, eschew emergence in favor of verification, and produce description, not conceptual theory (Charmaz, 2014).

Constructivist grounded theory argues against the complex Straussian coding procedures arguing that they reduced flexibility and the researcher’s creativity. Charmaz’s coding procedure

is deliberately more interpretative, intuitive, and impressionistic than the Classic or Straussian paradigms (Charmaz, 2006).

Rationale for Classic Grounded Theory in Immigration Hardship Evaluations

Grounded theory inductively generates a conceptual theory of a process that is “grounded” in data gathered from participants (Glaser & Holton, 2004). Grounded theory is important for this project because participants are at the center of understanding immigration hardship psychological evaluations and establishing current practices. Currently, the only research available on these types of evaluations is based on the perspectives of individual or small groups of attorneys or evaluators with experience in the field. The aspiration of this project is to distill the participants experience into a theory that can assist in rooting immigration hardship psychological evaluations into a clear theoretical foundation. The classic, or Glaserian, method of grounded theory will allow the emergence of a core variable that supports a theory regarding the current practices for creating immigration hardship psychological evaluations. Furthermore, given the importance of examining both attorney’s and mental health professional’s experiences in creating immigration hardship psychological evaluations and the incorporation of a document review of a sample redacted psychological evaluations, grounded theory presented an optimal method of study.

Components of Classic Grounded Theory

Classic grounded theory involves a number of concepts including emergent research questions, theoretical sampling and saturation, constant comparative analysis, coding, core variable, and memo writing.

Emergent research questions. Most studies begin by identifying specific research questions or hypotheses that set the scope for the research process. Grounded theory takes the

opposite approach by letting research questions emerge from the research process itself. “As an iterative process, grounded theory progresses in response to the evolving data collection and analyses” (Birks & Mills, 2011, p. 21). If research questions are identified at the onset, they should be broad and focused on the challenge faced by study participants (Birks & Mills, 2011). Accordingly, this study sought to learn from participants the procedures they use to conduct extreme hardship immigration evaluations.

Theoretical sampling and saturation. Given grounded theory’s primary objective of generating theory *from* the data the entire data collection procedure cannot be prearranged prior to the study. Initial sample choices are necessary to start the process, but as the data is gathered and analyzed gaps will invariably emerge. Gaps may include areas requiring additional evidence or unexpected concepts that prompt further investigation. This process of utilizing a progressive research sample guided by the data analysis process is called theoretical sampling. Theoretical sampling continues until the analysis has been exhausted and no new data are emerging – saturation (Glaser & Strauss, 1967).

Constant comparative analysis. In grounded theory, data collection and data analysis occur concurrently (Glaser & Strauss, 1967). As data is gathered, incidents are coded with a conceptual label and codes are subsequently organized into substantive and later theoretical categories (Glaser & Holton, 2004). The researcher then constantly compares codes to codes, codes to emerging categories, categories to categories, and eventually the emerging theory to the literature (Glaser & Holton, 2004; Glaser & Strauss, 1967). This process of constant comparative analysis continues until no new properties emerge and saturation is achieved (Holton, 2010).

Coding. “Coding is the core process in classic grounded theory methodology. It is through coding that the conceptual abstraction of data and its reintegration as theory takes place”

(Holton, 2010, p. 265). At a high-level, the coding process begins with substantive coding and theoretical coding, which conclude in the formation of a theory.

Substantive coding includes open and selective coding and its role is to conceptualize what is observed in the data (Glaser & Holton, 2004). Open coding involves analyzing the data line-by-line and coding incidents with a conceptual label that summarizes the data. To code the data every way possible, Glaser and Holton (2004) instruct the researcher to consider the following questions:

- “What is this data a study of?”
- “What category does this incident indicate?”
- “What is actually happening in the data?”
- “What is the participant’s main concern?”
- “How are they dealing with this concern?”

These questions help the researcher rise above descriptive details and focus on patterns between incidents, thus coding the underlying concepts (Holton, 2010). The researcher then compares the coded segments and groups codes into as many conceptual categories as possible (Glaser & Holton, 2004). Through the constant comparative analysis process, the categories become increasingly detailed and complex and relationships between categories begin to emerge (Glaser & Holton, 2004). Subsequently, a principal core variable (or core category) will emerge that appears to explain how the main concern of the study is processed or resolved (Holton, 2010). The identification of a core variable shifts the coding process from open to selective coding (Glaser & Holton, 2004).

During selective coding, the researcher focuses on the core variable and the categories that meaningfully relate to it. Subsequent data collection is selectively coded to saturate the

selected categories (Holton, 2010). Once saturation is achieved, and the core variable and related categories are sufficiently elaborated, the categories are further reduced by integrating them into categories based on a higher level of conceptualization (Holton, 2010).

The final stage of coding is theoretical coding which conceptualizes how the final set of categories relate to each other (Glaser & Holton, 2004). This gives rise to an emerging grounded theory that can “account for the relationships between the concepts thereby explaining the latent pattern of social behavior” (Holton, 2010, para. 1). Glaser insists on *trusting in emergence* of a theory at this point in the research (Glaser, 1992).

Core variable. The core variable is an abstract concept that encompasses the primary concern of the study and serves as the organizing factor for the developing theory. For Glaser, a core variable is generalizable: “it has grab; it is often a high impact dependent variable of great importance; it is hard to resist; it happens automatically with ease. Researchers tend to see their core variable everywhere” (2007, p.14). Identification of a core variable is necessary for the data analysis to maintain relevancy and workability. Glaser and Holton (2004, para. 54) provide the following criteria for establishing the core variable:

- “It is central, relating to as many other categories and their properties as possible.
- It accounts for a large portion of the variation in a pattern of behavior.
- It reoccurs frequently in the data and comes to be seen as a stable pattern that is more and more related to other variables.
- It relates meaningfully and easily with other categories.
- It has clear and grabbing implications for formal theory.

- It is completely variable and has conceptual carry through in the emerging theory, enabling the analyst to get through the analyses of the processes that he/she is working on by its relevance and explanatory power.”

Memoing. Throughout the data collection and analysis process, the researcher documents their theoretical ideas about the about the data and the connections between categories in the form of memos (Glaser & Holton, 2004). “Memos help the analyst to raise the data to a conceptual level and develop the properties of each category that begin to define them operationally” (Glaser & Holton, 2004, para. 62). Memos facilitate the theorizing process by hypothesizing increasing connections between categories and their properties (Glaser & Holton, 2004). Furthermore, when in the final stages of documenting the study, memos provide the map for the researcher to articulate the journey of conceptualizing the data, wrestling with complications, and eventually fashioning a theory.

The role of the literature review. In grounded theory, the literature review is integrated into the constant comparative analysis process during selective coding, acting as an equal data source along with the data, memos, codes, and categories (Glaser & Holton, 2004). “To undertake an extensive review of literature before the emergence of a core category violates the basic premise of grounded theory – that being, the theory emerges from the data not from extant theory” (Glaser & Holton, 2004, para. 46). Glaser (1998) lists the following possible impacts a pre-research literature review could have on the researcher, which are contrary to generating grounded theory:

- The researcher may be influenced by concepts that do not fit or are irrelevant.
- The researcher may develop a preconception of the problem that is irrelevant to the substantive area derailing the research from the reality of the situation.

- The researcher may become imbued with speculative, non-scientifically related interpretations and connections that find their way into the grounded theory, which are irrelevant.
- The researcher may feel in awe of other authors, especially the experts in the field, which detracts from one's own self-valuation as a creator of theory.
- The theoretical sensitivity is eroded by rhetorical jargon resulting in a theory sounds like the literature as opposed to how the emergent theory would have it.
- Which literature is relevant is unknown until the main concern of the participants emerges. The relevant literature may be actually far afield from the preconceived literature and not known until much later.

CHAPTER III: PROCEDURES

Participants

This study utilized archival data of transcribed interviews with attorneys and mental health professionals participating in extreme hardship immigration cases. Dr. Bergkamp led the initial project to gather the interview data. Dr. Bergkamp and Greg McLawsen provided the initial pool of potential participants – fellow attorneys and mental health professionals working in this field. Snowball sampling was then utilized to increase the pool of possible participants. At the conclusion of each interview, participants were asked to provide the name and contact information for other attorneys or mental health professionals who were engaged in this work. The resulting dataset includes basic demographic data and verbatim responses regarding their background in the field, what constitutes a good psychological evaluation, and their process. Redacted psychological evaluations provided by participants were also analyzed for content, writing style, and organization.

Classic grounded theory instructs that once a core category and related categories have been identified during open coding, theoretical sampling should continue until the categories are saturated. Saturation was achieved after the completion of thirteen interviews; seven evaluators and six attorneys.

Table 1

Participant Demographics

ID	Role	Gender	Credentials	Year Started Extreme Hardship Immigration Evaluations
E2	Evaluator	Male	PhD	1995
E3	Evaluator	Female	PhD	2013
A4	Attorney	Female	JD	1993
A5	Attorney	Female	JD	1998
A6	Attorney	Female	JD	1997
E7	Evaluator	Male	PsyD	1995
A8	Attorney	Female	JD	2010
E9	Evaluator	Female	PsyD	2011
A10	Attorney	Female	JD	1990
E11	Evaluator	Female	LMHC	2009
E12	Evaluator	Female	PhD	1984
A13	Attorney	Female	JD	2002
E14	Evaluator	Male	PhD	2012

Establishing Trustworthiness

Establishing trustworthiness is a primary concern for any empirical study (Creswell, 2012). Positivist research is evaluated in terms of the study's internal validity, external validity, reliability, and objectivity (Lincoln & Guba, 1985). The same criterion does not apply to post-positivist research, which instead seeks to express trustworthiness by engaging in specific techniques that increase the probability that the findings are credible, transferable, dependable, and confirmable (Lincoln & Guba, 1985).

Credibility Techniques

Credibility techniques may include prolonged engagement, persistent observation, and triangulation (Lincoln & Guba, 1985) as well as peer debriefing, negative case analysis, clarifying researcher bias, member checking, rich description, and external audits (Creswell, 2012). Expanding upon Creswell's (2012) recommendation that researchers employ at least two

of credibility strategies, this study utilized prolonged engagement, triangulation, peer review, and member checking.

Prolonged engagement refers to the researcher's lengthy, trusting, and collaborative relationship with participants in the field (Creswell, 2012; Lincoln & Guba, 1985). Prolonged engagement is inherent in Classic grounded theory's theoretical sampling process during which the researcher continues to return to the field until the analysis has been exhausted and no new data are emerging (saturation) (Glaser & Strauss, 1967). Theoretical sampling was conducted in this study fulfilling prolonged engagement and enhancing validity.

Triangulation involves using multiple sources, methods, investigators, or theories to corroborate discovered codes or themes (Creswell, 2012; Lincoln & Guba, 1985). This study demonstrates triangulation by utilizing data gathered from diverse sources – lawyers, evaluators, sample psychological evaluations, legal codes, and the literature. Additionally, the data was analyzed using the various methods in Classic grounded theory such as the multi-step coding process, the constant comparative analysis, theoretical sampling, and saturation.

Peer debriefing provides an external review of the research process (Creswell, 2012). The purpose of peer debriefing is in part to uncover the researcher's biases, perspectives, and assumptions and to determine if emergent theory seems reasonable and plausible to peer (Lincoln & Guba, 1985). The peer debriefing for this project included multiple independent data reviews by the Dissertation Chair.

Member checking involves requesting participant feedback on the accuracy and credibility of the preliminary analysis (Creswell, 2012). A participant was contacted after selective coding and provided a list of predominate concepts, categories, and emerging theory. The participant was chosen based on the influence their transcript had on concept generation.

The participant's feedback on the quality of fit and relevance of the components provided is in the results section.

Transferability Techniques

Transferability relates to external validity utilized in positivist research (Lincoln & Guba, 1985). Rich description, which lends to transferability, entails reporting results in rich detail to enable the reader to make decisions regarding transferability of results to other times, settings, situations, and people (Creswell, 2012; Lincoln & Guba, 1985). Rich description is expressed by describing ideas from a broad perspective to an increasingly narrow view, recounting the relationship between details, using action verbs, and quotes (Creswell, 2012). This strategy aligns with Classic grounded theory's underlying purpose of creating "a rich, dense theory with the feeling that nothing has been left out" (Glaser & Holton, 2004, para 50).

Dependability Techniques

Lincoln and Guba (1985) cite the earlier work of Guba who argued that there can be no "credibility without dependability, a demonstration of the former is sufficient to establish the latter." (p. 316). Therefore, the techniques listed in the credibility section, particularly triangulation, will demonstrate dependability in this study. Furthermore, Creswell (2012) argues that the use of detailed field notes in the form of audio-recorded interviews, detailed transcriptions, "blind" coding, computer programs to assist in analyzing the data, and intercoder agreement may also be used to demonstrate dependability. This study will further demonstrate dependability by utilizing the detailed transcriptions of the audio recorded interviews, the use of the computer software Dedoose (Version 8.2.14; SocioCultural Research Consultants LLC, 2019) during in the coding process.

Confirmability Techniques

The primary confirmability techniques include the researcher's use of a reflexive journal, confirmability audits, and triangulation (Lincoln & Guba, 1985). A reflexive journal includes the raw data, data reduction and analysis products, data reconstruction and synthesis products, process notes, materials relating to intentions and dispositions, as well as instrument development information (Lincoln & Guba, 1985). A reflexive journal will document how the researcher's context may influence the research process (i.e., selecting the topic, choosing the methodology, analyzing the data, interpreting the results, and presenting the conclusions). For confirmability audits, the researcher will document the process of data collection, data analysis, and interpretation. Triangulation techniques used in this study are described in the Credibility Techniques section.

Evaluating Classic Grounded Theory

Grounded theory studies are evaluated on the four criteria of fit, work, relevance, and modifiability (Glaser & Strauss, 1967). Fit specifies the degree to which the categories are indicated by the data and readily apply to the area of study (Glaser & Strauss, 1967). Successful "fit" relies upon the rigorous adherence to the concept of emergence, the process of constant comparative analysis, and theoretical sampling to the point of saturation. These procedures ensure the conceptual theory emerges from the data and not from preconceived notions or assumptions. The criteria of work specify the degree to which the resulting theory explains what happens in the data, predicts what will happen, interprets what is happening in the area studied, and provides applications (Glaser & Strauss, 1967). A theory is relevant when it allows the core problems and processes in the substantive field to emerge. Finally, modifiability refers to the

tenant that new data can modify the theory as all grounded theories have potential for further development (Glaser & Strauss, 1967).

Data Analysis Process

The following data analysis process was developed from Glaser's Classic grounded theory (Glaser & Strauss, 1967; Glaser & Holton, 2004; Holton, 2010). Dedoose (Version 8.2.14; SocioCultural Research Consultants LLC, 2019), a qualitative analysis software program, was used to facilitate the completion of these tasks.

This researcher conducted the initial set of interviews, created memos during the process, and transcribed the interviews. Each transcription was redacted and then uploaded as a separate piece of media into Dedoose (Version 8.2.14; SocioCultural Research Consultants LLC, 2019). The media files in Dedoose were labeled 'A:' for attorney and 'E:' for evaluator followed by a unique identifier. Redacted psychological reports and transcripts were analyzed line-by-line to produce conceptual codes of incidents (open coding). Throughout this process, the researcher documented her thinking and analytic process as memos in Dedoose. The constant comparative analysis process was used to compare codes to codes, codes to emerging categories, categories to categories. In conjunction with the constant comparative analysis process, theoretical sampling, an emergent process driven by the data, was utilized as needed to address gaps and saturate emerging codes and categories. Theoretical sampling continued until no new themes were identified (saturation) and a core category emerged. The identification of a core category shifted the coding process from open to selective coding. During selective coding, the researcher focused on the core category and the categories that meaningfully related to it. Subsequent data collection was selectively coded to saturate the selected categories (Holton, 2010). A detailed literature review was then conducted and selectively coded. Once saturation was achieved, and

the core and related categories were sufficiently elaborated, the categories were further reduced by integrating them into categories based on a higher level of conceptualization (Holton, 2010).

The final stage of coding is theoretical coding and was utilized to conceptualize how the final set of categories relate to one another (Glaser & Holton, 2004). This gave rise to an emerging grounded theory that accounted for the “relationships between the concepts thereby explaining the latent pattern of social behavior” (Holton, 2010, para. 1). Glaser insists on *trusting in emergence* of a theory at this point in the research (Glaser, 1992).

CHAPTER IV: RESULTS

Conceptual Categories

Open and selective coding resulted in 85 conceptual codes. The vast majority of these codes occurred many times. As coding continued, these codes were organized into four conceptual categories: Case Screening, Working Relationship, Assessment Process, and Personal Impact of Work. The following section describes each category, its relationship with the other categories, and illustrative quotes from study participants. To protect participant confidentiality, all identifying information has been removed and quotes are followed by a two-digit code, ‘A’ indicates attorney or ‘E’ for evaluator, followed by the participant’s identification number.

Table 2

Conceptual Categories and Definitions

Category Name	Definition	Theory Implications
Case Screening (10)	Processes that attorneys and evaluators engage in when evaluating potential extreme hardship cases.	Necessary collaboration between attorneys and evaluators to ensure professional agreement on presence of extreme hardship, case strategy, and evaluation referral question.
Working Relationship (13)	How attorneys, evaluators, and clients work together on extreme hardship cases.	The importance of an effective working relationship; steps that attorneys, evaluators, and clients take to actively foster it; and obstacles faced by clients.
Assessment Process (13)	Includes all aspects of the psychological assessment process, from clinical interview to submitting the final report.	Highlights complexity and unique aspects of conducting and report writing of extreme hardship evaluations.
Personal Impact of Work (8)	Aspects of extreme hardship waivers that attorneys and evaluators find rewarding and challenging.	How attorneys and evaluators develop personal meaning from this inherently ambiguous, emotionally challenging, and administratively difficult work.

Case Screening

This code was captured in ten of the 13 interviews. During the Case Screening process, attorneys assess many factors including determining if the applicant has a qualifying relative, if extreme hardship is present, does the applicant have any aggravating factors, and if a psychological evaluation is needed. If the attorney determines that a psychological evaluation is warranted, the evaluator will also assess these factors when determining if they will accept the case.

Identify a qualifying relative. Depending upon the type of hardship waiver sought, the applicant must have an identified qualifying relative.

“The number one thing that we have to do before we can accept the case is to make sure that there is a qualifying relative. . . . No matter what level of hardship, if there is no qualifying relative then there is no waiver.” (A:13)

“However, remember that since all parties are connected in a family system, the adverse disposition of one family member will very likely affect the wellbeing of other family members as well. Hence, to make the case for extreme hardship, the suffering of all family members, including the applying immigrant, needs to be brought to the attention of the Immigration Service judge or adjudicator because the basis of determining hardship is typically cumulative.” (E:2)

Determine if extreme hardship is present. When evaluating a potential hardship case, both the attorneys and evaluators must determine if the degree of hardship experienced by the qualifying relative meets the legal standard of ‘extreme.’ Below are some examples provided by study participants:

“I think there is almost always hardship in every case. The challenge is to prove that it’s extreme.” (A:13)

“I think that almost any time there are children involved, there is potential hardship. I feel strongly about that. Even if the people don’t present with some sort of unusual situation, if the potential immigration action is likely to cause separation of a family that that is enough for me to be interested in it as a potential hardship case.” (A:10)

“Hardship is more apparent if there are psychological issues beyond anxiety or depression, if the kids or the spouse are in therapy for different conditions, if there has been a past trauma that continues to impact the qualifying relative, or if school accommodations are in place such as special education, or a formal IEP (Individual Education Plan).” (A:10)

“... some cases are very hard to show hardship and others aren't. Unfortunately, the worse the case the easier it is for me to do my job. If someone has a history of depression or suicidality that makes it very easy. Whereas someone who is psychologically healthy makes for a much harder case.” (E:7)

“I don't want to take a case or the client's money when I don't see hardship and the lawyer can't convince me. If I'm having a hard time seeing hardship, I'm going to have a hard time writing the report.” (E:9)

Aggravating factors. Attorneys and evaluators also seek to identify any aggravating factors early in the applicant's case, as these evaluators described:

“Did the person ever break the law? Because that is a bad thing if they did. Even if they came to the country and overstayed their visa once, that's going to be hard to overcome. Or if they lied in a case. In one case, the client was an elderly citizen and his son was trying to get U.S. citizenship. They were from El Salvador. The son had been a soccer player and overstayed his visa once and then lied about it to the U.S. Embassy. Oh, so bad.” (E:9)

“If the need for a hardship waiver is caused by a mistake, misdeed, or negative event such as a criminal conviction, fraud, or immigration violations, the applying immigrant should address these negative equities by describing what happened and, if necessary, taking responsibility for his or her actions. Don't sugar coat what you've done wrong or try to gloss over it. The Immigration Service judge or adjudicator is making a discretionary decision and evidence of contrition and rehabilitation can play a role in whether or not the waiver is granted.” (E:2)

Determine if a psychological evaluation is needed. Attorneys methods for identifying when a psychological evaluation was required and opinion on how often evaluations should be used varied, as the example excerpts below indicate:

“Most of my cases involve a mental health evaluation. It really informs my law office about areas to explore. . . . If the case has taken more than more than 12 to 18 months, then in almost all those cases I require my clients to be evaluated again.” (A:10)

“It depends on what hardship evidence I already have. If someone has some mental health or psychological issues they may have already been in therapy and if that's

documented then an evaluation may not be necessary. The documentation is there. But if a person has never had treatment but there are mental health issues such as depression or anxiety, or past trauma, or based on our experience someone who has gone through XYZ and has never talked with someone about it, there might be some things going on.” (A:5)

“In the family-based cases, I would guess we get a hardship psychological evaluation in 40% of the cases. The psychological evaluation is a big expense. These are often farmworker families who are scraping together the money to submit the filing fee and the attorney fee. If we can try to save the money we will. So, if we can show the hardship by affidavit, by letters from doctors, and things like that we will. If someone is prone to anxiety or depression or when the kids are, something where a psychological evaluation is really going to bolster the case, then will request the U.S. citizen get the eval done. It provides a formal opinion that this person has already suffered a lot of trauma in their lives, and if they were separated from their spouse, they will go downhill, which means they can’t take care of their children, and there may be suicidal tendencies, they are on medications, this is how this person’s life is going to be destroyed if we don’t keep the family together.” (A:4)

“I think attorney’s need to be careful not to overuse evaluations because it weakens the ones that are strong. If everyone gets an eval then they become less valuable in a way. Everyone probably warrants an evaluation, but if the judge or agency keep seeing us use the same couple of evaluators then they start to wonder about their value.” (A:5)

Working Relationship

This code was mentioned in all interviews. Starting with the Case Screening process and continuing throughout the extreme hardship waiver process, the client, attorney, and evaluator engages in developing a Working Relationship. This process is pivotal to effective collaboration and completion of the waiver process. Study participants described effective behaviors and processes as well as challenging aspects in the following relationships (a) the attorney-client, (b) evaluator-client, and (c) attorney-evaluator.

Attorney-client relationship. This is the first working relationship formed in the extreme hardship waiver process and is crucial in forming an effective evaluator-client relationship. In the attorney-client relationship, participants mentioned the importance of a close relationship, honoring client confidentiality and prepping the client for the evaluation.

“It seems that a few lawyers have established close relationships with a particular evaluator and they really do have a good relationship now, but they don’t want to work with anyone else because they don’t feel confident in the quality from any other evaluators.” (E:3)

“If there is any question as to whether the case needs an expert opinion, then I give the client the option to do the evaluation. I explain the situation to the client, in-person, in language they can understand so they know what’s involved in an evaluation. I also think it’s good for attorneys to make sure they review the report to make sure there’s nothing in the report that could harm the client.” (A:4)

“Yes, I prepare my clients for the evaluation because they have no idea why they’re going there. If you don’t prepare them, they might go in and barely say anything. They may not know what to say, feel afraid and unsure of why they’re there, or know what they’re supposed to talk about. Then we have an eight page declaration and none of it was covered in the evaluation. So, I think attorneys need to make sure their clients know why they’re going for an evaluation. . . . I’ll usually explain to the client what we are trying to show for the client to win their case, what they have to establish with this waiver, and who they have to show hardship to, and I’ll explain that hardship can be shown for financial, emotional, or psychological reasons. . . . I’ll explain how often I use evaluations and how helpful they are. I always tell people, look at this as an opportunity to talk to someone about things that are going on. So, I frame it as a positive thing that will help their case, them personally to get resources and referrals. I ask them to make sure that they tell the evaluator all the things they told me and I’ll review the declaration with the client and give it to the evaluator.” (A:5)

Evaluator-client relationship. In the evaluator-client relationship, evaluator participants described their overall process for engaging with clients. This process is a necessary precursor to the Assessment Process category, when the evaluator conducts the assessment with the client.

“Usually, the client will call me and say that they need an evaluation for immigration purposes. That’s how it almost always starts. . . . I’ll have a conversation with the client, I’ll ask them if they know what kind of petition it is for and I’ll talk to them about what my procedures are and that I’ll need to talk with their attorney to get the referral question.” (E:3)

“I make sure they understand that that they are going to be waiving their right to confidentiality. From the ethical side, being very clear about the fee involved, the number of meetings that will take place, and how I will work with children, if they’re involved.” (E:2)

“I sit down with the client and let them know that they will need to pay for my hours but if I don’t think this is a good case, I’ll notify the attorney and won’t write it up.” (E:9)

“To do an effective and culturally relevant evaluation you need to recruit your client to do this work with you. It is your role as a clinician to explain to your client that you are on the same team. You’ll need to collaborate to make the most accurate picture.” (E:11)

“We had a client who made it clear in his declaration that he was not willing to take responsibility for his past mistakes. . . . We told him how he was being perceived. We don’t want to hear about how it wasn’t your fault or how you didn’t mean it. . . . Give us everything. We’re protected by confidentiality. We would rather know the whole story and work together with your attorney as a team to figure out what to do rather than you lie to us. Then everybody suffers. We cannot do that. He appreciated that. We were able to make a very different case. The therapeutic move was to make him feel safer.” (E:11)

“I had a client who wanted to know, ‘Since I’m spending this money is it going to help me or not?’ I had to say that hardship cases are difficult. She wanted some reassurance that spending this money would get a favorable result. I can’t say that. I always have to tell them I never know what the outcome is going to be.” (E:9)

“Encourage the family to be open about the stress that the possible deportation would create for the family. It is very difficult for most immigrants to be that open about what’s going on inside them, and particularly people who come from cultures where you don’t talk about personal stuff or that have the cultural belief that if you talk about feeling crazy that you are mentally ill. What the hardship evaluator is doing is writing a story about how they are coming unglued. The applicants, they are not going into therapy, they’re trying to save their family. It’s difficult. . . . So, you basically you have to get them to open up and talk more openly about the disaster, the train wreck that’s coming down the tracks.” (E:2)

Attorney-evaluator relationship. The attorney-evaluator relationship starts when the attorney refers the client to the evaluator for an evaluation. It is a necessary precursor to the Assessment Process category, when the evaluator collaborates with the attorney to complete the assessment process. In the attorney-evaluator relationship, participants discussed the importance of collaboration, having a shared understanding of the case, the importance of a clear referral question, and issues involved with working with the court.

“Sometimes I’ll get a call from the lawyer saying I need an evaluation and I need it fast.” (E:3)

“Then the evaluator will usually contact me and say so-and-so contacted me, what’s the case about. I will tell them, this is the case, these are the qualifying relatives, and this is the level of hardship required by the case.” (A:8)

“I always ask what the attorney’s concerns are, what is their legal approach is, and what they’re looking for. And to the degree I can honestly provide that I do, but they all know I’m not going to make stuff up to placate them.” (E:7)

“I want to know from the lawyer how are you making your case? If there’s something I’m not seeing, then I will ask to them to explain how legally it will work out. What is the case they are making and what would undermine it or how would it be challenged? How are you constructing the case and what do you see as the obstacles to that? Because that’s what I’m going to be looking at.” (E:9)

“When I find there is obvious deception or that the findings are not going to be helpful to the case, I’ll talk to the attorney, and if the attorney agrees I’ll stop the evaluation and refund half the client’s fee.” (E:3)

“I’m giving you a secret here that is crucial to success, to understand that your client is not the individual, your client is the attorney. Building a good collaborative relationship with the attorney is the key to providing a good report.” (E:11)

“Attorneys who are most helpful are the ones who have real specific questions or realistic guidance. For example, if an attorney told me we’re looking into a domestic violence case and we want to know if domestic violence occurred and the effects the domestic violence had, or we’re looking into a malingering issue. That is invaluable. It is really great if attorneys provide background information in a timely way and copies of the police report. My favorites were the attorneys who would give me feedback as to what happened with the case and why.” (E:12)

“The attorney I work with gives me a summary of the case. Let’s me know how it’s gone so far, and I usually get an in-depth social history as well as current status of things such as employment, health, and family. I receive a lot of information upfront and I draw on that a lot.” (E:14)

“There’s also an ethical line. If you call the psychologist in advance and tell them everything; I don’t want them to be swayed by what I say. I want it to be a fresh objective report, because that’s what we need to submit, an objective report. So, I have the client sign a release, because sometimes the evaluator wants to see documents to provide some background information.” (A:4)

“He [my evaluator] says, ‘My reports are truthful, so I’ll call you if I think someone is just completely making something up, so you know that. I can’t proceed because I won’t write an evaluation for someone like that.’ He’s very ethical. He is really so, so, so good. We just don’t use him often because he’s so expensive.” (A:4)

“Sometimes if the court starts to see the same evaluator names over and over their eyes sort of glaze over. They consider them hired guns. So, we want to keep the names fresh for the court. . . . There are definitely experts who write good reports, but they don’t testify well. So, they get a bad reputation with the court and lose the respect of the court.

There are other evaluators who, honestly just write bad reports. Many firms use the same evaluators, so the court, depending upon the particular judge or government attorney, have some evaluators that they just don't trust for whatever reason. Reputation is important because the government sometimes thinks that if you pay for an expert then that expert is just being paid to say what you want them to say, which is not the case. That would be highly unethical." (A:4)

"Another area of collaboration with lawyers, is if we are going to go to court, we do a prep. I tell them how I like to do it; I've been in court over 100 times. I usually have more experience being an expert witness than they have experience interviewing an expert witness. They are usually happy to take the suggestions so they know what I'm going to say." (E:7)

Assessment Process

This code focuses on the psychological assessment process conducted by the evaluator and was mentioned in all interviews. Given this study's emphasis on psychological evaluations, participant interviews did not explore processes attorneys are engaged in while evaluators conduct their assessment. This assessment process includes obtaining the referral question, reviewing background documentation, the clinical interview, assessment strategy, tone of the report, report structure, collaboratively editing the report, and quality issues.

Referral question. The referral question sets the scope for the assessment process. Topics discussed the importance of understanding the intersecting legal and psychological aspects of a hardship referral question, the variety of referral questions, and processes evaluators use to facilitate this process.

"Evaluators need to truly understand the question that is being asked in the case. Many clinicians have absolutely no training in doing these types of assessments and so do not know what is required. Some people will go to mental health agencies and they will receive a certificate that says this person has depression or post-traumatic stress disorder (PTSD). That holds little weight in any immigration proceeding because the question that is being asked in an immigration proceeding is a legal question. While it is useful to know what diagnoses the person has, the legal proceeding demands that the mental health professional respond to the implications of a ruling into the psychosocial health of the qualifying relative's overall family system, social system, etc. It is a legal question that needs to be answered from a psychosocial perspective. So, often clinicians get caught in either answering a question they think is psychological and so they are

missing the legal aspects of the question or they will jump straight to advocacy trying to answer a legal question which they are not able to do. So, understanding the clinician's role at the intersection of these two worlds is critical to writing an effective report."

(E:11)

"Sometimes the referral question is to clarify a particular diagnosis or substance use. The questions addressed in immigration cases are so varied, it's important to keep an open mind." (E:11)

"In an ideal case I try to explain why we want the evaluation done. What we are hoping to get from it. Without saying we want you to find that she suffers from PTSD. But, how would she be impacted psychologically if she were separated from her husband for ten years? Just so they know exactly what we're trying to establish and it stems from a mental health perspective. How would this person be impacted? I always try to make it very clear why we're doing it and what we're asking." (A:5)

"I have a form that I ask attorneys to complete before I meet with the client that helps guide the referral question. . . Basically, it's getting contact information, background information, type of application, any experiences of interpersonal violence, what's the referral question, and details of the case." (E:3)

Background documentation. There was variation among evaluators regarding the type of background information they request when taking on a case. The primary concern involves the client's declaration and balancing the desire to be objective with time and cost constraints, and the requirement for consistency throughout the waiver application.

"It is really difficult when we get vague referral question. In these cases, I want is the client's declaration, everything that the lawyer has including the application. Usually we get all that information in advance." (E:9)

"You read the declaration beforehand so you have more pointed questions for the client about inconsistencies that you found." (E:11)

"Some evaluators want the declaration if it's been written, others do not because they do not want it to inform their interview. They might want to read afterwards for consistency purposes, but some don't want to see it beforehand. I don't always have a declaration from the client either. Then I prefer to develop the declaration after the evaluation." (A:8)

"I normally provide the client declaration up front. Many times, I'm trying to keep the price of the evaluation low for my clients, I don't want them to have to go to ten meetings with the therapist before they can write up the report. I've already spent that amount of time to get the history. The declaration either connects dots that are missing or provides guidance of where to start the interview. I've had evaluators come back to me and say the

client's declaration says X, but after talking with them, I think you need to talk to them again. And I think good, it should be a collaborative kind of thing.” (A:6)

“Often if we've done a declaration, evaluators want those. So, I try to have those in shape before I have a client meet with an evaluator. You could argue that that might sway their perspective since they know the story, but I think it also helps because then they have that background and it makes the time more productive. Of course, things come up during the evaluation that we didn't know about and we will incorporate those facts into the statement or vice versa. So, there is a back-and-forth.” (A:5)

Clinical interview. Evaluators discussed many aspects of the clinical interview including the need to help the client feel safe, their typical interview process, and aspects of the client's history that are of particular interest for hardship waivers.

“A good way to help clients feel safe is through rapport. Rapport builds with a warm person sitting in front of you. I build rapport by going through the legal aspects of our work together. Latinos are not swayed by your goodwill. They have been screwed over, over, and over. So, a sure way to build trust with an undocumented immigrant is to be very clear on the legal aspects that work in their favor. The statement is protected. That's the first thing they need to know before they say anything. Everything they say is protected under confidentiality, except for certain exceptions, and as a resident of Washington state I have no obligation to share any information with any immigration officer. My role is to give a full picture. My role is to provide context.” (E:11)

“I interview the people usually just once but sometimes twice. Because they pay for this, and it's expensive, I want to keep their costs low.” (E:14)

“I usually try to do two interviews. For people who travel a long distance, like more than a 2-hour drive or need to fly here, I'll try to do one interview. But I really prefer two interviews. Sometimes there is even more depending on the case.” (E:7)

“Well, my process is I meet with the family – the two spouses first. I try to write a preliminary draft. Then, if there are children involved, then I have a second meeting with the children and the family and I do some play therapy or drawing, you know some art therapy stuff. I do simple stuff to see what the parenting is like. I get a history from them. I'm looking for medical history. Usually, the children make the case easier. Because if they have medical problems or educational issues or anything that is not working very good, then you can always make a more persuasive case if they are minors. So, you focus on the kids if there are kids, and there usually are. You have another session to get their histories and then you watch the parents and have them do some simple drawing if they are of age. If they are toddlers, it is simply observing who is caring for and how they're caring for. I mean there are so many different cases. So, I'll have the initial meeting, then a follow-up meeting, then a meeting with the family and the children, and then a final meeting to go back over everything so there's usually 2 to 4 meetings involved.” (E:2)

“ . . . It is just like a surface interview and they don’t really know our client. Sometimes when you’re dealing with trauma, people are not going to tell you stuff on the first visit. Especially with Central American children, you need to get them comfortable and they need to know you. The deeper stuff is not going to come from just one or two visits. Evaluations need to be deeper and evaluators and clients need to know they’re going to have to meet for several sessions, so the psychologist can get to know the individual and the individual can get to know them. In court, the judges will often say, ‘I’m not going to accept this evaluation because it is clear the psychologist does not know this client. If they go to a treating psychologist, okay fine I’ll put more weight on that. But somebody who has just written this report which it doesn’t tell me anything and it just talks about a lot of tests. No.’ Sometimes they can just be thrown out and then the client lost all that money. It’s a shame.” (A:4)

“I think the evaluator needs to do more than a single one-hour visit. Because who knows how long the actual interview was. Maybe the testing takes up a lot of the time. So, the psychologist may only have a very cursory discussion with the client. Or maybe the client filled out a form that the psychologist makes the report from. When I call the psychologist they often don’t seem to know about the client, or the details. I would think that if you have had an in-depth conversation with someone you would remember the details because they had touched you at a human level.” (A:4)

“He [my evaluator] says that he does not do an evaluation until he has met with the client at least ten times. He goes to their house and he interviews all family members. . . . He is really so, so, so good. We just don’t use him often because he’s so expensive.” (A:4)

“It’s important to consider defenses. If you don’t, the client may seem like they are perfectly okay, there’s no problems, so it would be hard to say they are going to have hardship. However, a deeper look will often reveal that they’re using a great deal of denial, avoidance, and repression. What’s it going to be like for them if things get worse?” (E:7)

“I think it’s really important to get a thorough history - their family and attachment history. Who was in the family, who wasn’t, who related to who, what their attachment style is, what attachments have been broken and how they responded, and what attachments have gone well? What are the attachments that are going to predict how this person is going to respond if their husband or wife is deported? I certainly care about the history of intimate relationships. Is there a history of failed relationships or a history of physical or emotional abuse? How have they responded to losses in the past? I also look at what their defenses are. For example, you might get a Personality Assessment Inventory (PAI) and/or Beck (Beck Depression Inventory [BDI], Beck Anxiety Inventory [BAI], etc.) with no clinical elevations, is it malingering or a defensive profile? This happens a significant minority of the time, a defensive profile. Is there some denial and repression going on? These are primitive defensive that are not going to hold up very well with higher levels of chronic stress. So, what’s the history of attachment and what

does the attachment history predict about a future loss, and what are the defenses the person is using now. For example, it's shocking, I'll ask, "If your husband gets removed will you go with him or stay here with the children?" It's amazing how often the person says we haven't thought about that at all. It's extraordinary. So that tells me there's a lot of denial going on. They're just not dealing with reality. So that bodes poorly because denial will not work well in the face of chronic or severe stress. It's adequate for mild stress, but it's a primitive defense." (E:7)

"There were a couple of reports when I felt I needed more collateral information from a neurologist. So, the clients were sent to a neurologist, and I had to wait for their report so I could incorporate their data into my report. Recently I had a hypothesis about a medical condition, so I spoke with the client and attorney and suggested that the client get evaluated by an endocrinologist. My hypothesis proved true and I was able to incorporate that information into my report and she was able to get treatment for her condition." (E:3)

Assessment strategy. The majority of evaluators included in this study felt that psychological tests were critical to hardship evaluations. Many described how they formed their testing battery, the tests they use, and their concerns with misalignment between norms and the client population.

"I approach each case is a research project. What measures will provide the best response to this particular question? Often, because of the politics of immigration, the role of the victim is very important. Most immigration benefits revolve around the role of victimhood. . . . This becomes relevant in hardship cases to show certain psychological vulnerabilities. For example, if there were early experiences of trauma, then you have certain vulnerabilities that the general population does not have. Because the core of the hardship case is not that it's hard to be away from your loved ones, but what makes this family especially vulnerable. We often find vulnerability in trauma." (E:11)

"I have a form that I ask attorneys to complete before I meet the client that helps guide the referral question, so I can create a testing protocol. So, for example, if the person may have PTSD then I know I need to evaluate for PTSD and I'll utilize evaluations or assessments that will address that. If it is for medical concerns, a hardship because there are medical issues, then I look to medical types of evaluations. It just depends. I need the referral question, so I can create an assessment protocol." (E:3)

"Testing isn't the cornerstone of my report, but it's relevant, and I think it's important to include at least one test that has a validity scale. Stuff like that Beck's (Beck Depression Inventory [BDI], Beck Anxiety Inventory [BAI], etc.), don't have a validity scale. I use the Personality Assessment Inventory (PAI) because it's about 200 fewer questions than the Minnesota Multiphasic Personality Inventory (MMPI), so it's a little more friendly to naturalized individuals and those speaking English as a second language." (E:7)

“The evaluation needs to include some measures of some kind. I am seeing evaluations with zero measures and some with just a symptom inventory. They need to have some kind of objective data and beyond symptom inventories ideally.” (E:9)

“Assessments of trauma are very important. We use the Trauma Symptom Inventory-2 (TSI-2), the MMPI, the BDI, the Hopkins Symptom Checklist (HSCL) for anxiety and depression, and others. But the issue here is psychological literacy among immigrant families and performance on standardized tests. It is an issue because all these measures are standardized.” (E:11)

“For hardship I am looking mainly for cognitive disability or an emotional functioning issue that may clarify the hardship. . . . I do screening measures such as the Montreal Cognitive Assessment (MoCA), the Test of Nonverbal Intelligence (TONI) for Spanish speakers, and the Rey Complex Figure Test (RCFT), which gives a basic quick screen of executive function. Then if anything comes up as significant, I dig further because that might be where the hardship lies. . . . If it all comes out within normal limits then I would utilize emotional measures such as the PAI and a Trauma Symptom Inventory-2 (TSI-2) to find out if there’s any trauma history intruding, or the Beck’s. . . . I also started using the Inventory of Altered Self-Capacities (IASC).” (E:9)

“I use the MoCA, which is a mental status and cognitive evaluation. I like that one. For anxiety and depression, I use the Beck’s, and I also use the may be the Hamilton Anxiety Rating Scale (HAM-A) and the Hamilton Depression Rating Scale (HAM-D). The HAM-A and the HAM-D are interviewer rating scales, and I will compare their self-evaluation and my observation, because often I find that people over- or under-report when they do their self-evaluation. So, when I’m interviewing them, I need that comparison because I also want to rule out malingering for example. . . . I also use the Duke Health Profile (DUKE), Duke Severity of Illnesses (DUSOI), Patient Health Questionnaire (PHQ-9), and if the issue is physical then I will certainly use the Health and Performance Questionnaire (HPQ). I also use stress measures such as the Duke Social Support and Stress Scale (DUSOCS), the Life Stressor Checklist (LSC-R), the MacArthur Surveys of Discrimination, MacArthur Perceived Stress Scales. For trauma, I’ll use Trauma Symptom Inventory (TSI-2), the Harvard Trauma Questionnaire (HTQ). Mood disorder questionnaires and disability assessments such as the World Health Organization Disability Assessment Schedule (WHODAS-2). When it involves something that’s more legal, such as a crime involving moral turpitude or a VAWA case then I will also use the MMPI.” (E:3)

“Well after the first meeting, I have them complete some standardized things like the Symptom Checklist 90 (SCL-90-R) and the Locke-Wallace Marital Adjustment Test (MAT) if they’re in a relationship. It depends, if they’re coming in, it’s less likely, but the more they tell me about what’s going on initially, the more I give them. For example, I can focus on depression or anxiety so I drill down on that. In some cases, I use the Millon Clinical Multiaxial Inventory (MCMI-IV), but that would be more pricey and more complicated. I usually just use paper and pencil standardized measures. Then I combine

the qualitative, or the narrative stuff they give you, with the quantitative stuff that the scores generate.” (E:2)

Assessing for malingering. Attorneys and evaluators stressed the need to assess if the client is providing honest and accurate information during the interview. This is an obvious concern due to the external incentive to feign or exaggerate symptoms to obtain a waiver.

