



# Webinar: Roundtable Discussion—Overcoming Challenges When Representing Afghan Asylum Seekers

August 21, 2024, 1:00 – 2:00 PM ET

Transcript

## Introduction

**Ashley DiGiore:** Hi, everyone. Thank you for joining today's training on *Navigating Challenges in Afghan Asylum Cases: A Roundtable Discussion*. This training is presented to you by Switchboard, a one-stop resource hub for refugee service providers in the United States, and VECINA, which seeks to empower immigrant justice advocates by mentoring attorneys, educating communities, and mobilizing volunteers. Today's facilitator is me, Ashley DiGiore, and I am the program manager for VECINA's Afghan projects. I've been involved with VECINA and with immigration since 2021. I'm a Department of Justice-accredited representative.

## Today's Speakers

**AD:** Today's speakers are Kristen Nilsen, who joins VECINA from private practice. For the past five years, she has run a solo practice in Northern California, helping clients navigate our complex immigration laws. She previously worked with other organizations to provide low-cost legal assistance to refugees. Kristen has ample experience mentoring and training legal students and representatives and worked as an immigration services officer with USCIS before transitioning to working with refugees.

Michelle Morales, who is a contract mentoring attorney with VECINA's Switchboard partnership. She runs a solo immigration practice in Silver Springs, Maryland, and is an adjunct professor at the George Washington University Law School, where she teaches immigration law. Before starting her practice, she worked at US Citizenship and Immigration Services as an asylum officer, refugee officer, and trainer. She has worked in the nonprofit sector at Ayuda in Washington, DC, and Central American Legal Assistance in Brooklyn, New York.

We've also got Aly Madan, who is an immigration attorney at the Greater Boston Legal Services. Since October 2022, she has been working on the Afghan refugee project grant alongside colleagues at refugee resettlement agencies and legal service organizations in Massachusetts. In this role, Aly has provided trauma-informed holistic representation to Afghans seeking both temporary and permanent forms of relief for themselves and for their families. So far, she has helped 15 clients secure asylum approvals.

## Learning Objectives

**AD:** Our learning objectives for today, by the end of this session, we hope you will be able to explain what a sworn statement during an affirmative asylum interview is, identify reasons why a client might be called in for a second interview, and write an effective response to a Notice of Intent to Deny or NOID.

## Poll Question



## What challenges have you faced during an affirmative asylum interview with Afghan clients?

**AD:** We would love for you to join us on our Slido. You can use the QR code on the screen or you can go to [slido.com](https://slido.com) and type in the code. We'd love to hear from you. What are some challenges that you have faced during an affirmative asylum interview with an Afghan client? I'll even put the link in the chat in case that's helpful.

A few ideas coming through. Thank you so much. Help us to frame our discussions today. It looks like we've got trouble remembering details from the application or specific facts due to trauma, marriage or polygamy challenges, location, having to travel far for an interview. We've seen that as well. Lengthy process of receiving an answer, appealing the decision, clients becoming nervous in the interviews and sounding evasive as a result for sure, proving a birth date, persecutor bars, another vote for polygamy, questionable social media usage, understanding the questions. Forgetting interview dates, that would definitely be a big challenge. I see a few more people typing. I don't want to cut anyone off quite yet. Decisions, travel, language.

Clients sharing too much information, yes. A lot of these answers are things we're going to discuss today. I'm glad we're all on the same page. Thank you so much for sharing your thoughts. Our hope for today is to help you find some ways to handle some of those challenges. When your Afghan affirmative asylum cases are straightforward and go smoothly, you can expect to have an interview scheduled within a few months of filing the I-589 and to receive a decision within a few months of the interview. However, like we just saw, not every case is straightforward and not every case goes smoothly.

Your client may encounter one or more hurdles along the way. These can include what we'll talk about today, sworn statements, second interviews, and Notices of Intent to Deny. If any of these come up, it does not mean that the case will ultimately be denied. Your client may overcome all of these hurdles. Today, we'll discuss each of these possible challenges. It's important to remember that at the heart of each of these challenges is the importance of preparing your client to testify credibly and of taking detailed notes of what happens during the interview.

**Michelle Morales:** Ashley, I just wanted to add a note about how credibility is at the center of these challenges. I think we saw from the responses that that's usually what's going on. A sworn statement is about getting detailed information about a bar to asylum. Second interviews are usually scheduled so the asylum officer can get more information regarding a bar to asylum. NOIDs are more often than not based on negative credibility findings regarding a bar to asylum. For example, the persecutor.