“The government wants to know that the person has been evaluated for whether for whether they are lying or not. How does the evaluator know they are being credible? Obviously, a person’s memories, you can’t test those. So how do we know what they’re telling us is actually accurate in terms of their trauma and what happened.” (A:8)

“Credibility is very important to the government, so we tell our psychologists be sure to give them the “lying” test. The ‘Credibility Test.’ Because we want to be sure the tests have been done to show that our client is telling the truth, and sometimes it comes out that they are not telling the truth.” (A:4)

“The thing I like least is when someone seems to have very poor credibility. To me poor credibility means that the rating scales on the test items are bad. It’s very rare that something happens that I cannot accept the credibility of their story. . . . I’ve done well over a thousand of these cases and I’ve had that happen maybe five times. But people engaging in malingering and exaggerating symptoms - that happens a significant minority of the time.” (E:7)

“Each case has its own dilemma about whether they’re malingering or not. I just read a report by a social worker who stated things like, “I really believe this person. They seem really sincere.” That is like completely worthless to me. There is no basis for that other than their intuition. Intuition is fine, but you have to find facts to support your intuition.” (E:7)

Norms for psychological assessments. Evaluators shared their concern with utilizing assessments that were not normed on the client’s population or of administering the assessment in a non-standardized way. Here are a few sample quotes:

“One of the difficulties with all psychometric devices is that they are normed; they are accurate for particular group of people. In hardship evaluations, most of the people we are dealing with are from other countries where the whole epistemology is different from the West. This is something I run into all the time. What this basically means is that what people know and how they know it is very different from how we do it here. So, if we take any kind of psychometric device that is normed on Americans and try to apply it on for example Cambodians, or Ugandans, or Sri Lankans it simply is not going to work. The assumptions that the cognitive structures of those people are the same as those in the

West is simply incorrect. You cannot make that assumption. . . . So, the psychometric devices don't have the kind of universal authenticity and applicability that the Immigration and Naturalization Service (INS) is looking for.” (E:14)

“Evaluators must be aware of how psychological measures relate or do not relate to the person they are evaluating because the norms for some of these measures have not been developed on this population. Often you are evaluating an American citizen, you're evaluating someone who was probably schooled in the U.S., but they may not have been. Whenever I'm evaluating someone who was not educated in the U.S. and am using measures that were normed on U.S. populations – I'm always going to note that in the report. In fact, I'm working on a case right now, where a person invalidated a PAI by over-endorsing infrequent items but the PAI was normed on mostly American citizens who have not experienced this kind of trauma. The fact that this was invalid may not be that she is malingering, she may just not match the normal experience of the normed group. So, I say that in the report. There is also the piece of validity. I never want to say in any of my immigration evaluations that I believe the person, that I'm validating their story. I am not saying, 'this is true,' I am saying whether the symptoms that she is displaying match the picture and the story as reported.” (E:9)

“What are our clients going to do? They need help and so long as we are very clear in our report, detailing our procedures and the possible limitations and implications that our procedures have on the findings then we're doing everything we can on our part.” (E:3)

“I am troubled when assessments are used that have not been validated on the group that the individual being assessed belongs to. This happens when the norms of a group have been applied to a person from a different group or when the assessment is administered in a non-standardized way and the norms are applied. So, if you give somebody a translated version of an assessment and then use the U.S. norms, I find that horrifying.” (E:12)

“I have a very low regard for all psychometric devices. In my 40 years of experience I have found them to be informative, a place to begin to look at the patient I'm working with, but in terms of any way of assessing personality I find them to be useless.” (E:14)

“I see a number of judges are now asking for the numbers, they're asking for the actual scores from the tests. And that is as bad as it gets in my book. Because the numbers are going to be misleading. So, when somebody says three does that mean inches or millimeters or kilometers? And they have no idea.” (E:12)

“A while ago I conducted a personal experiment. For a few months I included the Adverse Childhood Experience (ACE) scale along with the intake and compared the information clients provided on these forms with the data from the story of their lives they told me once we were in private. Often the ACE scale would indicate no problems at all. But their narrative was horrible, absolutely horrible. Abandonment, neglect, sexual abuse, poverty, you name it. So that really gave me a sense of how people engage with

these tests. They are really useful, they provide numbers, and people in positions of power understand numbers. So, if you really want to be an advocate you need to use numbers. The people for whom the numbers are important, the clients, you really need to recruit them into answering these tests. . . . Part of the picture are numbers, and you explain the numbers and what they mean in the courtroom. They need to be very accurate and people need to respond thoughtfully. Once you do that, clients fully engage with the process.” (E:11)

Tone of report. Study participants stressed the importance of translating the client’s experience into a narrative for a legal audience, which includes utilizing an objective tone, not rendering a judicial opinion, and being cautious when speculating what might happen to the client if the waiver was denied.

“Evaluators need to be able to translate. What you have, especially when it comes to undocumented immigrants, is a dialogue from two different traditions that are trying to understand each other. The legal part is to translate the markers of pain-and-suffering of the client into something that a judge or an immigration officer can understand. Many clients will ask, ‘What is depression? We don’t describe our pain in that way.’ Or the first time they ever heard about domestic violence is when they crossed the border. So, there are many cues that signal suffering that mental health providers are not trained to understand. The presentation of problems from someone who is pressured to keep the family together looks very different from someone who is privileged and can afford to stay in bed all day. Depression or an adjustment disorder in a person who is in immigration proceedings looks very different from the typical clinical population. Evaluators must understand that and translate it into the language of the more institutionalized discipline of psychology so that the judge or immigration officer can understand it. All while not sounding like an advocate.” (E:11)

“The attorneys are playing to win so they want the people who will to be persuasive to the judge. If they’re superficial reports, then they’re not going to be successful.” (E:2)

“I think one of the problems that I have to be careful of, is not to make the report too dramatic. In other words, try to keep the evaluation objective, evenhanded, and close to the facts.” (E:14)

“One report was too dramatic and too over-the-top in terms of how horrible this evaluator clearly thought the woman’s situation was. Usually I don’t have that problem – the reports are usually more restrained than I want them to be.” (A:8)

“The law says he shouldn’t be here. You have to kind of think the way they’re going to think. This is important - you want that judge to be a human being, but the most important thing is to appeal to him. Because it is vague. It’s hard to explain, but you have to put together the narrative using a lot of objective terms but in a way that builds an

emotional argument. So, the judge is “in the shoes” of these people and he or she can see this is going to be a disaster of major proportions for these people. And they’re good people. And you want the judge to feel some sense of compassion for them. But you can’t write it in the way that says, “please be compassionate.” You must write in a way that describes that if this happens, then that will take place, and when that happens this will take place, and then this person will have symptoms characteristic of a mental disorder. They won’t be able take care of themselves, they will likely go on public assistance, costing the state lots of money, and their children will grow up with issues that will cost the state more money.” (E:2)

“Some evaluators have difficulty either capturing enough detail or becoming overly emotional and losing objectivity. I think there’s inconsistency because the word hardship means a lot of different things to different people. . . . I try to educate the evaluator on what the government is looking for in extreme hardship. These are the factors that cases over the years have determined would create an extreme hardship. . . . So then when the psychologist is doing the report, they will have this in mind. What about this person’s history will rise above the level of extreme. . . ?” (A:4)

“I make sure that the evaluators know that if they don’t find any kind of hardship that it is still a valuable opinion for us. We don’t drive to get letters that ooze trauma.” (A:10)

“What helped me, was when the attorney I work with explained what my role actually is. I don’t make the case, that’s her job. . . . I just indicate the negative sequela to the American citizen if the applicant is not granted residency. All I can do is talk about the stress or the psychological dynamics that are likely to occur if the person is not given residency. That’s all I can do. . . . If I’ve made a case in my report, the attorney I work with gives it back to me and asks me to edit it. She has been extremely helpful.” (E:14)

“I think that for every kind of forensic evaluation you have to carefully consider our built-in vulnerability to being persuaded for certain causes. There can be social justice issues and there is concerted interest on the part of the lawyer and client for a certain outcome. I think it’s important for us to be mindful of the pulls on our conscience in terms of advocacy. We advocate for the truth that we find. . . .” (E:3)

“It is absolutely critical that the evaluator not render a judicial opinion. That is never our role in any forensic case. I was trained to not even use the word ‘hardship’ in the report because there is a legal meaning attached to it. You may believe that what the client is telling you is a hardship, but to use those words, makes it look like you are rendering an opinion on the case. So, with hardship cases I think that you have to be extremely careful of your phrasing.” (E:9)

“I think there is a temptation to project, especially with hardship cases, of what might happen into the future because you kind of have to. But it’s a fine line. So, I’ve seen people say, “this person will decompensate to such an effect.” You know, we really don’t know that. We have to be careful with the language and say, “based on what I found this person has the following psychological deficits or resources that would make it very hard

for her to either live in her partner's country because of x, y, z, and how she has responded to that separation. Or there are attachment things that have happened that I would explain; she will need a lot of therapy or she will have a very hard time finding a therapist who spoke English. That kind of thing. But going from that to predicting this is what's going to happen such as she will go to the hospital. That's a stretch. So not pushing or projecting beyond what you could be reasonably expected to project." (E:9)

Structure of report. The structure of the report was an important topic for study participants. They discussed the need for the evaluator to qualify themselves, the importance of testing, and how imperative it is for the evaluator to clearly articulate for the reader, who is not in the field of psychology, how they reached their conclusions.

"If I am working with an evaluator who has never done this type of evaluation before, I usually give them some samples and a lot of information - this is what it is, this is what we want, this is the legal standard, but we don't want you to exactly state that, but this is what we are going for." (A:10)

"I'm very clear with my therapist's as to what I want and what I need. I frequently send them a template. I want the first part of the report to talk about you, why should we believe you, this is not the time to be modest or shy. I need for you to give me a summary as to why the judge should believe what we're saying. Do include a resume or CV, but the first paragraph or two I want to hear how you walk on water. Then what I really want is the narrative. I realize you're going to give me these numbers, and these codes, and whatever. But what I really need for you to do is put your teaching hat on and teach not only me, but the judge, why you are saying what you are. Part of it may be dumbing it down, but you can't just give me the code." (A:6)

"I think that the evaluator should qualify themselves in the report. It also seems to be more credible if the evaluator does some sort of testing - those go better with the judges and everybody if the evaluator has done something other than purely interview and record what the qualifying relative said." (A:10)

"I think it's really important that the evaluator show credibility. That they have the background (i.e. experience, education, training, etc.) that tells the adjudicator that they are qualified to do these kinds of evaluations." (A:8)

"I need the resume of the person giving the evaluation showing that they have the expertise, background, and training to do these kinds of evaluations." (A:5)

"The good ones are well written and I'm partial to well-written documents. They read well and it's clear that someone took the time to write something - proper grammar, good spelling, the basics. Also, the level of detail. I like a structured evaluation that starts off saying who the evaluator is and why they're doing the evaluation, what the purpose is, a

little bit about the setting, and some background about the client, which can be broken down into sections. Then the tests that were administered. I think tests are always done, but they're not always in the evaluation. I think it's helpful to have the testing in the report. It looks more official. What tests were administered, why they were given, the results, and what the results mean. Findings, and summary, and weaving in the facts into the findings. Making it clear how the evaluator got to the findings.” (A:5)

“I've seen two evaluations that were done by non-psychologists, people who are not qualified to do psychological evaluations. What I have seen in those two cases are essentially, robust, detailed clinical interviews with a diagnosis attached to it and sometimes recommendations that say whoever is requesting the benefit, should get the benefit. That is what it should not look like. I think you need to have people approaching hardship cases like they approach psychological evaluations and forensic evaluations in particular. So ideally, they would be done by people who are licensed and trained in evaluation techniques – not just in doing clinical interviews and clinical assessment” (E:9)

“Sometimes evaluators reach a conclusion without showing me the steps of how they got there. They may understand it, but I need a bit more information and likely the judge will need it too.” (A:6)

“I've seen some really weak ones that get right to the findings without any analysis at all. They are not persuasive at all.” (A:5)

“The other thing I frequently see with evaluations is that they're missing a conclusion section. I frequently go back and ask for a quick overview/summary, no more than four or five sentences, in a nutshell why is this so critical.” (A:6)

“Oftentimes evaluators will jump straight to the conclusion. ‘This person is suffering from PTSD.’ I need to know what leads them to believe that. Explain it, describe the symptoms, and give examples. . . . When you say this person is suffering, give me an example of why you think they are clearly suffering i.e. they haven't slept for the last three weeks, they lost weight, etc. Thank you, that's exactly what we needed. . . . It needs to be described so that someone who wants to deny the waiver can get there with you and say ‘Oh, that person really is suffering.’” (A:6)

Collaboratively editing the report. The majority of study participants discussed the importance of the attorney and evaluator collaborating on the editing of the final report as well as the potential ethical dilemmas involved. Here are some sample quotes from participants:

“I send my first draft to the attorney for comments. Attorneys are not allowed to tell you what to say. They are very careful about that. “I'm not going to tell you what to write, but have you thought about this or what about that, or I think this might be interpreted this way? Could you change the wording on this?” That's the secret to good report at the

end the day. Of course, I've had one or two who asked me to do something I'm not comfortable with so we have to be firm in our ethics as well. I understand that their code of ethics tells them to do everything they can to help their clients. And I understand that. My code of ethics also says that I need to do everything I can to help my clinical clients. So, when attorneys push back, I feel that's their job. That's what makes them a good attorney. They need to make use of any resource they have. It can be a beautiful relationship. . . . So long as we all understand our role in the process and we push each other, the clients will be well served in the end." (E:11)

"The attorneys I work with are very on the ball. They go over my report with a fine-tooth comb. They criticize it, or they say add more here, or you said this here but you didn't say it at the end, or you could strengthen your conclusion by bringing in this factor that you emphasized at beginning." (E:2)

"Sometimes at the end the attorney might ask me to say little bit more about this or that, and I will. If they asked me to say something that I don't believe to be true or is slanted I will tell them I sorry can't do that. But I will have some back-and-forth. So, it varies from very helpful suggestions to requests to do things that are ethically questionable. So, I'm quite straightforward with attorneys about what I can do and what I cannot." (E:7)

"With my evaluators we almost always go back and forth with the word document. I don't mess with their assessments, if there are facts that I don't want in there I ask them to take them out, but they obviously won't often. And I'm okay with that." (A:8)

"The evaluator will usually send a draft of their evaluation, and I will usually provide some feedback. Generally, if there's something missing like they only evaluated what happens if they leave but not if they stay, or if I think there's something they missed, then I may ask them to elaborate on it." (A:13)

"Clinicians will often echo what the client says, and they don't themselves understand their situation that well and may say something like, "I'm trying not to be deported" but they're not in deportation proceedings. The client may not really understand what is happening and they could use an entirely wrong concept that will then get tracked right through the evaluator's report. If we don't get a chance to look at a draft of the report to suggest a different word it will stay there and be a problem for the adjudicator." (A:10)

"Regarding immigration parlance, they are fine with me changing that part, because it's not their area of expertise." (A:8)

"Usually the evaluator meets with the client once or a few times and then they send me a draft of the evaluation. I'll read through it, if there are facts that are different than what I know of, I'll explain that to the evaluator and the evaluator will call the client to clear it up, we will leave it, or in very rare circumstances we will take it out if it's not material to their assessment. In terms of actual findings, such as conclusions they are drawing, there haven't been any situations in which they are unusual to the case and must be dealt with. I haven't ever had to send a client to a different evaluator to get a new evaluation." (A:8)

“After the evaluation report is prepared the evaluator will usually give us a draft and ask for feedback. I’ll give my feedback and try not to ask someone to write whatever I want.” (A:5)

“I ask my evaluators if I could edit the report using track changes and I have never had someone say no to me. I tell them up front, I’m never going to ask you to lie, or embellish, or whatever. . . . No one has said no, but some people have said what you are asking for I can’t do. Fair enough.” (A:6)

“I like to see a draft in advance and edit it in a review mode with questions and comments. And I like to talk to them afterwards, how do you feel about this, so I can get a deeper understanding of what the hardship is. That helps me write my brief. So, I feel there needs to be a dialogue between the evaluator and the attorney, but both sides have to know that we are independent professionals and it needs to be objective on both sides.” (A:4)

“The back-and-forth with the evaluator is very helpful because we often find things to correct in the report. Sometimes we find mistakes, so it’s critical that we get a chance to at least help proof the report.” (A:10)

“I do work with attorneys, but they don’t dictate my work at all. In fact, when I work for large law firms, they like to have contracts, and I do pro bono work for them, I always make sure it’s in the contract that they can make whatever suggestions they want but that I get the last word.” (E:7)

Personal Impact of Work

This category was mentioned in eight of the interviews. This category encompasses what attorneys and evaluators find rewarding and challenging as well as how they attempt to find a balance in this difficult line of work.

Rewarding aspects of work. Study participants spoke of feeling personally rewarded by helping to keep families together, providing high-quality work, having a clear understanding of their role in the process, helping a population in need, and clearly understanding how political this work is.

“Oh, it’s rewarding!” (A:6)

“The attorney I work with is amazing. She’s devoted to this whole thing.” (E:14)

“Yes, I find it to be incredibly fulfilling. If I do a good report on a hardship case, I contributed to a family not getting broken up. It’s very satisfying.” (E:7)

“Well, it’s all very rewarding. I feel as though I’m doing my part to help people out. Helping lawyers with their job and helping individual petitioners with their applications, I’m doing my part.” (E:3)

“Who’s going to do this work?” That’s why I’m really proud of my team. We hate it but we’re going to do it.” (E:11)

“I have to keep reminding myself, wanting to help clients is my job and trying to win the case is the lawyer’s job. You’re always reminding yourself in forensics stuff that your job is to be an expert on the data and what the client is presenting to you at a given point in time. Not to render an opinion or a decision or help them win something.” (E:9)

“I know that my report is only going to be one piece of information that the lawyer is going to be using. I’m not going to be the expert on so many other things. It’s up to the attorney to decide what to use from my report, how to use it, and what other information they might need. I know I can’t cover everything. I can only do my part. So, I’ll do my best. If something else is necessary, then the lawyer is going to have to piece it together.” (E:3)

“I’m working on my doctorate, but I am a master’s level now. We’re not the crew that is the best - no PhD’s from Harvard. But we are doing what we can to help our people. That is what has been fundamental to the work. Once you have entered into the spirit behind immigration cases the pain, the abuses they are subjected to, you cannot turn the other way. If you can I question your humanity. Another thing that has kept me going in this work is the resiliency of the people, particularly those in detention. They are remarkable people. They’ve been through a lot and they still have a generous spirit. They are the ones who need our hearts.” (E:11)

“To be able to understand the structural violence our clients have been subject to. While also keeping a sense of social agency in mind. People are responsible for the decisions they make. It’s a really interesting balance. Power is at the core of the work we do - who has the power, how is the power used.” (E:11)

“. . . They have a misunderstanding of how political our role is. If you want to be blind to the politics in the name of so called objectivity, then you are really not doing a good service for the clients because politics are inherent to our position, especially in this political process. It is better to look at it squarely in the face and learn how to navigate the politics to fulfill your ethical role than to protect the politics that exist and do a very terrible job.” (E:11)

Challenging aspects of work. Study participants described a variety of personal and systematic challenges in this work. Participants discuss the lack of available training and support,

ambiguity inherent in the work as well as the logistical and emotional toll of this work. Here are a few examples:

“There’s no organization that I’m aware of to support psychologists doing immigration related work. There’s lots of groups regarding cross-cultural work, but none organized around immigration work that I’m aware of. Trainings are usually just offered by someone in the field who wants to offer it – there’s no central organization.” (E:7)

“I don’t think there are any [trade, industry groups, or best practices].” (E:2)

“When I started doing this 20 years ago, there was no one I could go to for supervision. I got pieces of it supervised. But now it’s quite popular there’s a lot of people doing this kind of work now. Even social workers and licensed counselors are doing it. But I think a lot of people fly by the seat-of-the-pants, as I did, but now people don’t have to, because there’s a bunch of us who’ve been around for a while.” (E:7)

“No, I’m not aware of any [industry groups, organizations, or best practices].” E:9)

“. . . you really need to jump in and tolerate uncertainty. It’s not everybody who can do that. So that leads to only a few people who do this work. . .” (E:11)

“Hardship cases are all difficult. I know what I’m measuring, but I don’t really know what they look for. And for me hardship cases are frustrating more than anything mainly because I feel like I put in a lot of effort into something and I feel bad when something like what happened in January happens. And the person spends their money, I did my best effort with it and I did all these measures, but in the end it wasn’t successful. And I think that is just part of the deal.” (E:9)

“Here’s the thing, I don’t know if some of these things I’m doing are working though. I might be doing too much, but I don’t know. . . . Frequently I don’t ever know if a case gets approved or denied. That’s one of the issues, I’ve asked the lawyers to give me feedback to let me know. They always say, “Oh my gosh, your reports are so helpful and we really appreciate it.” And they use me over and over, so I assume that’s true. But they often don’t get back to me and let me know the outcome. I ask for it because it will help me in my process, in developing my protocols, but I hardly ever get feedback.” (E:3)

“I did a re-evaluation for someone who had received a very poor evaluation. So, I did what I thought was a much better job and they still didn’t win. And I’m like hell, I don’t even know if the immigration people know what to look for. Do they know? All this work that we do to make it high quality and to make it stand up to psychological science and it doesn’t seem to make a difference. Or was it just the case? I don’t know.” (E:9)

“Doing psychological evaluations is not easy, it’s a really annoying job. It’s not for everybody. I personally hate it. Yeah, I can’t stand it, but it is what my community needs right now. So, I understand why there are so few clinicians doing it because it is truly

overwhelming, it is a pain in the butt, it is so administratively heavy, and it's just horrible.” (E:11)

“You're constantly writing reports. Constantly. Even on vacation. . . . A deadline is a deadline. It is a very stressful job. Many people tell me I don't want to do this full-time.” (E:11)

“Then you will go to court and sit there for four or five hours to be called as the next witness and no one is paying you for it. You can't bring your phone, computer, or food. You are sitting there doing nothing, absently nothing. You're so nervous you're a basket case. And usually it's like, “Oh, we didn't need you to testify.” So more often than not, you don't get called in and you drove all the way in and waited to testify for nothing.” (E:11)

“Everybody who calls your office is terribly anxious. Everybody.” (E:11)

“Any immigrant looking for residential status in the U.S. is under extreme duress by definition. Multi-generational trauma in our country, is a fascinating thing, because almost everyone who came to this country was traumatized either before or after they came here. One of the things I notice in my analytic practice was I had a predominance of fourth generation immigrant people coming in for analysis. It almost seemed like that was the first generation that had the latitude and security to look into what had been operating within the family since the immigration experience.” (E:14)

“Many of these clients are really struggling as it is, and we often will find that the deportation or denial of benefits to the family member is kind of the last straw. The family is barely keeping it together as it is, and if this were to happen then, this terrible situation would occur.” (E:13)

“I tell you, it's very stressful doing these things because their future family life depends upon your ability to write a coherent, persuasive story. And every story is different. I'll stay up nights trying to figure out how to say this. It's not like you just punch out some kind of a template of what goes on. Every story is different, and you have to tell it in a way that's meaningful, and boy I feel like the weight of the world is on me in some of these cases.” (E:2)

“The most difficult ones are in two classes. The ones who just can't open up and the heartbreakers. You give the questionnaires and they're basically saying everything's fine. I can't write a narrative if I don't have facts to back it up. . . . It's pretty frustrating. They're paying me to write the evaluation and then they clam up. And then there are the heartbreakers, like a case I just worked on. The Mom is visiting her sister in the U.S., she's Jordanian and she's pregnant and she ends up delivering in the U.S. So, her son is a U.S. citizen. She's goes back to Jordan and finds out that he has an extremely rare blood disease. He's dying. . . . So, they sent him to Children's Hospital who happen to be one of the places in the U.S. that deals with this rare blood disorder. So, the kid comes here but they won't let the parents in except on a visitor's visa. So, he's living at

children's orthopedic Hospital without his parents. He has an attachment disorder. He's messed up. He's four years old. So, you know it's pretty heartbreaking. The mom is pretty frantic. [Heavy sigh]. It's a mess. And I'm giving you the simple version of it." (E:2)

"I don't do more than one evaluation every couple months or so now. It takes too much out of me." (E:2)

"It is very difficult for some of us being raised in the U.S. to understand being raised in a country where horrific things happen, it's hard to think that people have actually gone through that." (A:4)

"It's interesting, because there are times when it's almost as if I am reading a book. I don't sort of internalize what my clients are going through. Every so often my translator will say, 'Oh my God that's a horrible story!' And I think, 'Oh wow, you're right. That is a horrible story.' It's not that I'm getting calloused, they're all horrible stories. It's like right now at this stage in the case I can't deal with the emotional aspects of the story. I have to think, 'how am I going to use this in this case?' I can't go into the emotional side of it." (A:6)

"I've had a lot of rape cases lately. I feel like I'm getting PTSD secondhand. I'm serious." (A:6)

"Often there are too few evaluators. . . . You feel very lonely - how do we serve this many people who need help, and how do you manage the price point from pro-bono, to reduced fee, to people who can actually pay?" (E:11)

"It's been a really emotional and deep journey. The burnout is another major downside. It's huge. One of the things I'm trying to do at my work is to protect the practitioners by creating community. There are so few of us doing this work, that no one gets what the hell you're talking about. "It's this really nice thing that you do to help others." They have no idea of the depth of how screwed up by the system people are. So, the potential for burnout is massive. It's just really dark, the system. It's very dark. Trying to keep hopeful, faithful, is difficult. That's the good the bad and the ugly." (E:11)

Core Variable

With the conceptual categories defined, analysis shifted to answer the question, "What is the primary challenge the participants in this study were facing and how were they attempting to resolve it?" Constant comparative analysis of the data determined that all the participants in this study were engaging in the processes described by the conceptual categories to establish

credibility. Seeking credibility accounted for the greatest variance of behavior between all the participants.

Relationship between case screening and credibility. Attorneys and evaluators screen cases individually and collaboratively in an effort to establish personal and professional credibility. They assess the client and their story to determine if extreme hardship is present, who the qualifying relative is, if a psychological evaluation is needed, if there are aggravating factors such as legal issues or substance use history, and the overall strength of the case. The attorney and evaluator also ensure they have the professional skills needed for the case and are able to meet logistical requirements such as language differences, fees, and schedule availability.

Poor case screening results in incongruencies that impact the evaluator's ability to write an effective, cohesive, and compelling report and hamper the attorney's ability to advocate for their client to the best of their ability.

Relationship between working relationship and credibility. Source credibility theory argues that credibility is influenced by perceived trustworthiness, competence, and inspiration (Whitehead, 1968). This theory readily applies to the working relationship between clients, attorneys, and evaluators in extreme hardship evaluations.

Clients want to hire credible attorneys and work with credible evaluators who they believe will help them prepare the most effective extreme hardship waiver application. While attorneys and evaluators assess the client's credibility, which is foundational to the merits of the case, they attempt to establish their own credibility with the client who represents a source of income. This results in the triad constantly assessing one another and asking themselves, "Is this person worthy of my trust? Are they competent? Is this someone I feel good about working with?"

Common strategies attorneys and evaluators use to demonstrate credibility to their clients include interacting with team members in a friendly, professional, and respectful manner; communicating their expertise in the field; providing a case assessment that balances instilling hope with the unpredictability inherent in the subjective nature of the extreme hardship legal process; establishing an agreed upon course of action with clearly defined roles and responsibilities and accurate time and cost estimates; addressing tasks in a timely manner (i.e. returning calls/emails promptly, keeping appointments, completing paperwork, etc.); and informing the team of changes to the plan. Additionally, attorneys provide evaluators with clear referral questions, case strategy, case documentation, contracts, and court decisions.

In addition to the behaviors previously mentioned, evaluators demonstrate credibility with the client by ensuring that their ethical and professional requirements have been met - the client fully understands the purpose of the evaluation, how the information will be used, and the limits of confidentiality. The evaluator also actively confers with the attorney regarding any issues that may arise during the assessment or report writing process.

Ideally, the credibility that the attorney and evaluator have demonstrated to their client will enable the client to fully, accurately, and honestly engage with the process. Common issues that hinder this process include inaccurate expectations, improperly addressed language or cultural differences, the psychological impacts of trauma or marginalization, as well as psychological defenses and coping strategies.

Relationship between the assessment process and credibility. If the attorney determines that the case requires a psychological evaluation, they suggest and describe the assessment process to the client. The client may be wary of this suggestion because the assessment process may represent an unfamiliar experience, requires meeting with another

professional who will charge additional fees and require more time from the client, and in the end, the effort will not guarantee a particular outcome. Therefore, attorneys thoughtfully approach this task to maintain the credibility they have established with the client and to build the credibility of the evaluator and the assessment process in the eyes of the client.

Attorneys and evaluators describe why the assessment is required, general estimates of fees they will be expected to pay, approximately how much time it will take, what to expect during the process, that the assessment does not guarantee a particular outcome in the case, and the importance of the client fully, accurately, and honestly relating their experience to the evaluator.

During the assessment process, the evaluator ensures their conduct meets their professional code of ethics and seeks to build credibility with the client and attorney. The evaluator accomplishes this by ensuring they fully understand the referral question and case strategy. They also review case documentation (before and/or after meeting with the client), ensure that the case is within their scope of competence, notify the attorney if are unable to identify hardship or if details are uncovered that would harm the case, and seek consultation when needed. Additionally, prior to meeting the client, the evaluator will determine if an interpreter is needed. If so, they will select an appropriate professional interpreter with the client's confidentiality and safety in mind.

When first speaking with the client, the evaluator ensures the client fully understands what the assessment process entails including what data will be gathered and how it will be used, fees, time required, that the assessment does not guarantee a particular outcome in the case, expectations of the client, and limits of confidentiality (i.e. informed consent). Additionally, the evaluator will obtain the client's permission, a release of information, to speak with other

relevant medical or mental health providers. If a medical condition is suspected, the evaluator may request medical exams before proceeding with the assessment.

During the assessment with the client, the evaluator also conducts an in-depth clinical interview, sometimes multiple interviews, with a particular focus on the referral question, client history (early development, social, cultural, educational, psychological, medical, financial, legal, substance use, trauma, etc.), client vulnerabilities, and the impact to the client if they relocate with the applicant and the impact if they separate from the applicant and remain in the U.S.

The assessment process frequently includes objective assessments. When conducting assessments, the evaluator selects current assessments that they are qualified to administer and that are appropriate for the referral question, client's age, physical and language abilities, and cultural background. If the assessment was normed on a population different from the client's, the evaluator describes the limitations of the instruments and implications for the findings and interpretation in the evaluation report.

The outcome of the assessment process is the psychological evaluation report. Evaluators build rapport with clients and attorneys during this phase of the process by engaging in the professional behaviors identified in the Relationship between Working Relationship and Credibility section. Additionally, in the report, the evaluator:

- Documents their expertise in the field of immigration extreme hardship evaluations
- Focuses the report on the referral question and case strategy
- Ensures their writing is detailed, objective, and easily understandable
- Identifies the qualifying relative's vulnerabilities and judiciously hypothesizes how they may be impacted by separating from or relocating with the applicant

- Includes results from assessment measures as well as any applicable cautions or limitations in their findings
- Does not render a legal opinion (i.e. that the qualifying relative is experiencing extreme hardship or that the applicant should be denied/granted the waiver, etc.)
- Provides a detailed analysis of how they reached their conclusions
- Remains within their area of expertise
- Collaboratively edits the report with the attorney while maintaining their professional ethical standards
- Provides a final report is well edited and professional

Relationship between personal impact of work and credibility. To help ensure the success of their extreme hardship case, clients must overcome many internal and external barriers to demonstrate credibility to their attorney and evaluator. Additionally, attorneys and evaluators must overcome the impact of repeated exposure to human suffering and the difficulty inherent in conducting complex work frequently in the absence of specific training, support, or feedback.

The stakes are high for extreme hardship waiver applicants and their families. If the case is denied, applicants face possible separation from their families and a bar from re-entering the U.S. or relocating their families to countries that may be unknown to some family members. The threat of such personal upheaval is highly stressful to all family members. Additionally, legal and evaluation services are expensive, lengthy, and possibly unfamiliar which may increase the client's confusion and fear. Unfortunately, this population frequently has limited access to supportive resources, such as physical and mental health care, that would help clients navigate

this process. Clients must overcome these barriers to engage openly and honestly with the attorney and evaluator in their extreme hardship application process.

Attorneys and evaluators also face personal and systemic challenges inherent in this field of work. All evaluators expressed the profound affect these cases had on them personally. This led some participants to limit the number of cases they accepted while others saw it as a call to action that appeared to fuel their desire to help this population. Similarly, evaluators were also deeply affected by the ambiguity inherent in the work including the lack of educational and support opportunities coupled with the lack of feedback on case outcomes. Some evaluators were fortunate enough to find training and support through a forensic psychologist mentor. However, most participants had no knowledge of this field before receiving a referral and were unaware of any specific trade or industry groups that provided training, support, or best practices. The lack of formal training opportunities led these participants to learn this complex process largely through trial and error. Unfortunately, such a strategy often leads to highly variable outcomes. Multiple participants reported seeing reports that they felt were professionally unacceptable. This complicated landscape appeared to have led some participants to view demonstrating professional credibility as a daunting aspiration while others embraced the challenge of exemplifying credibility in their work with this vulnerable population.

Grounded Theory

Through theoretical coding, which conceptualizes how the final set of categories relate to each other, a grounded theory emerged. The intent of the grounded theory is to explain the latent pattern of social behavior. Therefore, the question used to guide this stage of analysis was, “What drives attorneys and evaluators to pursue *credibility* in such a complex and ambiguous

field?" I theorize their passion for this work is fueled by values and the human drive to reconcile ambiguity.

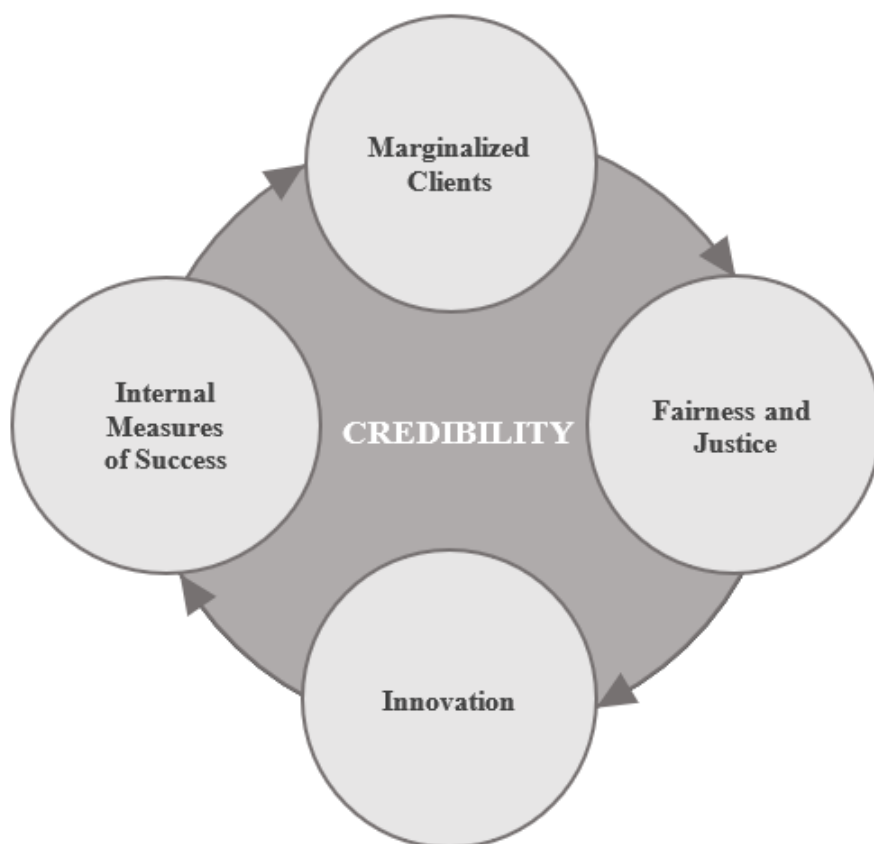


Figure 1. Explanation of Desire to Pursue Credibility

Struggles involving human rights inevitably evoke moral and ethical dilemmas regarding fairness and justice. Fairness and justness are related concepts that refer to impartial treatment. These values are fundamental to the fields of law and psychology and both abide by professional guidelines and principles regarding fair and just behavior.

Attorneys and evaluators participating in this study demonstrated concern for these values when they repeatedly spoke of the marginalization of their clients. They noted systemic unjust treatment in the U.S. immigration, legal, and social support systems as well as by the extreme hardship petition process itself. In response, they diligently sought to embody fair and

just treatment of their clients. They wanted to provide the same degree of credibility to extreme hardship cases that they would apply to other legal cases. However, extreme hardship cases are inherently ambiguous because both “extreme” and “hardship” are unique to each case and judges, the finders of “fact,” use their subjective interpretations to determine outcomes.

Human beings tend to prefer the known, certain, and predictable. Most people find ambiguity unsettling. Thankfully our intolerance for ambiguity drives many of us to find answers, identify patterns, and invent strategies for attaining certainty. Notably, the profession of psychology is based on identifying, conceptualizing, and treating inherently ambiguous phenomena. In the absence of federal guidance, this study found that effective evaluators utilized processes and strategies from their professional training, applied findings from relevant research, and obtained what external guidance and training they could to create their own process for completing extreme hardship evaluations. However, aside from occasionally hearing if a case was accepted or denied, evaluators do not receive feedback from judicial authorities of the impact their evaluation had on a case. They have no idea if their report aided or impeded a successful outcome for the applicant.

Without external feedback on the quality of their psychological evaluations, evaluators and developed internal standards of excellence and motivation to persevere in this difficult field. Participants who remained highly active and passionate about this work appeared to have successfully completed a meaning-making process (Park, 2010) that provided motivation and confidence that the work they were doing was valuable and justified. In summary, the marginalized state of this population fueled study participant’s desire to provide fair and just services and in doing so the ambiguity of the field forced them to innovate, create their own structure, and establish internal measures of success that held personal meaning for them. When

positive meaning was not established, participants spoke of fatigue, burnout, poor work quality, and ultimately leaving this area of specialization.

Results of Member Checking

A participant whose transcript greatly influenced the generation of concepts during data analysis was contacted for their feedback on the accuracy and credibility of the predominate concepts, categories, and emerging theory. The participant found the concepts and categories “accurate and comprehensive” commenting that, “they capture the overall process I utilize and teach my students when conducting extreme hardship evaluations.” Additionally, he found the core variable compelling, “I have never thought about it in that way, but yes, seeking credibility makes sense to me.” In terms of the Grounded theory from this study, *Striving for Credibility in the Face of Ambiguity*, the participant reported, “I like the concept of making meaning of the process and not the outcome. That makes a lot of sense to me. I hear about the outcome of my cases less than 50 percent of the time. Seeking justice and fairness are also huge. For me, it’s about keeping families together. That is so fundamental to our wellbeing and something so many of us take for granted. . . . When the outcome of a case is positive, I know I’ve helped keep a family together. I feel like I’ve won the Superbowl. Every time. I don’t get used to it. It is as thrilling on the hundredth case as it was on the first. Dr. King spoke of the long arc of the moral universe. But we must be committed to fight for the long haul and understand that the arc does not bend on its own but with help from others. When one becomes conscious of that, of something larger than oneself, the personal meaning of this work becomes clear and invigorating.”

CHAPTER V: DISCUSSION

The Grounded theory from this study, *Striving for Credibility in the Face of Ambiguity*, reinforces the need for guidance from the APA that is applicable to the field of extreme hardship evaluations (e.g. Ethical Principles of Psychologists and Code of Conduct, 2010; Specialty Guidelines for Forensic Psychology, 2013; Task Force on Immigration Report, 2012; and Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations, 1993). This Grounded Theory aligns with APA general principles and aspirational ethical standards, aspirational guidelines for forensic psychological practice, research regarding the psychology of immigration, and skillsets needed to conduct multicultural assessments. Similarly, this Grounded Theory reinforces guidance from groups such as the Council of National Psychological Associations for the Advancement of Ethnic Minority Interests (e.g. Psychological Treatment of Ethnic Minority Populations, 2003) and the Surgeon General's Mental Health: Culture, Race and Ethnicity (2001) which provide direction regarding cultural competence, diversification of the U.S., health disparities of minorities in the U.S., and the knowledge and skills required to provide culturally competent services. This guidance instills the core ethical values identified in this Grounded Theory (i.e. fairness and justice) and highlight the professional skills (i.e. multicultural competence, psychological evaluation, and forensic psychology) that evaluators need to navigate this inherently ambiguous field of psychology. However, these guidelines alone are insufficient in providing evaluators the information needed to create effective extreme hardship evaluations. Evaluators must augment this professional guidance with more detailed sources such as federal immigration policies.

The USCIS Policy Manual (2019) describes admissibility requirements and details extreme hardship waivers including the purpose of the waivers, adjudication process, qualifying

relatives, extreme hardship considerations and factors, determination, and the use of discretion.

This information enables evaluators to provide fair and just services to their clients. The Grounded Theory from this study, *Striving for Credibility in the Face of Ambiguity*, compliments and adds to this critical guidance. Yet, conducting effective extreme hardship evaluations requires a more nuanced guidance which is partially addressed by the professional literature.

The legal and mental health fields have published articles providing guidance on the statutory requirements and judiciary process (Carbonell, 2004; Hake 2005; ILRC, 2016; Marquez & Quinn, 2016; Scott, 2009; Scott & Cannon, 2007; Wiebe & Brenes, 2011) as well as the importance of multicultural training when conducting extreme hardship evaluations (Aranda, 2016; Barrett, 2004; Carbonell, 2004; de las Fuentes et al., 2013; Stutman & Brady-Amoon, 2011 & 2015). Regarding the evaluation itself, both fields provide direction on the overall assessment process, initial contact with the client, referral question, clinical interview, assessment strategy, tone of report, and report structure. Again, this Grounded Theory compliments and adds to the guidance provided in the literature by detailing additional processes, exposing the lived experience of the study participants, their striving for credibility, and the resulting Grounded Theory regarding their *Striving for Credibility in the Face of Ambiguity*. Looking forward, it is hoped that this dissertation will aid in the creation of commonly agreed upon best practices for extreme hardship psychological evaluations.

CHAPTER VI: LIMITATIONS, IMPLICATIONS, RECOMMENDATIONS, AND CONCLUSION

Limitations

In grounded theory, “researchers are part of what they study, they are not separate from it” (Charmaz, 2014, p. 320). This is a longstanding concern in the field of qualitative research given its interpretative nature of data collection (Charmaz, 2014). While classic grounded theory acknowledges this concern, it utilizes procedures such as theoretical sampling, coding, constant comparison analysis, and collecting a large breadth of data from many different sources are employed to diminish the effects of the researcher’s personal biases or interpretations on the emerging theory (Glaser, 2002).

Another limiting factor was the use of snowball sampling to identify participants. Snowball sampling involves existing study participants identifying potential subjects to include in the study. Snowball sampling is a helpful sampling method for groups that are difficult to identify and locate, which negates the ability to conduct a random sample, and explains its frequent use in exploratory qualitative research studies. However, it can introduce biases including the impact the first participants will have on the sample and that participants recommend colleagues they know and so they may have similar processes thus reducing variability in the study.

Finally, another limitation of this study was the type and number of participants. Fourteen participants were interviewed, but one evaluator did not return her consent. This resulted in six female attorney participants and seven evaluator participants, four of whom were female. A larger number of participants may have widened the experiences of attorneys and evaluators.

Additionally, the experience of clients and adjudicators were not included in this study due to time limitations.

Implications

This study highlights the difficulties mental health professionals face when attempting to conduct just and fair extreme hardship evaluations. The ambiguity and lack of external feedback inherent in the field necessitates the need for evaluators to create their own processes and rely on internal standards of excellence and motivation to persevere in this difficult field. General guidance is available and the number of published articles continue to increase but supports from a professional community such as detailed guidelines, best practices, training/supervision/mentoring, and processes to assure quality are largely absent. As such, this study represents a call to action for researchers and professionals in the field to provide the detailed supports this difficult field requires. The voice of the participants directly contributes to the recommendations for this study.

Recommendations

This study highlighted a number of areas for improvement in the field of extreme hardship evaluations such as clinician qualifications, training, supervision, mentoring, and criteria to evaluate the quality of reports.

Clinician Qualifications

This study identified the need to clarify evaluator qualifications for attorneys and clients. Wiebe and Brenes (2011, p. 4) reviewed hundreds of cases and found that reports were written by a wide array of mental health professionals including “psychiatrists, psychologists, psychiatric interns, nurse specialists, psychotherapists, clinical social workers, licensed certified social workers, counselors, social workers, medical doctors, members of the clergy, certified

domestic violence counselors, staff therapists, and case managers, with a myriad of letters after their names (MA, MSW, CSW, CPFT, PsyD, JD, PhD, MD, just to name a few)". The professionals' training and qualifications determine the psychological assessments they have access to and the type of report they provide. The APA Guidelines for Test User Qualifications (Turner, DeMers, Fox, & Reed, 2001) indicate that clinicians conducting integrative psychological assessments be aware of the difference between psychometric testing and psychological assessment and have knowledge of psychological measurement (i.e. descriptive statistics, reliability, validity, normative interpretation, selection of appropriate tests, administration procedures, variables related to diversity and their impact on test selection, testing individuals with disabilities, and an appropriate amount of supervised experience). Furthermore, Groth-Marnat and Wright (2016) suggested that clinicians also have an understanding of the demands, type of referral questions, and expectations of forensic assessments; be able to identify and evaluate a series of hypotheses to determine which are the most relevant and accurate; have an in-depth knowledge of the criteria for the diagnoses they are assessing; and the ability to integrate the test data into a relevant description of the person that incorporates their social environment, personal history, and behavioral observations in order to address the referral question. Finally, the APA Competency Benchmarks for Professional Psychology (2011) indicate that psychology doctoral programs ensure that students demonstrate the following skills prior to independent practice. The prospective graduate:

- Independently selects and implements multiple methods and means of evaluation in ways that are responsive to and respectful of diverse individuals, couples, families, and groups and context.

- Independently understands the strengths and limitations of diagnostic approaches and interpretation of results from multiple measures for diagnosis and treatment planning.
- Independently selects and administers a variety of assessment tools and integrates results to accurately evaluate presenting question appropriate to the practice site and broad area of practice.
- Utilizes case formulation and diagnosis for intervention planning in the context of stages of human development and diversity.
- Independently and accurately conceptualizes the multiple dimensions of the case based on the results of assessment.
- Communicates results in written and verbal form clearly, constructively, and accurately in a conceptually appropriate manner. (p. 9-10)

Training, Supervision, and Mentoring

This study reinforced the need for training, supervision, and mentoring for evaluators. Many evaluators who passionately demonstrated a thorough knowledge of this specialty held advanced degrees in psychology and were trained, supervised, or mentored by individuals with doctorates in psychology and degrees in law. However, most respondents discussed the need for additional training and support. Here is a sample of comments from study participants:

“There’s no organization that I’m aware of to support psychologists doing immigration related work. There’s lots of groups regarding cross-cultural work, but none organized around immigration work that I’m aware of. Trainings are usually just offered by someone in the field who wants to offer it – there’s no central organization.” (E:7)

“I don’t think there are any [trade, industry groups, or best practices].” (E:2)

“No, I’m not aware of any [industry groups, organizations, or best practices].” E:9)

“I think a lot of people fly by the seat-of-the-pants. . . .” (E:7)

“I think it would be helpful for evaluators to be trained in an immigration seminar on the law regarding hardship and what that means in an immigration context, so they know what the law is.” (A:4)

“I need to know what works best in an evaluation and what trainings are available. I would also like to know more about the attorney’s perspective, and from immigration judges, what kind of documents help them make a decision? What type of information they are looking for when they review a psychological evaluation?” (E:11)

“. . . you really need to jump in and tolerate uncertainty. It’s not everybody who can do that. So that leads to only a few people who do this work, and the few people tend to become overwhelmed with the demands that they have and to reconcile this issue they raise their prices. So, it becomes even more inaccessible to those who need it. Our mission is to increase access to psychosocial evaluations.” (E:11)

“The business is not ready to provide for this need. Often professionals will say, I provide counseling, but we are not set up to be flexible in understanding what our clients need. I say that as a Latina. The way mental health professionals can help the Latina today is not by offering counseling, it’s by offering psychosocial evaluations for immigration cases.” (E:11)

“Attorneys need to tell us what they want, what they need, and what they want us to do. The next thing would be highly individualized training.” (E:14)

Participants identified the following organizations as potential sources of information, support, and training for those conducting extreme hardship evaluations:

- American Immigration Lawyers Association (<https://www.aila.org/>) and state chapters
- Northwest Immigrant Rights Project (<https://www.nwirp.org/>)
- Puentes (<http://www.puenteseseattle.org/>)
- Health Right International (<https://healthright.org/>)
- Heartland Alliance Marjorie Kovler Center (<https://www.heartlandalliance.org/>)
- Physicians for Human Rights (<https://phr.org/#top>)
- World Bank Country Profiles (<https://datacatalog.worldbank.org/dataset/country-profiles>)

- U.S. Travel Advisories

(<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>)

Quality Guidelines

This study identified the need for quality guidelines that attorneys, evaluators, and clients could utilize to aid them in their selection of an evaluator and to accurately assess the quality of the evaluation report. Here is a sample of comments regarding the need for quality guidelines from study participants:

“It seems that a few lawyers have established close relationships with a particular evaluator and they really do have a good relationship now, but they don’t want to work with anyone else because they don’t feel confident in the quality from any other evaluators.” (E:3)

“Primarily I feel as though I’m doing my part to protect the field of psychology and some ‘truth.’ I’ve been scandalized by what’s out there, what people are paying for and what passes as a report. It’s disheartening. Because there are no rules, regulations, or competencies that are published or expected, no guidelines, no standards, and I’ve had lawyers ask me to evaluate people and they send me an evaluation that was done by somebody who should not be doing that work. I get scandalized by it. So, there’s part of my social justice and me wanting to protect the field and the truth from people who a disservice to the public, to the client, to the attorneys, and to the process.” (E:3)

“Sometimes I’ve had evaluators want to go and do research about what education conditions are like in a certain corner of El Salvador for example. That is really not appropriate. The client told the evaluator this was one of their worries, so they want to verify it, I get that, but I don’t want the expert opinion to be outside their field.” (A:10)

“The other thing I’ve seen; I was shocked and then I saw it a second time! I was like, ‘Oh my God, there really aren’t any standards for this!’ Someone who was a licensed mental health counselor, who actually had a pretty good analysis psychologically of what was going on with the client, but no measures to back it up. What she used for her prediction was the client’s current GAF score and she gave a number. Then she said, “I would predict that if this person had to move or be separated from her spouse her GAF would go up to 30.” (E:9)

“The only thing I would say is that when you develop guidelines that folks are going to follow, if there’s going to be enforcement behind them, then we need to know what the government is looking for. That’s going to be hard. It is for the government to decide what is a good report versus what is not a good report, so you need the involvement of the stakeholders in creating the guidelines. So, it would be really important that the

research not be done purely academically because it has policy implications and should include engagement with policy stakeholders who have something to say, or who could influence, or implement. Again, that might be a pipe dream, because there are so many political things to overcome in this particular issue.” (E:9)

“I’m not saying they deliberately did bad job and charged the client a lot of money. I’m saying there isn’t a lot of experience with this stuff. The fact that someone could even do this with an LMHC and basically provide what is a detailed clinical interview with a write-up. That’s not a psychological evaluation.” (E:9)

“Ideally, they would be guidelines that come from the government that say this is what we want, this is what we’re looking for, and then that’s passed down to us doing this work. But at the same time, I can imagine the government would want nothing to do with providing this kind of information. . . . They don’t want that because there are political reasons to not make it any easier for folks to argue for benefits for immigration status.” (E:9)

Conclusion

The purpose of this study was to identify current practices of immigration attorneys and mental health professionals engaged in producing psychological evaluations for extreme hardship cases. The study utilized classic ground theory (Glaser & Holton, 2004) to analyze interviews of thirteen participants and redacted psychological reports. Participants described their process for producing extreme hardship evaluations and how the work impacted them personally.

This study utilized classic grounded theory (Glaser & Holton, 2004) to analyze interviews of thirteen study participants and redacted psychological evaluations. The interviews consisted of approximately thirteen questions and typically took about one hour to complete. Participants were sought for the expertise in the field and so were invited to add any additional information they thought would be helpful. The researcher asked follow-up questions to increase depth and understanding of the participants' experiences.

After transcription and redaction, the interviews were coded. During substantive coding codes were compared to codes and grouped until conceptual categories started to take shape.

Coding continued until categories were saturated. This phase of substantial coding continued until a core variable emerged. Credibility was identified as the core variable for this study; it accounted for the greatest variance of behavior between among the participants. The desire for credibility was theorized to be the driving force behind participants' engagement in the processes behind the conceptual categories. Data analysis then shifted to theoretical coding to explore the relationship between the conceptual categories in an effort to determine *why* participants sought credibility. A Grounded Theory titled, *Striving for Credibility in the Face of Ambiguity* arose. This theory captures how struggles for human rights evoke moral and ethical dilemmas regarding fairness and justice, which are integral values in the legal and mental health professions. However, the ambiguity and lack of external feedback inherent in the field necessitates the need for evaluators to create their own processes and rely on internal standards of excellence. Participants who were passionate about this work appeared to have successfully completed a meaning-making process (Park, 2010) and when positive meaning was not established, participants spoke of fatigue, burnout, poor work quality, and ultimately leaving this area of specialization. Recommendations include clarifying clinician qualifications, training, supervision, mentoring, and criteria to evaluate the quality of reports.

This study contributes to the field by providing original research on how attorneys and mental health professionals approach this complex process and provides recommendations for improvements in the future. It is my hope that this study will offer additional guidance on extreme hardship psychological evaluations for mental health professionals interested in increasing their ability to provide ethical and effective services to immigrants seeking extreme hardship waivers.

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Appendix A: IRB Application

1. **Name and mailing address of Principal Investigator(s):** Jude Bergkamp
2. **Academic Department:** PsyD
3. **Departmental Status:** Faculty
4. **Phone Number:** (xxx) xxx-xxxx
5. **Name of research advisor:** Jude Bergkamp, PsyD
6. **Name & email address (es) of other researcher(s) involved in this project:** N/A
7. **Project Title:** Best Practices in Immigration Hardship Evaluations IRB
8. **Is this project federally funded:** No.
 - a. **Source of funding for this project (if applicable):** N/A
9. **Expected starting date for data collection:** January 1, 2015
10. **Expected completion date for data collection:** January 1, 2016
11. **Project Purpose(s):** Certain immigration cases require individuals to demonstrate that denial of the desired immigration benefit would result in extreme hardship to close relatives. A facet of extreme hardship can be psychological in nature, and psychological evaluations are frequently submitted as part of the waiver of inadmissibility. There is no statutory definition of extreme hardship, let alone of psychological hardship specifically. Professional literature is sparse in this area and clinicians may be practicing with a lack of guidelines and best practices. In addition, there is limited case law to guide psychological evaluators in formulating their opinions.

In collaboration with Greg McLawsen, JD, this researcher aims to establish current best practices in the evaluation of extreme hardship in immigration cases. First, we will conduct qualitative interviews with experienced evaluators and attorney members of the American Immigration Lawyers Association. Second, we will analyze archival

data from hardship cases maintained by the United States Citizenship and Immigration Services. The archival data will be acquired through a Freedom of Information Act request. The analysis of existing archival data in tandem with common psychological evaluation practices from experienced clinician will provide a baseline to describe best practice in this burgeoning area.

12. Describe the proposed participants- age, number, sex, race, or other special characteristics. Describe criteria for inclusion and exclusion of participants. Please provide brief justification for these criteria. (Up to 500 words): Participants will be experienced mental health clinicians engaged in conducting hardship evaluations and experienced immigration lawyers.

13. Describe how the participants are to be selected and recruited. (Up to 500 words): An initial pool of potential participants will be acquired from the Washington Chapter of the American Immigration Lawyers Association, consisting of attorneys who practice immigration law in Washington State. Snowball sampling will then be utilized to increase to pool by inquiring about other mental health clinicians and attorneys engaged in immigration law and evaluation at the conclusion of each interview.

14. Describe the proposed procedures, (e.g., interview surveys, questionnaires, experiments, etc.) in the project. Any proposed experimental activities that are included in evaluation, research, development, demonstration, instruction, study, treatments, debriefing, questionnaires, and similar projects must be described. USE SIMPLE LANGUAGE, AVOID JARGON, AND IDENTIFY ACRONYMS. Please do not insert a copy of your methodology section from your proposal. State briefly and concisely the procedures for the project. (500 words): Qualitative interviews will

be recorded, assigned an identification number, and transcribed with all names and identifying information redacted. The data will then be analyzed using a Grounded Theory methodology (Glaser & Strauss, 1967) in order to derive an inductive theory regarding hardship evaluation process and practice.

Archival data will be analyzed by coding for the type of evidence submitted to demonstrate hardship, then using logistic regression analysis to assess the relative influence of various hardship factors and components of mental health evaluation (McLawsen, et al., 2011).

15. Participants in research may be exposed to the possibility of harm — physiological, psychological, and/or social—please provide the following information: (Up to 500 words)

- a. **Identify and describe potential risks of harm to participants (including physical, emotional, financial, or social harm):** Considering the general neutrality and anonymity of the questions, risk of physical, emotional, financial, or social harm is limited to null.
- b. **Identify and describe the anticipated benefits of this research (including direct benefits to participants and to society-at-large or others):** A multitude of immigration benefits can result from legal findings that are influenced by hardship evaluations, which in turn affect the lives of immigrants and their families. Research findings will begin to establish a groundwork and foundation of best practices in the area of immigration hardship evaluations, with the possible outcome of increasing the integrity and analysis of these evaluations in the future.

- c. **Explain why you believe the risks are so outweighed by the benefits described above as to warrant asking participants to accept these risks. Include a discussion of why the research method you propose is superior to alternative methods that may entail less risk:** We believe that the proposed research method poses quite a low risk to participants and offers the burgeoning area of immigration hardship evaluations with valuable data on common and best practices, thus the potential addition to relevant literature outweighs the potential risk.
- d. **Explain fully how the rights and welfare of participants at risk will be protected (e.g., screening out particularly vulnerable participants, follow-up contact with participants, list of referrals, etc.) and what provisions will be made for the case of an adverse incident occurring during the study:** Records obtained through the Freedom of Information Act will be redacted by the federal agency pursuant to the Privacy Act; those interviewed for qualitative data will be bound by my professional ethical duties to safeguard client information. Since no identifying information will be gathered during this research process, participants' rights to privacy will be protected. Additionally, participants will be informed that they may discontinue the interviews at any time.
16. **Explain how participants' privacy is addressed by your proposed research. Specify any steps taken to safeguard the anonymity of participants and/or confidentiality of their responses. Indicate what personal identifying information will be kept, and procedures for storage and ultimate disposal of personal information. Describe how you will de-identify the data or attach the signed confidentiality agreement on the**

attachments tab (scan, if necessary). (Up to 500 words): Interview participant data, and any other identifying information, will be redacted upon transcription and audio recordings will be deleted after transcription.

Appendix B: Interview Scheduling Script

Hello Mr./Ms./Dr. [last name], my name is Susan Burke and I am a psychology doctoral student at Antioch University Seattle. I am calling you regarding the interview we had scheduled today to discuss immigration hardship evaluations. Does this time still work for you? Terrific, thank you so much for your time.

As you saw in the consent, this research project is focused on establishing best practices in immigration hardship evaluations. These evaluations are complex and difficult given the sparseness of professional literature on the topic and limited case law. Our goal is that this research will assist attorneys and evaluators in their collaborative effort to provide highly impactful and legally relevant psychological evaluations in their immigration hardship cases.

The interview will be audiotaped. This enables an accurate transcription of our discussion and reduces the time needed to conduct the interview. Your identity and responses will remain anonymous. You will be assigned a random identification number and all personally identifying information will be redacted from the transcript. Additionally, as mentioned in the consent form, your responses may be used towards academic purposes that include publication and presentation. Do you have any questions or concerns regarding before we begin? Excellent, let's get started. This is a semi-structured interview so please feel free to add any information you feel may be useful.

Conduct interview.

Well, that concludes our interview. I would like to thank you again for taking the time to discuss this important topic with me. Your feedback is a critical component of this research effort.

If you have any questions about this project in the future, please feel free to contact our Primary Investigator, Dr. xxxxx at xxx@xxx.edu or (xxx) xxx-xxxx.

Appendix C: Informed Consent

Best Practices in Immigration Hardship Evaluations
Attorney Consent

The aim of this research project is to establish current best practices in the evaluation of extreme hardship in immigration cases. Towards this end, we invite you to participate in a qualitative interview to discuss your thoughts and opinions regarding this topic. This interview will take under an hour and a list of example questions are included below. The interview will be audiotaped. Your identity and responses will remain anonymous. Your signature connotes that your responses may be used towards academic purposes that include publication and presentation.

The Committee on the Protection of Human Subjects at Antioch University Seattle has reviewed and approved this project. If you decide to participate, you are free to withdraw your consent and discontinue participation at any time.

Example questions:

1. What instructions do you give to a mental health professional who is performing a hardship evaluation for you?
2. What are the essential components of a good hardship evaluation?
3. How do you think clinicians can improve their hardship evaluations?
4. What are the common mistakes that clinicians make in conducting hardship evaluations?
5. When immigration adjudicators look at hardship cases involving psychological issues, what factors weigh most strongly in favor of a grant?
6. Describe the nature of the contact you would typically have with clinician doing an evaluation for you.
7. What is the educational and licensing background of clinicians you have used for evaluations?
8. Thinking of all the hardship waiver cases you have done, in approximately what percentage of cases have you used a mental health evaluation?

I have read the above statement and understand that I may withdraw from this study at any time. Additionally, I may also ask for a summary of the results of this study and/or any subsequent publications that emerge in relation to this project.

Please contact Dr. xxxxx, the project's primary investigator, with any questions or concerns at xxx@xxx.edu.

Participant Name (Printed): _____ Date: _____

Participant Signature: _____ Date: _____

Best Practices in Immigration Hardship Evaluations
Clinician Consent

The aim of this research project is to establish current best practices in the evaluation of extreme hardship in immigration cases. Towards this end, we invite you to participate in a qualitative interview to discuss your thoughts and opinions regarding this topic. This interview will take under an hour and a list of example questions are included below. The interview will be audiotaped. Your identity and responses will remain anonymous. Your signature connotes that your responses may be used towards academic purposes that include publication and presentation.

The Committee on the Protection of Human Subjects at Antioch University Seattle has reviewed and approved this project. If you decide to participate, you are free to withdraw your consent and discontinue participation at any time.

Example questions:

1. What would you consider to be best practices regarding hardship evaluations?
2. What are the essential components of a good hardship evaluation?
3. What are your common procedures, and in what order?
4. What do you think other clinicians may omit in their hardship evaluations?
5. What have been some of your most difficult cases? How did this change your evaluation practice?
6. How can the representing attorney best support your work on a hardship case?

I have read the above statement and understand that I may withdraw from this study at any time. Additionally, I may also ask for a summary of the results of this study and/or any subsequent publications that emerge in relation to this project.

Please contact Dr. xxxxx, the project's primary investigator, with any questions or concerns at xxx@xxx.edu.

Participant Name (Printed): _____ Date: _____

Participant Signature: _____ Date: _____

Appendix D: Interview Questions

This project will utilize Grounded Theory methodology (Glaser & Strauss, 1967) in order to derive an inductive theory regarding best practices in hardship evaluation. This methodology uses semi-structured interviewing starting with general questions and allowing the interviewer to probe further depending on the interviewee responses. The following are examples of the general questions that will be used to begin and focus the interviews.

Determining best practices for hardship evaluations require gaining insight from both clinicians and attorneys. Thus, there are two sets of questions, one for each class of professional.

Clinician Questions:

1. What would you consider to be best practices regarding hardship evaluations?
2. What are the essential components of a good hardship evaluation?
3. What are your common procedures, and in what order?
4. What do you think other clinicians may omit in their hardship evaluations?
5. What have been some of your most difficult cases? How did this change your evaluation practice?
6. How can the representing attorney best support your work on a hardship case?
7. Are there any trade or industry groups for these types of cases/evaluations?
8. Is there anyone else you know who is involved with these types of evaluations that you feel I should talk to?
9. Are you aware of any best practices or guidance on these types of cases/evaluations?
10. Anything else you would like to add that we did not discuss?
11. Are there any other aspects of this process that you would recommend we ask in future interviews?

Attorney Questions:

1. What instructions do you give to a mental health professional who is performing a hardship evaluation for you?
2. What are the essential components of a good hardship evaluation?
3. How do you think clinicians can improve their hardship evaluations?
4. What are the common mistakes that clinicians make in conducting hardship evaluations?
5. When immigration adjudicators look at hardship cases involving psychological issues, what factors weigh most strongly in favor of a grant?
6. Describe the nature of the contact you would typically have with clinician doing an evaluation for you.
7. What is the educational and licensing background of clinicians you have used for evaluations?
8. Thinking of all the hardship waiver cases you have done, in approximately what percentage of cases have you used a mental health evaluation?
9. Are there any trade or industry groups for these types of cases/evaluations?
10. Is there anyone else you know who is involved with these types of evaluations that you feel I should talk to?
11. Are you aware of any best practices or guidance on these types of cases/evaluations?
12. Anything else you would like to add that we did not discuss?
13. Are there any other aspects of this process that you would recommend we ask in future interviews?

Appendix E: Transcripts

Participant: Evaluator

ID: 2

Gender: Male

Credentials: PhD

Interviewer: Okay, there we go, now we are recording. Thank you so much for your permission to do record the interview. Before we get started, do have any questions for me about the project?

Respondent: No.

Interviewer: Okay, all right. We can just jump right in. There are eleven questions but by all means please feel free to add any information you think might be useful or anything we might be missing. You are one of the first evaluators we were talking to, so feel free and comment on any piece of this process, note if anything is unclear, or if you would suggest improvements for the future. That would be wonderful.

Respondent: Okay.

Interviewer: Our first question is, what would you consider to be best practices regarding hardship evaluations?

Respondent: [Laughter]. Best practices.

Interviewer: It's just a small question. [Laughter].

Respondent: The best practice to help encourage the family to be open about the stress that the possible deportation would create for the family. It is very difficult for most immigrants to be that open about what's going on inside them, and particularly people who come from cultures where you don't talk about personal stuff or that have the cultural belief that if you talk about feeling crazy that you are mentally ill. What the hardship evaluator is doing is writing a story about how they are coming unglued. The applicants, they are not going into therapy, they're trying to save their family. It's difficult. Then when you use standardized instruments for evaluation, it's complicated too, because some of those instruments are accepted measures but they are not necessarily ones that, because of language, are easily used by an applicant. So, you basically have to get them to open up and talk more openly about the disaster, the train wreck that's coming down the tracks.

Interviewer: Okay, alright. Anything else about best practices?

Respondent: Well, it's making sure they understand that that they are going to be waiving their right to confidentiality. From the ethical side, being very clear about the fee involved, and number of meetings that will take place, how I will work with children, if they're involved.

Interviewer: Yeah.

Respondent: So, best practices are the same ones that you would use for any psychological evaluation – they must be applied to these cases too. Generally, they do not know much about the process, it may be quite foreign to them. I've worked with some who were very educated about it, but most people know very little about the process.

Interviewer: Yeah, this is a new and foreign experience.

Respondent: So, they don't know what they're getting into really.

Interviewer: Yeah.

Respondent: All they want is the waiver but the they don't understand what it's going to require to get there.

Interviewer: Yeah, I could see that.

Respondent: And then there are lots of language barriers. I don't speak Spanish, I don't speak

Chinese, I don't speak other languages. I only speak English. Sometimes you need to have a translator there. I had one couple where the wife was English speaking and the husband was Mexican, and the wife could not understand her husband's Spanish.

Interviewer: Oh my gosh. Wow.

Respondent: So, in other words... I don't quite know how they communicated.

Interviewer: Yes.

Respondent: In many cases, I'll rely on one person who is more fluent to communicate to the other person who is less fluent. But in this case, the wife could not understand her husband in Spanish, and for him to communicate was critical since he was the one seeking the waiver. He had to be able to talk about what was going on for him.

Interviewer: Yeah, that's critical.

Respondent: So, you got to iron out all that stuff in the beginning. There's just a lot of complexities. I let people know that I'm going to be working with their attorney too, I'm not just doing this solo.

Interviewer: Yeah, important to keep that line of communication open too and make sure they're aware of it.

Respondent: Right.

Interviewer: And for our second question, what are essential components of a good hardship evaluation?

Respondent: Read the document that I sent you. It's very detailed. It goes over the 15 things that the law says are considerations and you have to address those 15 things.

Interviewer: Okay. Definitely. Perfect, thank you so much for sending that.

Respondent: You're free to quote from it. I mean it's essentially the law.

Interviewer: Okay.

Respondent: So that's essentially what you are doing. A lot of people, because it's easier, they want to focus on the economic hardship. Well the economic hardship is not a sufficient enough condition to constitute an extreme hardship.

Interviewer: You have to go beyond that, that's where it gets tough huh?

Respondent: Yeah, and of course we're not economists - we're psychologists. So, we're going to see, for example, if the U.S. citizen has two young children, and she works and depends on daycare and his income is going to be subtracted and she can't afford the daycare obviously it's going to have a huge impact on the psychological functioning of the family.

Interviewer: Yeah. Okay, and for our third question, what are your common procedures and in what order?

Respondent: Well, my process is I meet with the family – the two spouses first. I try to write a preliminary draft. Then, if there are children involved, then I have a second meeting with the children and the family and I do some play therapy or drawing, you know some art therapy stuff. I do simple stuff to see what the parenting is like. I get a history from them. I'm looking for medical history. Usually, the children make the case easier. Because if they have medical problems or educational issues or anything that is not working very good, then you can always make a more persuasive case if they are minors. So, you focus on the kids if there are kids, and there usually are. You have another session to get their histories and then you watch the parents and have them do some simple drawing if they are of age. If they are toddlers, it is simply observing who is caring for and how they're caring for. I mean there are so many different cases. So, I'll have the initial meeting, then a follow-up meeting, then a meeting with the family and the children, and then a final meeting to go back over everything so there's usually 2 to 4 meetings

involved.

Interviewer: Out of curiosity, do you seek outside sources of information too or contacts?

Respondent: Well after the first meeting, I have them complete some standardized things like a Symptom Checklist 90 and the Locke-Wallace Marital Adjustment Test if they're in a relationship. It depends, if they're coming in, it's less likely, but the more they tell me about what's going on initially, the more I give them. For example, I can focus on depression or anxiety so I drill down on that. In some cases, I use the Millon Clinical Multiaxial Inventory, but that would be more pricey and more complicated. I usually just use more paper and pencil standardized measures. Then I combine the qualitative, or the narrative stuff they give you, with the quantitative stuff that the scores generate.

Interviewer: Yes, trying to build that story. I can see that. On a related note, how can the representing attorney best support your work?

Respondent: The attorneys I work with are very on the ball. They go over my report with a fine-tooth comb. They criticize it, or they say add more here, or said this there but you didn't say it at the end, or you could strengthen your conclusion by bringing in this factor that you emphasized at beginning. Most of the attorneys have a fairly, you know they're pretty rigorous about it [the report/case].

Interviewer: Okay. Have you noticed a difference at the onset is there particular information you receive from the attorney when they are first contacting you?

Respondent: I won't start a case without a declaration. They're the ones who take the declarations. I won't start without it. In my experience, I can get one story and the attorney can get another one, and then I'm up a creek without a paddle because I have to rewrite it because it's inconsistent with the narrative they provided with attorney.

Interviewer: I see, you use that declaration as a baseline and build off of that.

Respondent: Yes, it's a sworn statement. If they tell me something different and I write my analysis based on that then I have to go back and restructure everything.

Interviewer: Yes, that makes sense and definitely sounds like a best practice. Looking at the flip side, what do you think other clinicians may omit from their hardship evaluations?

Respondent: Well I haven't read any of anyone else's. I don't know what they omit or don't omit.

Interviewer: Speaking of that, how did you get involved in this field of forensic psychology?

Respondent: Well, I think an attorney named xxxxx, off who is an immigration attorney in town, he called me and asked me if I would do it. I had no idea what I was doing.

Interviewer: That seems to be the case for most folks. [Laughter]. Learning from the bootstraps.

Respondent: He's very skilled, he's very knowledgeable, and very thorough.

Interviewer: Oh, excellent.

Respondent: So, you know I've worked with all types of people - an ophthalmologist from Taiwan, a mother who's from the United Emirates, a plumber from Croatia. I mean it's all over the map.

Interviewer: Completely different cases each time.

Respondent: Yeah.

Interviewer: Speaking of that, what have been some of your more difficult cases and how did that change your evaluation practice?

Respondent: The most difficult ones are in two classes. The ones who just can't open up and the heartbreakers. You give the questionnaires and they're basically saying everything's fine. I can't write a narrative if I don't have facts to back it up.

Interviewer: Yeah if “everything’s fine.”

Respondent: It’s pretty frustrating. They’re paying me to write the evaluation and then they clam up. And then there are the heartbreakers, like a case I just worked on. The Mom is visiting her sister in the U.S., she’s Jordanian and she’s pregnant and she ends up delivering in the U.S. So, her son is a U.S. citizen. She’s goes back to Jordan and finds out that he has an extremely rare blood disease. He’s dying. She called me today by the way. I’m working with her family because it’s all messed-up I’m a family therapist. Her brother is here who is a U.S. citizen, she’s not. She’s married has two other kids. So, he develops this rare blood disease. They think its cancer but it’s not. It’s this esoteric platelet disease that is not cancerous but he’s dying. So, they sent him to Children’s Hospital who happen to be one of the places in the United States that deals with this rare blood disorder. So, the kid comes here but they won’t let the parents in except on a visitor’s visa. So, he’s living at children’s orthopedic Hospital without his parents. He has attachment disorder. He’s messed up. He’s four years old. So, you know it’s pretty heartbreaking. The mom is pretty frantic. [Heavy sigh]. It’s a mess. And I’m giving you the simple version of it.

Interviewer: Which sounds really complex, so I can only imagine. That would definitely make for difficult case in so many ways. Coming across some of these difficult cases how did this change your evaluation practice?

Respondent: It doesn’t, I don’t think it does. Every story – I tell you it’s very stressful doing these things because their future family life depends upon your ability to write a coherent, persuasive story. And every story is different. I’ll stay up nights trying to figure out how to say this. It’s not like you just punch out some kind of a template of what goes on. Every story is different, and you have to tell it in a way that’s meaningful, and boy I feel like the weight of the world is on me in some of these cases. I’ll give you another complicated case. This woman is American citizen and her family is paying for her husband to get a waiver. She has a complicated psychiatric history - well established. Well in that sense it was a no-brainer because she has such a complicated psychiatric history. So, I write the report and you know I tell my clients, “I’m not here to portray you in most glowing light.” So, I write the report and I go over the whole thing with her and she says it’s true, there’s nothing in there that’s inconsistent. But, unbeknownst to me, after I read it to her it brings up her fears, because she was in a previous relationship where her husband was in jail for beating her up. The second husband wasn’t violent but the first one was. Turns out she doesn’t really get along with her husband. She’s afraid he’s using her to get citizenship. So, after we go through this whole process, she stops it. She felt her husband would have the right to use the report against her. And she’s afraid of losing her children.

Interviewer: Yeah, afraid of what it could lead to.

Respondent: So that was a month’s work down the drain, I mean not down the drain, but it didn’t go anywhere. Due to stuff I didn’t know.

Interviewer: My gosh.

Respondent: It’s all over the place. Yeah, each one is so unique. I don’t do more than one evaluation every couple months or so now. It takes too much out of me.

Interviewer: Yeah, and even that sounds like a lot to bear still.

Respondent: Well, with like the kid I told you about who is a U.S. citizen but is Jordanian. I had to learn about the disease. And you invest yourself in the culture of the family. So, every project is like “so this is the way Korean family structure works, this is the way Native American family structure works” so you also have to be an anthropologist.

Interviewer: Really get in-depth.

Respondent: Because it has to be in the context of the culture.

Interviewer: That makes sense – what it means to them. So, my next question is, are there any trade, industry groups, or best practices? We've been looking for any sort of guidance for folks doing these evals and didn't know if you were aware of any.

Respondent: No, I think attorneys find the people they can work with. But no, I don't think there are any. I bet, I would be interested to see, when you get into it, I'll bet you'll see A to Z. In the immigration business there's a lot of people who offer services for a fair amount of money that don't really do much. Because they're poor, they don't have money, they have cash and they're exploited. You see them being exploited all the time. Unfortunately, some of that is on the mental health side too. You'll get a two page report I would guess, and the person will charge of \$500 for that or something. Or you'll get a nine page report, like from me, and it's very detailed with at least 10 to 15 references/citations in it. I guess it's all over the map. But the attorneys are playing to win so they want the people who will be persuasive to the judge. If they're superficial reports they're not going to be successful.

Interviewer: So, they're coming back to you - building that relationship.

Respondent: Yeah right. So, you have a kind of a scorekeeper as it were that's objective, making the decisions.

Interviewer: Exactly.

Respondent: I can't recall one that was ever reversed.

Interviewer: Yeah, through appeals or anything of that nature?

Respondent: Yeah. You got it write these kind of like a short story that's ending badly.

Interviewer: Makes sense. Okay. Is there anyone else you know who is involved with these type evaluations that you feel I should talk to?

Respondent: No, but a good personal to call is – call some of the attorneys in town. Do you have a list?

Interviewer: Yes, we have a two-tiered. We're talking to evaluators and trying to build our list of evaluators who are involved in the field. We're working with xxxxx who is an immigration attorney in the area and working with him to snowball a list on that side of immigration attorneys too.

Respondent: Well xxxxx.

Interviewer: Great, he's not on our list.

Respondent: He's very good. His assistant is very good too - all they do are these waivers.

Interviewer: Great that definitely sound like someone we should reach out to. Is there anything else you'd like to add that we didn't discuss?

Respondent: No but I'd like to see what you come up with, because you know I'm kind of in the dark. I just figured out over the last 20 years I've been doing these things. I had no idea what I was doing in the first years.

Interviewer: I hear you, in the little bit of research I've been able to find, just 3-4 articles, they're trying to do the same thing, trying to carve out what is this space and what needs to be included.

Respondent: As I explained the article, the problem is the criteria is *extremely* vague. What constitutes a hardship is vague, but then there are a whole bunch of criteria so they're basically saying, "Tell us about how your case touches on this criteria and converge all this criteria into a report that shows extreme hardship."

Interviewer: I was reading about that quite about, and even what constitutes "*normal*" hardship of a family separation.

Respondent: Yes, and that's insufficient. To say that they can lose their dad, and it's going to be hard on them, then they'll say, "Well if he's so important then go with him."

Interviewer: Yep, that becomes a quick answer.

Respondent: Okay so it can be hard on them, but he is one who is here illegally – it's not our fault. The law says he shouldn't be here. You have to kind of think the way they're going to think. This is important - you want that judge to be a human being, but the most important thing is to appeal to him. Because it is vague. It's hard to explain, but you have to put together the narrative using a lot of objective terms but in a way that builds an emotional argument. So, the judge is "in the shoes" of these people and he or she can see this is going to be a disaster of major proportions for these people. And they're good people. And you want the judge to feel some sense of compassion for them. But you can't write it in the way that says, "please be compassionate." You must write in a way that describes that if this happens, then that will take place, and when that happens this will take place, and then this person will have symptoms characteristic of a mental disorder. They won't be able take care of themselves, they will likely go on public assistance, costing the state lots of money, and their children will grow up with issues that will cost the state more money. That's the other thing you bang at, not only are you going to ruin these people's lives, you're going to cost the state a bazillion dollars in the process.

Interviewer: It sounds like you have such a fine line to walk – keeping the objective and the emotional?

Respondent: Yeah, but that's the story. One lady I just did, she was Peruvian and her father left her when she was 11. She grew up in Lima and this had a *huge* impact on her. Then her mother remarried and she refused to go to the new family. By the time she's 15 and then she finally tracks down her father who is a severe alcoholic, but she didn't know much about him, and he rejects her again. So, you can see where you go with that – she's going to be abandoned again and this is what happens to her when that happens – this is her pattern of depression.

Interviewer: Are there any aspects of this process that you would recommend we add, change, or delete anything for future interviews?

Respondent: Well I wouldn't start off with what it the question, "what are the best practices" because it's too abstract. I would ask "how do you set it up" or something that's more pragmatic procedural because best practices could mean a million things.

Interviewer: Gotcha, maybe "What are your common procedures and in what order."

Respondent: Well, just get them talking. I think I was telling you about best practices, but I was really telling you about procedures – it overlaps. I don't know how important it is to [keep the separate]. Otherwise your narrative data will be all over the place. Cause it's a research project, right? Are you doing this for your doctorate?

Interviewer: Yes, I am.

Respondent: It will drive you crazy if you don't get it organized now.

Interviewer: Absolutely, thank you for your feedback. That's kind of what we're struggling with. In the research, we've looked at and the people we have talked to, everyone is building this from the ground up. Our focus was on best practices, thinking that maybe they're out there and maybe we just haven't run into them.

Respondent: I think it's basically clinicians who can write well, who can tell a story, and put all the factual stuff in the story to make it persuasive. If you can't write well and you don't have a sense of how to persuade without using coercive or persuasive language because in your heavy-handed.

Interviewer: Yes, and swerving too far away from the objective data.

Respondent: Yeah right you can't say like this person if you use any language that is filled with superlatives and negativity - it will backfire on you.

Interviewer: I bet.

Respondent: Well that's what I know.

Interviewer: Thank you so much for your time, I really appreciate it.

Respondent: Sure, let me know close to finishing or if you have any questions give me a call. I would love to read whatever you come up with.

Interviewer: Absolutely! I definitely will. We don't have time frames, were just getting going. Working with xxxxx and xxxxx on this and looking at a phased approach too. This may be just one phase of our research and hoping to do quite a bit more in this area. I'll keep you apprised of what were up to.

Respondent: Okay, great thanks so much. It's been good talking to you.

Interviewer: Likewise, thanks so much, bye-bye.