When the asylum officer asks your client about possible bad acts and, for example, again, the persecutor bar, their instinct might be to shut down even if what they did wasn't bad. Then what happens is the asylum officer might perceive your client shutting down as him trying to hide something bad. This could lead to a denial of the case based on a negative credibility finding.

We're going to talk a lot more about this, but it's important to emphasize to your client that they must tell the truth and answer the asylum officer's questions directly. One tip always is to prepare them for this and tell them that during the questioning, they shouldn't be thinking about what to say or not to say because that can appear evasive to an asylum officer. I'll stop for now. Thanks.

**AD:** Sure. Thank you so much, Michelle. Let's get into talking about each of these separately. We'll start with sworn statements. Kristen, would you please provide a brief definition of what a sworn statement is? Then we can go back to that other slide while Kristen does so.

## 1. Sworn Statements

**Kristen Nilsen:** Alright. Good morning, everybody. A sworn statement in the affirmative asylum context means that the asylum officer has detected a possible bar to asylum or has detected that there are inconsistencies in



the applicant's words. They want to record the questions and answers related to possible bars or possible reasons why the asylum should be or could be denied.

The asylum officer is supposed to take notes that generally reflect the questions and answers that occurred during an interview and every interview, but they're not required to be word for word. When they notice a red flag such as a possible bar or a terrorist-related inadmissibility ground, TRIG, they have to go into Q&A mode or sworn statement mode just for that portion of the interview and write down all of their questions word for word and the applicant's answers word for word.

**AD:** Thank you, Kristen. Michelle, using your experience as an asylum officer, could you describe what happens when an asylum officer goes into sworn statement mode during the asylum interview?

**MM:** Sure. After the asylum officer gives your client notice that they're going to take a sworn statement, that's a requirement they have to inform your client. They don't tell you why. They won't indicate the reason why they're going into sworn statement mode. They'll simply begin asking questions and taking notes as they did before. It might not seem any different in tone than the way the [sound cut] point. This is where your role comes in. It's going to be up to you to analyze what they're concerned about when they're in sworn statement mode. Is it the persecutor bar? Is it material support?

Again, your role as an attorney during this interview is pretty limited. It's really, really important to just take detailed notes. The officer's own notes are going to help them in deciding if your client's testimony is credible. I want to make a note about this. This sworn statement itself indicates that there's a red flag. If your client's testimony is detailed and consistent, he may allay the asylum officer's initial concern. There might not be a negative credibility determination. Yes, so that's a sworn statement.

### Case Scenario: Farzad, Part 1

**AD:** Thank you, Michelle. To illustrate, let's analyze this with a hypothetical scenario. Case scenario part one here, we've got Farzad. "You're with a client, Farzad, at his asylum interview. It's about half an hour into the interview. So far, Farzad has answered the asylum officer's questions directly and with an appropriate amount of detail, but when the officer begins asking Farzad what his duties were as an intelligence officer, Farzad becomes evasive. The officer tells Farzad that he is going to take a sworn statement."

### Poll Question

How could you have prepared Farzad to respond to the Asylum Officer's questions about his work as an intelligence officer?

**AD:** Using that scenario, we'd love for your input. How could you have prepared Farzad to answer or to respond to the asylum officer's questions about his work as an intelligence officer? Would love to see your thoughts and get some feedback from our participants. Our panelists. I said the wrong word. I'm so sorry.

Just in case, in case anyone joined us late, to respond to the question, you can use the QR code on the screen or you can go to [slido.com](https://www.slido.com) and type in our code, and you'll be able to provide input that way.

A lot of people are saying practice, mock interviews, prep sessions, but getting through some of those questions ahead of time, for sure. "Answer the questions directly and succinctly," more practice. Kristen, what suggestions do you have to prepare Farzad to respond to the asylum officer's questions while we see more of our friends' thoughts come in?

**KN:** Yes, absolutely. Practice, practice, practice is the best thing to do here. This is all going to be part of how



you prepare Farzad to testify before the interview. He should be prepared to talk about his daily job duties, who he supervised, who supervised him, his interactions with prisoners or suspected terrorists, or anyone he has been involved with investigating or arresting. More than that, he should be prepared to listen to and respond directly to the question asked.

Sometimes people like to answer the question they think they hear, not the question that the officer is asking. He should be prepared to answer each question truthfully to the best of his ability. He should keep in mind that all of these interviews are confidential. It's his case. He's trying to prove to the officer why he qualifies for asylum, so he needs to be able to answer every question and not try to avoid answering questions because he thinks it might reflect negatively. He just needs to answer to the best of his ability.