Participant: Evaluator

ID: 3

Gender: Female

Credentials: PhD

Respondent: Oh yes, I just called, saying I'm here. This is needed so badly.

Interviewer: I was so excited to read your article. I thought oh gosh, I really hope we get to meet.

Respondent: Oh good. Well I spend so much of my time in helping other professionals develop their competencies and mentoring them. I was at a conference recently with the Texas Psychological Association and met with another psychologist, she's a professor at a A&M and we spent hours talking about how to develop her competency in this area. Because she's getting requests from attorneys and is feeling the pull to help.

Interviewer: That's fabulous. We were hoping that this is a phased project, and to help Antioch build some of this momentum to. In the Seattle area there are number of attorneys and evaluators conducting these cases, but it seems that as I'm talking to folks it's relatively new. We've not gotten a lot of them. But then talking to folks in Washington DC and they're saying while we've been doing them for years.

Respondent: Yes, we been doing them a long time here to.

Interviewer: Any questions for me about the project?

Respondent: I'm just curious to see how this goes.

Interviewer: The format I have is just a few starter questions, and that I would really love if there's anything I'm missing or different directions you could take us or areas you think are you are valuable these let's discuss them. These are just openers; I really want to tap your expertise.

Respondent: Okay.

Interviewer: Let's just start with a brief background. How long have you been doing immigration hardship evaluations and how did you get in this field?

Respondent: I've been doing them probably two full years. I got into it because one of my new colleagues in my office is a psychologist who had been doing it for a number of years. She encouraged me to start doing them. I did quite a bit of research on it and she supervised me for year. Then I started helping her with hers and she supervised me, and I just started doing them on

my own.

Interviewer: How have you felt about the work? Are there areas that are particularly difficult or fulfilling?

Respondent: Well, it's all very rewarding. I feel as though I'm doing my part to help people out. Helping lawyers with their job helping individual petitioners with their applications, I'm doing my part. Primarily I feel as though I'm doing my part to protect the field of psychology and some "truth." I've been scandalized by what's out there, what people are paying for and what passes as a report. It's disheartening. Because there are no rules, regulations, or competencies that are published or expected, no guidelines, no standards, and I've had lawyers asked me to evaluate people and they send me an evaluation that was done by somebody who should not be doing that work. I get scandalized by it. So, there's part of my social justice and me wanting to protect the field and the truth from people who do a disservice to the public, to the client, to the attorneys, and to the process.

Interviewer: Okay. What have you seen in some of these poor reports? Are there any themes to them or how you might categorize some of the problems?

Respondent: I see unsubstantiated claims, more advocacy rather than evaluation, I see typos and misspellings, people with certain licenses that are making diagnoses who their prohibited from doing so in our state regulations because the scope of their practice. Those things are very concerning to me to me. I see inadequate evaluation. I'm not sure why lawyers except such poor reports except that maybe they don't know what could be better.

Interviewer: Yes, what a great report would look like. We're saying that in our area as well. It seems that a few lawyers have established close relationships with a particular evaluator and they really do have a good relationship now, but they don't want to work with anyone else because they don't feel confident in the quality from any other evaluators.

Respondent: And they might not.

Interviewer: Yes, rightfully so. Thinking of the unsubstantiated claims, are they using psychological evaluations in some of these reports, or is that what's missing?

Respondent: Sometimes it looks like what they're doing is a clinical interview. And certainly, there are some individuals were quite skilled at conducting a thorough clinical interview and are skilled at doing this. But when I see a report that says for example PTSD, and I don't see them describing the symptoms or the story, just they say they interviewed the person and they have PTSD because of the trauma they experienced. I say okay fine, but what did they say to you? Do they avoid thinking of the issue, do they avoid places, do they have nightmares, do they have insomnia, do they have depression, what are the symptoms, do they have flashbacks, do they have panic? Give me the criteria that you used to evaluate. And that's not happening. As an example.

Interviewer: That makes sense. These claims being made without any support.

Respondent: They're not substantiated. That ruins our credibility as a profession. Especially if it's not working. Here's the thing, I don't know if some of these things are working though. I might be doing too much, but I don't know. I don't know if it's working.

Interviewer: Yes, and that brings us to another area that has come up regarding the lack of clarity around the definition of extreme hardship and how best to demonstrate it, and why as to whether a case is to approved or denied.

Respondent: Frequently I don't every know if a case gets approved or denied. That's one of the issues. I asked the lawyers to give me feedback to let me know. They always say, oh my gosh, your reports are so helpful and we really appreciate it. And they use me over and over, so I

assume that's true. But they often don't get back to me and let me know the outcome. I ask for it because I say it will help me in my process, in developing my protocols, but I hardly ever get feedback.

Interviewer: Okay, gotcha. Just to share I'm also hearing from attorneys that they don't necessarily know why a particular case was approved or denied. It's not always clear for them.

Respondent: I think these immigration judges have a lot of discretion.

Interviewer: Yeah, I think you're right. It makes it very difficult to build structure around this, yet the foundations are somewhat loose.

Respondent: Yeah. I think they were created that way. If you look at the regulations, I think they were meant to give a lot of discretion and not to give a lot of guidance. I think it was intended to allow variations in how people may make a petition. Which is fine, but it leaves us with people who are minimally competent or incompetent doing this work because there's no rules around it.

Interviewer: Yes, the downside. Shifting towards your work and the work you do, talk to me about what you consider to be best practices in hardship evaluations? Are there particular workflows, procedures, or interactions with the attorneys?

Respondent: We pretty much described in our paper. What we thought are the best practices. Usually, they client will call me and say that they need an evaluation for immigration purposes. That's how it almost always starts. Sometimes I'll get a call from the lawyer saying I need an evaluation and I need it fast. Usually it starts like that. I'll have a conversation with the client, I'll ask them if they know what kind of petition it is for and I'll talk to them about what my procedures are and that I'll need to talk with their attorney to get the referral question. I have a form that I ask attorneys to complete before I meet the client that helps guide the referral question, so I can create a testing protocol. So, for example, if the person may have PTSD then I know I need to evaluate for PTSD and I'll utilize evaluations or assessments that will address that. If it is for medical concerns, a hardship because there are medical issues, then I look to medical types of evaluations. It just depends. I need the referral question, so I can create an assessment protocol.

Interviewer: Yes, to zero in. Speaking of do you review the client declaration upfront or not? I'm finding that can be an area of difference between some evaluators.

Respondent: I don't even know what you're talking about.

Interviewer: I don't know what other names it may have. From my understanding is the client's description to the attorney of the problems. So, I guess I would always call it like the attorney's clinical interview.

Respondent: I rarely get that. I do get some collateral information and documents from the attorneys. But my form does ask them, let me look at it so I'm. I would be happy to send it to you.

Interviewer: Oh, thank you

Respondent: Basically, it's getting contact information, background information, type of application, any experiences of interpersonal violence, what's the referral question, and details of the case. Attorneys will fill that out, most are compliant with it, but it is a little unusual. Here I have your email, I'll email it to you right now.

Interviewer: Thank you.

Respondent: No problem. I'll also send you my immigration informed consent form.

Interviewer: Thank you so much.

Respondent: Sure. I just get this information. I rarely get the client declaration, but I sometimes

get an INS letter if the INS has already made a ruling on them, that will come as part of the collateral information. If there are other legal cases or other legal issues going on I will request collateral information about that. For instance, if it is a the CIMT, a crime involving legal turpitude, then there's probably legal documents that I review. An AWA is an Adam Walsh Act case, and there's certainly lots of collateral information that I need to gather from that to. So, I gather all of that information before I do the evaluation.

Interviewer: Yes, makes sense. You mentioned different objective measures, are there particular measures that you tend to use? Once you would never use? Your thoughts?

Respondent: Oh gosh. I use all kinds of things.

Interviewer: We could even exchange of her email if that would be easier.

Respondent: I use the MoCA, which is a mental status and cognitive evaluation. I like that one. For anxiety and depression, I use the BECKs, and I also use the may be the HAM-A and HAM-D. The HAM-A and the HAM-D are interviewer raters, and I will compare their self-evaluation and my observation. Because often I find that people over- or under-report when they do their self-evaluation. So, when I'm interviewing them, I need that comparison because I also want to rule out malingering for example.

Interviewer: Great. So the HAM helps you tap into the aspect of malingering?

Respondent: Yes, the Hamilton Rating Scale. Let me be clear, it does not detect malingering. What it does, is that when I use it to compare their self-report with my observational report, if there's a big discrepancy I have to figure out why. I also use the Duke Health Profile, Duke Severity of Illnesses, Patient Health Questionnaire, and if the issue is physical then I will certainly use the HPQ, the Health and Performance Questionnaire. I also use stress measures such as the Duke Social Support and Stress Scale, the Life Stressor Checklist, the MacArthur Surveys of Discrimination, MacArthur Perceived Stress Scales. For trauma, I'll use Trauma Symptom Inventory, the Harvard Trauma Questionnaire. Mood disorder questionnaires and disability assessments such as the WHODAS. When it involves something that's more legal, such as a crime involving moral turpitude or a VAWA case then I will also use the MMPI.

Interviewer: Oh, great.

Respondent: Yes, because I need something that is more comprehensive.

Interviewer: You mentioned seeing unsubstantiated claims in these poor reports. Your process addresses this by a detailed clinical interview focused on a specific referral question and further substantiate your report through the use of assessments.

Respondent: Right.

Interviewer: Do your clinical interviews also extend out to other family members, or other individuals in their social circle?

Respondent: Sometimes, it just depends. I was going to see if I could find a copy with one that I was displeased with, so I could be more specific with you, but I don't know if I can find it. It's pretty rare. Most the time I get referred people who can stand on their own and do well in terms of an evaluation. There was one case where a woman appeared to have a thought disorder and was pretty disorganized so her daughter-in-law accompanied her to the interview and I invited her in so I could gather some information via collateral interview. When is a legal or some other specialized case, I do interview healthcare providers, or probation officers, and that kind of thing. All gather information from them.

Interviewer: Language barriers. Do use translators or any thoughts on that?

Respondent: So far, I have not had to. My referrals are for English and Spanish speakers and I am fully bilingual. There was a case that I was referred to of a Chinese woman and she was

modestly fluent in English. I tried to get a clinician here in town who is fully bilingual in Mandarin to join me on this case, that I needed their expertise in translating skills. And nobody would take me up on it. Even with my supervision and telling them this is my case; they would just be assisting. Nobody would. Because they are not doing evaluations and they were probably concerned about liability or not having the training. In that case I did interview her, I did not do an evaluation, I did not accept the case. I gave the attorney feedback that I would not be able to do the evaluation because I wasn't competent to do that. It was a unique case anyway.

Interviewer: Do you have any concerns with the use of translators in these cases?

Respondent: The concern I would have would be is if the translators was a family member or friend or people from their church, or their community, someone who is not trained to do this kind of work. For instance, I know that some of the detention facilities all use translators that you dial up on the phone because the therapists that they have hired are frequently not bilingual or competent in the delivery of the service in another language so they have a speaker on the table between them with the translator. I know that they do that. I think there's plenty of research and articles out there on the use of those. I think I even wrote one of those articles.

Interviewer: I'm pretty sure. I'll look into it to. I have found that some people have very strong opinions on that topic. That critical elements can be lost in translation.

Respondent: Here's the thing, this Chinese woman, she needed somebody, so what she's going to have to do is find somebody who did this kind of evaluation, who also spoke Chinese, her particular dialect of Chinese, so that's hard. That situation was a crime involving moral turpitude. She had been arrested for interstate sex trafficking. She had already lost custody of her child and was in danger of being deported. She made some statements to me during the interview, that I would have had to be used in the report, which when I told her attorney, the attorney was shocked she would say something like that. And agreed with me that I should not be doing evaluation. The statement she made were very prejudicial to her case. So, I didn't take the case. Hopefully the attorney would be counseling her, advising her on what to say and what not to say, if they were able to find a new evaluator.

Interviewer: Absolutely, I see the difficulty. People are in this situation already, what are they going to do?

Respondent: What are our clients going to do? They need help and so long as we are very clear in our report, detailing our procedures and the possible limitations and implications that our procedures have on the findings then we're doing everything we can on our part.

Interviewer: Very true. You mentioned declining this case, for very clear reasons. Are there other cases that you decline? Or ones that you make a particular point of accepting?

Respondent: Some cases I decline because I don't have time. I spent a lot of time on these reports. And if you want, I can forward you a couple of didactic reports.

Interviewer: That would be wonderful! Thank you so much. They would only be looked at by me. I would only be looking that them in terms of content, writing style, and organization. We are getting samples of evaluations that people feel are really good or and really poor.

Respondent: When I see a really bad one, I'll forward it to you. They can be horrible.

Interviewer: Yes, and people have spent potentially the last dollars in their pocket in their pocket to get these things. Some folks are indicating that they have a particular theoretical orientation that is leading them in their description of extreme hardship. It kind of came out as a surprise and so and I'm wanting to ask everyone about it. One evaluator had a lot of background in psychoanalytic and attachment theory, so he would utilize a lot of information on past attachments or past attachment ruptures to identify potential vulnerability. Is there anything like

that for you? I don't quite know how to word the question.

Respondent: No, my evaluations are not theoretically driven. This is not a psychological evaluation for the purpose of trying to figure out what someone psychology is. It is a specific legal question about hardship or something like that. I appreciate the question, but I don't. If it was a psychological evaluation for therapy, then certainly I would probably add some of that, but not in this case.

Interviewer: Are there particular aspects that you focus on in determining if there's extreme hardship? Medical, mental health, social/family, economic?

Respondent: Yeah, probably all of it. Yeah, everything that's relevant. I try. I know that my report is only going to be one piece of information that the lawyer is going to be using. I'm not going to be the expert on so many other things. It's up to the attorney to decide what to use from my report, how to use it, and what other information they might need. I know I can't cover everything. I can only do my part. So, I'll do my best. If something else is necessary, then the lawyer is going to have to piece it together. There were a couple of reports when I felt I needed more collateral information from a neurologist. So, the clients were sent to a neurologist, and I had to wait for their report so I could incorporate their data into my report. Recently I had a hypothesis about a medical condition, so I spoke with the client and attorney and suggested that the client get evaluated by an endocrinologist. My hypothesis proved true and I was able to incorporate that in my report and she was able to get treatment for her condition.

Interviewer: Wow, that's wonderful. I think that covers the questions that I had. Are there any areas that you feel we've missed? I want to be sensitive to your time limits too.

Respondent: I think that for every kind of forensic evaluation you have to carefully consider our built-in vulnerability to being persuaded for certain causes. There can be social justice issues and there is concerted interest on the part of the lawyer and client for a certain outcome. I think it's important for us to be mindful of the pulls on our conscience in terms of advocacy. We advocate for the truth that we find, but in terms of being persuaded and not carefully looking at malingering, or whatever. I didn't send you and malingering case, but I do have one that I could redact and send to you. Oh, wait a minute no I don't, I told the attorney I wasn't going to write a report. So, I refunded the client half the fee. I do that on occasion, when I find there is obvious deception or that the findings are not going to be helpful to the case, I'll talk to the attorney, and if the attorney agrees, I refund half the client's fee.

Interviewer: Sounds like an excellent policy.

Respondent: Well, since I'm not going to be spending the time writing the report.

Interviewer: Are there anyone you would recommend, either other evaluators or attorneys that I might talk to about this project?

Respondent: Absolutely, sure. The person who trained me is Dr. xxxxx, PsyD (xxx) xxx-xxxx. xxxxx, (xxx) xxx-xxxx and there was someone in her office named xxx who would be helpful too.

Interviewer: Wonderful, thank you so much for your time.

Respondent: It worked out perfectly. Thank you.

Interviewer: I'll keep you posted on the progress of our work here. Have a good day, bye-bye. Bye-bye.

Participant: Attorney

ID: 4

Gender: Female

Credentials: JD

Interviewer: Thank you for your permission to record our call. Any questions for me? Or should I just jump in? By all means, please feel free to add anything I might be missing, or different aspects we haven't thought of. Since we are just getting going, we are looking for feedback experts in the field.

Respondent: You can just jump in. One question I have is, have you been in contact with our national office, American Immigration Lawyers Association (aila.org) regarding standardized hardship evaluations? Our national office is very active. We have a committee focused on this topic. Someone I think would be good to talk to is xxxxx. xxxxx is on our national US CIS committee. We have some public information and a lot of private information.

Interviewer: Wonderful, thank you so much. Well let's get started. Maybe just to start us the little bit of your background with these cases? How long have you been doing it? How did you get into it?

Respondent: Well, I graduated from law school a long time ago. I've been in practice for over 20 years, and I've been doing immigration for over 20 years. I started with a big family-based practice in the early 1990s. I've done business, family, and removal. I need hardship evaluations primarily in family-based cases and removal cases. Deportation is an older term, which has been replaced by removal.

Interviewer: How would you classify these extreme hardship cases? They would come under both of those umbrellas?

Respondent: They do. Under the family-based case it typically happens when a husband or wife, a spouse is petitioning for the other spouse. For example, a husband who is a U.S. citizen and his wife who is a foreign national. The wife came into the U.S. without any visa, or documents, and entered without inspection. There is a waiver available if the wife wants to get permanent residence status. But that waiver is only available if she goes outside the United States to the consulate overseas or down in the Sea Tac, or in Mexico she's from Mexico. And that's typically hardship waiver. That's kind of where it comes up in the family-based case - when a permanent applications are being filed for a family member or even a preference family member. Preference being somebody under the immigration preference system. You know anything about that system?

Interviewer: I don't actually.

Respondent: Okay. There are individuals that are classified as immediate relatives. There is no backlog or waiting period for those people i.e. thousands of minor children of U.S. citizens. Beyond that there are what's called the preference immigrant. They are kind of in a backlog system according to first, second, third, and fourth preference. For Example, thousands of permanent residents are in preference for 2A, period 2B would be adult children of permanent residence. So, there is preference, but hardship waivers are available in either the immediate family category or the preference category. It all boils down to if somebody entered the U.S. without inspection they have to go out of the country and they basically have to get a waiver to excuse that illegal entry. The government says "Okay, you entered the US without a visa and that was wrong, if you admit to that and it would be an extreme hardship to your spouse or the petitioning relative then were going to excuse that illegal entry because the hardship outweighs the illegal entry, and were going to let you in.

Interviewer: That makes sense, thanks so much. There's so much to learn. Particularly on the

legal side.

Respondent: The family-based cases tend to be more straightforward. Because you're usually dealing with people who are only "crime" has been that they have crossed inside the U.S. illegally just to have a better life. There usually have family here, jobs, a lot have businesses, these are really good people who are very well integrated into the community. The hardship waivers are definitely more straightforward. It's like, if I was separated from my spouse then I'd lose my job, I lose my business, my spouse wouldn't be able to take care of all the kids, and our lives would fall apart. Those are pretty straightforward. Where I see a lot of inconsistency is in the removal cases. In removal proceedings, you're dealing with the more difficult type of client. Usually people have some criminal activity, sometimes it's major, sometimes it's minor. Recently, within the past five years the courts now views DUIs as very serious and an individual with DUI should be deported. If you talk to me 10 years ago about a DUI, you would just need to show some proof of rehabilitation and you would probably be fine for their removal. But now, these are very difficult cases. Some of these people may also have minor convictions and some even have some possession convictions. It's a more difficult scenario and the person is already in removal proceedings with the government actively trying to deport this person. There's a type of release called "cancellation of removal". There are two different types of cancellation of removal. The type that comes up the most, is cancellation of removal for a nonpermanent resident. There is cancellation of removal for permanent resident i.e. someone who already has a green card, but the nonpermanent resident is more common. Basically, this person is been in the country for over 10 years, that person has a qualifying relative defined as either a US citizen permanent resident, spouse, child, or parent. And if that person were to be removed or deported from the US it would not be as extreme but the bar is a little bit higher - an extraordinary hardship to the qualifying relative. Whereas in the family-based cases you have extreme hardship, for removal base cancellation you have extraordinary hardship. Now the judge is just not going to take the spouse's word for it, you have to have proof, objective evidence. So, we send our clients or psychological evaluations. That's where I see vast inconsistency *especially* amongst the Spanish-speaking psychologists. There are some that I would say are just flat out incompetent. I mean you look at the report and it's like really did you actually interview my client? The report is full of spelling issues, and I know there may be a language barrier. The quality isn't there in the writing is scattered. The writing doesn't hone in on the issues of hardship. It doesn't dig deep. It's very surface. It's like if I interviewed somebody, I could probably write the same things. I would expect a psychologist has the tools and skills to go deeper. One of the things they really want to see in removal proceedings is a test to show that the person isn't lying. I think that's called the MMPI? A credibility test so you can say that this person has PTSD, which would be an extraordinary hardship to the spouse, and here are the tests to prove that they are not lying about it.

Interviewer: Oh, I see, that's a critical piece.

Respondent: Credibility is very important to the government, so we tell our psychologists be sure to give them the "lying" test. The "Credibility Test." Because we want to be sure the tests have been done to show that our client is telling the truth, and sometimes it comes out that they are not telling the truth. For removal cases the stakes are a lot higher. If the psychologist's report is not good, and the person gets deported, then you just torn apart a family. Whereas in the family-based system, if an extreme hardship evaluation doesn't come back the way you wanted, talk to the client and say, "hey I think, let's send you to this psychologist..." Or even if the worst happens and the case is denied, which they are approving most cases, I mean we haven't had a

denial and a long time. And these are people who it is difficult to pick out what the extreme hardship is because they are just a normal family. You can always refile a family-based petition but for removals you can't.

Interviewer: Are you doing many psychological evaluations for your extreme hardship, your family cases?

Respondent: Yes, we do. It really helps with the 601 and 601A waiver applications. The distinction being the 601A is for someone who is "very clean" and they basically get a preapproval here in the U.S.. So, by the time they go to be processed at the consulate for their permanent resident status everything is preapproved and there is usually just about a two or three week time out of the U.S.. Whereas for 601 is if they have a more complicated immigration history, and they're going to be spending some time outside the US.

Interviewer: I didn't realize that. So, if the waiver is submitted they still might be spending some time out of the U.S.?

Respondent: Yeah, if somebody enters with the visa then they can stay in the U.S. and complete the process to obtain permanent resident status here in the U.S. The visa allows them to submit what is known as an adjustment of status application here in the U.S. Sometimes they will need, if they've got to follow 601 for some crime, they may need a hardship evaluation done. We typically don't do that many hardship evaluations for people who adjust status because we show proof of rehabilitation for their criminal activity if they need a 601, but we don't need to go into hardship. Hardship comes in when someone enters without inspection. The law does not provide the ability for them to change their status in the U.S. Their only option, if they want permanent resident status, is to leave the country and complete their processing abroad. Many tasks are done prior to leaving the US. For example, the initial immigrant petition is filed and approved here in the U.S. and then the case gets transferred to the National Visa Center. But the ultimate case has to be decided at the consulate abroad for someone who entered without inspection. The processing of the hardship evaluation, which is part of the waiver application, is all adjudicated here in the U.S. Sometimes you have somebody that you think is a clean case you file an I-601A they get preapproved, then they go to the back to the consulate, and more complications in their history come up, and then they have to file another 601 and may be another more in depth hardship evaluation to bolster their 601.

Interviewer: Well, that is really helpful to me. With the hardship there will definitely be time spent outside the U.S. just the length of time differs.

Respondent: Exactly. Everyone has to collect their visa abroad if they've entered without inspection.

Interviewer: any idea of the percentage of cases where you get a hardship psychological evaluation?

Respondent: In the family-based cases, I would guess we get a hardship psychological evaluation in 40% of the cases. The psychological evaluation is a big expense. These are often farmworker families who are scraping together the money to submit the filing fee and the attorney fee. If we can try to save the money we will. So, if we can show the hardship by affidavit, by letters from doctors, and things like that we will. If someone is prone to anxiety or depression or when the kids are, something where a psychological evaluation is really going to bolster the case, then will request the U.S. citizen get the eval done. It provides a formal opinion that this person has already suffered a lot of trauma in their lives, and if they were separated from their spouse, they will go downhill, which means they can't take care of their children, and there may be suicidal tendencies, they are on medications, this is how this person's life is going to be

destroyed if we don't keep the family together.

Interviewer: Yes, I was hearing about a wide range in fees.

Respondent: Yes, the fees vary dramatically. We are all looking for someone who is good, consistent, and doesn't charge high fees. We all have our favorite evaluators. We have used some of the experts who have come across the AILA list serves. A couple of people I would never recommend. They do not provide quality work. It's like they're in it for the money. You look at this report and you can see that's not even my client's fact pattern. They apologize, but then you know they're using a template, which is fine. But everyone's history is different.

Interviewer: Oh, my and that is so critical. Have you found that licensing background or education makes a difference in quality?

Respondent: Sometimes. It definitely seems like the higher educated individuals generally are better. But not always. The person we use now has her master's degree, but she is very compassionate with our clients and she'll take as long as it takes to dig down deep. In the past we used someone on the Eastside in Bellevue who's *very* expensive. Most of my clients can't afford his fees. But he will dig *so* deep that no stone is left unturned. Like nothing. I'll never forget a very difficult Mongolian case once and the government was alleging fraud in an asylum claim. I sent my client for an evaluation and he found a Mongolian video from a Mongolian news channel that talked about shooting, basically what my client was saying was all true. It was that video. But I think he charges like \$8000 for an evaluation. Which is way too expensive for most of my clients.

Interviewer: Yes, he sounds more like a private investigator at that point.

Respondent: He says that he does not do an evaluation until he has met with the client at least ten times. He goes to their house and he interviews all family members. He says, "My reports are truthful, so I'll call you if I think someone is just completely making something up, so you know that. I can't proceed because I won't write an evaluation for someone like that." He's very ethical. He is really so, so, so good. We just don't use him often because he's so expensive.

Interviewer: That's so good to hear that there is someone out there with such a high bar. In all honesty I've been hearing more about cases where the bar isn't high enough in the reports are very poor.

Respondent: Yeah, we definitely see that.

Interviewer: What are you seeing?

Respondent: The testing can be spotty, definitely the lack of detail. It is just like a surface interview and they don't really know our client. Sometimes when you're dealing with trauma, people are not going to tell you stuff on the first visit. Especially with Central American children, you need to get them comfortable and they need to know you. The deeper stuff is not going to come from just one or two visits. Evaluations need to be deeper and evaluators and clients need to know they're going to have to meet for several sessions, so the psychologist can get to know the individual and the individual can get to know them. In court, the judges will often say, "I'm not going to accept this evaluation because it is clear the psychologist does not know this client. If they go to a treating psychologist, okay fine I'll put more weight on that. But somebody who has just written this report which it doesn't tell me anything and it just talks about a lot of tests. No." Sometimes they can just be thrown out and then the client lost all that money. It's a shame.

Interviewer: So, greater depth is needed.

Respondent: I think the evaluator needs to do more than a single one-hour visit. Because who knows how long that actual interview was. Maybe the testing takes up a lot of the time. So, the psychologist may just have a very cursory discussion with the client. Or maybe the client filled

out a form that the psychologist makes a report from. When I call the psychologist they often don't seem to know about the client, or the details. I would think that if you have had an in-depth conversation with someone you would remember the details because they had touched you at a human level.

Interviewer: Yeah, I would agree. At this point, hopefully you got to know this person's life story. It's a very intense situation they are in. It is not an easy story.

Respondent: Yes. It is very difficult for some of us being raised in the United States to understand being raised in the country where horrific things happen, it's hard to think that people have actually gone through that.

Interviewer: Definitely. So, you talked a little bit about the back-and-forth with the evaluators, how does that work? Do you like to see a draft of the report? Or what are some of the ideal processes like to see?

Respondent: I always want to see a draft. There's also an ethical line. If you call the psychologist in advance and tell them everything; I don't want them to be swayed by what I say. I want it to be a fresh objective report, because that's what we need to submit, an objective report. So, I have the client sign a release, because sometimes the evaluator wants to see documents to provide some background information. I like to see a draft in advance and I edit it in a review mode with questions and comments. And I like to talk to them afterwards, how do you feel about this, so I can get a deeper understanding of what the hardship is. That helps me write my brief. So, I feel there needs to be a dialogue between the evaluator and the attorney, but both sides have to know that we are independent professionals and it needs to be objective on both sides.

Interviewer: Being objective....

Respondent: Yeah. Some evaluators have difficulty either capturing enough detail or becoming overly emotional and losing objectivity. I think there's inconsistency because the word hardship means a lot of different things to different people. I think it would be helpful for evaluators to maybe be trained in an immigration seminar on the law regarding hardship and what that means in an immigration context, so they know what the law is. It's been analyzed by several cases over the years, and how the word extreme has been analyzed versus the word extraordinary because those are two different standards. I try to educate the evaluator on what the government is looking for in extreme hardship. These are the factors that cases over the years have determined would create an extreme hardship and these are the factors that would create an extraordinary hardship. So then when the psychologist is doing the report, they will have this in mind. What about this person's history will rise above the level of extreme or extraordinary? I think that would result in a better report.

Interviewer: Are you aware of any resources in the area or online offering such trainings?

Respondent: AILA has an annual conference and AILA has continuing education courses. Training on hardship and family-based cases are usually offered. There is also a regional conference in February or March that often talks about family cases. Or if you approached our local chapter at AILA WA.org and asked for training. I'm sure we could locate some really good attorneys to do a training seminar and provides materials to take home about what the law is.

Interviewer: Thank you so much. Are you aware of any best practices that exist for attorneys or evaluators currently?

Respondent: Evaluators best practice is to do a combination of testing, including the credibility testing, as well as in-depth interviews, which could take several, at a reasonable cost, and to know what the law is. For attorneys, I think best practices regarding getting evaluations involve

analyzing the case. If there is any question as to whether the case needs an expert opinion, then I give the client the option to do the evaluation. I explain the situation to the client, in-person, in the language they can understand so they know what's involved in an evaluation. Perhaps it could be a collaborative meeting with the attorney evaluator and client. I also think it's good for attorneys to make sure they review the report to make sure there's nothing in the report that could harm the client.

Interviewer: I am also asking everyone if they would be willing to share any redacted psychological evals with us. We are not interested in content, we're looking at structure, flow, format, the good, and the bad.

Respondent: Yeah, we would have to get a release from our clients. I would deftly be willing to share but it is a sensitive subject.

Interviewer: I completely understand.

Respondent: Yes, even if it was redacted their history is still there. And so, if I was that person I would definitely want to know.

Interviewer: Yes, that makes sense.

Respondent: Yes, we would have to get the client's written consent and then redact them, but if they are okay with that then yeah, I would be happy to share that.

Interviewer: Thanks, I appreciate that.

Respondent: Can you provide reassurance that we would not be in violation of any HIPPA regulations? I don't really know HIPPA that deeply. I would want to make sure I was in complian.ce

Interviewer: Sure, when I send you the consent, I will add an element regarding HIPAA compliance.

Respondent: Great, thank you. It may not even be applicable.

Interviewer: It makes sense to me, then you know what you are signing up for. That is actually in it for the questions that I had. Is there anything you think we might have missed?

Respondent: One thing I think, again, that would be very helpful, is if there was a referral base of good evaluators in multiple languages. With consistent best practices. It would be very, very helpful. Sometimes if the court starts to see the same evaluator names over and over their eyes sort of glaze over. They consider them hired guns. So, we want to keep the names fresh for the court. But in family cases there are so many different adjudicators that's not as much of an issue.

Interviewer: Is the evaluators reputation is also a factor in the "eyes glazing over" in the court?

Respondent: There are definitely experts who write good reports, but they don't testify well. So, they get a bad reputation with the court and lose the respect of the court. There are other evaluators who, honestly just write bad reports. Many firms use the same evaluators, so the court, depending upon the particular judge or government attorney, have some evaluators that they just don't trust for whatever reason.

Interviewer: Wow, so this is critical.

Respondent: Yeah, reputation is important because the government sometimes thinks that if you pay for an expert then that expert is just being paid to say what you want them to say, which is not the case. That would be highly unethical.

Interviewer: But there are concerns, that makes sense. Are there other evaluators or attorneys you feel I should talk to as part of this project?

Respondent: Have you spoken with xxxxx, she does family court cases. She's very thorough. Her email is xxx@xxx.com, xxxxx, she doesn't do any removal cases, but she does a number of family-based cases. She's at xxx@xxx.com, xxxxx in Yakima xxx@xxx.com, and xxxxx in

Kennewick, I think it's xxx@xxx.com. In Spokane, xxx works for a nonprofit called World Relief. Her email xxx@xxx.com. I also know someone in Wenatchee, let me know if you need that.

Interviewer: Thank you, that's so helpful. Any evaluators what you might recommend we reach out to?

Respondent: xxxxx, at xxx@xxx.com. She does pretty good work.

Interviewer: Great, thank you so much.

Respondent: Oh, you're so welcome I hope it was helpful.

Interviewer: Absolutely, thank you for your time. It was great and gave me a lot of good information.

Respondent: I think it's a wonderful what you're doing. Bringing up the standards would be awesome!

Interviewer: Great, that's what I've been hearing. I would be happy to keep you up-to-date on the progress of our project if you'd like. Thank you so much xxx have a good afternoon. Bye-bye

Respondent: bye-bye.

Participant: Attorney

ID: 5

Gender: Female

Credentials: JD

Interviewer: Thank you for your permission to record our call. It just makes my job a lot easier. Any questions for me? Or should I just jump in?

Respondent: Go ahead, and if I have any questions I'll ask.

Interviewer: This is a very open interview so there's areas you think I'm missing or need to reword by all means please share your feedback, I would love it. So perhaps a place to start, it's a bit of your background on doing extreme hardship immigration cases?

Respondent: Like maybe how long?

Interviewer: Yeah, how long, what you like about it, what's hard about it. In general.

Respondent: I'm going on my 17th year. I've been doing this a long time now. I feel like each extreme hardship case is so unique. The waivers we have to show extreme hardship to a certain relative for our clients to be granted this waiver, it comes up in a lot of different kinds of immigration cases, not just where you need an extreme hardship waiver. It can also come up in immigration court cases where people are asking for a second chance to stay in the U.S.

Interviewer: Oh, interesting.

Respondent: Yes, it comes up in so many places. I feel like a lot of what I do is a variation of the same thing. I do a lot of cases for people that are applying for permanent residence through a spouse or parent or child as in an adult child. And for one reason or another they are not eligible to get their permanent residence directly. So, they have to apply for waiver. Because they're not eligible for some reason. There's a lot of reasons why they may not be eligible. Under the immigration law, there are certain situations when you can apply for waiver, to waive what is making you ineligible. And there are certain circumstances you can't. If you are eligible, you have to show a high-level of hardship to certain family members. Some waivers you can actually show the hardship to yourself.

Interviewer: Oh really?

Respondent: Yeah, that can be nice in a certain way. In certain cases, you don't need a qualifying relative, but you're talking about hardship to you or other people who are not specifically qualifying relatives.

Interviewer: Do you use psychological evaluations and all those different types of cases? Or some more than others?

Respondent: Some more than others. It depends on what hardship evidence I already have. If someone has some mental health or psychological issues they may have already been in therapy and if that's documented then an evaluation may not be necessary. The documentation is there. But if a person has never had treatment but there are mental health issues such as depression or anxiety, or past trauma, or based on our experience someone who has gone through XYZ and has never talked with someone about it, there might be some things going on. We also, use mental health evaluations in asylum cases. For clients who are applying for the VAWA (victims of domestic violence) or U-visas (victims of crime). Because in those cases you have to show someone has been psychologically impacted by certain events, and sometimes there is no other way to do that other than the psych eval. I know that's kind of off-topic.

Interviewer: Yes, it sounds like they are so closely related. I wonder if that's an area will want to investigate in the future? There seems to be a bit more written for what is needed on asylum cases, but not much more. Any idea of what percentage of your cases, thinking of your extreme hardship cases, that you request a mental health evaluation for?

Respondent: I would say a solid 50%. Maybe more.

Interviewer: Do you have a sense when immigration adjudicators are looking at hardship case involving psychological issues, any sense of what factors weigh most strongly in favor for grant?

Respondent: One, if there is a history of any mental health issues that already documented, maybe not so well but there's something out there already maybe someone's been prescribed antidepressants already, so they don't think you're inventing this for the case. If there's something out there that can be helpful. Maybe they met with someone in years ago even if they didn't get a letter, that can be helpful. Obviously, the evaluation is important, the way its prepared, the way the diagnosis is reached, objective testing (it doesn't have to be overboard), being clear about how the evaluator reached their conclusions and what they tested for. Including some factual background, but not rehashing what is already in the client's relative statement. Because we always do a really detailed declaration with our clients and the person getting the evaluation. So sometimes, if it's just those same facts repeated it can be a bit much. It's nice to have insight and additional details that a mental health professional can provide. Taking it to another level. Something in there about why, just a little, the evaluator thinks the person is a reliable reporter - that they are giving accurate information. Their tone of voice, their behavior, their emotions. That gives a little bit of feel to it. The resume of the person giving the evaluation showing that they have the expertise, background, and training to do these kinds of evaluations. I think that's really helpful.

Interviewer: Along those lines, does educational background or licenses make a difference? Or some or experience?

Respondent: Having the educational background is helpful, it doesn't matter where, and the credentials. Then showing on the resume or in the report itself the evaluators particular expertise in this area, or what they've done for training and oversight. Every now and again I've had evaluators who have a supervisor, and I think that's okay, so long as it's clear what's going on.

Interviewer: How could that be positioned, to be most helpful to you? What would be the best way to indicate the supervisor was involved?

Respondent: To be clear on how the evaluation was performed and the role and tasks performed by the supervisor.

Interviewer: You mentioned a resume, do you usually have a separate resume coming from your evaluators as well?

Respondent: I try to. If I don't, it's an oversight.

Interviewer: That's great to hear. Anything about what makes one evaluation better than another? I know that's a big question, but are there some stars that stand out and what makes them different? Or what makes a bad one?

Respondent: The good ones are well written and I'm partial to well-written documents. They read well and it's clear that someone took the time to write something - proper grammar, good spelling, the basics. Also, the level of detail. I like a structured evaluation that starts off saying who the evaluator is and why they're doing the evaluation, what the purpose is, a little bit about the setting, and some background about the client, which can be broken down into sections. Then the tests that were administered. I think tests are always done, but they're not always in the evaluation. I think it's helpful to have the testing in the report. It looks more official. What tests were administered, why they were given, the results, and what the results mean. Findings, and summary, and weaving in the facts to the findings. Making it clear how the evaluator got to the findings. I've seen some really weak ones that get right to the findings without any analysis at all. They are not persuasive at all.

Interviewer: Walking the reader through the whole process. Here's who I am here's what I did, background what we found, the analysis I did in the conclusions I drew. Yeah that makes sense. What instructions do you give an evaluator who is performing evaluations for your cases? How do you kick it off? And is there a back-and-forth?

Respondent: In an ideal case I try to explain why we want the evaluation done. What we are hoping to get from it. Without saying we want you to find she suffers from PTSD. But, how would she be impacted psychologically if she were separated from her husband for ten years? Just so they know exactly what we're trying to establish and it stems from a mental health perspective. How would this person be impacted? I always try to make it very clear why we're doing it and what we're asking. Often if we've done a declaration, evaluators want those. So, I try to have those in shape before I have a client meet with an evaluator. You could argue that that might sway their perspective since they know the story, but I think it also helps because then they have that background and it makes the time more productive. Of course, things come up during the evaluation that we didn't know about and we will incorporate those facts into the statement or vice versa. So, there is a back-and-forth. After the evaluation report is prepared the evaluator will usually give us a draft and ask for feedback. I'll give my feedback and try not to ask someone to write whatever I want.

Interviewer: But that is quite helpful, you to see where the evaluators going and how the reports coming together. Great, that's good to hear. Common mistakes and evaluations? Any patterns?

Respondent: I think the mistakes are primarily in weaker evaluations. I don't know if they're necessarily mistakes. Flying through the facts and getting them wrong. That can be hard. If a client says one thing in the evaluations is something else. Especially if the hardship case that's going to be in court and is going to be testimony you can't be saying different things. Making some factual mistakes. That's really the main one. Otherwise it's really just not doing much analysis, or not addressing certain things that are very important to the case. Another thing I forgot to say is that I always prepare my client for the evaluation to.

Interviewer: Oh, I have not heard about that.

Respondent: Yes, I prepare my clients for the evaluation because they have no idea why they're going there. If you don't prepare them, they might go in and barely say anything. They may not know what to say, feel afraid and unsure of why they're there, or know what they're supposed to talk about. Then we have an eight page declaration and none of it was covered in the evaluation. So, I think attorneys need to make sure their clients know why they're going for an evaluation.

Interviewer: How do you describe the process to clients? What does that conversation look like?

Respondent: I'll usually explain to the client what we are trying to show for the client to win their case, what they have to establish with this waiver, and who they have to show hardship to, and I'll explain that hardship can be shown for financial, emotional, or psychological reasons. I'll explain that these things that you told us - it's like telling someone hey there's something wrong with you.

Interviewer: It's a delicate conversation.

Respondent: It is. I'll explain how often I use evaluations and how helpful they are. I always tell people, look at this as an opportunity to talk to someone about things that are going on. So, I frame it as a positive thing that will help their case and them personally to get resources and referrals. I ask them to make sure that they tell the evaluator all the things they told me and I'll review the declaration with the client and give it to the evaluator.

Interviewer: Is cost a concern to? And how much it might vary from evaluator to evaluator?

Respondent: That is a big factor for a lot of people. It can be costly. We've been lucky to have evaluators who have reasonable fees, but they're not always available. We use other organizations, such as Puentes. It's a new organization, and the woman who started it was doing mental health evaluation and saw the need that many people can't afford to pay a lot for an evaluation. So, she recruited a bunch of social workers, psychologists to train them to do sliding scale evaluations.

Interviewer: Wow, this is fabulous.

Respondent: Yeah. She might be someone you want to talk to. Right now, she's doing a lot of them. I think a lot more people can afford her fees. Although I have to say at times, depending upon who is doing evaluation, the quality is reflected in the cost of the evaluation.

Interviewer: I suppose it could be the case that potentially those who have lower fees may have less experience?

Respondent: Yes, I think it's that they're new to this. And it's like all things, some people that are new to something pour all their effort into it while others don't know what to do and so do a poor job. Like everything.

Interviewer: And just in general, do costs vary dramatically?

Respondent: Yes, they vary dramatically. It could be anywhere from \$500 to, I don't use the really expensive ones, but I've seen \$3000-\$5000 evaluations. I think some people do pay that much for an eval. That's not even testimony, they had to testify.

Interviewer: Does it affect the end-product much?

Respondent: I think it's the individual evaluator honestly. It's hard, because on affirmative cases where you're just submitting to USCIS, they're not going to go to an immigration judge. They're never going to have to testify. See can consider different evaluators for those cases as opposed to cases that will be in court and they will be providing testimony. The government attorneys know who's who, they formed opinions, and judges to. And you hear what they have to say. Oh so-and-so, she'll say whatever you want.

Interviewer: Their reputation gets known.

Respondent: Of course, you consider that.

Interviewer: So that changes the ballgame, if there's a potential going into court.

Respondent: I think it does.

Interviewer: That makes sense.

Respondent: Not that I'm saying you would use someone with a poor reputation if they were going to court. But we use this one woman who does a really good job, we heard government attorneys say negative things about her, that surprising because we don't see anything that's concerning. But I know that's how they feel. I think she does a really great job and is conscientious. But for some reason.

Interviewer: Maybe along the same lines, and people were mentioning that the reports needed to walk this fine line of painting a picture of the client's story, and yet keeping in mind that the audience is for the court and the need to be objective. Keeping it objective and yet not too dry.

Respondent: Yes, that's definitely right. They're not supposed to be an advocate saying this person should win this case. They need to focus on the mental health issues the person has and how this person would be impacted psychologically if this were to happen. To stick to that and not advocate beyond that.

Interviewer: You mentioned Puentes. Are you aware of any other groups or organizations involved in providing psychological associations?

Respondent: Yeah, there's also an organization called HealthRight International. They're based in New York. They do mental health evaluations pro bono. Even if you're doing a case on sliding scale though still do pro bono. They provide mental health professionals who are volunteers throughout the U.S. to do these for immigration cases. But I don't know if they do them for hardship waivers. They have trained their mental health professionals well. They, by far, are the best. The people they have chosen locally have done a great job so far.

Interviewer: Excellent.

Respondent: I can always put you in contact with the person we deal with to get in the waiting line for an evaluation. You know you wait a while to get a client evaluated, but it's worth the wait if you have the time. However, they trained their volunteers, they did it right.

Interviewer: Good to hear. It's always nice when someone's figured out. I'll reach out to them for sure. Thank you.

Interviewer: Along those lines, are there other attorneys or evaluators that you think it might be good for me to talk to as part of this project?

Respondent: Sure, you've talked to some attorneys already right? I would say the Northwest Immigrants' Rights Project. They have like 25 or 30 attorneys. And they had a few attorneys who just do the family evaluations with the waivers, that's all they do. Her name is xxxxx. They might use a lot of pro bono mental health evaluators. These to have some "in-house" social workers that they trained to do eval for clients. I will email you names of folks we've worked with in the past. xxxxx started the Puentes organization. She's really wanted to do this, she's passionate about it, but I think it would be good to see how well it's working. She also does eval's for tons of lawyers. Another attorney is xxxxx. Do you want more?

Interviewer: I'll take as many as you're willing to share. I'm always trying to increase the number of people I involved in this process.

Respondent: Sure, then another one is xxxxx. She is to be the legal director at the Northwest Immigrants Right Project (NERP), another person is xxxxx who is also at NERP. They've all been practicing for really long time and are just really good resources.

Interviewer: That would be great, thank you so much. The more input I get the more robust it gets. We are also interested in looking at redacted evaluations. We are looking at structure,

format, what works what doesn't. We're not interested in content. I don't know that would be of interest to you at all.

Respondent: Sure, I could send you some. I could send you the good ones and some bad ones.

Interviewer: perfect! That's exactly what we're looking for not the content just what makes a good one and what makes a bad one. That would be really helpful. Are there any topics we didn't cover that you think would be helpful?

Respondent: I think attorney's need to be careful not to overuse evaluations because it weakens the ones that are strong. If ever gets an eval then they become less valuable in a way. Everyone probably warrants an evaluation, but if the judge or agency keep seeing us use the same couple of evaluators then they start to wonder about their value. I guess it's not really an issue on your end.

Interviewer: So that's important though. It's part of the picture.

Respondent: it's more in the asylum context. With asylum there's a huge need in asylum. Under the immigration law there is this rule that you have to apply for asylum within one year of entering the United States. So few people know about that. Most people genuine claims are really messed up when they come here. I've had so many people in my office have been in the U.S. 10 years, and it's the first time they've ever talked about what happened. If there are psychological reasons why the client didn't come forward sooner like they have PTSD and they avoid thinking of the past, then you can get around the one year limitation period there such a need in that context. Sometimes will have clients just go meet with the therapist for mini-evaluation to see if there's anything there to work with.

Interviewer: Yeah can we go further with this.

Respondent: Yeah. If you couldn't even on there's nothing, I don't know if it's worth submitting the eval.

Interviewer: So, the need in asylum cases is huge.

Respondent: Yes, to show that they merit an exception to the one year filing deadline. It's a huge number of people. A lot of lawyers don't really explore this with clients. But it's a huge need. It also goes to helps show if someone telling the truth of what happened to them, it helps corroborate past trauma. We don't always have proof. In asylum cases the person who abused you is not going to give you a letter. You don't have any way to prove what happened other than the psychological effects. We use evaluators all the time for these cases-always. So, I don't know if you want to branch out but this is the area in need.

Interviewer: Wonderful, thank you so much for that information. I'd be happy to keep you updated on our project as it progresses.

Respondent: Sure, that would be great. Do you know Dr. xxxxx? She's done a ton of evaluations for me.

Interviewer: That's great to hear. You know I don't know that we knew she did them. That's the funniest thing, she's right in our backyard.

Respondent: She stopped doing them for a long time, but she's done a lot of them in the asylum and VAWA context.

Interviewer: that was all the questions that I had, so thank you so much for your time. I really appreciate it. Thanks so much. Have a good night. Bye-bye

Respondent: you're so welcome, bye-bye.

Participant: Attorney

ID: 6

Gender: Female

Credentials: JD

Interviewer: Thank you for giving me permission to record our call. I just started the recording. Sorry to have interrupted you, but you were speaking of the importance of the relationship between the evaluator and the attorney?

Respondent: I'm very clear with my therapist's as to what I want and what I need. I frequently send them a template. I want the first part of the report to talk about you, why should we believe you, this is not the time for you to be modest or shy. I need for you to give me a summary as to why the judge should believe what we're saying. Do include a resume or CV, but the first paragraph or two I want to hear how you walk on water. Then what I really want is the narrative. I realize you're going to give me these numbers, and these codes, and whatever. But what I really need for you to do is put your teaching on and teach not only me, but the judge, why you are saying what you are. Part of it may be dumbing it down, but you can't just give me the code.

Interviewer: Yes, it needs to be explained. That makes sense.

Respondent: So, I actually handhold quite a bit at first. Then I give them carte blanche. I ask my evaluators if I could edit the report using track changes and I have never had someone say no to me. I tell them up front, I'm never going to ask you to lie, or embellish, or whatever. Some evaluators reach a conclusion without showing me the steps of how they got there. They may understand it, but I need a bit more information of how you got there and likely the judge will too. No one has said no, but some people have said what you are asking for I can't do. Fair enough. The other thing I frequently see with evaluations is that they're missing a conclusion section. I frequently go back and ask for a quick overview/summary, no more than four or five sentences, in a nutshell why is this so critical. The bad ones that I have seen have really been in the "file, stuff, and shred it" type. [recording unclear].

Interviewer: Okay gotcha.

Respondent: Because my folks, I will work with someone who's given me a crappy one once. And then were done. I just can't. I've been doing immigration since 1997. For many years I did immigration for high end folks from Microsoft and other high-tech companies. So, money was not an object. Then I made a shift. I wanted to help the people who could not afford the zillion dollars an hour. My clients very frequently are paying me like \$100 a month for years. So, when I'm asking them to pay another thousand dollars for an evaluation, I know I am talking about a big sacrifice on their part. So, I can't afford to have an evaluation that is not functional.

Interviewer: absolutely. We spoke earlier about how much the quality and prices for evaluations vary. Have you seen that as well?

Respondent: Oh yes! This was before me, obviously. I had a guy who paid \$20,000 for the eval. I don't even understand what that would look like. No.

Interviewer: Yes, you have to work on it for years.

Respondent: Yes! Oh my God! What do you mean you paid \$20,000. Does not compute. Does not compute. I mean it's a fine eval, but it's no better than my client pay \$1,000 for. It was way more technical and there a lot more issues. So yes, I could see it being more expensive because the guy was detained. So was done in jail. But it doesn't matter, \$20,000 is a hell of a lot of money. I've never heard of any other one anywhere near that. At first, I thought there was a mistake, but the criminal law attorney vouched for how much they paid.

Interviewer: Oh, that sad. And you mentioned the cost isn't necessarily tied to quality. Are you seeing any relationship between the evaluators educational background or certifications and quality?

Respondent: One of my huge challenges is that I don't like my therapists to use interpreters. So, my world of therapists is really pretty small.

Interviewer: Oh! So, tell me your thoughts about the use of an interpreter.

Respondent: Lots of different things, and I feel very strongly about it. I think the interpreter slows down the process, by its very nature. And that really interrupts the dialogue that happens. Sometimes we have to use an interpreter. 90% of my clients speak Spanish. My experience with translators is in court where I frequently think that's translation was not quite on point. It was close. And it may be technically be correct. But it was incorrect and how they used it. For example, I was once in court with the client the client stated that my child was born with his stomach outside his body. And it was translated as the stomach was inside out. Somewhat similar, and arguably the translation was technically correct. But give you a very different impression of what the illness was. That's where, if someone knows Spanish, you can at least ask the next question is to have it makes sense. But if you don't know the language you have no idea and you left with the impression that the stomach was inside out.

Interviewer: Yes, the interpreter said it was inside out end of discussion moving on.

Respondent: Yes, that's why don't like translators. Again, I use them. But if I got my druthers, I will always go with someone who knows the language. Even if it is someone who is from Columbia and my client is from Mexico, even though there are different syntaxes or whatever else it still better. They can read the body language at the same time that the word has been given out and use of the follow-up question makes more sense, and there's further clarification. So, my world of therapists is generally pretty small, because of your not bilingual I will be using you.

Interviewer: What is the general percentage of cases where you use a mental health evaluation?

Respondent: I frequently use them in asylum cases because you're trying to establish that this person, especially if they were only *threatened* as opposed to assaulted. If they've been physically assaulted the harm is clear. But if they threatened to kill me and did that scared you and how do I prove that.

Interviewer: Yes, how do you prove the impact.

Respondent: So, use them in that context for asylum cases very often. I use them for U-visas because for U-visa you have to prove that you are a victim of a crime. Again, pretty easy if you're raped and you bore the child. Which I've had. But I've also had the situation of looking down the barrel of a gun, and the person not shooting. And it's like did this person really suffer or not? I'm like are you kidding me? Seriously, that is the position immigration takes. I've also use them in trafficking cases. To prove that they were coursed or manipulated into prostitution. Which is usually the trafficking cases. Judge often thinks it's subjective, "no one was holding a gun to her head." Yeah but he was threatening to take the children away, or he was stalking the kids. I use them for that very frequently. I use them less so for cancellation of removal, which are the hardship ones that you are talking about. My experience has been if you are just going for the hardship of how difficult it will be to be separated, and this is the first time you going to a therapist, judges tend to dismiss them. That's been my experience. If I know this is potentially going to end up in court, I try to get people going to a therapist way in advance. So, they can say they've been going to therapy for the past year. Actually, it really helps my clients, so I don't have any problems with that.

Interviewer: Yeah, it's a win-win.

Respondent: Right, I always try to take care of my client. Other than the money out of pocket, I think it's good for them to deal some of the issues that are going on. That's where use the therapist more than any other cases - the asylum and U-visa cases. Unless there's been a clear crime. I've had a lot of rape cases lately. I feel like I'm getting PTSD, secondhand. I'm serious.

Interviewer: Speaking of, this work has to be really challenging, and I suppose really rewarding. What are your thoughts on that? It's a tough field.

Respondent: Oh, it's rewarding! It's interesting, because there are times when it's almost as if I am reading a book. I don't sort of internalize what my clients are going through. Every so often my translator will say, "Oh my God that's a horrible story!" And I think, "Oh wow you're right. That is a horrible story." It's not that I'm getting calloused, they're all horrible stories. It's like right now at this stage in the case and I can't deal with the emotional aspects of the story. I have to think, "How am I going to use this in this case?" I can't go into the emotional side of it.

Interviewer: My gosh, that would be so difficult. Trying to stay focused.

Respondent: Yeah.

Interviewer: In the evaluations you've received, what are some essential components? You mentioned the evaluator introducing themselves and describing their qualifications up front. Are there other components that you find helpful?

Respondent: Yes, oftentimes evaluators will jump straight to the conclusion. "This person is suffering from PTSD." I need to know what leads you to believe that. Explain it, describe the symptoms, and give examples. It needs to be described so that someone who wants to deny the waiver can get there with you and say, "Oh, that person really is suffering."

Interviewer: Take them to the process. That makes sense.

Respondent: I think because so many of these issues are so evident, in my opinion. Why should I have to explain that this person is suffering from PTSD, clearly they are. It's almost like asking you to dumb it down, but I need you to explain how you got there. That is the piece that is frequently missing. Sometimes it's like give me the examples. That's another way of putting it. Give me an example. When you say this person is suffering, give me an example of why you think they are clearly suffering - they haven't slept for the last three weeks, they lost weight, etc. Thank you, that's exactly what we needed. If I know my clients well enough then I can ask rhetorical questions. I never want to put words into my therapist's mouth. I know my client is not sleeping or not eating or whatever I can say something like so did you discuss with the client what effect this is having on her sleep. So, then I didn't put those words in your mouth. I would rather have the therapist tell me. My theory is that I always want to be able to say, "did I tell you to write something?" And they say, "you asked a lot of questions, but you never told me what to write." If I've ever had to put them on the stand, you know they're going to get cross-examined. And I don't want any lines being crossed.

Interviewer: How about background documentation?

Respondent: I normally provide the client declaration up front. Many times, I'm trying to keep the price of the evaluation low for my clients, I don't want them to have to go to ten meetings with the therapist before they can write up the report. I've already spent that amount of time to get the history. The declaration either connects the dots that are missing or provides guidance of where to start the interview. I've had them come back and say the client's declaration says X, but talking with them, I think you need to talk to them again. And I think good, it should be a collaborative kind of thing.

Interviewer: Yes, that sounds like a best practice. The back-and-forth, reviewing, providing feedback. Are you aware of any best practices, industry groups, meeting of that nature?

Respondent: I don't.

Interviewer: Okay, I've been asking everyone just in case, but I haven't come across any either yet.

Respondent: I have not. I think my very first evaluation was done by Dr. xxxxx? He was at Antioch, I'm pretty sure.

Interviewer: Oh, maybe before my time. There was a, Dr. xxxxx?

Respondent: No, xxxxx was his name. I think he was the first one who did one for me, years, and years, and years ago.

Interviewer: Yes, I'm finding him online. And that brings me to my next question, do you feel there are any other evaluators or attorneys we should talk to as part of this project?

Respondent: It all depends upon what sort of grouping you're looking for. I'm assuming you spoken the folks at NERP?

Interviewer: Yes, I have spoken with them and it was so helpful.

Respondent: I've got a few names for you. Have you spoken with xxxxx or xxxxx. These are folks who've been in the business for many years. Their number is (xxx) xxx-xxxx. Another one would be xxxxx (xxx) xxx-xxxx. She's been practicing longer than I have. Have you talked to anybody at, xxxxx or xxxxx?

Interviewer: Yes, I did speak with xxxxx.

Respondent: Great, so you spoke with them. A newbie is xxxxx (xxx) xxx-xxxx. Another person you may want to talk to, which may provide a totally different perspective but maybe worth it, is xxxxx.

Interviewer: Yes, I spoke with xxxxx.

Respondent: Here's another idea, have you considered talking to a judge?

Interviewer: You know what, I haven't. Would they be open that kind of thing?

Respondent: Well, I would talk to a retired judge. I'm going to give you his phone number. xxxxx. Be prepared to get a lecture. (xxx) xxx-xxxx. I think you'd be willing to talk to you, and I think it be sort of fun.

Interviewer: That's a wonderful idea. Thank you so much. Are there any evaluators you would suggest I contact?

Respondent: Have you spoken with xxxxx?

Interviewer: She's on my list, but I haven't spoken with her yet.

Respondent: Have you spoken with xxxxx (xxx) xxx-xxxx. None of those of the \$20,000 one, sorry.

Interviewer: I almost want to talk to them just to find out what that was all about.

Respondent: [Laughter].

Interviewer: Another part of our project that I would just like to put out there, is we are also analyzing redacted ecological reports. Really looking for content writing style organization. No portion of the client's information would be used.

Respondent: That requires more work than I'm going to commit to.

Interviewer: No problem, I completely understand. Any aspects of this field you feel we haven't touched on that you would like to share some feedback on?

Respondent: I think you guys [psychologists] are heading into a growth area. I think that in immigration things are just getting more and more difficult and more trying. So, I think psychologists are going to be used way more. Which is not necessarily a plus for my clients, but I think it's a growth field.

Interviewer: Yes, I suppose difficulty with the expense and additional time involved with an evaluator? Is that what you are thinking in terms of negative impacts on the client?

Respondent: Oh yeah, it's huge! Plus, I think more and more is going to be required in Tacoma at the detention center. And the question is, what's the impact [of someone going to detention] on that as well. Which I think it has an impact.

Interviewer: Yes, it changes things. Thank you so much for your time. I will also resend you the consent form via email. Please just sign it and resend it to me thanks.

Respondent: Great, sounds good. Good luck to you.

Participant: Evaluator

ID: 7

Gender: Male

Credentials: PsyD

Interviewer: Thanks for your permission to start the recording. Any questions for me?

Respondent: No, we've covered it all. Just, fire away. Ask the questions you'd like.

Interviewer: Okay I'll just jump in the questions. By all means please feel free to add any information. Let's start with your background in doing immigration extreme hardship cases.

Respondent: Well, there are all kinds of immigration cases that involve a psychologist. Hardship is one kind of evaluation that I do.

Interviewer: So, it's quite the broad field. So, for this research, our thought was to reduce the scope and focus on hardship cases only. What are your thoughts on that? Do you think some the other areas need attention as well?

Respondent: Well I think they all do. When I started doing this 20 years ago, there was no one I could go to for supervision. I got pieces of it supervised. But now it's quite popular there's a lot of people doing this kind of work now. Even social workers and licensed counselors are doing it. But I think a lot of people fly by the seat-of-the-pants, as I did, but now people don't have to, because there's a bunch of us who've been around for a while. Yeah, I think they all need attention. Some of the other ones are asylum cases, U-visas, T-visas, VAWA petitions, and 648 petitions, which are waivers for the citizenship test. So, there's quite a few different things we do.

Interviewer: Okay. When you're getting involved with an extreme hardship case, are there particular elements of the case that would lead you towards accepting the case? Or once you would steer away from? Any sort of screening process that you utilize?

Respondent: I'll take any case. But some cases are very hard to show hardship and others aren't. Unfortunately, the worse the case the easier it is for me to do my job. If someone has a history of depression, or suicidality that makes it very easy. Whereas someone psychologically healthy makes for a much harder case.

Interviewer: If there is a history of seeking mental health treatment, does that take a different? Or are there other elements that do?

Respondent: Yes, if there's documentation of mental health treatment. That's a compelling argument and really gives me something to hang my argument on. Any significant medical or mental health history is very interesting to me. Otherwise I'll report it as, "the client reported that," but if I have documentation, I can say "she was treated for depression for this long." So, it gives a little higher degree of certainty there.

Interviewer: Sounds good. Are there areas you find in this field of work to be particularly difficult or for fulfilling?

Respondent: Yes, I find it to be incredibly fulfilling. If I do a good report on a hardship case, I contributed to a family not getting broken up. It's very satisfying. In asylum, if I do my job well and they win the case, I've contributed someone not having to go back and get tortured, or beaten, or incarcerated, or sexually violated. It's incredibly satisfying. Highly satisfying. The thing I like least is when someone seems to have very poor credibility. To me poor credibility means that the rating scales on the test items are bad. It's very rare that something happens that I cannot accept the credibility of their story. Once in a blue moon someone will say something that is so inconsistent with what I know to be true like about country or something, which is more common in asylum. But that happens. I've done well over a thousand of these cases and I've had that happen maybe five times. But people engage in malingering and exaggerating symptoms - that happens a significant minority of the time.

Interviewer: How do you tease that apart? You mentioned different measures you're using, looking at malingering, or validity scales? Could you tell me more about that?

Respondent: Yes, I look at the hard data from validity scales. Then I look at soft data. For example, the BECKs don't have validity scales, I use the BECK Anxiety and the BECK Depression. If I see that have a very high score, but they have a lot of zero endorsements, then I think someone is really trying to bullshit me when they have so many zeros [recording unclear]. I also give the personality assessment inventory (PAI) and look at the malingering scale. I look at affect when they talk about painful stuff - is there affect consistent. So, I'd say I get some question regarding validity 25-30% of the time, only about 10% of the time do I think someone is really deliberately exaggerating and malingering. My rates of malingering are likely lower than the general population, because if someone comes to me they've already put themselves at risk for being discovered if they are malingering, and they've already paid a lot of money for it. Well in most cases the clients pay money for it but not all. So just the effort of coming to my office is a bit of a prescreen. It's always complicated. Each case has its own dilemma about whether they're malingering or not. I just read a report by a social worker who stated things like, "I really believe this person. They seem really sincere." That is like completely worthless to me. There is no basis for that other than their intuition. Intuition is fine, but you have to find facts to support your intuition.

Interviewer: I was hearing that some of these evaluations are written from an emotional standpoint and so the court tosses it out a bit, kind of like, "what my supposed to do with this?"

Respondent: Yep.

Interviewer: With the validity and malingering testing, even if you are not finding any concerns there is that something you would include in your report?

Respondent: Yes, I always include it. Unless it was a child who responded, in that case I don't usually do validity testing. But if it was an adult, I included 100% of the time. If it's good, great I talk about it if it's not good I talk about that. Either way.

Interviewer: What you consider to be best practices from beginning to end of your process?

Respondent: It's really important to get a thorough history - their family and attachment history. Who was in the family, who wasn't, who related to who, what their attachment style is, what attachments have been broken and how they responded, and what attachments have gone well? What are the attachments that are going to predict how this person is going to respond if their husband or wife is deported? I certainly care about the history of intimate relationships. Is there a history of failed relationships or a history of abuse or emotional abuse? How have they

responded to losses in the past? I also look at what their defenses are. For example, you might get a PAI and/or BECK with no clinical elevations, is it malingering or a defensive profile? This happens a significant minority of the time, a defensive profile. Is there some denial and repression going on? These are fairly primitive defensive that are not going to hold up very well with higher levels of chronic stress. So, what's the history of attachment and what does the attachment history predict about a future loss, and what are the defenses the person is using now. For example, it's shocking, I'll ask, "If your husband gets removed will you go with him or stay here with the children?" It's amazing how often the person says we haven't thought about that at all. It's extraordinary. So that tells me there's a lot of denial going on. They're just not dealing with reality. So that bodes poorly because denial will not work well in the face of chronic or severe stress. It's adequate for mild stress, but it's a primitive defense. Some I'm interested in the defensive systems. Testing isn't the cornerstone of my report, but it's relevant, and I think it's important to include at least one test that has a validity scale. Stuff like that BECKs don't have a validity scale. I use the PAI because it's about 200 fewer questions than the MMPI, so it's a little more friendly to naturalized individuals and those speaking English as a second language. I do a lot of work in Spanish.

Interviewer: Makes sense. For your interviews do you typically do one, or multiple, does it vary?

Respondent: I usually try to do two interviews. For people who travel a long distance, like more than a 2-hour drive or need to fly here, I'll try to do one interview. But I really prefer two interviews. Sometimes there is even more depending on the case. The VAWA cases can get complicated and I will need two or more interviews for those.

Interviewer: You mentioned language barriers; your website mentions you're bilingual...

Respondent: Yes, as is most my staff.

Interviewer: Can you talk to me about that, it's got to be a huge advantage.

Respondent: It's a huge advantage if the person speaks English or Spanish. But there are so many languages. To the degree it can be done in the person's language so much the better. But I don't believe it has to be done in the person's native language, but I think you need really good interpretation if you're not doing it in the person's native language. Very often your limited. The person's brother-in-law who lives nearby and is bilingual but has no experience as an interpreter. Being bilingual doesn't mean you're a good interpreter. Sometimes a close family member may have an investment in how you describe their family. That's happened where I had some very, flat-out twisted interpretations. Those are just the ones I discovered. If it's not English French or Spanish I have no clue. Best practices you do it in the language of the person if you're bilingual, but if you're not best practice is you get a good interpreter. I'm not always in a position to get a professional interpreter, but that's best practice. Very often that is just not available, the person doesn't have the money, the will only talk and from front of some of the trust because there's cultural issues.

Interviewer: Okay, so in those cases is that something you would make note of any report?

Respondent: Yeah, I would note that this evaluation was evaluation conducted in Spanish by bilingual evaluator. Or this evaluation was conducted in English with the assistance of an English/Spanish interpreter.

Interviewer: How about working with the representing attorney? Are there things they can do to help support the work you need to do? Is there any kind of back-and-forth between the two of you that you find particular helpful?

Respondent: I always ask what the attorney's concerns are, what is their legal approach, and what they're looking for. And to the degree I can honestly provide that I do, but they all know I'm not going to make stuff up to placate them. So, I find it what they want, what they're looking for, what the issues are that are relevant to the immigration case. Sometimes at the end the attorney might ask me to say little bit more about this or that, and I will. If they asked me to say something that I don't believe to be true or is slanted I will tell them I sorry can't do that. But I will have some back-and-forth. So, it varies from very helpful suggestions to requests to do things that are ethically questionable. So, I'm quite straightforward with attorneys about what I can do and what I cannot.

Interviewer: Do you tend to request the client's declaration?

Respondent: I never do it before I see the person. Never ever. Sometimes I do it after I've written my draft, but usually not. There're almost always some minor discrepancies - they told me they were held for 10 days and they told the attorney they were held for 12 days. That kind of stuff I can work with pretty easy. If there is a significant discrepancy, then I ask the client to come back in and discuss what is really true and why they provided such different answers. I need to figure out which is true, and why they said to such different things.

Interviewer: Yeah that makes sense. What's going on behind that.

Respondent: So, to answer question, yes. I do work with attorneys, but they don't dictate my work at all. In fact, when I work for large law firms, they like to have contracts, and I do pro bono work for them, I always make sure it's in the contract that they can make whatever suggestions they want but that I get the last word.

Interviewer: That's an excellent best practice.

Respondent: Yes, I always make sure that's the contract.

Interviewer: Since you've seen other clinicians' psychological evaluations, what are you seeing that they are missing from their evals? What are some common errors or omissions?

Respondent: Well, just repeating what the client said and not providing any analysis. That's a common mistake. Social workers tend to do that more often than psychologists in my experience. Mostly errors of omission. Like people not thinking about stuff like defenses. It's important to consider defenses. If you don't, the client may seem like they are perfectly okay, there's no problems, so it would be hard to say they are going to have hardship. However, a deeper look will often reveal that they're using a great deal of denial, avoidance, and repression. What's it going to be like if things get worse? Not taking an adequate attachment history or utilizing it adequately in the report. By attachment I mean relationship with spouse, their children, current relationship with their parents, and their community. I also look at community involvement, and how involved they and their family are in the community. Looking at non-psychological factors such as income, educational health, or criminal activities are like in the foreign country. That data is available through different human rights groups or the World Bank. Not doing that kind of stuff. A big one, is just going on intuition. I'm all for intuition, but we got to have some facts here. Just believing the person is not enough. Were all predisposed to believe our clients because we were getting paid for this work and we want to keep the referrals coming in. I must say I do lose referral sources if I find the person is not credible. But really being able to talk about issues of validity and credibility in a realistic way is highly valuable and not just going with intuition.

Interviewer: That's fabulous. Anything regarding issues with clients having a history of legal issues or substance-abuse?

Respondent: It depends who has legal problems. If it's the person I'm evaluating, who is the U.S. citizen or resident, or if it is the person who's subject to removal and ideally, they're sick of

them. So, if it's the person I'm evaluating I want to look at their legal and substance abuse history and see if this relationship made any difference to that. Did they stop stealing or smoking dope after they got on this relationship? If so, I want to point that out that this relationship has been crucial to them staying sober or getting out of criminal activity. If it's the person getting deported, I'm not being asked to evaluate them. I think it's important for us to stay within our area of expertise. This is another area for best practice. If people are outside their area of expertise. For example, I am not an expert in education in El Salvador. So, I have no right to say that education in El Salvador is lousy or that this person needs therapy but they can't get therapy and El Salvador because I'm not an expert in these things. I will say, "the client reports that xyz", or that "the World Bank indicates that xyz." So, if the client's spouse has some legal history, I'm not evaluating them, that's not my area of expertise. So, they had a legal history of stealing from stores, they didn't like it, but they did it because they're really poor. So, if they get sent back to El Salvador they will be likely to engage in criminal behavior again. What is the impact of that on the person I'm evaluating? How will this impact the person I'm evaluating.

Interviewer: Any other aspects of this process that we not touched on that you would like to add?

Respondent: Yes, one other thing. I am rigid and unyielding about this in my own practice. We never give an opinion that this person will suffer extreme hardship. Never, ever, ever. Don't ever do it. We describe what the hardship is. It has to do with the area of expertise. Extreme hardship is a legal term not a psychological term. That's why we have a judge, is to make that determination. The evaluators do not have the legal training to make that determination. Lawyers always want you to give your opinion, but I always respond sorry that it is not in my area of expertise.

Interviewer: I have heard that many evaluators have difficulty remaining within their area of expertise.

Respondent: Yes, if I'm ever asked in court, I tell them exactly what I just told you. Another area of collaboration with lawyers, is if we are going to go to court, we do a prep. I tell them how I like to do it; I've been in court over 100 times. I usually have more experience being an expert witness than they have experience interviewing an expert witness. They are usually happy to take the suggestions so they know what I'm going to say.

Interviewer: That makes sense. You been in this field for such a long time are you aware of any groups, educational offerings, trainings, for evaluators who are new to this space?

Respondent: There's no organization that I'm aware of to support psychologists doing immigration related work. There's lots of groups regarding cross-cultural work, but none organized around immigration work that I'm aware of. Trainings are usually just offered by someone in the field who wants to offer it – there's no central organization.

Interviewer: Okay thanks. I've been asking everybody to see if there's something out there that we haven't come across yet.

Respondent: If you come across anything, I'd love to hear about it.

Interviewer: Yes, I would be happy to keep you informed of our progress

Respondent: So, will this be part of your dissertation?

Interviewer: Yes, and it may spur other research projects.

Respondent: I would be very interested in seeing any product that comes out of this.

Interviewer: One final piece, as part of this project we are also letting folks know that we are interested in analyzing redacted psychological evaluations. We're looking at writing style, organization, etc. If that would be a bench did you it would be helpful to us.

Respondent: Yes, please send me an email about that, I won't remember. I have a few I could send to you

Interviewer: Also, you know of any other attorneys or evaluators in this field that you feel I should talk to for this project? We could also do this of her email is that would be easier.

Respondent: Another person who does evaluations that I think is a great job is xxxxx at xxx@xxx.com. For lawyers xxxxx at xxx@xxx.com, xxxxx at xxx@xxx.com, xxxxx at xxx@xxx.com, and xxxxx at xxx@xxx.com.

Participant: Attorney

ID: 8

Gender: Female

Credentials: JD

Interviewer: Okay so I have started recording our conversation. Thank you so much for giving you permission to do that.

Respondent: Sure.

Interviewer: Should we just jump in the questions or is there anything else we should cover before we get rolling?

Respondent: No, that's great

Interviewer: Okay. I've got about a dozen questions, but please feel free to add any information or guide me into different areas I may not be covering – we are very flexible. We would like to utilize your expertise and I am not an expert in this field.

Respondent: Sure.

Interviewer: How long have you been doing extreme hardship cases? And how did you get involved in it? Just for a bit of background in this field.

Respondent: Absolutely. Well, I've been an immigration lawyer for five years now. And pretty much from the outset I've been doing cases that involved extreme hardship. There are lots of different types of cases where extreme hardship comes into play. When you're talking about actual hardship to a qualifying family member, and you can do work in removal proceedings, like deportation proceedings, there are types of cases that require a showing of extreme hardship. Or there are cases that don't require it, but you still use extreme hardship to support the case.

Interviewer: Ah, I didn't realize that.

Respondent: Yeah, and there are what we call affirmative application cases where your filing for a waiver or something that is not in court and that's actually with U.S. citizenship and Immigration Services. In that case, I think pretty much all the time it would be a requirement, to show extreme hardship, and that's where I've used them there. I've pretty much been doing that for five years at this point. I don't do any business immigration.

Interviewer: Great gotcha. Are there particular cases that you accept or decline? Are there certain things you're looking for in a particular case?

Respondent: You mean the ones that require extreme hardship?

Interviewer: Yes, those ones.

Respondent: No, at least at this point. [Laughter]. At least at this point, I haven't turned on a case requires extreme hardship. I don't think that you can, at least at the initial consultation, get a good sense of how the hardship case is going to play out, because each case is *totally* different. The factors in a client's extreme hardship case are developed over a period of time while sitting

down and talking with the client. You could also send the client at the outset to a psychologist who can perform an evaluation and really get a sense of where you're going to strategically place emphasis for hardship purposes.

Interviewer: Do you have a sense for approximately how many of your cases would require a mental health evaluation?

Respondent: Well, for any case that I do that requires extreme hardship, and even where one wouldn't be required necessarily, I always do a psychological evaluation. Always. Every time. I use them every time as I do experts. I consider them one of the same. Certainly, because the mental health component of extreme hardship is such a significant consideration when it comes immigration. I always do it. Sometimes the evaluators get to certain underlying issues in the family's case that I maybe haven't heard yet from the clients, and so it's really a collaborative process with the evaluators.

Interviewer: Okay, are the essential components you would consider for a good hardship evaluation?

Respondent: Humm. I think it's really important that the evaluator show credibility. That they have the background – experience, education, training, etc. - that tells the adjudicator that they are qualified to do these kinds of evaluations. What I'm trying to do is get evaluators to be more clinical about it. Most of them are really good at it, but instead of just a discussion of what I've talked about with this client, and this is what I see of the as issues in the case, you know the indexes, what are those called axes? What you call those?

Interviewer: A diagnosis?

Respondent: Yes, a diagnosis absolutely. If the client has what I would think is PTSD from a certain traumatic incident. I want somebody who is qualified to give that assessment and does a particular kind of PTSD evaluation. If possible. I don't know much about psychology, but from what I know there are certain trainings that are better at providing the background for the person be able to establish that the client has PTSD. It in which case I want that person to build a say I've taken those courses and I know how to diagnose this.

Interviewer: Okay so even to have elements of this with in the report?

Respondent: Yeah, as part of the resume or CV. I would point to that and say this person has training in this particular area. In either my briefs with the court or US CIS I always introduce them as I would an expert. This person is an expert and can provide evaluation of mental health. The inclination of US CIS and sometimes judges is to say, is to discount evaluations. And that's really ridiculous and horrible inclination that they have. I think that's because people don't properly introduce evaluators and experts, they're experts on mental health. And they're not introduced as such and I think that's really, really important to do.

Interviewer: Interesting. You mentioned the CV, is there additional information that would help you introduce them, as you say, as an expert?

Respondent: No. For experts in immigration proceedings, for immigration proceedings were really lax on that evidentiary standard. We don't strictly abide by the federal evidentiary standard. I don't know if you know anything about court and stuff but...

Interviewer: Not so much. [Laughter].

Respondent: [Laughter]. Well, when you're introducing an expert in normal criminal proceedings or other types of civil proceedings you often have to go through a very strict introduction of the expert what we call a Daubert expert qualification. In immigration, it's kind of up to the lawyer on how they actually do that. Then the judge almost always accepts the person as an expert in less the government really goes after that person. But they may weigh the

expert's testimony less if they don't see that the person is as qualified as they would think they should be as an expert. If that makes sense. Bill accept them may be, no accept the testimony but they may not give it weight if they don't think of them as an expert.

Interviewer: Interesting, yes.

Respondent: You know I think I'm kind of a throw everything [including the] kitchen sink kind of person into some of these cases because there's no reason not to. So I try to introduce experts as this person has, based on their CV of course, an extensive amount of experience, any kind of recent classes they've taken on PTSD or specific trauma, because that's usually what we're dealing with is PTSD, trauma, and depression, so any specific stuff, classes, updated articles, anything that they've done with respect to being able to train and call themselves a professional, an expert I mean in this area I would definitely highlight.

Interviewer: Okay great. That makes sense. You mentioned objective measures in the psychological evaluations you received. Are those an important component as well?

Respondent: Yes.

Interviewer: So, if they're doing psychological measures on say PTSD or something like that. That really lends credibility?

Respondent: Yes, that's really critical. And I've gone back and forth with a couple different evaluators on this. The government for a while was talking about doing a malingering test, some kind of malingering test.

Interviewer: Interesting.

Respondent: The government wants to know that the person has been evaluated for whether they are lying or not. How does the evaluator know there being credible? Obviously, a person's memories, you can't test those. So how do we know what they're telling us is actually accurate in terms of their trauma and what happened? So, I talked to xxxxx, the evaluator who helps with Northwest Immigrant Rights Project (NWIRP) often. I asked her about that on my most recent case, I asked do you do tests for malingering because that something the government has asked for before so if it's easy enough to just put it in their can you do that? She said those are inherent in the tests that we do. That's part of the test. If the person answers inconsistently or to consistently that's part of our testing. So, she didn't put anything specific in there. I've had an Antioch psychologist before who put something specific in their evaluations regarding malingering. So, some kind of either explicit saying that's included in our tests so no need to talk about it separately as a footnote or something or if it is something that you can talk about separately putting that in there. Because that is definitely something the government wonders about.

Interviewer: Okay. And I've heard some folks talk about psychological evaluations walking the fine line between, I don't know quite how to word this yet but painting the story of the client and yet not being too emotional or too invested, just this fine line between this pretty emotional story and being objectively appealing to the court. Have you run into anything like that with your psychological evaluations that you received? Perhaps some that were too emotional are overstepping their bounds?

Respondent: No, not really. I had one that was a little too over the top in terms of dramatic and so I just toned it down. With my evaluators we almost always go back and forth with the word document. I don't mess with their assessments, if there are facts that I don't want in there I ask them to take them out, but they obviously won't often. And I'm okay with that. One report was too dramatic and too over-the-top in terms of how horrible this evaluator clearly thought the

woman's situation was. Usually I don't have that problem – the reports are usually more restrained than I want them to be.

Interviewer: Oh interesting. [Laughter].

Respondent: I try to get them to be a little bit more vocal sometimes on the impact departure on the client's qualifying relative or something like that.

Interviewer: Oh, that's interesting to hear. I wonder if this is due to a lack of best practices too? Evaluators feel like they're walking a really fine line, but maybe there's more room there than they realize.

Respondent: Obviously it would depend upon the attorney and what they want and what they feel they can get away with, but I think obviously being as objective as possible will help with their argument that the evaluators are experts. Whether they have a PhD or not, that these people are capable of doing these evaluations. So, you want to remain as objective as possible, but you can make objective statements about, factual statements, about how depression will affect this person. Without going too far into speculation, which is a fine line for sure.

Interviewer: you mentioned evaluators having PhD's, are there particular educational or licensing backgrounds you look for in your evaluators?

Respondent: More licensing is better I guess. Education is part of the components of qualifying an expert witness, how much education do they have. Experience can be used to. If you are comparing a therapist with a Master's degree therapist who has 15 years of experience doing evaluations that's going to be seen as equally knowledgeable as a person who has a PhD who's been it who's been doing it for two years. But if you're comparing a therapist with one year and a PhD with one year, you're probably going to get better results with the PhD. Based solely on education.

Interviewer: Okay, that makes sense. You mentioned going back-and-forth with your evaluator. What kind of instructions do you give them and how does that relationship work best?

Respondent: Because of confidentiality issues, I tell my client you need to call the evaluator and tell them you're my client. Set something up with them and then the evaluator will let me know that you called them. Then the evaluator will usually contact me and say so-and-so contacted me, what's the case about. I will tell them, this is the case, these are the qualifying relatives, and this is the level of hardship required by the case. It's not just extreme hardship, there is also exceptional and extremely unusual hardship. It is a much higher standard and much, much more difficult to meet than extreme hardship. I almost treat all my cases like the exceptional and extremely unusual standard. I try to meet that each time if possible. Regardless, there are two different standards, see want to be sure the evaluators using the right standard in their evaluation. If they're going to say something like that. Other than that, I just give them a little bit of background. Some evaluators want the declaration if it's been written, others do not because they do not want it to inform their interview. They might want to read afterwards for consistency purposes, but some don't want to see it beforehand. I don't always have a declaration from the client either. So, then I prefer to develop the declaration after that the evaluation. Timewise it is sometimes easier to have the client me with the evaluator first. Otherwise, I work with three or four therapists on a regular basis and they had all done these evaluations before I started working with them and had outlines of how their evaluations were set up and they were good for my clients. It was fine. Beyond giving them the facts of the case, I don't really give them any instruction. Oh, and the type of case. If it is in asylum case, that is going to be a very different evaluation from extreme hardship case.

Interviewer: Oh, that makes sense. Once they are doing the evaluation, do you find it's helpful if they're reaching out to you with potentially unusual findings? What does that part of the process look like in the best case scenario?