However, if he doesn't know an answer, he should be prepared to say that he doesn't know or that he doesn't remember, and then maybe be prepared to answer why he doesn't know that answer. It could be something like he wasn't involved with the decision-making, so he doesn't know why certain things were done, or he just can't remember because it's been three, four years now at this point. He just should be prepared to answer all the questions and answer them well. You as the attorney should also have a good grasp on what his job duties were so that you can listen. If you need to later on, the officer usually allows questioning, so you can also ask questions to flesh out what he has done as part of his job.

**AD:** Thanks, Kristen. I'd like to highlight the most recent response. This person says they like to explain to clients the reason why things like that happens, what the officer's goal is, so that they can be more prepared to answer whatever the question is. I think that's an important thing to highlight as well, making sure clients understand why they're going into this interview, what the purpose is, what the officer is looking for, getting both sides of the story, both sides of the situation. Go ahead, Kristen.

## Tips for Sworn Statements

**KN:** Alright, so a couple of tips for you that we've gathered. Remain calm. Just because you're going in sworn statement mode doesn't mean that it's a bad thing. It really is just the officer doing their due diligence to making sure they're getting the right answers on tricky questions. Take very detailed notes. You should be taking notes anyway during your interview, but specifically during the sworn statement portion.

Stay alert. Listen for any inconsistencies or the officer mischaracterizing information to make sure that what is going into the sworn statement is true and correct, and then ask the officer for a copy of the sworn statement before the interview is concluded. They can usually give you a printout, or if there's an online application, they'll often upload it to the portal.

## 2. Second Interviews

**AD:** Awesome. Thank you. Now, let's go ahead and turn to our next topic: our possible challenge in an affirmative asylum case, which would be second interviews. Michelle, would you please explain to us what a second interview is?

**MM:** Sure, so a second interview is exactly what it sounds like. It can occur for several reasons. Usually, it's because the asylum officer didn't obtain enough information about a specific issue during the first interview. Your client will receive a notice directing them to report to the asylum office on a specific date and time. Again, you're not going to have an explanation as to why you're being called in for a second interview. It just looks like an interview notice with no explanation.

What we've seen with Afghan cases is that the second interviews are often about bars to asylum such as the persecutor bar or criminal bars. When I was an asylum officer, we were strongly discouraged from scheduling second interviews. The expectation was that we would conduct thorough and complete interviews the first time around. If your client receives a second interview notice, it's really important to take it seriously.



**AD:** Thank you. Then, Kristen, what exactly happens at a second interview? Is it different from an initial interview and how might it be different?

**KN:** Sure. Second interviews, like Michelle said, happen for a variety of reasons. A big reason that we see in the Afghan context is that they're called for second interviews because their background checks are completed after the first interview instead of before the first interview like a typical asylum case. New information arises that the officer will need to follow up on that just didn't come up in the first interview.

I've had second interviews that last for four hours where the asylum officer goes into great detail about my client's work-related activities. I've also had second interviews that were scheduled simply because the asylum officer forgot to have the asylum applicant sign the application or they just needed to ask questions about their Tazkira or something like that. I've also had second interviews where the officer was only interested in speaking to a derivative.

Even though the second interview request came in the principal's name, luckily, we brought the derivative with us to that second interview and he only had questions for her. The tricky part is you never know exactly why the second interview has been scheduled. Even though it might be for something that we resolve quickly, you really need to prepare as it might be a full-length interview again.

### Case Scenario: Farzad, Part 2

**AD:** Thank you, Kristen. Using that information, let's go back to Farzad. About two weeks after his asylum interview, Farzad receives an appointment notice from the asylum office for a second interview. We can see here.

### Poll Question

How might you prepare Farzad for the second interview?

**AD:** How might you prepare him for that second interview? Would love to get the learner's thoughts on this again.

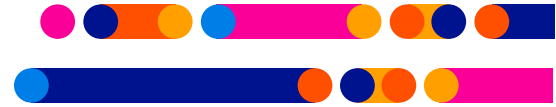
I don't think we've had anyone new join us. Just in case, if you'd like to share an answer to this question, you can scan the QR code or go to slido.com and type in the code. Got a few people typing so far. Someone has said, "Ask about any social media he has or had." "Mock interview again," absolutely, practice. "Recount his responses from his first interview," yes. "Practice," I think that's our big theme of the day. Aly, while some more of these come in, do you have some ideas or suggestions?

**Aly Madan:** Sure, yes, these all are definitely on point. As folks mentioned, a lot of this is about being proactive in your preparation. This is where you'd want to refer to detailed notes you took during the initial interview to help you issue spot and try and anticipate what might come up based on how that interview went and then, again, preparing your client accordingly. The main thing is preparing them to testify credibly. As everyone has mentioned, the practice.