Respondent: Usually the evaluator meets with the client once or a few times and then send me a draft of the evaluation. I'll read through it, if there are facts that are different than what I know of, I'll explain that to the evaluator and the evaluator will call the client to clear it up, we will leave it, or in very rare circumstances we will take it out if it's not material to their assessment. In terms of actual findings, such as conclusions they are drawing, there haven't been any situations in which they are unusual to the case and must be dealt with. I haven't ever had to send a client to a different evaluator to get a new evaluation.

Interviewer: Yeah, like this just didn't work, we need to redo. Have there been common mistakes that you have seen from evaluators conducting these evaluations? Areas in need of improvement?

Respondent: I can't think of anything off the top of my head. Usually, they are so willing, in terms of procedural stuff. Regarding immigration parlance, they are fine with me changing that part, because it's not their area of expertise. In terms of improvement, I can't think of any because the four or five people that I've worked with for a long time have been doing it for a while, so they are pretty established. I haven't used a new person in a very long time.

Interviewer: So, you got a great working relationship with his evaluators.

Respondent: Yeah, I just can't think of any mistakes.

Interviewer: This might be related, is there anyone involved in this field either evaluators or attorneys that you feel we should talk to for this research project?

Respondent: I'm doing a talk on extreme hardship waivers and psychological evaluations at AILA National, which is the American Immigration Lawyers Association (AILA)'s national conference each year. There's this woman xxxxx, who I'm on the panel with who is a therapist. She's doing the talk with us. I think that she might be good to talk to. She's got some interesting information. She's really good at explaining how necessary evaluations are for extreme hardship determination. She's good at that. Her name is xxxxx.

Interviewer: Great, thanks so much. Where will the conference be held? Is it in Florida?

Respondent: No, it is in Washington DC.

Interviewer: Oh, darn it if it was at all close, I would like to go.

Respondent: Yeah, it's pretty expensive. I don't know if you want to pay for it.

Interviewer: Oh well, darn it. Anyone else you think I should talk to?

Respondent: The people xxxxx put on the list, were people I know who do evaluations a lot. I can't think of anyone else off the top of my head. If you read email me the release form, then I'll email you back anyone that I think of.

Interviewer: That would be great. We are looking to speak with any good evaluators in the area, we like to talk with them too.

Respondent: Oh, that I have for sure. I can send you all the names of the people I work with.

Interviewer: Oh, thank you. Were just looking to snowball the list of participants.

Respondent: We worked with, Dr. xxxxx, I haven't worked with him in a long time. My boss worked with him a lot. He's done a lot of evaluations for us.

Interviewer: Oh great, and he's over at Antioch. Are you aware of any best practices, guidance, industry groups, anything of that nature for these types of cases for conducting these evaluations?

Respondent: No, not that I can think of. It's pretty new. Immigration kind of started requiring these [evaluations] almost, it's been about three or four years. I should not say required, but they expected them to be part of the case and judges to. I think it's pretty new, people would use them before that, but it wasn't a matter of course. They would use evaluations for psychological components, if the client has seen a therapist before then they would use that, but if not, it was the declaration and that would be all that you would have for that component. These evaluations are now being used way more in the past 3 to 4 years. It's become much more standardized. No, I just don't think there are best practices. There are a few articles.

Interviewer: Gotcha, it's a relatively new movement. Any other topics that you think might be helpful that we haven't touched on?

Respondent: I think that's kind of a surprising thing. A lot of attorneys don't think that you should use evaluations in every single case; only when you have extreme situations. They use them only when the person has a diagnosed medical or mental health condition or has met with a therapist before. But I do them every time.

Interviewer: have you found that to be beneficial to your cases?

Respondent: I think so. I haven't not use them in a long time, so I can't tell you a before and after. I can't tell you whether they been granted more with using them. I will say that if you get a week psychological evaluation, saying this person is totally fine like they will be upset if their husband leaves but it won't be that bad, that it is going to hurt their case for sure. That part of it, that you don't want to use it if it's going to weaken your case. You just wait to see if it will be granted based upon what you have [without the evaluation]. If you're dealing with just an extreme hardship case for the waiver, you really get the evaluator talk to the person about what is the reality if you're husband, usually the husband, if your wife is deported how will that affect you, how will that affect your daily life? If they can really get down to that, most people are going to have significant psychological issues that will stem from something like that. The point of extreme hardship cases is that you have to distinguish your cases from everyone else in the same position. Because the psychological suffering that comes from deportation of a loved one, is considered standard. That is just what happens, separation is tough. So, what makes it more tough in your case? That's where the extreme hardship is shown. So, they can't just say I'm going to be really sad. But, if they can find something in the background, like my parents abandoned me when I was younger, anything that makes their case different from everyone else who would suffer with separation, that's what's important to get at.

Interviewer: Great. Are there elements that you've seen that have come across your desk that way? Like you mentioned being abandoned by your parents as a child?

Respondent: Yeah, I've used before, I waiting to see if it's going to be approved, where the parents separated before, years ago for whatever reason, but the kids were devastated. Like lock themselves in rooms and one of the kids threatened to commit suicide. You know that kind of stuff happened. So, through prior separation of the parents has provided evidence and the parent was still in Washington state. Yes, abandonment as a child, or if a parent died early on and how that might bring up prior feelings of abandonment. Divorce of parents, a woman who was fostered as a child who has severe recurring issues because of that, a hard time trusting the guy. Another woman had prior drug problems that she wasn't able to stop until her husband really got her to stop. So, if he left recurring issues with drugs or drinking might arise. They weren't diagnosed as an alcoholic, the admission that they had significant alcohol use issues before, that might be brought up again if the husband were to leave. Postpartum depression, we see that

pretty often. If they have postpartum depression, they may have been doing totally fine the last five years, but that doesn't mean that they will be totally fine if the husband leaves.

Interviewer: That makes sense. I had also heard, negative connotations around previous substance use or run-ins with the law. Is that another difficult element that might come out for an evaluation?

Respondent: Substance use on the part of the noncitizen is a problem. If you talk about the qualifying relative, the person to whom the hardship is really the key element of the case and they are a U.S. citizen, if they are a permanent resident you have to be a little careful if you're talking a substance use because technically, they could still be deported. It's probably not likely, but you have to be far more cautious and you talking about someone who has permanent residence. But if the qualifying relative is the U.S. citizen, we put everything in there. Substance use, criminal past, all that stuff because they're not under threat of immigration coming after them.

Interviewer: That's a wonderful differentiation. Some of the research I've been reading just didn't break that out. They were just really talking that steering away from her being very cautious around criminal history and substance abuse. I assumed it applied to both parties.

Respondent: No. Certainly with the noncitizen, you have to be very careful with what you admit to and what you talk about. Usually evaluators are fine with me taking some stuff out if it's going to hurt the case.

Interviewer: That makes sense.

Respondent: Usually it's not material to the evaluation.

Interviewer: Yeah, they're catching a lot and that clinical interview and some of those assessments. That makes sense. Any aspects of this process, as I say were just getting started, anything you might recommend I change or do differently as we move forward?

Respondent: It made complete sense, nothing that I can think of at all. It's really clear. I'm glad you guys are doing this honestly. It's really needed.

Interviewer: Thank you. Will definitely keep everyone apprised of our progress.

Respondent: Great, thank you. That sounds good. Good luck with it

Interviewer: I'll email you the consent, and if you would send me the list of the evaluators in the area you think we should talk to that would be wonderful. Thanks so much for your time I really appreciate it.

Respondent: No problem. Bye

Interviewer: Bye-bye

Participant: Evaluator

ID: 9

Gender: Female

Credentials: PsyD

Interviewer: Okay, so I am now recording a conversation. Thank you so much for accepting the recording. The just make the interview and transcription go faster. That is all I have for my housekeeping items. Any other questions for me?

Respondent: Not at the moment.

Interviewer: Please let me know if I am missing areas are questions that we should add let me know.

Respondent: Okay.

Interviewer: Great, I'll just jump in on our first question. How long have you been doing immigration hardship evaluations?

Respondent: I am recently graduated from the George Washington University in Washington DC. I started doing immigration evaluations, including hardship, in 2011. That was during one of my first practicum placements with xxxxx and Associates in Washington DC and that is a major part of what he does. It was an assessment practicum. I also continued beyond my practicum time with him. I am trilingual and having Spanish as another language was extremely helpful for him. He is also bilingual but needs more people to do that. I did a lot of immigration evaluations for him. There was a time when we were getting a preponderance of hardship cases. Most of the ones I've done on the West Coast were for Northwest Immigrants Right Project and they were political asylum VAWA cases, not so much hardship. I did one hardship case on my own, once I was licensed, in the beginning of this year.

Interviewer: That seems to be a little bit of an unusual path. I am finding many folks receive a call and have to figure it out on their own.

Respondent: Yes, I was trained in this.

Interviewer: Are you aware of any industry groups, organizations, or best practices that folks doing these cases can turn to?

Respondent: No, I'm not aware of any. What I do know, I'm not sure that this extends to hardship. But immigration evaluations in particular, there are groups like Physicians for Human Rights and Northwest Immigrants Right Project, but not quite as much. Groups like Physicians for Human Rights provide training for physicians and psychologists on how to do immigration evaluations, but mainly political asylum and not so much on the hardship side. xxxxx was one of the few people in DC who did this routinely. He had a lot of relationships with lawyers in the DC area because they continuously referred people to him. My understanding from him was that, and this is in DC, which has quite a robust immigrant population, that the lawyers were only beginning to sort of wake-up to the possibility that a psychological evaluation might be useful in a particular case. His way of doing things was quite sophisticated in my experience compared to what I've seen here in Seattle. So, he trained me well. But I don't know that he would have a specific set of guidelines. He taught us this what to look for in these kinds of cases. So, I had that inculcated in me from the beginning.

Interviewer: From day one. Okay, that makes sense. So maybe that leads us to, what do you feel constitutes a top-notch hardship evaluation?

Respondent: This is based partly on what I learned from him and comparing to what I've seen. I've seen two evaluations that were done by non-psychologists, people who are not qualified to do psychological evaluations. What I have seen in those two cases are essentially, robust, detailed clinical interviews with a diagnosis attached to it and sometimes recommendations that say whoever is requesting the benefit, should get the benefit. That is what it should *not* look like. I think you need to have people approaching hardship cases like they approach psychological evaluations and forensic evaluations in particular. So ideally, this would be done by people who are licensed and trained in evaluation techniques – not just in doing clinical interviews and clinical assessment.

Interviewer: That makes sense.

Respondent: The evaluation needs to include some measures of some kind. I am seeing evaluations with zero measures and some with just a symptom inventory. They need to have some kind of objective data and beyond symptom inventories ideally. It is absolutely critical that

the evaluator not render a judicial opinion. That is never our role in any forensic case. I was trained to not even use the word “hardship” in the report because there is a legal meaning attached to it. You may believe that what they are telling you is a hardship, but to use those words, makes it look like you are rendering an opinion on the case. So, with hardship cases I think that you have to be extremely careful of your phrasing. You are not saying that this is either hardship or not a hardship since that’s not for us to decide legally. The other piece of it is that these cases really need to consider all of the possible outcomes. So, you need to consider, first what is the impact to the U.S. citizen if they are separated, that is that the other individual leaves that country and has to go back for 10 years. Scenario 2, what if the US citizen moves with the non-citizen. A lot of times I have seen them not really address the two sides fully. So, it’s hard to tell what they are facing. Someone can just look at it and say so-and-so could always just go live in some other country. It’s not really addressed. Or they could just be apart. If it’s addressed at all then it’s that their being apart would be a hardship – but my guess is that’s not enough. I’ve looked at the language of extreme hardship and it’s really not clear. But they don’t consider change in language / having to learn a new language, economic reasons / not being able to find a job - those things in and of themselves are not considered enough.

Interviewer: Yeah, it’s not extreme.

Respondent: You have to be able demonstrate more things. The problem is there are no guidelines or any formula, not that there could be a formula, but there’s no guidelines for this at all. At least nothing that we know of. The lawyers end up throwing everything at it. The kids I worked on; the lawyer had written in her declaration that the person affected was an American citizen who was married to a Brazilian. The Brazilian was from a rural town in the middle of Brazil. And the argument was that its dangerous to live in Brazil and the American citizen could get kidnapped. I have lived in Brazil – seriously. That is not likely to happen because if it happens at all it would happen in an urban area. Brazil is the 8th largest economy in the world. Yeah it has problems, but we are not talking about El Salvador. But they threw all that stuff in there. I don’t know, maybe they need to just in case something sticks.

Interviewer: Humm.

Respondent: I do know that I include context of the persons country when it is relevant and it explains the person’s behavior. That is usually more relevant for political asylum or VAWA cases. Where I have to explain why the person did not go to the police for instance and I’ll include some country context stuff in there. But I don’t put that stuff in my evaluation in a hardship case because I’m not an expert. And in that case, I didn’t believe it because I had lived in the country. And there is a fine line that while we want to contextually explain our client’s responses to situations at the same time sort of arguing a political argument is a little beyond our role as psychologists.

Interviewer: Yes, I see - stretching those boundaries.

Respondent: Those are sort of the basic things. Hardship evaluations absolutely cannot render a decision. And if I have recommendations, they are not recommendations on a decision, they are recommendations for the client in dealing with the stress they are experiencing – they’re psychological recommendations. They are never recommendations saying things like this person should be given the benefit that they are seeking.

Interviewer: Yeah, to the court. That makes sense. Yeah, and you mentioned covering both sides of the argument too.

Respondent: Right. Evaluators must be aware of how psychological measures relate or do not relate to the person you are evaluating because the norms for some of these measures have not

been developed on this population. Often you are evaluating an American citizen, you're evaluating someone who was probably schooled in the U.S., but they may not have been. Whenever I'm evaluating someone who was not educated in the U.S. and am using measures that were normed on U.S. populations – I'm always going to note that in the report. In fact, I'm working on a case right now, where a person invalidated a PAI by over-endorsing infrequent items but the PAI was normed on mostly American citizens who have not experienced this kind of trauma. The fact that this was invalid may not be that she is malingering, she may just not match the normal experience of the normed group. So, we say that in the report. There is also the piece of validity. I never want to say in any of my immigration evaluations that I believe the person, that I'm validating their story. I am not saying "this is true," I am saying whether the symptoms that she is displaying match the picture and the story as reported.

Interviewer: Yes, and the measures – do all these pieces come together.

Respondent: Do these things fit together. And I always say in the beginning of the report that this is my evaluation of the *person* and how she/he presents but not of the story because we can't do that. And memory is a weird thing anyway.

Interviewer: Yes, memory is slippery. [Laughter].

Respondent: I think there is a temptation to project, especially with hardship cases, of what might happen into the future because you kind of have to. But it's a fine line. So, I've seen people say, "this person will decompensate to such an effect." You know, we really don't *know* that. We have to be careful with the language and say, "based on what I found this person has the following psychological deficits or resources that would make it very hard for her to either live in her partner's country because of x, y, z, and how she has responded to that separation. Or there are attachment things that have happened that I would explained; she will need a lot of therapy or she will have a very hard time finding a therapist who spoke English. That kind of thing. But going from that to predicting this is what's going to happen such as going to the hospital. That's a stretch. So not pushing or projecting what you could be reasonably expected to project. The other thing I've seen; I was shocked and then I saw it a second time! I was like, "Oh my God, there really aren't any standards for this!" Someone who was a licensed mental health counselor, who actually had a pretty good analysis psychologically of what was going on with the client, but no measures to back it up. What she used for her prediction was the client's current GAF score and she gave a number. Then she said that, "I would predict that if this person had to move or be separated from her spouse her GAF would go up to 30."

Interviewer: Oh no.

Respondent: No joke. Oh my God. I don't know where to address this. Number one, the GAF has is like a finger in the air, it has no validity at all. And number two, a GAF of 30 how could you predict that with any kind of precision? 30? I never have anyone that GAF even when I was putting my finger in the air trying to figure it. That would put the person in the hospital completely unable to function.

Interviewer: Wow!

Respondent: Yeah, so there's stuff like that.

Interviewer: That's wonderful that you have access to other evaluations. I have only had one other interview, but he hadn't even seen any. That sounds like strength too, that you've been able to compare and contrast.

Respondent: Right. I was trained in doing them and so I saw ones that were done well. The one that I did on my own in January. The lawyer contacted me and said we've had an evaluation done, the evaluator has moved to Oregon and now CIS are asking for more information. Could

you do an evaluation, we'll give you what was done before. The second one that I saw, that was an example of a poor evaluation, is from a therapy client. He brought in his report and I saw the evaluation that was done for him. This is a case where I don't think he's going to win because my client is Spanish speaking, Mexican, but American citizen. His wife speaks fluent English, has lived most of her life in the U.S. but is not a citizen. The argument that was made in the report was simply that they should not be separated. I'm like, yeah but he could go live in Mexico – his whole family is there.

Interviewer: Oh no, that's my understanding of how the courts would look at it too – that's not enough.

Respondent: Exactly. It's not a very good evaluation and it's not a very strong case actually. He is going to be very upset if they are separated because I see *major* deficits in my working with him in terms of attachment stuff and he relies on her for so much but mostly relies on her for language stuff in the U.S.

Interviewer: Wow. Yeah, she is his interpreter.

Respondent: It's like oh my God. I don't have a lot of hope for this case. And the evaluation really wasn't going to help them either. I don't even know if I could have done something. I would have said, you know, I don't think this is a particularly strong case.

Interviewer: You're taking me to another question, are there particular cases that you accept or decline? Do certain things need to be in place for you to accept it or ones where you say no, I won't be getting involved with this.

Respondent: This is what I was trained to do. I will always talk to the lawyer and find out how they are making their case and how they see it unfolding. Because what I don't want to do is complete this process and have the client pay for the entire report when I don't really think there is a good case. I sit down with the client and let them know that they will pay for my hours but if I don't think this is a good case, I'll notify the attorney and won't write it up. I'll go back to the lawyer and tell them what I'm finding, this is what I recommend, which might include, "I could write this but it's probably not going to help the case." I've actually never had to do this, but xxxxx said that his lawyer said, "Oh, never mind." Typically, the lawyers knew what a good case looked like, but that case was someone who was clearly misrepresenting herself. It was a political asylum case and she was saying she was from one country, but he happened to realize that the story she was telling was impossible in the country she said she was from. I also don't want to put these people through more. But if my therapy client had come to me and explained it, I think would have said to him or her right then, I'm not seeing it. Have you considered the following? I don't want to take a case or the client's money when I don't see hardship and the lawyer can't convince me. If I'm having a hard time seeing hardship, I'm going to have a hard time writing the report.

Interviewer: Yeah, that makes sense. How can the representing attorney best your work on a hardship case?

Respondent: This is a classic for us as psychologists working with any attorney. I think the worst thing, when we really roll our eyes, is when we get vague referral questions. It is really difficult when we get vague referral question. In these cases, I want is the client's declaration, everything that the lawyer has including the application. Usually we get all that information in advance. I want to know from the lawyer how are you making your case? If there's something I'm not seeing, then I will ask to them to explain how legally it will work out. What is the case there are making and what would undermine it or how would it be challenged? How are you constructing the case and what do you see as the obstacles to that? Because that's what I'm going

to be looking at. Did the person ever break the law? Because that is a bad thing if they did. Even if they came to the country and overstayed their visa once, that's going to be hard to overcome. Or if they lied in one case. In one case, the client who was an elderly citizen and his son was trying to get U.S. citizenship. They were from El Salvador. The son had been a soccer player and overstayed his visa once and then lied about it to the U.S. Embassy. Oh, so bad.

Interviewer: Not a good decision.

Respondent: Right. I was evaluating not the son, but the father and the father's argument was that because I have diabetes, I'm feeling more anxious. I was like I don't know if that's going to be enough. I didn't see it. Maybe they made the case, but I don't know.

Interviewer: That would've been an uphill battle.

Respondent: I thought so, but I don't know. First of all, I don't know why the one I did in January didn't win. I'm not a lawyer so I really don't know these things.

Interviewer: That's got to be so frustrating as well.

Respondent: Yeah, I've learned little by little the hardship cases of the ones. I usually tell my clients that, I tell them these are really hard cases. I had a client who wanted to know, "Since I'm spending this money is it going to help me are not?" I had to that hardship cases are difficult. She wanted some reassurance that her spending this money would get a favorable result. I can't say that. I always have to tell them I never know what the outcome is going to be. And even though I know that most of the immigration cases having a psychological evaluation helps. It's not clear to me if it helps more in hardship cases. I really don't know if it helps.

Interviewer: Yeah.

Respondent: I did a re-evaluation for someone who had received a *very poor* evaluation. So, I did what I thought was a much better job and they still didn't win. And I'm like hell, I don't even know if the immigration people know what to look for. Do they know? All this work that we do to make it high quality and to make it stand up to psychological science and it doesn't seem to make a difference. Or was it just the case? I don't know.

Interviewer: Then not hearing anything back of their decision or how they got there.

Respondent: Exactly.

Interviewer: You had mentioned legal history coming up as being an important factor. And this is more of a curiosity question for me. Substance abuse is that also a large factor in these cases?

Respondent: I did this hardship case and I believe he won this one. It was very interesting the guy was in his first very positive relationship with someone who happen to not be an American citizen. Prior to that he had a very strong history of substance abuse. Serious substance abuse. He been in prison. His longest stretch of sobriety had been with this woman who was really good for him. And she was not a U.S. citizen. He had already started sliding back into substance abuse in the process of the case. The stress of this. I thought that I could make a really clear argument that was like this guy for the first time in his life is in a relationship that for many reasons psychologically makes sense. It makes sense that he would be connected to her and maybe there is all kind of enmeshment going on, but he's sober. And he's not going to have the resources to move to her country – emotional and psychological resources. Then being separated would probably lead to his death for suicidality or severe substance use. I think that they won that case. That was one where it played out in their favor.

Interviewer: Wow, interesting. I have not heard of that stance before.

Respondent: I had not expected that would be the case. All the measures I did with him show this very dependent personality. Very, very needy and this woman was providing an important function for him psychologically.

Interviewer: All the data points were making the same picture.

Respondent: Absolutely. The history all supported it. He said he needed a mom and that was what this woman was for him he even called her mom. It was like wow!

Interviewer: You were like, perfect thank you.

Respondent: Yes, there was a lot of data there. I would like to think that was part of what made the case, but I don't know.

Interviewer: Yet again no feedback on the good or bad when they win or when they don't. You mentioned objective measures are there particular measures you find yourself using often or is it case by case?

Respondent: It is a bit case-by-case. It's really depends on what the basis of the hardship is. If the basis of the hardship is that the person has a learning disability and they would not get services in the other country that they are getting here that can be a pretty strong case. I have done that actually quite by accident. It was with the child who was the American citizen to whom there would be a hardship. The parents were Nigerian and not [US] citizens. This was during my training and I wanted to do a child assessment case and so my supervisor said sure go ahead give him the WISC and everything else. And I did, and I discovered there was actually a learning disability. So, in addition to these other factors this kid has a learning disability that has been undiagnosed, and it's been undiagnosed because he's in a school where he is required to do rote learning but as soon as he's in a different kind of environment it's going to show up and here's why. Again, I don't know whether that made a difference but as a general rule I don't normally do those kinds of measures. I do screening measures such as the MOCA, the Test of Nonverbal Intelligence (TONI) for Spanish speakers, and the Rey Complex Figure Test (RCFT), which gives a basic quick screen of executive function. Then if anything comes up as significant, I dig further because that might be where the hardship lies.

Interviewer: Yes, where the story comes together.

Respondent: Exactly. If it all comes out within normal limits then I would utilize emotional measures such as the PAI and a Trauma Symptom Inventory (TSI-2) to find if there's any trauma history intruding, or the Beck's. I don't use MMPI's I'm very critical of them. I know people who have used the Millon but I don't like to use it because I think it's pathologizing. The person I know who uses it says yes that's the point. It's sort of disingenuous use of the tool in a way. So, I don't use it. She has a good reason for using it, but I just feel like I would be using the tool the wrong way. Then depending on the outcomes of those measures if they are valid or nothings tripped, I might do a Rorschach. Part of the reason why do a Rorschach this is one of my strong interests and I have a lot of experience with it I did my dissertation on it. So, I believe in it. I also use it because sometimes object relations stuff that doesn't come up elsewhere comes up there.

Interviewer: Yeah that makes sense.

Respondent: I also started using the Inventory of Altered Self-Capacities (IASC). I used it on my last case and it was very interesting. I also use the Beck's for depression (BDI), anxiety (BAI), etc. Sometimes if a person is very guarded and will come out not elevating much on the PAI. I have a Rorschach that might give me more data and the IASC - I used in this last one that I did in January. And all of the scales that had to do with relational sensitivity were highly elevated. As they were in the TSI-2. Here was someone who would depend on her partner for any sense of self-worth. We could argue that she needs therapy and she does, but this is what would be even more distressing to be separated from her partner. That case didn't win. For hardship I am looking mainly for cognitive disability or an emotional functioning issue that may

make clarify the hardship. I utilize object relations and how they relate to the person or if it is their partner, that kind of thing.

Interviewer: Do you find yourself needing to pull in data from supporting individuals such as family, friends, employers that kind of thing?

Respondent: I will use it, but my understanding is that that kind of stuff is kind of weak. That's what xxxxx taught me. Everybody kind of expects the family to say no they should get the hardship.

Interviewer: Yes, no surprises there.

Respondent: Right. And it doesn't strike me as being particularly objective, not like we have fully objective data in the other measures, but I might mention it but typically I don't emphasize it.

Interviewer: Right, no need to go there. Okay. Regarding the use of translators, you mentioned being trilingual but does that come up for you?

Respondent: In immigration evaluations in general I will use translation if the person is not 100% fluent. This is how xxxxx taught me, if they're not fully bilingual in English. I have only had to do this with political asylum cases when I was evaluating Ethiopians and I don't speak Amharic. Right. Then I would bring a translator who was a native speaker because we are asking them to access emotional material and even if they have a fairly good demand of the English language, they're not going to be able to access it as easily in English as they would in their original language. The other piece of it is, if you are questioned about it on the stand, you don't want them to be like, well you gave these things in a language that was not their language. How do you know that they can actually explain what was going on? And so I take that away from it to.

Interviewer: Yeah that makes sense.

Respondent: With folks or Spanish or Portuguese speaking. I haven't had anyone who is Portuguese speaking, but I would love to. I would do it in their language. Always.

Interviewer: What have been some year most difficult cases? And how have these changed your evaluation practice?

Respondent: Hardship cases are all difficult. I know what I'm measuring, but I don't really know what they look for. And for me hardship cases are frustrating more than anything mainly because I feel like I put in a lot of effort into something and I feel bad when something like what happened in January happens. And the person spends their money, I did my best effort with it and I did all these measures, but in the end it wasn't successful. And I think that is just part of the deal. But it would be useful to know what makes a successful one. I don't think that there's any – I don't even think the government folks could tell you what that was.

Interviewer: I'm just dipping my toes into this but the little bit I've gleaned is that it just seems so vague and unknown. Every article I read is voicing exactly what you're saying. We need more clarity, we need more guidance, this is still unclear, we don't know.

Respondent: Even the lawyers need more guidance too you know.

Interviewer: Absolutely. I want to win this case what do I need to do to win it? And if that's not clear then where do I start?

Respondent: I have to keep reminding myself, wanting to help clients is my job and trying to win the case is the lawyer's job. You're always reminding yourself in forensics stuff that your job is to be an expert on the data and what the client is presenting to you at a given point in time. Not to render an opinion or a decision or help them win something.

Interviewer: Yeah, but difficult. Is there anyone else you know who's involved with these types of evaluations that you feel I should talk to?

Respondent: I would recommend, you could use my name, to talk to xxxxx. He was my supervisor. He's in Washington DC. He is my mentor on this stuff he really taught me well. He's also very busy but he cares about these issues and he cares about the policy angle. He's been involved in policy stuff about this to going on the hill and arguing. Not so much the hardship stuff, but there's a rule in political asylum cases where the person has to file political asylum claim within a year of their entry. And it's kind of an arbitrary period of time, but not reasonable when you consider that many people who legitimately come fleeing their countries from a threat don't have the cognitive or executive function capacity in the moment that they flee to actually to figure out that they could apply for political asylum and no one tells them that either. They find out by accident. So, he's active in that realm as well. His number is (xxx) xxx-xxxx.

Interviewer: Yes, I think I've come across his name when I was researching evaluators.

Respondent: I really don't know anyone else in that DC area. I knew one or two other people who did these evaluations but for those who I would recommend xxxxx is one of the best ones. The other person who I know is actually local her name is xxxxx. She's done hardship stuff to she does all kinds of immigration things. She's done things here locally.

Interviewer: Wonderful, thank you so much. I will get her on my list. I see her in Bellevue? Great I'll add her information. Anything else that you'd like to add that we didn't discuss?

Respondent: Not that I can think of. It would be wonderful if it made recommendations as to what constitutes a good evaluation. But you would need to have some idea of what the government is looking for. So that's a tall order!

Interviewer: You start chasing your tail.

Respondent: Right. Because you could come up with what constitutes a good psych eval in a forensic setting. Right. So, we can say that. But if that's not even important in these cases. In my experience here in Seattle, where I have been in the courtroom, I didn't go to court in DC, here in Seattle in the courtroom and I've observed the government lawyer. They are so disorganized. They didn't even need me on the stand because they had no questions. And xxxxx said that even if I had gotten on the stand, they are so unsophisticated they're not going to ask you hard questions because they don't know anything about this. That's fine with me. Whatever. But what I don't know, is do they have any idea when they have an evaluation in front of them that's a high-quality one? The case we are making is a good one because we have all this data behind it? I don't know if they know.

Interviewer: I understand what you're saying and how critical that piece is. xxxxx had done some research on that and they were looking at outcomes, did the case win or lose, but even that is such a vague measure. Because even if it won, you don't necessarily know why, unless they do release a statement but even if they do this statement is kind of vague too. Or just point to the overall picture, the overall picture was compelling. Okay, but what points of that picture made it compelling? They don't go to that level of detail.

Respondent: Right so it would be interesting for me to know is when you come up with guidelines are these guidelines for whom? And based on what?

Interviewer: Exactly are we cooking them up or they coming from the government?

Respondent: Yes. Ideally, they would be guidelines that come from the government that say this is what we want, this is what we're looking for, and then that's passed down to us doing this work. But at the same time, I can imagine the government would want nothing to do with providing this kind of information.

Interviewer: That's the tough part, who starts the dance.

Respondent: They don't want that because there are political reasons to not make it any easier for folks to argue for benefits for immigration status.

Interviewer: Very true.

Interviewer: It's kind of a chicken or egg thing. It's not that I don't think this is great research I do, but I have my doubts. It will be really interesting to see what you find, but at the same time I think the guidelines development stuff has to be done in collaboration with the government and I don't know under what scenario they would do that.

Interviewer: Yeah how that would come about.

Respondent: Right because there's not an incentive. In fact, there's actually a disincentive to provide any more transparency around this.

Interviewer: Yeah, I think you're right. That is so interesting I'll keep you posted. Are there any aspects of this process that you would recommend we change, get rid of add in future interviews?

Respondent: The only thing I would say is that when you develop guidelines that folks are going to follow, if there's going to be enforcement behind them, then we need to know what the government is looking for. That's going to be hard. It is for the government to decide what is a good report versus what is not a good report, so you need the involvement of the stakeholders in creating the guidelines. So, it would be really important that the research not be done purely academically because it has policy implications and should include engagement with policy stakeholders who have something to say, or who could influence, or implement. Again, that might be a pipe dream, because there are so many political things to overcome in this particular issue.

Interviewer: Part of the concern is that xxxxx has seen some evaluations that came across his desk that were so poorly written. So potentially even as a first step, definitely not policy or to that level, but to raise the bar of the minimum standards for these evaluations.

Respondent: Right, exactly. And the question is who's your audience to that? Lawyers, hopefully yes. But the lawyers are going to want to know if it looks like this doesn't mean it's going to win?

Interviewer: Yes, I hear what you're saying. And that we can't answer, at least at this point.

Respondent: We don't know. We can certainly tell them this is what a good psychological evaluation looks like and this is what you should be looking for.

Interviewer: And for evaluators how to conduct them so they know what to expect and what should be included.

Respondent: Right but in order to have the weight behind that. Just somebody saying that in the research community or publishing about it isn't enough. Because there's plenty of folks who don't belong that community who are doing their things their way anyway. And they're not governed. I'm not saying they deliberately did bad job and charged the client a lot of money. I'm saying there isn't a lot of experience with this stuff. The fact that someone could even do this with an LMHC and basically provide what is a detailed clinical interview with the write-up. That's not a psychological evaluation.

Interviewer: Yeah there is a need for clarification isn't there.

Respondent: They're not under our umbrella they are under the counseling umbrella so I don't know. Right? At what point are we preaching to the choir.

Interviewer: One thing I've run into is a lot of folks learning by fire. They're looking for some sort of guidance looking for the research and I think I found three or four articles and that's an

increase from a couple of years ago so they're starting to get some traction but I think initially some evaluators literally just did it, "I had no background I had no guidance I had no mentors. I worked with the lawyers closely as I could and did the best job I thought I could do." Literally just learning on their own.

Respondent: Right. There is a specific need for it and there might also be an audience and potential way to make that happen. Have you considered the way nonprofit groups such as physicians for human rights have provided training? And that's training within a specific context, they're providing training for people who might need a psychological evaluation for political asylum cases that they have taken on. They train their pro bono evaluators - here's what we are expecting and we are going to give you training on how to do it. We have a certain standard for the evaluations we create. But hardship evaluations, I don't know who that would be? I think part of the problem in Seattle is this a new field for Seattle. It's not just hardship, there are few immigration cases. A lot of people don't have this experience here.

Interviewer: I think you're right

Respondent: They just haven't had that population now it's coming

Interviewer: Thank you so much for your time I really appreciate it.

Respondent: You're welcome. Anything else I can help you with let me know. I would love to keep in contact. To find out how this turns out. I would strongly recommend speaking to at least xxxxx he's my Guru and he's also just so knowledgeable about these things. He's been doing it for decades.

Interviewer: he has such a depth of knowledge. I will definitely reach out to him thanks again. Have a good afternoon, goodbye.

Respondent: Bye.

Participant: Attorney

ID: 10

Gender: Female

Credentials: JD

Interviewer: Thank you for giving me your permission to record our call. Any questions? Or should I just jump right in?

Respondent: You can just jump right in.

Interviewer: all right, this is a semi structured interview. So, by all means provide any feedback you feel is pertinent or topics you think are important. So, to get us started, can you provide a little bit about your background in immigration hardship evaluations? How long have you been involved with immigrations cases in your practice?

Respondent: Well, I'm an immigration attorney. I have a practice where 30% - 50% of my cases involve hardship. Either they are consular cases where there is a waiver involved or they are removal cases where hardship to the individual or family member would make a difference. And I've been doing this work for about 25 years.

Interviewer: Great. For your screening process, are there particular aspects of a case make it particularly strong or weak? What are you looking for in your initial screening process?

Respondent: I think that almost any time there are children involved, there is potential hardship. I feel strongly about that. Even if the people don't present with some sort of unusual situation, if the potential immigration action is likely to cause separation of a family that that is enough for

me to be interested in it as a potential hardship case. Of course, I'm not the evaluator, I'm this person who is sort of in-taking the case.

Interviewer: okay. Across the hardship cases you've done, any idea of how many or percentage of cases where you've used a mental health evaluation?

Respondent: Most of my cases involve a mental health evaluation. It really informs my law office about areas to explore. Some people might use that evaluator more than once. Maybe they'll evaluate the family early on and then again as were getting close to submitting whatever application for release. So, I think in a lot of cases where there are families involved, we will use a mental health evaluation.

Interviewer: You mentioned using them more than once in a single case. Can you tell me more about that?

Respondent: Yes, because sometimes years go by between the first time you contact a person for an evaluation and when the case is actually ready to be submitted and ready for hearing. If it's been more than 12 to 18 months, then in almost all those cases I require my clients to be evaluated again. Sometimes we have them contact someone else if the evaluator isn't available.

Interviewer: In some of the longer cases, I was also hearing from some attorneys who said that it can be helpful is if there is an ongoing relationship between the evaluator and the foreign national. Is that something that you potentially encourage too? Or is that a factor?

Respondent: Yes, it's a factor for the judges. In fact, just this week in court, I had a judge say to me that he thinks that evaluations of children, especially, for use in litigation are traumatizing to the children and he doesn't want to hear about them. But if a person were a treating therapist that he would want to hear that person. That judge is not in the minority of judges. Many people do not think that, thinking of judges not administrative tribunals, that judges don't really like evaluations. I don't think they understand that there is a whole profession behind it.

Interviewer: Yeah, I was hearing that one of the concerns was, "you've met with this client once. And now you're giving this huge write-up on their life story and how can that possibly be." Is that essentially what you are hearing or are there other concerns?

Respondent: Right. Which means the judge is second-guessing the evaluator. Yeah. That is the main concern of judges. If they don't like it, that's the reason they don't like it.

Interviewer: When you're working with immigration cases that involve psychological issues, which factors weigh most heavily in a grant?

Respondent: Well, I actually don't know. The cases that go to immigration for the I-601A cases, I can't really tell what the most important factors are because we have gotten all of them approved. Kids, or no kids, so I don't know. Hardship is more apparent if there are psychological issues beyond anxiety or depression, if the kids or the spouse are in therapy for different conditions, if there has been a past trauma that continues to impact the qualifying relative, or if school accommodations are in place such as special education, or a formal IEP.

Interviewer: What would you consider to be the essential components of a good hardship evaluation?

Respondent: Well, that is your job.

Interviewer: I'm assuming you've seen good evaluations and poor ones. What would you consider to be beneficial?

Respondent: I have not seen too many poor ones. The main person we work with, we have been able to get that evaluator to change-up their format a bit. I think that the evaluator should qualify themselves in the report. It seems to be more credible if the evaluator does some sort of testing - those go better with the judges and everybody if the evaluator has done something other than

purely interview and record what the qualifying relative said. I don't know, they're different. The best ones, it's important that they not reach beyond the people there. Sometimes I've had evaluators want to go and do research about what education conditions are like in a certain corner of El Salvador for example. And that is really not appropriate. Although the client has just told the evaluator this was one of their worries and so they want to verify it, I get that, but I don't want the expert opinion to be outside their field. I don't know, does that help?

Interviewer: Oh, it does, definitely. It sounds like formatting is something that you've been able to work through with your evaluator to get a format that works. You mentioned the qualifications, are you speaking of educational credentials, or?

Respondent: That they need to say it somewhere. I have worked with people with different credentials MSW, PhD, and it doesn't matter for me. I don't necessarily need someone who is a psychologist.

Interviewer: It's more the content?

Respondent: Yes, it's all about the content. Our biggest challenge in finding people has been that a lot of treating professionals don't want to write they just want to treat. I have tried with many people over the years, who do really good work as therapist and seem like they would be a great person to do evaluations, but it doesn't always go well.

Interviewer: Yes. Hard to get the best of both worlds.

Respondent: Some people are really good writers. You can tell from looking at an example of one of their reports.

Interviewer: Are there any instructions that you give a mental health professional that is providing hardship evaluation on one of your cases?

Respondent: If I am working with an evaluator who has never done this type of evaluation before, I usually give them some samples and a lot of information - this is what it is, this is what we want, this is the legal standard, but we don't want you to exactly state that, but this is what we are going for. I make sure that the evaluators know that if they don't find that there's any kind of hardship that it is still a valuable opinion for us. We don't drive to get letters that ooze trauma.

Interviewer: Yes, I was hearing a bit about that. The need to walk in this fine line of painting a picture of the hardship and yet keeping it within the legal framework of objective measures, objective findings etc. And that was a key skill for your evaluators as well. Can you describe the nature of the communication you have with the evaluator? Is there much back and forth? Is it helpful if the clinician raises particular issues with you before the report is complete or in different stages?

Respondent: The back-and-forth with the evaluator is very helpful because we often find things to correct in the report. Sometimes we find mistakes, so it's critical that we get a chance to at least help proof the report. One of our evaluators wants to see our client's draft statement. We go into a big long history with them and that seems to be helpful for that evaluator to see before they meet the client because then they have more to go on, I guess. Usually the evaluator wants to know what's the basic procedural "posture" for a law case such as, is the person trying to stay here and facing deportation or are they trying to not be separated from family. Oftentimes there are things that we know here in the law office that would be important for the evaluator to know that aren't necessarily going to come up during the clinical interview. We try to give them information we think is relevant. Oftentimes evaluations raise things that we were unaware of. The best example would be the client told the evaluator that she had a young child that died a really tragic death and that's why this person was in Mexico for so many months at one

particular time. We may not know that because it didn't come up, it didn't matter, she has four other children now. But this is really important information for the case. I wouldn't have known this if it hadn't come up during the evaluation.

Interviewer: You mentioned seeing some mistakes occasionally. Are there common mistakes you see or is it a case by case basis?

Respondent: Case-by-case. Clinicians will often echo what the client says, and they don't themselves understand their situation that well and may say something like, "I'm trying not to be deported" but they're not in deportation proceedings. The client may not really understand what is happening and they could use an entirely wrong concept that will then get tracked right through the evaluator's report. If we don't get a chance to look at a draft of the report to suggest a different word it will stay there and be a problem for the adjudicator.

Interviewer: Is there anyone else you know who is involved with these type of evaluations that you think I should talk to? Other attorneys or evaluators?

Respondent: Well, I'm sure you have a lot of people on your list. Nope, I don't think I have other people to offer.

Interviewer: Anything else you would like to add that we did not discuss?

Respondent: No, I'm looking forward to seeing what you come up with.

Interviewer: Yes, if you would like I'd be more than happy to keep you up-to-date on our progress and results.

Respondent: Good.

Interviewer: Those were all the questions that I had. Thank you so much for your time. You're welcome thanks for calling and good luck with finishing your project.

Participant: Evaluator

ID: 11

Gender: Female

Credentials: LMHC

Interviewer: Great, let's get started.

Respondent: Conducting psychosocial evaluations for immigration cases of all kinds is our strongest program. Our mission is to increase the accessibility of the service to undocumented migrants and asylees - to increase their representation. I have been working on this for over six years. I've done 183 cases and counting. I have trained colleagues and now we have two full-time staff clinicians, and there are about 15 of us. We are thinking to expand possibly beyond Washington state to states where there are detention centers.

Interviewer: Excellent!

Respondent: Yes, so I've been very intentionally making sure that we can serve a larger amount of people. It's a full-time job.

Interviewer: Yes, definitely. I have a couple more housekeeping items to complete. I have a consent that I would like to send to you for your signature which provides your consent for us to use this interview in research and publications.

Respondent: Okay, no problem.

Interviewer: Great, thank you. One other question, do you remind do you mind if I record our call that helps me transcribe our conversation?

Respondent: Of course, absolutely

Interviewer: Okay, thank you let me get that started. Thank you so much. Any questions for me, or should I just jump right in?

Respondent: No questions.

Interviewer: What I have is a semi-structured interview. What we are looking to do is tap your knowledge and expertise in this field. So, if you feel I'm missing a point or not touching on something that you feel is critical or relevant please stop me and let me know. We talked about this a bit, but how long have you been doing immigration hardship evaluations?

Respondent: I started in May 2009.

Interviewer: Great. Are there particular cases that you accept or decline? Do you do any particular triage for cases that you see?

Respondent: There are five kinds of proceedings where I have provided psych evaluations for, hardship cases would be one of them. The immigration system is very complex as is individual law and therefore what is required of the evaluator. The first one is a hardship case, the second is U-visas (if you are a victim of a crime on U.S. soil and you collaborate with the police you are entitled to apply for a U-visa), then you have the Violence Against Women Act VAWA (if you are the victim of domestic violence by U.S. citizen or legal permanent resident you are entitled to apply), also asylum-seekers, and finally cancellation of removal (these are for folks who are often facing deportation and who are often detained. So, cancellation of removal is to stop deportation and hopefully get them out detention. We are asked to comment on whether or not such individuals are a risk to public safety), and much less often, I'm asked to comment on C-visas, which are for victims of human trafficking. Usually they overlap, so for example the laws for hardship case often operate on cancellation the removal. We're not going to deport this dad because of what would happen to the new citizen children. It's not an I-601 waiver, but the same logic operates, what would happen of the whole family system if the dad was deported. Each case has its own diagnosis as well. I think that's about it.

Interviewer: Okay. Are the best practices that you've identified regarding hardship evaluations?

Respondent: Do you mean clinical or, what order?

Interviewer: Well, clinical definitely, or if you have other best practices such as administrative, or coordination with attorneys, etc.

Respondent: Yes, this is like the training we've developed. So, I also want to be careful I'm not giving you all the material.

Interviewer: I would love to be able attend one of your trainings about possible, that would be great.

Respondent: There is so much involved in writing an effective evaluation. Evaluators need to truly understand the question that is being asked in the case. Many clinicians have absolutely no training on doing types of assessments and so do not know what is required. Some people will go to mental health agencies and they will receive a certificate that says this person has depression or this person PTSD. That holds little weight in any immigration proceeding because the question that is being asked in an immigration proceeding is a legal question. While it is useful to know what diagnoses the person has, the legal proceeding demands that the mental health professional respond to the implications of a ruling into the psychosocial health of the qualifying relative's overall family system, social system, etc. It is a legal question that needs to be answered from a psychosocial perspective. So, often clinicians get caught in either answering a question they think is psychological and so they are missing the legal aspects of the question or they will jump straight to advocacy trying to answer a legal question legally which they are not prepared or able to do. So, understanding the clinician's role at the intersection of these two

worlds is critical to write an effective report. So that's one piece of the issue. Evaluators need to be able to translate. What you have, especially when it comes to undocumented immigrants, is a dialogue from two different traditions that are trying to understand each other. The legal part is to translate the markers of pain-and-suffering of the client into something that a judge or an immigration officer can understand. Many clients will ask, "What is depression? We don't describe our pain in that way." Or the first time they ever hear about domestic violence is when they crossed the border. So, there are many cues that signal suffering that mental health providers are not trained to understand. The presentation of problems from someone who is pressured to keep the family together looks very different from someone who is privileged and can afford to stay in bed all day. Depression or an adjustment disorder in a person who is in immigration proceedings looks very different from the typical clinical population. Evaluators must understand that and translate it into the language of the more institutionalized discipline of psychology so that the judge an immigration officer can understand it. All while not sounding like an advocate.

Interviewer: Oh my gosh yes.

Respondent: It is a lot.

Interviewer: That's what I've been gathering, exactly what you're saying. Clinicians tend to move into an advocacy role or maybe unknowingly move into a legal stance role which is unappreciated by the court.

Respondent: I had a provider once that I refer to case, who said, "this person qualifies for asylum." We never used them again.

Interviewer: Oh no, I'm sure the court did not appreciate that.

Respondent: Exactly, they did not.

Interviewer: Yes, so just some fundamental understanding.

Respondent: Our training has not given us the tools to perform this role. It's an emergent role. It's not a historical role - we have to deal with our current immigration system. It would be a 10-year-old role. At least at this volume. So, it's important to be gracious to our discipline, while it's true that we lack the tools to perform this role formally, it is also important to recognize that many people who have been doing this work for a long time can provide insight.

Interviewer: Absolutely, I think your training will be so valuable.

Respondent: I hope so.

Interviewer: I agree. I think people are doing the best they can but are moving forward without much guidance.

Respondent: Often there are too few evaluators. There is not the capacity to keep up with demand. You feel very lonely - how do we serve this many people who need help, and how do you manage the price point from pro-bono, to reduced fee, to people who can actually pay? How do you build that? In our profession, we are not trained in this.

Interviewer: Yes, on the business side of things.

Respondent: Yes, we know how to start private practices. But not how to build capacity. So, ends up happening for the end user, those who need evaluations, the few people who take the steps, you really need to jump in and tolerate uncertainty. It's not everybody who can do that. So that leads to only a few people who do this work, and the few people tend to become overwhelmed with the demands that they have and to reconcile this issue they raise their prices. So, it becomes even more inaccessible to those who need it. Our mission is to offer clinicians not only training but also the backend support, like this is how you build capacity and we have the systems and the framework to help you do this. Our mission is to increase access to psychosocial

evaluations.

Interviewer: Yes, they have to be approachable and the challenges associated with that.

Respondent: The business is not ready to provide for this need. Often people will say, I provide counseling, but we are not set up to be flexible in understanding what our clients need. I say that as a Latina. The way mental health professionals can help the Latina today is not by offering counseling, it's by offering psychosocial evaluations for immigration cases. We don't have the flexibility, and I think it is a great opportunity for the discipline of psychology to review our fundamentals. To become more flexible.

Interviewer: Yes, our social justice roots and where are we going with this.

Respondent: We have [unknown] for social justice, but not necessarily a model for what an advocate looks like. Because sometimes good advocacy needs to be done professional you don't really need to [unknown] to be a good advocate to be professional. We play with the perception that psychology is apolitical in order to do very political work.

Interviewer: Yes, an interesting tap dance is in it.

Respondent: Right, were apolitical, it's an objective - the politics of it is built into the system. We are using our political role with all the power invested in us by the state of Washington to advocate.

Interviewer: Yes, exciting work

Respondent: Sorry, I got on my soapbox!

Interviewer: No, it's exciting work, your passion is fabulous!

Respondent: No, I'm just old! [Laughter].

Interviewer: I'm curious are there particular objective measures that you use given the population and language barriers and acculturation issues. Do you find that to be an issue as well?

Respondent: Yes, absolutely. People who have doctorates can use the MMPI, which is what we use. People who have Master's in Counseling don't have access to the MMPI, but there are other measures that can be used. I want to say that in trainings we've offered previously, it was said, "please don't use measures" because that raises the bar for all of us. I think that's a disservice to people who are going to shop around. In many cases the assessment results are the make it or break it point in the case. It goes back to the question that the case needs answered. The question that the case needs determines the assessment. It's not an overall assessment.

Interviewer: Exactly, it's very specific.

Respondent: Yes, but sometimes the issue is general to. Sometimes the referral question is to clarify a particular diagnosis or substance use. The questions addressed in immigration cases are so varied, it's important to keep an open mind. I approach each case is a research project. What measures will provide the best response to this particular question? Often, because of the politics of immigration, the role of the victim is very important. Most immigration benefits revolve around the role of victimhood. Asylum-seekers, victims of abuse, victims of crime, right. This becomes relevant in hardship cases to show certain psychological vulnerabilities. For example, if there were early experiences of trauma, then you have certain vulnerabilities that the general population does not have. Because the core of the hardship case is not that it's hard to be away from your loved ones, but what makes this family *especially* vulnerable. We often find vulnerability in trauma. Assessments of trauma are very important. We use the Trauma Symptom Inventory (TSI-2), the MMPI, the BDI, the Hopkins Symptom Checklist (HSCL) for anxiety and depression, and others. But the issue here is psychological literacy among immigrant families and performance on standardized tests. It is an issue because all these measures are standardized.

Interviewer: Yes, on a Western population.

Respondent: Yes, but not only that. I had a local neurologist, who is a sweetheart, who is very committed to the Central American cause back in the 80s, he is a self-referred Hispanic minority specialist, and I read one of his reports and he conducted an intelligence test, the WISC, on someone who I was later asked to do report. This Guatemalan man showed up as borderline intellectually disabled. Of course, this man didn't know much of this. He tried to use this test to defend his case, but everyone could see through it including the judge and the immigration officer, so it was not an effective report.

A while ago I conducted a personal experiment. For a few months I included the Adverse Childhood Experience (ACE) scale along with the intake and compared the information clients provided on these forms with the data from the story of their lives they told me once we were in private. Often the ACE scale would indicate no problems at all. But their narrative story was horrible, absolutely horrible. Abandonment, neglect, sexual abuse, poverty, you name it. So that really gave me a sense of how people engage with these tests. They are really useful, they provide numbers, and people in positions of power understand numbers. So, if you really want to be an advocate you need to use numbers. The people for whom the numbers are important, the clients, you really need to recruit them into answering these tests. I've noticed anecdotally that when people are asked to answer a questionnaire, they receive it as schoolwork. Ugh, I don't want to do this.

Interviewer: Especially about painful experiences.

Respondent: No, it's not even that. I'm talking about the BDI something like that i.e. Do you ever feel sad? That kind of stuff. No, the measures are not triggering in and of themselves. That would not go well. To do an effective and culturally relevant evaluation you need to recruit your client to do this work with you. It is your role as a clinician to explain to your client that you are on the same team. You'll need to collaborate to make the most accurate picture. Part of the picture are numbers, and you explain the numbers and what they mean in the courtroom. They need to be very accurate and people need to respond thoughtfully. Once you do that, clients fully engage with the process.

Interviewer: Yes, once they understand how it's going to be used. It's not just another piece of paper, it's critical information.

Respondent: It's part of the practice, it's part of how you inform clients whose lives are really on the line. It hasn't been my experience that they lie or exaggerate. I've had about two cases out of 183 where the client was clearly lying. It has been my experience that most people are willing to be very honest and as accurate as possible. We have developed a model of psychosocial assessments that is standardized at its core. So much so that a few clients have very sporadically asked to see the reports. We have a conversation about keeping in mind that this is just a picture of part of your life for this particular request, this is not a comprehensive picture of who you are. What they told me, is that they have actually felt very honored by the report. We have reason to be proud that our clients feel honored by our reports and that they are effective in the courtroom, enabling judges to make their decisions. The report has provided a comprehensive background of the client. I'm giving you a global framework of how we use measurements really and what the problems that may come up when using standardized measurements with this population, beyond the issue of poor validation for this population. To be honest, these measurements are so simple. It fits pretty well. I wouldn't do it for research, but for the purposes of forensic you are doing

translation anyway. I think it works out, except for more culturally bound assessments like I mentioned earlier. Everyone uses assessments nowadays.

Respondent: Speaking of, have you found for your cases that you need to include any sort of malingering or validity scales?

Interviewer: Of course.

Respondent: Okay, that sounds like a best practice for you.

Respondent: It's crucial.

Interviewer: I've received varying feedback on that.

Respondent: Oh, some people say that clinicians are not able to identify malingering. But when I perform an evaluation, I put myself in the role of a devil's advocate. I try to get myself into the mindset of an immigration officer or an immigration judge. We have quite a bit of access, we team at the attorney. Often the attorney will give us the declaration, various criminal records, etc.

Respondent: Do you request the declaration up front?

Interviewer: Of course. It gives you so much. You start to identify certain patterns and the way they narrate, and what they're looking like. We had a client who made it clear in his declaration that he was not willing to take responsibility for his past mistakes. So, I was really curious as to why the attorney took this case. Dude everyone is seeing through you right now. As I was reading the declaration, I hypothesized that his childhood had a lot of neglect and abuse, he's used to not trusting people so he's trying to B.S. everybody here to defend himself. He's trying to create an image of himself in a very ineffective way. He's telling stories. We knew that going in. So once we were seeing him in detention, we are like, "Look buddy, this is how your being perceived."

Respondent: Oh, he probably didn't even know.

Respondent: Don't get mad at us, we're part of your team and we want to help you. We told him this is how you are being perceived. We don't want to hear about how it wasn't your fault or how you didn't mean it. This is a pro bono case, we are willing to help you for free, so the least you can do is to be honest with us.

Interviewer: Absolutely.

Respondent: Give us everything. We're protected by confidentiality. We would rather know the whole story and work together with your attorney as a team to try and figure out what to do rather than you lie us. Then everybody suffers. We cannot do that. He appreciated that. We were able to make a very different case. The therapeutic move was to make them feel safer. He was telling the truth, it was not about making up information, it was about changing his posture. Right? Oh, some might say that's coaching him or whatever, but no. The narrative that he was offering was telling the truth. Our role there was to work with him and getting him to a place where he could own his truth, it connected truth, which is going to benefit everybody. So, I make sure I explained to people. This is where the advocacy and clinical practice get a little tight. Or where objectivity looks very different what has been given to us. Thinking of malingering, I understand malingering as a response of distrust to an unjust system. That's how I understand malingering. The client may be lying because they don't trust and they're trying to protect themselves. So, the only way to take a client out of malingering is to make them feel safe. A good way to help clients feel safe is through rapport. Rapport builds with a warm person sitting in front of you. I build rapport by going through the legal aspects of these of our work together. Latinos are not swayed by your goodwill. They have been screwed over, over, and over. So, a sure way to build trust with an undocumented immigrant is to be very clear on the legal aspects that work in their favor. The statement is protected. That's the first thing they need to know

before they say anything. Everything they say is protected under confidentiality, except for certain exceptions, and is a resident of Washington state I have no obligation to share any information with any immigration officer. My role is to give a full picture. My role is to provide context. So, I explained that to them. Basically, I say if there is some aspect of your story that is not strategic for your case, I rather you tell me. For example, in a hardship case, what if one of the spouses is abusive?

Respondent: What do you do then?

Interviewer: If the spouse, who is the qualifying relative, is abusive, I'd rather the client tell me. I'd rather know. Then we decide together what we do with the information to protect them and their family. My first ethical commitment is to the client's safety. It's not to immigration enforcement. So ethically, I'm down to that, as the ethics of my profession. I make that very clear to them. I'm on your side; there's no need to lie to me. When they lie to me, I know. And I tell them, I don't believe you right now. Tell me why? I had a client once who said I have so much depression. I said oh really, what is a look like, depression? You know depression. That's an easy one, right. I ended up calling his wife and it turns out that the guy was pretty abusive. Sister to sister, what's going on here.

Respondent: Do you or your organization use translators? If there are language barriers how you tackle that?

Respondent: No, because we are a Latino-led, Latino-founded organization. We're committed to the Latino undocumented migrants because they make such a large percentage of the undocumented population. We don't use translators. We have native Spanish-speaking clinicians. I look for people who speak Spanish, and then train them to conduct these evaluations. When that is not available, we use interpreters of course, but that is just not ideal.

Interviewer: Are there particular issues that you run into with interpreters?

Respondent: We just avoid it. I used an interpreter once. This is why I'm super opposed to using interpreters, because it's not safe. We live in a very segregated city in a very segregated state. The likelihood that the interpreter is part of the client's community is very high. And there's no confidentiality there. I've heard hellish stories of friends of mine who have gone to other community mental health agencies where they've had family members act as interpreters for the counseling and the interpreter in this particular case was the perpetrator. So, we go above and beyond

Interviewer: Oh my gosh.

Respondent: What quality of care can you and afford? So, in this particular case we go above and beyond to prevent the need to use interpreters.

Interviewer: Thanks for sharing your perspective on that.

Respondent: I'm opinionated!

Interviewer: I appreciate it, you've had such experience. Any know so much a

Respondent: One of the things regarding malingering, it goes further, the mistrust. There are politics of mistrust in Latin America. Especially among friends. You are lying to me to take advantage of me. That's the cultural ground level basis for any relationship including marriage. That's the value of having Latinos interview Latinos, who can translate well into the politics of the immigration court. When people are telling a story I question any inconsistencies, to get to the bottom of it. We use the politics of mistrust to catch people lying. We need to be prepared to account for inconsistencies.

Interviewer: Yes, the court will pick them apart I assume. You got to be ready.

Respondent: It will also invalidate your report. Your report is not credible anymore if there are any inconsistencies. You really need to interview with the understanding that this person is trying not to get screwed by the system, everything they're saying is in their favor, you are the devil's advocate. So, you can write the strongest report possible and account for those things that look unfavorable. Be able to put those things into context. Sorry I have strayed from hardship cases, there are usually criminal records involved.

Interviewer: I was hearing from other evaluators as well who would seek to find if there were criminal or substance use history because I would have such a negative impact on hardship eval.

Respondent: I once had an attorney ask me, "Can you please not mention her addiction?" I was like are you kidding me? You're [recording unclear] is next week and then were all screwed on her case. She screwed.

Interviewer: Speaking of, in working with attorneys, are there best practices of how to work together on a case? What helps you deliver the best possible report?

Respondent: I'm giving you a secret here that is crucial to your success, to understand that your client is not the individual, your client is the attorney. Building good collaborative relationship with the attorney is the key to providing a good report. I send my first draft to the attorney for comments. Attorneys are not allowed to tell you what to say. They are very careful about that. "I'm not going to tell you what to write, but have you thought about this, or what about that, or I think this might be interpreted this way? Could you change the wording on this?" That's the secret to good report at the end the day. Of course, I've had one or two who asked me to do something I'm not comfortable with so we have to be firm in our ethics as well. I understand that their code of ethics tells them to do everything they can to help their clients. And I understand that. My code of ethics also says that I need to do everything I can to help my clinical clients. So, when attorneys push back, I feel that's their job. That's what makes them a good attorney. They need to make use of any resource they have. It can be a beautiful relationship. If I'm concerned about the impact on the family system in the end, they will listen to it. For example, one attorney didn't want to mention the very complicated criminal history of the client, but I said, "Hey look at this history, it happened during a time of the client's life when he was dealing with X, Y, and Z, and they are all self-damaging things. They're all self-destructive. There is an acting out. And then look at what happened, he totally turned things around, look at the course of his life. Okay, okay that will help with the case. So long as we all understand our role in the process and we push each other, the clients will be well served in the end. And that goes also for the government attorney and also for the judge. Everybody's doing their job. That's why understanding your role in the system is crucial.

Interviewer: It sounds like it and may be one of the hardest parts to learn. How did you go about this? It sounds like really coordinating with your attorneys, is that right?

Respondent: I think that my experience at the time, in terms of working in community mental health, and not having worked in private practice for too long, I had a lot of experience working in organizations. Teamwork, that's the mentality I approach this with. That's why I ask attorneys, "Tell me about this draft, what do you think?" Also, I respond to emails within two to three hours, being really accessible and fast is helpful. My experience of colleagues in community mental health is that it takes them a week to respond to an email. Even when I email them it takes them a week to respond to me. Usually my experience of other evaluators is that they just send the report. I might be mistaken, maybe you can tell me more. But my experience is that they just send a one pager or a very good report, but they just send it. There is no collaborative understanding in the name of objectivity.

Interviewer: Yes, that was the only argument I've heard so far regarding the declaration. Some people didn't want the declaration upfront because they wanted to be objective when they met with the client, but then they would run the risk of conflicting with the declaration. It was an interesting issue.

Respondent: You read the declaration beforehand so you have more pointed questions for the client about inconsistencies that you found.

Interviewer: Yes, so you can go deeper, I would tend to agree.

Respondent: In those cases, I assume they are more formalists, and they have a misunderstanding of how political our role is. If you want to be blind to the politics in the name of so called objectivity, then you are really not doing a good service for the clients because politics are inherent to our position, especially in this political process. It is better to look at it squarely in the face and learn how to navigate the politics to fulfill your ethical role than to protect the politics that exist and do a very terrible job.

Interviewer: I agree. And do you have a sense of the themes of poor evaluations that might have come across your desk?

Respondent: I get attorneys who tell me they did an evaluation before, but it didn't really work. People go to Consejo Counseling and the clinicians don't know this is going on, they don't know that their letter will be used by the lawyers. So, what they get is a statement, "this person has depression." The end that cost them \$100, fine.

Interviewer: That's probably what they were hired to do quick diagnosis.

Respondent: Doing psychological evaluations is not easy, it's a really annoying job. It's not for everybody. I personally hate it. Yeah, I can't stand it, but it is what my community needs right now. So, I understand why there are so few clinicians doing it because it is truly overwhelming, it is a pain in the butt, it is so administratively heavy, and it's just horrible.

Interviewer: What are the downsides?

Respondent: Do you really want to get me started? [Laughter].

Interviewer: [Laughter].

Respondent: First off, you're trying to constantly coordinate. You are at the muse of three parties, the attorney, the client, and the government. You're working with population that again feels shortchanged for anything, getting your time paid for is a challenge. Because the families pay for it. Some families, usually the ones who don't have any money, say okay and they pay. Usually those who can pay for it try to bargain over bills or sometimes set up payment plans.

Interviewer: Wow, really difficult.

Respondent: Yeah, so in that sense there is a whole population in need and here you are charging them which puts you in a weird position. That's why I started Puentes because I wanted to increase access for those who could not pay, especially detainees. So really making good use of graduate students and volunteers because it is expensive and heavy, the amount of responsibility you have. Everybody who calls your office is terribly anxious. Everybody.

Interviewer: So much is at stake.

Respondent: They are confused. "My attorney told me to call, and I don't know why."

Interviewer: Yes, who are you?

Respondent: I don't know what you do, and you're telling me to pay you, and I have no idea what I'm paying for. It takes you two hours and now you're asking me for more money? Yes, I need to make revisions and I have to write the report. Then you will go to court and sit there for four or five hours to be called as the next witness and no one is paying you for it. You can't bring your phone, computer, or food. You are sitting there doing nothing, absently nothing. You're so

nervous you're a basket case. And usually it's like, "Oh, we didn't need you to testify." So more often than not, you don't get called and you drove all the way in and waited to testify for nothing. You're constantly writing reports. Constantly. Even on vacation.

Interviewer: Yes, the time pressures must be awful.

Respondent: A deadline is a deadline. It is a very stressful job. Many people tell me I don't want to do this full-time. I feel like good for you, you can afford not to do this with your time. There other people who don't have the choice of what to do with their time based on being hungry in the country of origin and they decided to come here. It is usually folks who come from a privileged background to say they don't want to do this. And I'm like, "come on guys, really? Who's going to do this work?" That's why I'm really proud of my team. We hate it but were going to do it. There are so many deportation orphans in the U.S. The amount of people who are detained is obscene. I'm working on my doctorate, but I am a master's level now. We're not the crew that is the best – no PhD's from Harvard. But we are doing what we can to help our people. That is what has been fundamental to the work. Once you have entered into the spirit behind immigration cases, the pain, the abuses they are subjected to, you cannot turn the other way. If you can I question your humanity. Another thing that has kept me going in this work is the resiliency of the people, particularly those in detention. They are remarkable people. They've been through a lot and they still have a generous spirit. They are the ones who need our hearts. That's how we named our training, Developing Eyes to See. It is like, what are you seeing here?

Interviewer: Yes, what do you see?

Respondent: How much do you see? Who is perspective are you using? There is a bias that comes up when you're talking to someone who is in an orange jumpsuit. I'm sorry I'm off the topic of hardship cases again.

Interviewer: No, no, it's part of your work.

Respondent: To be able to understand the structural violence our clients have been subject to. While also keeping a sense of social agency in mind. People are responsible for the decisions they make. It's a really interesting balance. Power is at the core of the work we do - who has the power, how is the power used. When I opened my private practice, the first call ever had was from a Mexican man who needed a psych evaluation for an immigration case. I said yes, and the rest is history. I didn't even know it existed. It's been a really emotional and deep journey. The burnout is another major downside. It's huge. One of the things I'm trying to do at my work is to protect the practitioners by creating community. There are so few of us doing this work, that no one gets what the hell you're talking about. "It's this really nice thing that you do to help others." They have no idea of the depth of how screwed up by the system people are. So, the potential for burnout is massive. It's just really dark, the system. It's very dark. Trying to keep hopeful, faithful, is difficult. That's the good the bad and the ugly.

Interviewer: Thank you so much. Are there any pieces that maybe we haven't touched on that you think would be good to include?

Respondent: I'm sure. We should talk again.

Interviewer: Yes, what I can do via email is send you the release form and if email is the easiest for you. I would love to know of other clinicians or attorneys in this field you feel I should talk to for this project.

Respondent: Well my colleague xxxxx.

Interviewer: Okay, if she would be open to it, that would be great.

Respondent: I need to know what works best in an evaluation and what trainings are available. This project is exploratory I get that. I would also really like to know more about the attorney's

perspective, and from immigration judges, what kind of documents help them make a decision? What type of information they are looking for when they review a psychological evaluation?

Interviewer: Yes, that may be something in the future.

Respondent: Can you reach out to Judge xxxxx and Judge xxxxx at the detention center?

Interviewer: I don't know. Not in this phase. We weren't going to be talking with any judges at this point but potentially in a future phase.

Respondent: Right, because you are focused on hardship cases. But there are judges involved in those cases?

Interviewer: Yes, but my understanding is that a packet of information is submitted to the judge and responds that the waiver was approved or denied with little information as to why.

Respondent: Now that you mention it, I've seen those responses. I've had to respond to those. But usually we get a lot of success. I think we're doing it well. There is a high rate of success.

Interviewer: Great news. For other folks it feels like a black box, some of their cases are successful and others are not and they're not always clear as to why.

Respondent: Because not every clinician understands the question being asked. The question that is being asked in a hardship case is what makes his family unique. So, if you say they're going to be sad because a spouse is going to be gone that is not enough. You need to say they're going to be sad because the spouse is going to be gone and the experiences person this person has had make them vulnerable to developing clinically significant symptoms in the future. You really need to look at the psychological vulnerabilities that mark this person's life. Immigration officers will also deny based on the fact that the qualifying relative has not been attending counseling on a regular basis therefore there is no evidence of psychological hardship, which is an extremely racist culturally insensitive thing to say. Latinos typically do not go to counseling, even if suicidal. That is a matter of concern to me personally. Racism in the system.

Interviewer: Yes, it's not culturally sensitive.

Respondent: Undocumented immigrants and their families are usually an invisible group. The fact that they are invisible has affected what we can say about them in mental health. So that's an opportunity for the mental health discipline. That an immigration officer can get away with saying such a race this statement without being aware of how racist it is. That's awful.

Interviewer: Absolutely, couldn't agree more. Thank you so much for your time. I appreciate it so much. This has been such a valuable conversation. I will send you an email and definitely keep you posted of our process, and I would love to talk with your colleagues.

Respondent: xxxxx would be great thank you

Interviewer: Thank you for your time.

Respondent: Thank you, bye.

Interviewer: Bye.

Participant: Evaluator

ID: 12

Gender: Female

Credentials: PhD

Respondent: Officially I'm giving you my consent as we speak.

Interviewer: Okay, perfect! Thank you so much. What do you consider to be best practices regarding hardship evaluations?

Respondent: The best practice is related to what the person is trying to show. What the case requires. In one particular case, extreme hardship might mean that the person had been held by authorities in their country and now has become really fearful of authorities and so will not report things – that might be one form of extreme hardship. Another form might be there IQ is 20 and they can't understand the questions. Best practices is not establishing best practices.

Interviewer: Okay, yes.

Respondent: From my point of view, the only reason I am participating in this research, and I'm doing it gladly, is because if you asked me the whole idea of establishing best practices to me is horrifying.

Interviewer: Okay, tell me more.

Respondent: It's horrifying because I fear it will become a "by the book," pragmatic kind of approach to something that is not very clear in what will be considered best practices will actually mean something that does not serve the client but that serves the bureaucracy. So best practices in my book are nonexistent. They are so individualized that you could not come up with a single way of doing it.

Interviewer: Okay yeah.

Respondent: I'm troubled when assessments are used that have not been validated on the group that the individual being assessed belongs to. This happens when the norms of a group have been applied to a person from another group or when the assessment is administered in a non-standardized way and the norms are applied. So, if you give somebody a translated version of an assessment and then use the U.S. norms, I find that horrifying. Not that I have any strong feelings about this. [Laughter.]

Interviewer: [Laughter]. But this is so important, and it can be done so willy-nilly.

Respondent: Yes, and so when I hear standardized practices, I see a number of judges are now asking for the numbers, they're asking for the actual scores from the tests. And that is as bad as it gets in my book. Because the numbers are going to be misleading. So, when somebody says three does that mean inches or millimeters or kilometers? And they have no idea.

Interviewer: Yeah, absolutely. And I'm wondering do you have an approach for your clinical interviewing or how you really get to understand the client? I've heard from some evaluators who do a single clinical interview while others reach out to additional sources for information or meet with the client multiple times. Any thoughts on that piece of things?

Respondent: I've done all of the above. I interview the lawyer and then the client to get an idea where the hardship might be and then I look at the documentation. Once I have a general idea of what the problem was then I could research it and go to little bit more depth on whether it existed or not. If someone claimed PTSD for example, or people claim that they didn't have a high enough IQ, or that they have had brain injury or whatever, I go specifically into what was the brain injury what are the effects or what's the PTSD or if they are claiming. If their IQ is too low, then I absolutely have to go to third party. So, what I would do would depend on where the extreme hardship seems to be appearing.

Interviewer: That makes sense.

Respondent: I would have a screening and then go in-depth into what the screening seems to suggest.

Interviewer: Were there some relationships with the attorney that you found more helpful or less helpful?

Respondent: Yes, there were huge differences in terms of the attorneys. Attorneys who are most helpful are the ones who had real specific questions or realistic guidance. For example, if an

attorney told me we're looking into a domestic violence case and we want to know if domestic violence occurred and the effects the domestic violence had or were looking into malingering issue. That was invaluable. It was really great if attorneys that provide background information in a timely way and copies of the police report. My favorites were the attorneys who would give me feedback as to what happened with the case and why.

Interviewer: Did that happen very often? Or was that few and far between?

Respondent: Yes, it happened relatively frequently.

Interviewer: I believe you are bilingual, is that correct?

Respondent: I speak four languages but only three of them good enough for psychological work.

Interviewer: Oh wow! Has that made a difference to your work in this field?

Respondent: Huge! You may know that I come from Mexico and my first language, my native tongue, is Spanish. So, I can speak with people who come from Spanish-speaking countries in their own language which immediately establishes a bond of trust. But also, more important than that, which almost nothing is more important than that, but more important than that is that I could understand what they were saying to me and not be confused. I'll give you an example, there was a client that I had who was evaluated by somebody who was either working through a translator or was trying to do and half-Spanish – they really didn't understand language.

Whatever it was the client was accused of sexual molestation with a young girl. Part of that was based on when they asked the client, the client said, I'm not going to pronounce it exactly the way he said it, but he had given this young girl something like "cuties" or "curdies." Which was taken to mean that he had given her some type of sexually communicated disease. When he said this in Spanish, he had given her quarters \$0.25 coins for the laundry. So that's an extreme example. Didn't happen all the time, but misunderstandings like that happen often when people are working in languages that they don't know. Particularly when it's about very personal intimate kinds of issues, which is indispensable.

Interviewer: Yes, I would think so that makes so much sense.

Respondent: And I have evaluated people in languages that I do not speak because there was nobody else that would do it. But at least I knew how easy it was to misunderstand so I was sure to double check any time there is something of great importance. I would double check that I understood. And I'm sure I missed, because you do that when you're working cross languages. At least I know how bad it can get if you're not careful.

Interviewer: Yes.

Respondent: So, I guess going back to this practice thing, if possible, to do the evaluation in the language that is the primary one for the client. And to have the evaluator know the language very well, not in a kind-of-sort-of level, but when it's really mastered.

Interviewer: Absolutely that would be so important. And I've seen some cases that kind of surprised me where if the evaluator didn't speak the language, they would use a family member as an interpreter and that seemed problematic to me as well.

Respondent: Will that's not only problematic but it specifically forbidden in the ethical guidelines for psychologists.

Interviewer: Yeah not a good idea. [Laughter]. But that was already coming up in some of the interviews, so if you are using a translator a professional translator must be used.

Respondent: Yes, or at the very least someone who is not a member of the client's family.

Interviewer: Yes, not that close.

Respondent: Preferably not a kid, which happens sometimes.

Interviewer: Do you still do these kind of cases and if not was there a reason why you got out of them?

Respondent: I'm so close to retirement – I'm three weeks away. As I close my practice three months ago.

Interviewer: Congratulations! Are you aware of any other evaluators or attorneys that you think I should talk to as part of this project?

Respondent: Well you probably already know all of them, but I always think of xxxxx, xxxxx, and xxxxx.

Interviewer: I'll be sure to add them to my list.

Respondent: Also, xxxxx has worked in the arena. Those are the people that are coming to my mind right now.

Interviewer: Wonderful thanks so much. Anything else you'd like to add?

Respondent: No, I was vociferous enough. [Laughter].

Interviewer: [Laughter]. I appreciate your perspective so much it is so helpful thank you. Goodbye.

Respondent: Goodbye.

Participant: Attorney

ID: 13

Gender: Female

Credentials: JD

Interviewer: Any questions? Or should I just jump right in?

Respondent: You can just jump right in.

Interviewer: It's this is a semi structured interview. So, by all means if you have any other feedback to provide please do. Or if you feel I'm missing something, let me know. We'd love your input. For background how long have you been doing extreme hardship cases? And how did you get involved?

Respondent: I did my first one in law school 2002. Since then I've done a large number of them since 2003.

Interviewer: I have found it to be common that many evaluators have had to learn on their own. But it sounds like on the attorney side you've been involved a lot longer.

Respondent: Yes, since 1996 when Congress passed the vast restriction on immigration, these evaluations have become very critical for noncitizens /citizen deportation.

Interviewer: Are there particular cases that you accept or decline?

Respondent: What you mean by accept or decline? Are there cases I just don't take?

Interviewer: Yes, are some more compelling than others? I guess we are just trying to understand, from the start, are you doing some fielding before the evaluator even sees the case?

Respondent: The number one thing that we have to do before we can accept the case is to make sure that there is a qualifying relative. Because the immigration laws restrict the availability of waivers to cases where the noncitizen actually has a certain type of relative in the United States that has some sort of legal status either as a permanent resident or a U.S. citizen. No matter what level of hardship, if there is no qualifying relative then there is no waiver. That's the first type of screening we would do.

Interviewer: What would be a case that I would reject?

Respondent: I don't know that I would reject the case, but I would definitely say to a client that your chances of succeeding are very low if they have a very tenuous relationship with a qualifying relative. For example, if an individual has a U.S. citizen child who lives with the other parent, they are the noncustodial parent, they have not seen them in years, that person is going to be very difficult if not impossible to credibly establish extreme hardship to that qualifying relative. I suppose there could be circumstances, where that case would still be trialed, but... I always view my role as providing objective advice to my client. So, when in the screening process I will say, "I'm not seeing a particularly strong waiver here." Another example would be if it were a very recent marriage, not so much a recent relationship, so if the spouse is someone the immigrant just met a month ago and then they're getting married, that would be a pretty weak case. Many times, the evaluator will come up with things that we did not get in our screening. I think that's because evaluators have training that I lack in terms of evaluating mental health conditions and emotional health. Frankly, I'm not qualified to speculate about that. Even though my preliminary evaluation may be good, I may not find a lot of hardship, then sometimes the evaluation comes back and I'm shocked to learn about past suicide attempts, child sexual abuse, or things of that nature that maybe would not have come to light but for the fact that there was an evaluation. So, I don't know that I would ever just flat out refuse to take a case. I think there is almost always hardship in every case. The challenge is to prove that it's extreme. That's where I think the evaluators are much better suited to make that determination than I am. Certainly I will often dissuade clients from pursuing a case if I think their chance of success is slim. I will tell them that. And then they decide to proceed with the full knowledge that their chance of success is slim. It's not my job to make that decision, that's made by USCIS or the immigration judges. It's not my job to assess hardship.

Interviewer: Yes, that makes sense. Maybe I'll reword that question more about the screening process.

Respondent: Yeah.

Interviewer: Thinking of all the hardship waiver cases you've done, approximately what percentage of cases have you used a mental health evaluation?

Respondent: I would say almost all. The exception would be cases where there is a very strong argument for something like medical hardship. You know there's a lot of kinds of hardship: medical, financial, and emotional hardship. In cases where for example, there's a qualifying relative child who would probably go back with the parent and they're going to go to a country that has no treatment for their medical condition. That would be a case, where a psych eval maybe wouldn't be necessary. But honestly, given how relatively, even the filing fee for these waivers is \$500 to \$600, even excluding attorney's fees... Well, there is a wide range of fees that evaluators charge. Some evaluators do them for free particularly if I'm doing the case for free. If I'm not working for free, I generally don't ask the evaluator to do so. Some evaluators only charge a couple hundred dollars. It never hurts the case. Because if it hurts the case, I'm not going to submit it. I've never had an evaluation where I thought, "oh I can't submit this it's not going to help the case." Maybe it's not going to be the key piece of evidence that results in our grant, but that's why I say it's very rare for me to find a case where I'm not going to submit it. Just because of the cost and burden on the client is so low and the risk of not submitting it, a piece of evidence the adjudicator would've really liked to have seen, is just too great a risk.

Interviewer: Yeah, better to include it.

Respondent: Yeah.

Interviewer: So, there is this wide range in fees?

Respondent: Yeah, I'm assuming it has to do with the expertise of the evaluator. Some evaluators have very significant credentials PhD's, psychiatrists, you know people who are practicing clinicians, or psychologists are going to charge more fees than say someone who's a licensed mental health counselor. Other than their credentials, I've found that the evaluations from licensed mental health counselors are as good as the evaluations from people with greater credentials. The evaluations from folks with terminal degrees can be more in the nature of \$750 or more. When you can usually get an evaluation from a licensed mental health counselor from \$350-\$500 which is significantly less.

Interviewer: So, you're not seeing a lot of difference between the content or the structure? It sounds like they are very similar.

Respondent: No, they generally use the same structure. It starts off by talking about the facts, the facts as related to the evaluator, evaluation of the applicant's demeanor, presentation at interview, and whatever diagnostic tests or interviews techniques were performed, and then a section on the results of the interview. I can say that the best evaluation I've ever received, was from a treating psychiatrist [they had a long standing relationship with the client]. The one problem with most evaluations is that they tend to be one-off affairs. I don't know what the solution is to this. Somebody meets with the client once for 2 to 4 hours to conduct the evaluation and then they write it up and sends it in. This is quite appropriately subject to some question by the government, "this is only done for the purpose of this benefit and there is not a long-term relationship with the client. So, I think that is a valid criticism. The best evaluation I ever had, was done by somebody who had a grant to provide ongoing treatment to my client. So, he was providing pro bono treatment for years, several years, meeting with my client once a month for 16 to 18 months for several hours each meeting. So, the government had no way to challenge him. They couldn't challenge his credentials, they couldn't challenge the procedures he did in the case, because it was a long-term treatment. So the one thing I would love to see as a best practice, I don't know financially how this would be possible, it's difficult for the applicants who are often in financially tenuous situations, and also the evaluators who need to make a living, but in terms of best practices, the best evaluations are from people who have a continuing relationship with the client in some capacity. So, to the extent that people are willing to do follow-up or continue to meet with the client outside of the one interview that's going to make the evaluation much more powerful.

Interviewer: Interesting, that makes sense. You just briefly mentioned credentials, have you found that the credentials make any difference in the reports you are submitting?

Respondent: I'm sure that it does, at least to some extent. I can imagine that a judge, or a neutral factfinder, is going to give more weight to someone who has more training or experience. That said I've had cases denied where there is a psychologist involved and cases approved, numerous times, when there is a licensed mental health counselor. I think it's possible for either variety of evaluator to do a good job.

Interviewer: When you're looking at hardship cases involving psychological issues, are there particular factors that weigh more strongly in favor for grant?

Respondent: Particular factors? It's hard to say because each case is so individual. Certainly, many of these clients are really struggling as it is, and we often will find that the deportation or denial of benefits to the family member is kind of the last straw. The family is barely keeping it together as it is, and if this were to happen then, this terrible situation would occur. So, it's critical that the evaluation really discusses the impact of the denial and addresses both alternatives is critical. In most cases there is going to be two possibilities if the waiver is denied.