**AD:** Thank you. Thank you, yes. A lot of these tips here are similar to the ones from the previous one as well, so that's easy to remember. Alright, we'll wrap up with some general tips here.

### Preparing Clients to Testify Credibly

**MM:** Yes, I can take this, Ashley. Back to credibility. Review your client's declaration and testimony from the first interview with them. The core of a positive credibility finding is giving an appropriate amount of detail, but also consistency with what your client testified before and what they've put down in written testimony. You're



going to want to review their declaration with them and go over your notes that you took during that first interview so they know what they've already testified to. This second bullet point refers to a third factor in a credibility determination: Is their testimony plausible?

Back to detail, you're going to be, when you're preparing them, determining what the appropriate amount of detail is that they're capable of. Then this is just really important to underscore. Not only because of ethics to always tell the truth, but it just helps a client to not overthink things during the actual interview when they're going to be really nervous. Just tell the truth. Listen to the question that you're asked. Only answer that question, but answer it directly, and to keep it relatively short. Then if the asylum officer wants more detail, they'll ask to wait for follow-up questions.

### 3. Notices of Intent to Deny (NOIDs)

**AD:** Thank you, Michelle. Now, we can go ahead and turn to our final topic or possible challenge in an affirmative asylum case. We're going to look at Notice of Intent to Deny or, as it's commonly called, a NOID. Aly, would you please explain what a NOID is?

**AM:** Sure. A NOID is a detailed letter from the asylum office explaining why they do not believe your client is eligible for asylum. On its face, it seems bad, but it really is a second chance for you and your client. It's an opportunity to respond with more evidence, to clarify points of confusion, or address any issues that arose during the interview. Applicants who are otherwise in lawful status such as parole like many of our clients will receive a NOID rather than a referral to immigration court. Although you can request an extension for more time, you will want to start working on a rebuttal as soon as possible since you typically get about two weeks to respond.

**AD:** Thank you. Aly, have you ever received a NOID?

**AM:** Yes, one of my clients received a NOID. As I think Michelle was mentioning earlier, it was about credibility. The officer said he was not credible. It said that he did not provide enough detail regarding his participation in political protests in an activist group. That was one of the most important parts of his case. In our rebuttal, we highlighted several reasons that the NOID was incorrect, including what the officer wrote in the NOID itself, other supporting evidence we had already provided, country reports, and quotes from his interview, which, again, it's about taking really good notes so we can use those words again in response.

We also outlined interpreter issues that had led to confusion and tensions during the interview. We cited heavily to the USCIS officer training module on credibility. That, I think, was the bulk of our evidence, honestly, was using, again, USCIS's own words. We explained that the officer did not ask the appropriate questions to elicit the detail that she said was lacking. The NOID also said that our client's explanations of why he could not provide detail were not reasonable.

We argued that the officer was wrong here because these events occurred several years ago. He was young at the time, he was not a leader of the group, and that he had experienced significant trauma. Again, all of those were pulled basically directly from the credibility training module. The NOID also said that the lack of detail was relevant because it concerned whether he participated in "any political activity." We argued that the officer ignored extensive corroborating evidence, including the client's own membership card from the group with his name and photo and a certificate of appreciation for his activism.

We were like, "Why did you not address any of that?" Then we said that the officer ignored the client's other clearly established grounds for asylum, which, again, were listed right in the NOID as his moderate religious beliefs and affiliations with the U.S. and the U.K. In addition to our rebuttal in more of that brief format, we submitted supplemental affidavits from the client and another witness who was familiar with his activity and additional supporting evidence such as photos, identity documents. We are still waiting on a response, but we are hopeful. Thank you.





## Case Scenario: Farzad, Part 3

**AD:** Thank you for sharing all of that, Aly. That's super helpful. We'll go back to Farzad again. Several weeks after his second interview, Farzad receives a Notice of Intent to Deny from the asylum office. You have 15 days to rebut the reasons for denial. We'll see on the next slide what we can do. How am I thinking about what Aly just shared with us, thinking about your own experience possibly? How might you write an effective response to a NOID for Farzad?

### Poll Question

How might you write an effective response to the NOID?

**AD:** "Address each point in the NOID specifically." Absolutely. "Read it very carefully." "Don't panic," that's really great advice. "Try to understand the language of the NOID and address it with details," "Ask for more time," "Provide any new evidence that may have become available," "Additional information," "Talk with the client." Yes, as a few more people are typing, panelists, do you guys have any additional feedback or thoughts?