In the first instance, the beneficiary and the petitioner, the petitioner being the person who is trying to give benefits to the beneficiary, relocate to the beneficiary's country. So, the U.S. citizen spouse moves to Mexico or the U.S. citizen child goes to the Philippines or whatever. So, it's really important to evaluate in every hardship evaluation, that aspect of the case. What would happen if the qualifying relative moves with the foreign national to the foreign national's country? What type of hardship would be expected then? What would be the impact on the child, the spouse, whatever from an educational perspective, from a psychological perspective, and so on? But then it's not sufficient to just have that. You also need to have an evaluation of the other possibility, which is that the family is separated. The spouse or the child stays in the U.S., my assumption is that the qualifying relative has to have status so they can stay in the states. An evaluation that fails to evaluate both possibilities is not going to be a strong. Evaluating both possibilities is critical. Beyond that, it's a matter of the detail. An evaluation that really tries to assess what is the real hardship here and wider problem for this person. Sometimes we have cases where there is an undocumented spouse who is not in deportation proceedings, so they are not applying for relief. The person applying for relief is another undocumented spouse. The qualifying relative is the child. Often in such a case the courts will do an evaluation of a child assuming the child is old enough to participate in such an evaluation. But sometimes the child is too young or not able to comprehend or participate in the evaluation process. In that case, we will have an evaluation of the undocumented spouse, even though they are not the qualifying relative. There is no doubt that under the law passed by Congress the hardship to them is technically not relevant. But the reason it comes into play, is reflective hardship. For example, if mom has a history of suicidal ideation and is barely keeping it together with dad's help under all the stressful circumstances of the deportation hearing, and if dad were to ultimately get deported, mom's depression would likely worsen, and then focus on the hardship that would place on the child by talking about how hard it is for the child to see their mother going through this. Even though the child is doing great overall and in school, somehow miraculously adjusting to the fact of their parent possibly being deported. Either in the scenario that they stay here, or they go with dad, it's important for the evaluator to think about the reflective hardships here. Even though the undocumented spouse, is not technically relative, if that person has some pre-existing condition that is really going to be aggravated by this and that is going to really cause harm to the child. Even if the child is otherwise doing fine. So that's another important piece.

Interviewer: Perfect. What instructions do you give a mental health professional who's going to do an evaluation for you?

Respondent: I tend to not give any specific instructions, unless I know something already. As I said earlier, I find evaluators are able to uncover stuff that I wasn't aware of beforehand. They have the training that I don't have. I don't like to prejudge things, so I don't want to tell them I expect you to find X, Y, and Z. So, I don't really provide much of anything at all. Most evaluators require that we send detailed statements beforehand, outlining the client's factual situation, so I definitely do that. I'm sure there would be a circumstance when I would say hey, "take a look for this particular fact," but I can't think of one recently arrived on that.

Interviewer: Okay. Is there a back-and-forth dialogue between you and the evaluator that's particularly helpful?

Respondent: The evaluator will usually send a draft of their evaluation, and I will provide some feedback. Generally, if there's something missing like they only evaluated what happens if they leave but not if they stay, or if I think there's something they missed, then I may ask them to elaborate on it. But that's about it.

Interviewer: Okay. Are there common mistakes that you see clinicians making in the evaluations?

Respondent: I can't really think of any.

Interviewer: Do you know of anyone else who's involved with these evaluations that you feel I should talk to? Either evaluators or other attorneys?

Respondent: I could give you a list of several evaluators that we've used in the past. I don't know if they're on your list already or not. xxxxx is one. xxxxx is another one. Oh, I guess I can think of one mistake. This just happened to one evaluation the evaluator so embarrassed she accidentally let her license lapse. She renewed it immediately. It was just administrative thing. But the government figured out and gave her hell about it on the stand. So, if you have any business licenses that you need for your practice, make sure that they're all current at the time of your evaluation.

Interviewer: That would be a best practice wouldn't it! Because folks don't think of that.

Respondent: I'm sure xxxxx gave you a long list of attorneys but if you've exhausted those by all means contact me.

Interviewer: Wonderful thank you. We're hoping to use a snowball effect to keep extending our reach. Anything else you would like to bring up that we haven't discussed?

Respondent: No. I just wish there were more resources available. That's kind of a common refrain in these cases. Most of these clients are very vulnerable, there is no right to immigration much less a right to have psychological assistance. The thing that is sad to me, in almost all these evaluations, the concluding paragraph says something to the effect that, "I recommend that this person have long-term therapy with a mental health professional." In my experience that never happens. In most cases, not because the person doesn't want to do it, but because they don't have the money. Just hiring an attorney is expense enough and most people don't have money to afford counseling. I would love it if there was more work by mental health professionals to get grants, or some kind of ongoing funding, because as I said, the best evaluations are those that involve ongoing treatment. If I could make one massive change it would be that, maybe not for every single person, but there would be some category of clients that would be eligible for a grant for ongoing treatment, because is not only going to help them, but it's going to really help their case. The one case I was telling about earlier, the one who received treatment through a grant for torture survivors, so is limited to people who have survived torture, but they received free outpatient services through this program. I think it was critical to my client's case and helped him process this deep psychological scar that I don't think he had had the luxury to do before. I know that people can't work for free. But it would be great if there were more funding for people to be able to do this type of work on an ongoing basis without having the financial burden.

Interviewer: Yes, make sense. One of the pieces we're looking at for this research is to ask if you would be interested in providing redirected psychological reports? We would be evaluating them for content and structure. I just thought I would ask.

Respondent: I would need to ask my clients. I would need to get their consent. Let me think about it. You could shoot me an email in a week or two about it.

Interviewer: that would be great. If you would like I can keep you up-to-date as our research progresses.

Respondent: That would be great, wonderful.

Interviewer: Thank you so much for your time. Have a good day

Respondent: Not a problem but all have a great day.

Participant: Evaluator

ID: 14

Gender: Male

Credentials: PhD

Interviewer: Thank you for so much for providing your permission to record this call. It helps so much with transcription. No one else will have access to those files. Did you have any questions or concerns about project or the consent?

Respondent: No. Well, one question, are we talking mostly asylum cases?

Interviewer: Our original scope was looking at immigration hardship cases.

Respondent: Oh, yes, I'm familiar with those.

Interviewer: Yes, but as I've talked to evaluators there asking, "What about asylum? What about some of these other areas where psychological evaluations are used extensively." So, I would invite comment on those areas as well. We can just indicate them as such, this is a best practice for asylum, and does that apply to immigration hardship cases are not.

Respondent: Okay, great.

Interviewer: Wonderful, thank you. My first question would be some background. Your background in doing immigration hardship evaluations? If you could provide some information about that.

Respondent: I haven't done very much. I've worked with a lawyer here in Olympia on a couple of cases for hardship evaluation. And she's been very good at explaining to me just what my role is and what kind of information is useful to her as an attorney. In terms of working with the government, including immigration, INS, and stuff like that I have quite a bit of experience with that both in traveling overseas to work and bringing people overseas here to work in the US for blocks of three months. Negotiating 214-B, which are probably familiar with. Do you know 214-B of the INS code?

Interviewer: Actually, I am not familiar. Can you tell me more?

Respondent: It tries to quantify visa applications determination. Basically, what it says is, we look at the numbers and if the numbers work then were more inclined to get the visa and if the numbers don't work then were less inclined to give the visa. That came in about eight or nine years ago. Trying to take the influence, the prejudice out of the decision. It has not worked for us. What it basically says for us is that if you want to get a visa you have to be really old, or married with family, or wealthy. If you're not in those categories you're not going to get a visa because the chances are once you get here, you're going to jump the visa and try to gain legal status. So that's the kind of experience we've had. But regard to the hardship evaluations, I can speak to you just my own experience on that.

Interviewer: Great, thank you so much.

Respondent: I may have led us astray.

Interviewer: Oh no, not at all. On a similar note, other evaluators and attorneys have expressed concern regarding the lack of clarity, around quote extreme hardship, and the lack of clarity around why a particular case was approved or denied.

Respondent: Yes, I think lack of clarity is the norm. It really is. These decisions are made very arbitrarily on data that is not necessarily consistent from person to person. It's very much a

subjective kind of thumbs up or thumbs down kind of thing. The accountability really doesn't exist. Because there's no basis for the accountability.

Interviewer: Yes, that's one piece I've been struggling with in this project. Some of the questions I've gotten from evaluators saying, how can you develop best practices, when it's really not clear what is required.

Respondent: Exactly, exactly.

Interviewer: I was curious of your take on that as well. Do you see room for guidance, or is so arbitrary that guidance would be difficult to create?

Respondent: It's always going to be arbitrary. There is no way that this can be systematized in a way that is equal for all applicants. One of the problems is with psychometric devices. The only one I use right now is the Depression-Anxiety Scale (DAS). I use it for a number of reasons; because it's free, it's available on the web so that anyone can use it, and it doesn't really have to be normed so much on a particular population. One of the difficulties with all psychometric devices is that they are normed; they are accurate for particular group of people. In hardship evaluations, most of the people we are dealing with are from other countries where the whole epistemology is different from the West. This is something I run into all the time. What this basically means is that what people know and how they know it is very different from how we do it here. So, if we take any kind of psychometric device that is normed on Americans and try to apply it on for example Cambodians, or Ugandans, or Sri Lankans it simply is not going to work. The assumptions that the cognitive structures of those people are the same as those in the West is simply incorrect. You cannot make that assumption. That means that virtually all psychometric devices are not really valid. Now the Harvard Trauma Questionnaire, they tried to norm it on Cambodians because of the work they did on site, and they were relatively successful with that, but even there you have tribal differences and then you have regional differences within a particular ethnic group. So, for example, if you wanted to look at the U.S. and try to norm something on the U.S. and you took one person from Alabama and one person from Washington state and one person from Massachusetts, you'd find some pretty large differences in cognitive structures that those people have. Not to mention if you wanted to norm it on people from Olympia, Poulsbo, or Renton you're going to find another bunch of differences. So, the psychometric devices don't have the kind of universal authenticity and applicability that the INS is looking for. So basically, when we use those devices we try to interpret them in a way that INS can understand and to try to demonstrate that there's going to be extreme hardship. Any immigrant looking for residential status in the U.S. is under extreme duress by definition. Multi-generational trauma in our country, is a fascinating thing, because almost everyone who came to this country was traumatized either before or after they came here. One of the things I notice in my analytic practice was I had a predominance of fourth generation immigrant people coming in for analysis. It almost seemed like that was the first generation that had the latitude and security to look into what had been operating within the family since the immigration experience. So, to make a long story short, what it boils down to is this, that all immigrants who are applying for status are under extreme duress. That's just there. It's not difficult to prove at all. Number two is that the country can only accept so many people. So, number three, is there just going to do a thumbs up or thumbs down on it.

Interviewer: Gotcha. Yeah, okay.

Respondent: So best practices, that's a tough nut.

Interviewer: Yeah, exactly. We've also received example evaluations from some of the folks we've talked to. The quality of the evaluations can vary itself so dramatically.

Respondent: Oh my gosh yes.

Interviewer: Okay so you've seen the same. So that is difficult too, it almost feels like the cart before the horse. How can we firm up the quality of the evaluations as a field, but then are we really making a difference in terms of these cases being approved or not?

Respondent: Right, yep. What the lawyer down here, xxxxx, I don't know if you've run into her, but xxxxx has. She's very good. What she says is my job is simply to indicate hardship without any indication as to whether or not that qualifies them for admission to the country. All I'm doing is saying here's the hardship, and here's what it is, and as a psychologist I can tell you this is going to be really difficult. The dilemma that we are up against, at least that I've been up against here, is that the INS has no provision for accommodating, or evaluating, the hardship of the applicant. The only hardship that is applicable is the hardship to the American citizen who is either in relation with the applicant, or married to the applicant, or child of the applicant. That kind of thing. So, I can say, this man who came here from Uganda and married an American woman from Chehalis he will probably commit suicide if he is not given his visa. That has no standing whatsoever with the INS. But if I say his wife will probably be hospitalized for depression, she's an American citizen, okay now we got a problem and they have to take that into consideration.

Interviewer: Yes, my gosh that is so difficult. Okay, I was just looking at my notes and yes, we did speak with xxxxx.

Respondent: She's good.

Interviewer: Definitely, it was great to talk to her. I like to hear some of the same names keep coming up.

Respondent: You take the interview from here on, I've pretty much given you my diatribe and now I want to be able to answer questions.

Interviewer: Oh no! It's very helpful. In any these areas please feel free to elaborate on your experience, or the cases you've seen. It's perfect. In terms of the use of measures, I'm definitely hearing the difficulty with norms, and you mentioned the DAS. Do you use any others?

Respondent: I have a very low regard for all psychometric devices. In my 40 years of experience I have found them to be informative, a place to begin to look at the patient I'm working with, but in terms of any way of assessing personality I find them to be useless.

Interviewer: Attorneys have also mentioned the need to meet legal standards for identifying "objective" data and the difficulty and conflict over assessments. Either being urged by attorneys to use particular assessments or urged to provide "objective" findings. Have you run into those things as well? Or perhaps your relationship with xxxxx is different? I don't know.

Respondent: Absolutely. I think the difficulty that we all run into in this field is that first of all the applicant for residents in this country, the applicant, is under duress. Period. They need to move here. Period. That's the objective data, but that's not acceptable objective data. The "objective data" is basically coming from what's considered to be an unbiased, mechanical process that will bring out something that we can attach a decision to. Now the problem, again with any psychometric device, are the norms. It takes 15 people and looks for the same thing in each person. But the actual salient information on which the decision needs to be made is unique, idiosyncratic, and individual. And that can't be measured against other standards because it has no uniformity. So, what it boils down to is that we have a situation in which the objective data is very clear. Someone moved here, they left their home, because there was no opportunity for them or they were in some way being oppressed, or for any number of reasons. The objective data is that they need to move here because it is a better situation than what they left. That is not

acceptable to the INS. The INS want something more objective to somehow define whether or not they should be given a visa because the number of visas is limited. So, it's a sifting out process a sorting out process. Any "objective data" other than the fact of the person is here, is not going to have anywhere near the importance of the fact that they are here. Is that clear?

Interviewer: Yes., so then how do you make this compelling case within your psychological reports?

Respondent: Oh, I make a compelling case by showing that the American citizen, who is in relationship with the applicant, will face tremendous difficulty if this person is repatriated. Xxxxx says that is the only thing that counts. The applicant is of no concern. It is only the U.S. citizen who is now going to have a very negative impact. One of the things I did recently, I had a case where an immigrant from Mexico was married to an American woman who was a member of one of the tribes here and they wanted to send him back to Mexico. I made the case that the American government has a history, 200 year history, of breaking up Native American marriages and that were they to send this man back, not only would the wife be severely traumatized, but would reawaken 200 years of systematic traumatization of the tribe. So that the entire tribe was going to be traumatized by this. I don't remember how that one worked out. I hand them over to xxxxx and I usually don't find out what happens to them. But that was the point where basically we're talking about an American citizen, and a whole group who would be traumatized. Xxxxx thought that was a pretty compelling argument. But again, my job is to get them to stay here. That's my job as I see it. Not to be "objective" as to whether or not they should, but just to say, look you've got a family here that you're going to break up if you send this person back. And we have study, after study, after study about broken families and what you can expect mentally and physically as a result of that action. The country, the social system is going to pay them for the next 30-40 years.

Interviewer: Excellent, just going through the research to highlight the impact we know will happen to the family and the financial impact of social services. Yes, that makes sense.

Respondent: Yes, that essentially dumps it into the hands of the lawyers and the INS and says okay you guys sort this out. I don't have to sort it out I'm just telling you what's going to happen.

Interviewer: Yes, the impact of it. To be sure you're getting the broad picture of the impact to the individual and their family are you often doing multiple interviews? How do you gather this data?

Respondent: I interviewed a couple. Usually the couple. If their children involved, I interview them as well. Basically, I find it what the relationship is to each other, how long has a relationship been in place, what the status is of it at the moment, and then I just write something up. I do it, we all do, as a psychologist I put together a work of viable fiction.

Interviewer: Yeah, capturing a person's life and the implications of that on a page.

Respondent: Exactly. [Laughter].

Interviewer: Yes, like it's ever going to do it justice. Related to that, do you ever use translators? Do you have any opinions on that?

Respondent: I have not had to do that yet, no. We were doing this a lot in Chicago in 1987 when we started the Marjorie Kovler Center for the Treatment of Survivors of Torture. We just got there and realized we had a lot of refugees in Chicago who had been tortured before they came. There were no services, so we set this organization up. One of the things we found was that it was very difficult to work with translators because in many cases the only available translator were members of the family.

Interviewer: Yes, okay.

Respondent: And the refugee did not want to talk about these things in the presence of a family member.

Interviewer: That makes sense. Yes, I ran into some folks who will only use bilingual evaluators, but there can be such difficulties finding evaluators who speak such wide range of languages.

Respondent: So far, I have not faced that in Olympia. Everyone I've spoken with spoke English pretty well.

Interviewer: You mentioned your relationship with xxxxx or other attorneys are there things in that relationship or communications they provide to you that help you do your job?

Respondent: Oh yes. Every time I make a case for the applicant being granted residency permit; she reminds me that's not my job. I just indicate the negative sequela to the American citizen if the applicant is not being granted residency. All I can do is talk about the stress or the psychological dynamics that are likely to occur if the person is not given residency. That's all I can do. But in terms of whether or not this qualifies, as xxxxx says, she's the one that has to make the case. All I do is give her the information that will help her do that.

Interviewer: Do you require any background information from xxxxx? Do you look at that upfront on or later or other process that work for you?

Respondent: Absolutely. The attorney I work with gives me a summary of the case. Let's me know how it's gone so far, and I usually get an in-depth social history as well as current status of things such as employment, health, and family. I receive a lot of information upfront and I draw on that a lot. I interview the people usually just once but sometimes twice. Because they pay for this, and it's expensive, I want to keep their costs low. The other thing is I can usually pick up pretty fast, and this is a totally subjective, absolutely unverifiable, unconscionably bad way of doing things, I can pick up pretty fast if someone is prevaricating. So, if someone is here because they basically want to do a hit on someone who is part of their drug gang in Mexico, I picked that up pretty fast. Or they're here because they were pretty well off, but they think they can be much better off here, and they've married this woman, so they can then claim that they have a marital status. You can pick that up so fast. It's not hard at all.

Interviewer: I assume the stories to start to not hold together.

Respondent: That's exactly right.

Interviewer: How do you approach those cases? Do decline them? Just out of curiosity.

Respondent: I haven't had any here. In Chicago I did have some. And at that point I would basically say this person is here to exploit the system they're really not up against any hardship and I see no reason why they should be given a residency visa. Because we did have that actually, one of the really interesting things in Chicago was that we were working with many torture survivors and every now and then one of the survivors would walk in and see someone else who was a "torture survivor" and it was actually their torturer were who had come to Chicago to basically kidnap them and send them back.

Interviewer: Oh my gosh. It's hard to get your brain around that kind of thing.

Respondent: We would blow the whistle on those people very quickly., "INS you got to get this person out of here immediately."

Interviewer: Thinking of the hardships to the American citizen, are there particular areas you have an eye towards? You mentioned the marital relationship, past mental health history, past medical history, substance abuse?

Respondent: Those are incredibly important. Yes, past medical and past psychological and psychiatric history are incredibly important. If the American citizen has a vulnerability towards a particular form of mental illness, depression, anxiety, OCD, paranoia, these kinds of things, that gets factored in we were talking about a situation that is more unstable than people might normally think. So that anything that destabilizes this individual is likely to create a crisis.

Interviewer: Are there other areas you look into as well?

Respondent: Yes economic. I also look into social. If the person who is applying for residency has lived in the family for five years, and the children are now nine years old, that person has been an influence in that child's life from the ages of 4 to 9 which are pretty formative years and to suddenly disrupt that would probably create problems in school, problems socially, and may create problems medically, including some somatization, that kind of thing. We definitely look at the kids a lot.

Interviewer: Okay great. That makes sense. I assume some cases are more difficult or easier than others?

Respondent: Sure. My goal is to get them a residency permit. I am not an unbiased examiner by any stretch of the imagination. I have worked all over the world in war zones, I have brought people from war zones to work with us in this country and I'm appalled at American foreign policy. We are responsible for an enormous amount of suffering in the world. So, when people make it here and really need to find some stability, I'm pretty much on board with that. Now we do run a program here, or we have in the past, for people who are from war zones to come work with us here for three months and then go back to their home country and work with people there. I get very upset with people who come here and then don't want to leave. And I rarely will come to their aid on wanting to stay here. Even people from Gaza who, believe me I understand completely why anyone from Gaza would want to leave Gaza. The agreement is we will give them all-expenses-paid, come here and work with us for three months, in return for which you go back to your country and work with people their people. When people don't do that, I'm like, "okay I'm sorry, I'm not going to help you out." We had a man from Gaza who really wants to stay in the US, and I didn't support him. I wouldn't do it.

Interviewer: Yeah, that was not the purpose of your program. It was to share this information and bring it back home.

Respondent: But in terms of the work I do with xxxxx, I do very little of it. I'm really kind of out of the loop at this point.

Interviewer: We also spoke of good evaluations and poor evaluations. Are there elements you would say are required for good evaluations and maybe some gotcha areas and some of the poor ones?

Respondent: Yeah. I think one of the problems I have to be careful of, is not to make the report too dramatic. In other words, try to keep the evaluation objective, evenhanded, close to the facts. For example here's a woman who is married to a man from Columbia and she has a history of physical abuse as a child, domestic violence type stuff and she is now with a man who she has a stable relationship in the event that that the relationship suddenly ends she is likely to be facing a whole bunch of stuff that the social system is going to have to cope with. Just straightforward stuff like that. Never once even indicating that I have any investment whatsoever and whether not the person gets sent back. So, with the tribe, one thing I made clear was that you're going to see a pretty good spike in trauma throughout the entire tribe. Which traditionally could result in more drug abuse, alcoholism, domestic violence within the tribe because of a past history that

cannot be denied. That's all. I just say that, and make whatever decision you want, but know that if you make a decision this way this is something you going to be facing.

Interviewer: I've been hearing that quite a bit. That's a difficult line to walk. To keep that evenhanded, objective tone and yet at the same time build a compelling narrative. That seems to be a difficulty for many evaluators.

Respondent: That's where the attorney I work with comes in. She says to me, "The attorney makes the case. I don't have to make a case. All I have to do is give her the ammunition." I give her some straight psychological "facts" to the degree that's not an oxymoron. If then... most likely that or if then... most likely this. I just give that to her and she makes the case. I don't have to make the case. She makes a good case. The attorney I work with is amazing. She's devoted to this whole thing.

Interviewer: That's excellent. That's a wonderful rule of thumb, because I hear so many evaluators and attorneys struggling with this. Some attorneys have mentioned perhaps is a lack of training but based upon what you're saying I'm wondering if it's more of setting proper expectations and clarifying roles and responsibilities?

Respondent: Yeah, training is important. For example, I'm a psychoanalyst and I deal with individuals. But I've had to do a lot of review of the literature on family psychology as a result of getting into this. So yes, it's no different than anything else. Anytime we move into an area that is not an area of expertise we have to get up to speed. So further training - absolutely. Any psychologist who is doing this who suddenly finds himself or herself working with, for example a married couple is going to want to get familiar with whatever of research that has been done on family dynamics in a marital situation, or couple situation in the effect of one person on another. Family systems are very, very important. What happens when a parent leaves the family? What are we looking at then, what kind of sequela can we expect and is this tolerable? Is this what we want? All we have to do is say okay if this... then that, if this... then that, research shows this. We do have to rely on the research. As far psychological testing, I don't think it has much currency. I really don't. I think it's much better to be able to go on what has already appeared in the literature as particular consequences of particular behaviors. The literature shows pretty well that if you beat the crap out of your kids the kids probably will not do as well in school. We know that. We know very well that when children experience the divorce of their parents when there like four years old there will be repercussions of that later in their life, in school, or in social relationships. And we know this. This is the evidence this is what we know. And then the lawyer can make whatever case they want of it.

Interviewer: Yes, definitely. Have you found any trainings for guidance that have been helpful to you in this field?

Respondent: Yes, what is been really helpful to me are refugee groups. Groups of people who are working with refugees in Seattle I often ask for help from the Northwest Immigrants Right Center and the Kovler Center in Chicago. I have also written an article years ago regarding ethical dilemmas in the research. These are very helpful. For example, I get a family and the wife is Hmong and she has married an American man. I don't know anything about the Hmong culture and so these are helpful sources of information

Interviewer: Great, that's so helpful. Many folks are asking for additional training, but I haven't come across many sources yet.

Respondent: What helped me, was then the attorney I work with explained what my role actually is. I don't make the case, that's her job. I just say what is going to happen. If I've made a case in my report, the attorney I work with gives it back to me and asks me to edit it. She has

been extremely helpful. Attorneys need to tell us what they want, what we need, and what they want us to do. The next thing would be highly individualized training. If you're working with an immigrant from Uganda and a family, find out what goes on in Uganda, what the customs and traditions are. Educate yourself of the ethnic background of the person you are evaluating. That, you have to do on your own. The resources available again are the Northwest Immigrants Right Center in the Kovler and the international trauma treatment program can help with that. So yes, lawyers generally telling evaluators what they need and then evaluators having access to resources to learn more about the ethnic background of the person who is applying for residency.

Interviewer: That makes sense.

Respondent: As far as debating on which psychometric devices would be the best to use and all of that I think that's kind of a dead end.

Interviewer: Yeah, and I appreciate your feedback.

Respondent: I think the law loves them though. Oh, this MMPI says that this person XYZ then our decision is clear.

Interviewer: Yes, some of the evaluators I've talked to are struggling with that. Bringing up the issues you are raising, but not quite knowing how to approach it. I love what you are saying about reviewing the research regarding consequences for particular actions.

Respondent: Yes.

Interviewer: Any other elements you'd like to mention regarding this work that we didn't touch on?

Respondent: Yes, asylum cases. A whole different ball of wax. The whole issue of torture, and what torture does, in which the U.S. policy is towards the people who've been tortured to seek asylum and all that. That's a very specialized area. I don't think a lot of people get involved in but, I would definitely say that people who are trained to do this work ought to have at least some exposure to being able to recognize some of the sequela of torture. Torture changes things completely. A lot of immigrants don't want to say they were tortured.

Interviewer: Yes, they're trying to move beyond.

Respondent: Yes, there trying to get beyond it, they don't want to relive it, they don't want the torturer to know they blow the whistle on them. It's not at all unusual for a government to come in here and exact revenge on people who are blowing the whistle on that government. We've seen that numerous times. So, there's a lot of fear. Once a case has transformed from you might say a simple residency, to a more complicated asylum case, that that changes the whole landscape. So, would be good if evaluators have some exposure to what they might want to look for. Basic PTSD research these days is pretty good for helping people to understand that.

Interviewer: Fabulous. It sounds like a whole another research project could be devoted to that. And then some. Any other comments?

Respondent: Yes, you are an excellent interviewer. I thank you very much for your interest in this topic. I'm very glad that you and xxxxx are doing this it is very, very necessary and has a very big payoff for many people. So, thank you very much for doing the research it takes a lot of work and coordinating with people. Thank you. You've been very good.

Interviewer: Thank you so much. If you'd like I would be more than happy to keep you informed of our research and how it's progressing.

Respondent: Oh yes definitely.

Interviewer: Great. We are hoping that this will be like a phase 1 of a new movement of in search within Antioch. I don't know how involved all be in future phases but hopefully this will

be just the beginning of moving Antioch more and more into this area because it fits the school's mission. It fit so much. We hope this is just the beginning.

Respondent: It's huge. Thank you do keep me informed, please.

Interviewer: One last thing, if you happen to have, or would be willing to share any redacted psychological evaluations that would be fabulous.

Respondent: That would definitely be up to xxxxx. I think some may still be in litigation. One thing she does, which I think is pretty clever if she keeps these things going forever. Eventually the INS loses interest. She keeps going and going, they get delays in this that and the other thing, meanwhile the person is living here and forming deeper and deeper relationships. And it becomes more and more consequential to deny them residency. She's clever with what she does. I will talk to xxxxx and see what she says about that.

Interviewer: If that would be possible, that would be great. It would just help us look at some examples. Your approach is different from others I've heard, and it sounds so valuable, really relying on the research and showing the consequences. It really hits the mark, but I haven't heard many people speak of that yet.

Respondent: Well, that's all things to xxxxx. She's been my source and my educator otherwise I'd have no idea what I was doing.

Interviewer: Well you're quite the team!

Respondent: Thanks.

Interviewer: One must question, do you know any other evaluators or attorneys you feel I should contact as part of this project?

Respondent: The Northwest immigrants right Center, I would deftly touch base with them. Have you talked with xxxxx?

Interviewer: Yes, I have, she's wonderful.

Respondent: That's all I have thanks.

Interviewer: Well, thanks so much for your time. Goodbye.

Appendix F: Supplemental Interview Material

What You Need to Know About Extreme Hardship Immigration Waivers

xxx xxx, Ph.D.

Establishing extreme hardship is a fundamental requirement for both I-601 and I-601A immigration waivers. So just what exactly constitutes extreme hardship? Surprisingly, you won't find a very clear definition of extreme hardship under U.S. immigration law. But once you begin to grasp the concept of extreme hardship, it will become clear what you need to do to make a compelling argument for obtaining such a waiver. This article explains some of the critical factors you need to know about obtaining extreme hardship immigration waivers.

Extreme Hardship Is Discretionary

One defining characteristic of extreme hardship is that it is a legal standard that is highly discretionary. For hardship waiver cases, an Immigration Service judge or adjudicator makes a determination as to whether he or she thinks that you've established extreme hardship, which, again, is an ambiguous legal term. So effectively, "extreme hardship" is whatever the Immigration Service judge or adjudicator thinks it is under his or her discretionary authority.

Extreme Hardship Is a Case-by-Case Decision

The Board of Immigration Appeals has said that extreme hardship depends on the facts and circumstances of each particular case. Establishing extreme hardship and preparing a successful immigration waiver involves storytelling. To win approval of your waiver, you have to present your family's history, explain your particular personal circumstances and family relationships, and show how the denial of your waiver would negatively impact your family (especially your qualifying U.S. citizen relative). And since each family is completely different, each immigration waiver will have its own unique circumstances.

Factors for Determining Extreme Hardship

Rather than looking for a precise definition, extreme hardship is better understood as a series of factors. The regulations on suspension of deportation (8 C.F.R. 1240.58) list the following 14 relevant factors to examine when determining whether extreme hardship would result from a deportation:

1. The age of the applying immigrant, both at the time of entry to the United States and at the time of application for suspension of deportation.
2. The age, number, and immigration status of the applicant's children and their ability to speak the native language and to adjust to life in the country of return.
3. The health condition of the applicant or the applicant's children, spouse, or parents and the availability of any required medical treatment in the country to which the applicant would be returned.
4. The applying immigrant's ability to obtain employment in the country to which he or she would be returned.
5. The applying immigrant's length of residence in the United States.
6. The existence of other family members who are or will be legally residing in the U.S.
7. The financial impact of the applying immigrant's departure.
8. The impact of a disruption of educational opportunities.

9. The psychological impact of the applying immigrant's deportation.
10. The current political and economic conditions in the country to which the applying immigrant would be returned.
11. Family and other ties to the country to which the applying immigrant would be returned.
12. Contributions to and ties to a community in the United States, including the applying immigrant's degree of integration into society.
13. The applying immigrant's immigration history, including authorized residence in the U.S.
14. The availability of other means of adjusting to permanent resident status.

This list is not exhaustive or in any way intended to cover all of the various forms of hardships that your family would face if your waiver were denied. Rather than using this as a checklist, you should consider this list to be merely a few examples of the type of inequities that an Immigration Service judge or adjudicator would weigh in making the extreme hardship determination.

Keep in mind that *all* factors relevant to extreme hardship must be taken into consideration. Even if no single factor rises to the level of "extreme hardship," the cumulative effect of all the hardships could meet the standard. This is why it's essential to bring all factors to the attention of the Immigration Service judge or adjudicator, even if you think that the hardship doesn't seem to meet the "extreme hardship" standard.

Economic Hardship Is Insufficient

The denial of a waiver resulting in deportation would create a financial disaster for most waiver applicants and their families. But it is a mistake to focus solely or excessively on the economic hardship. According to the Board of Immigration Appeals, financial difficulties alone may not rise to the level of extreme hardship. However, economic hardship in conjunction with other adverse circumstances may establish extreme hardship.

"Extreme Hardship" Involves All Family Members

By statute, a waiver requires persuasive evidence that the qualifying U. S. citizen relatives would suffer greatly if the applicant were deported. Obviously, the negative impact of any deportation would most directly fall on the applicant if he or she would be forced to leave the United States. Yet to meet the legal standard, hardship on the applying immigrant cannot and should not be the sole focus of the hardship documentation.

Under U.S. immigration laws, the "extreme hardship" suffered by noncitizens is technically irrelevant and it is the extreme suffering of the qualifying citizen relatives that must be taken into account. However, remember that since all parties are connected in a family system, the adverse disposition of one family member will very likely affect the wellbeing of other family members as well. Hence, to make the case for extreme hardship, the suffering of all family members, including the applying immigrant, needs to be brought to the attention of the Immigration Service judge or adjudicator because the basis of determining hardship is typically cumulative.

Explain Any Negative Equities

If the need for a hardship waiver is caused by a mistake, misdeed, or negative event such as a criminal conviction, fraud, or immigration violations, the applying immigrant should address these negative equities by describing what happened and, if necessary, taking responsibility for his or her actions. Don't sugar coat what you've done wrong or try to gloss over it. The Immigration Service judge or adjudicator is making a discretionary decision and evidence of contrition and rehabilitation can play a role in whether or not the waiver is granted.

Making Your Case Persuasive

It is important to explore the extreme hardship that would occur in two hypothetical possibilities that might take place. The first is if the waiver was denied and the applying immigrant was deported back to his or her country of origin, how would the qualifying relatives suffer if they remained in the U.S. without this person? The second is what hardship would the qualifying family members suffer if, after the hypothetical denial of the waiver, they were forced to leave the U.S. to live abroad in the country to which the applying immigrant was deported to? The more these two perspectives can be clearly addressed and documented in a comprehensive manner, the more likely an Immigration Service judge or adjudicator will find your case persuasive.

The Road to Successful Waiver

As I have tried to show, the road to successful waiver is not an easy one. Consequently, never just assume that you and your family's circumstances would meet the extreme hardship standard. However, many people facing this challenge don't believe that they will be successful and give up before they even begin. So, don't get intimidated by the fear of deportation or losing your case. While perseverance and tenacity are essential requirements for this journey, the most important one is that you be able to systematically document and argue your case according to the criteria I have presented here. The more you and your representatives are able to do this, the more likely you will prevail in your efforts to obtain your immigration waiver.

Appendix G: Memos

Memo**Topic:** Interview with Evaluator**Participant ID:** 2

- Numerous tensions inherent in the evaluation process
- Immigrants may be hesitant to share their struggles – stigma, cultural beliefs, their focus is on their family crisis, evaluator is a stranger, “everything’s fine”
- Assessments may also pose cultural, language, and norm barriers
- Lack of confidentiality in the forensic assessment process
- Language barriers between client and evaluator
- Identifying extreme hardship is unique for each family
- Starting with or without declarations
- Unaware of others’ reports
- Passion to help / very stressful process
- Exploitation / honest work with desperate immigrants
- The balance of using objective data and terms that builds an emotional argument

Memo**Topic:** Interview with Evaluator**Participant ID:** 3

- Strong use of assessments and clearly identifying limitations of assessments with minority populations
- Balancing difficulties with translators and the needs of this population
- Very passionate and knowledgeable about topic
- Shocked by poor evaluations
- Not knowing outcome of cases and if report was impactful to court. Hampers improving assessment process
- Passion to help

Memo**Topic:** Interview with Attorney**Participant ID:** 4

- Evaluators must have clear understanding of legal definition of extreme and extraordinary hardship
- Evaluators need to meet with family more than once

Memo**Topic:** Interview with Attorney**Participant ID:** 5

- If someone has some mental health or psychological issues may already have been in therapy and that’s documented, and an evaluation may not be necessary. It’s easier to document. But if a person has never had treatment but there are mental health issues such as depression or anxiety, or past trauma, or based on our experience someone who has gone through XYZ and has never talked with someone about it, there might be some things going on.
- Report needs to include:

- How diagnosis was reached
- Reliability of client
- Qualifications of evaluator
- Preparing clients for evaluation is critical to engaged participation

Memo

Topic: Interview with Attorney

Participant ID: 6

- The importance of starting therapy right away
- The importance of a good interpreter
- Starting the report with the qualifications of the evaluator
- The importance of walking the reader through the logical steps that led to the diagnosis
- The impact on finances and time on clients who are often stretched thin

Memo

Topic: Interview with Evaluator

Participant ID: 7

- Importance of assessing validity and malingering
- Importance of obtaining an attachment-based history
- Importance of identifying defensive mechanisms
- Bilingual or use of a highly qualified interpreter
- Has trained other clinicians
- Expert witness

Memo

Topic: Interview with Attorney

Participant ID: 8

- Exercise caution when discussing past legal or substance use of permanent resident or noncitizen

Memo

Topic: Interview with Evaluator

Participant ID: 9

- Importance of not rendering a decision for the court or even using language that would imply
- Use objective measures
- Be sure to include both sides of argument
- Do not go beyond scope of practice
- Measures used – including projective
- How to create guidelines without government input and when government requirements are so vague?
- Clarify credentials necessary to conduct psychological evaluations

Memo

Topic: Interview with Attorney

Participant ID: 10

- If legal process is long (12-18 months) may use evaluator more than once
- “judges don’t really like evaluations implied that administrative tribunals do. I don’t think judges understand that there is a whole profession behind it and may think it is traumatizing for children or wonder how valid it is if the therapist only met with the client once”
- Psychological issues beyond anxiety or depression in the spouse are important. With the court cases, you can include hardship to kids. And it does seem in the court cases that the judges are quite favorable to their being special education, or formal IEP’s in place, or when kids or the spouse are in therapy for different conditions, but those are easier cases. Or if there is been a certain past trauma that continues to impact the qualifying relative, those would be cases where hardship is more apparent.
- the person should qualify themselves. It seems to be more credible if the evaluator does some sort of testing
- Evaluators should not speculate on areas that they are not an expert in
- Has found that many treating therapists don’t want to write reports
- Credentials of evaluator don’t matter
- Attorney will provide sample reports to new evaluators
- Attorney likes to review draft of report and may request edits
- Attorney provides client’s statement and intent of case
- Common mistake is for evaluator to parrot terminology from the client that may be inaccurate
- Attorney requests example reports from potential evaluators to evaluate their writing

Memo**Topic:** Interview with Evaluator**Participant ID: 11**

- Cultural aspects of lying/distrust in Latino culture?
- Potential lack of safety when using translators from small communities
- Potential for burnout
- Social justice – highly needed by population

Memo**Topic:** Interview with Evaluator**Participant ID: 12**

- Importance of advanced understanding of client’s native language
- Each case is unique
- Lack of feedback on case is difficult
- Each case requires research
- Proper use of assessments

Memo**Topic:** Interview with Attorney**Participant ID: 13**

- The tremendously positive impact of the evaluator having a long-term relationship with client
- Making sure all business and professional licenses are up-to-date at the time of the evaluation.
- The attorney providing a detailed statement to the evaluator for the evaluation process begins.
- The evaluator evaluating the impact of both possible outcomes of a denial. The impact if the qualifying relative leaves the country in the impact the qualifying relative stays in the United States without the undocumented individual.
- The evaluator evaluating reflective hardship. The hardship experienced by the qualifying relative, even if they are functioning well, if the undocumented individual is deported or their situation deteriorates.
- The impact of evaluation fees on clients and the importance of pro bono work.
- It is difficult to demonstrate hardship on the qualifying relative if the relationship/marriage is new.
- Respondent is very passionate and knowledgeable about these cases.
- The importance of the clinical interview. Many times, the evaluator uncovers information not previously known to the attorney such as suicidality, abuse, etc.

Memo

Topic: Interview with Evaluator

Participant ID: 14

- “My job is simply to indicate hardship without any indication as to whether or not that qualifies them for admission to the country.”
- Limited norms on evals makes them less useful.
- He relies heavily on what the research says is the likely outcome of a particular action
- He relies heavily on refugee groups to learn more about the culture of his client
- The attorney argues the case not the evaluator. Evaluators provide the “ammunition” in the form of straight psychological facts

Appendix H: Codes

Case screening

- Declining cases
- Determining if a psychological eval is needed
- Determining if extreme hardship is present
- History of legal or substance use issues
- Identify qualified citizen

Working Relationship

- Evaluator/Attorney professional relationship
 - Attorney reviews/edits draft of report
 - Attorney/Evaluator contract
 - Clear referral question
 - Conferring
 - Consistent processes/forms
 - Ethical issues in relationship with attorney
 - Evaluator characteristics
 - Ability to testify in court
 - Compassion
 - Consistent processes/practices
 - Credibility
 - Depth
 - Evaluator credentials/experience
 - Introduction to field
 - Multi-lingual
 - Responsiveness
 - Size of immigration practice
 - Treating therapist/psychiatrist
 - Training
- Personal impact of work
 - Cons of work
 - Cost/time involved
 - Notification of case success or failure
 - Pros of work
- Relationship with client
 - Client need
 - High risk
 - Client openness/defensiveness
 - Confidentiality
 - Ethical issues in relationship with client
 - Preparing clients

Assessment Process

- Clinical interview(s)
 - Home visit
 - Interviewing collaterals
- Evaluation report
 - Ethical issues in report
 - Evaluator Bio

- Identifying client psychological vulnerabilities
- Identifying extreme hardship
- Identifying future impacts of the court's decision
- Language assessed in/use of interpreter/bilingual evaluator
- Psychological/legal boundaries
- Quality issues
 - Advocate tone
 - Conclusions/diagnoses without analysis/criteria
 - Credibility
 - Depth of report
 - Editing issues
 - Focus on hardship
 - Report doesn't match facts in the case
 - Restating information in client declaration
- Recommendations/resources/referrals
- Reporting negative actions by US citizen
- Reporting negative actions by US permanent resident
- Reporting negative actions by applicant
- Researching socio-political info re country of origin
- Summary
- Uncover previously unknown information
- Writing for a legal audience
 - Clarifying limits of expertise/citing experts
- Clarifying psychological terms
- Legal definition of extreme hardship
 - Each case is unique
 - Legal application of extreme hardship
 - Legal authorities who determine extreme hardship
- Medical referral before proceeding with assessment
- Objective measures
 - Broad psychological screener
 - Cognitive
 - Disability
 - Discrimination
 - Ethical issues with objective measures
 - Malingering/Credibility/Validity
 - Marital
 - Mood
 - Personality
 - Physical health
 - Projectives
 - Safety
 - Stress
 - Suicidality
 - Trauma
- Reviewing case documentation

- Before meeting with client
 - Discrepancies in client story
 - Not before meeting client
 - With the client
- Theoretically driven
- Translators
 - Ethical issues
 - Poor translation