**MM:** I have one. The, "Don't panic," I would say, is really important. It's frustrating and stressful. It can be to receive a NOID in your case because it's usually unexpected. In some ways, it's like writing an appeal brief. It can feel cathartic and therapeutic to go through point by point just to underscore again and again, why your client is actually eligible for the benefit that they're asking for. Like in Aly's case, it wasn't related to a bar. It was, you're not really a refugee because they were doubting whether he had even participated in these activities that he claimed. I imagine for Aly, it felt good to underscore not only his testimony but the other evidence that he had submitted to prove that.

**AD:** Thanks, Michelle. Kristen, Aly, do you have anything to add?

**KN:** I find one thing is helpful is that when you get a NOID, it's like a long, almost like, block of text. It helps me to go in and number each allegation, break it down so that you can say, "Okay. To this allegation, this is how I'm going to respond. To this allegation, this is how I'm going to respond." Create an outline. Then as you're typing, that gives you a better idea of how to frame your arguments and which arguments are going to be most useful and which evidence you want to provide to rebut each of the allegations.

**AD:** Thank you. Okay. Thank you, everybody, for your input. We'll go ahead and flip to some general tips that we can keep in mind.

### Tips for Rebutting a NOID

**AM:** I think a few people mentioned these previously. It's important to ask the asylum office for additional time to rebut the NOID. Again, reading it carefully, going through line by line like Kristen was mentioning, and responding to each basis of the NOID with specific examples. We and our clients are the experts on their cases, not the asylum officer. We can come back with whatever we feel is appropriate. We probably know the law in the way that is applicable to them.

**AD:** That's a great point, Aly. Thank you. Now, that was everything. Oh, sorry, I forgot about a slide.

### Overcoming Hurdles and Challenges

**AD:** Just a reminder to everyone, you can overcome hurdles and challenges. Everything we've talked about today, just because it happens, just because there's a sworn statement taken, just because your client's called in for a second interview, and/or just because you receive a NOID does not necessarily mean the asylum office



will deny the client's application.

There's always space to overcome it and help your client to receive a grant of asylum. Now, what I was trying to say is that was everything we had planned for today. We'd love to open the floor up for questions.

## Q&A Panel

How much extra time can you ask for a NOID extension to respond? What is typical?

**AM:** I believe the maximum that they will give you is up to 30 days.

**AD:** Do they tell you right away that you've got an extension or do you just cross your fingers and toes and start working while you wait to hear?

**AM:** I did not request an extension, so I'm not sure how long it would take them to respond. I think just because it is such a limited amount of time technically, it's better to just prepare as if you're not going to get the extension so that you are gathering that evidence, talking to your client, writing your response as early as possible. Then if you have extra time, that's great.

**AD:** I'm so sorry. I went on mute by accident. Thank you, Aly. I'm going to go back through some of the questions we do have. It looks like someone's hand is raised. Unfortunately, we can't call on people. If you do have a question, please type it in the Q&A. Jumping back—oh, yes. Sorry, Michelle.

**MM:** Sorry, Ashley. Just to add on to what Aly was saying, you can check the Affirmative Asylum Procedures Manual for questions about getting that extension.

**AD:** Thank you, Michelle.

**MM:** How it works.

**AD:** Alright. Jumping back to our first two things that we talked about, the sworn statements and second interview.

Is there a magic number of how many times to practice with a client to prepare them for their interview? Just to avoid the client being nervous or anxious, is there a magic number?

**KN:** I'll take that. I don't know that there's a magic number. At least once is always good. You want to be able to tell your client what to expect from, "This is how the interview is going to start. These are the types of questions we're going to go through. This is the information they're trying to elicit." Definitely, if you get a second interview, you probably want to do a follow-up prep session. You also just need to read your client.

If you go through one prep session and your client does not seem prepared, do another one. [chuckles] You want your client to feel confident to answer the questions. You have to remind your client that this is their case. You can't answer the questions for them. An interpreter can't answer the questions for them. They need to be able to answer the questions themselves. You really have to equip them to understand what types of questions are going to be asked and how they can answer them and what kinds of information.

If an officer asks, "Were you ever persecuted by the Taliban?" they need to think of that broadly. What interactions did they have with the Taliban? Did the Taliban hurt them? Did the Taliban hurt their family? The Taliban sits in threat. The Taliban harm anybody you know. You just really got to think broadly about what sorts of answers are correct for each question and then do a lot of preparation if you feel like your client can't answer those questions yet.





**MM:** I would just add to Kristen's excellent answer. It's going to be helpful to have prepared their declaration first and then to run them through what the asylum interview is going to actually look like. Just like writing the declaration, how much to prepare them for the interview is more of an art than a science. I don't think there is a magic number. It's a useful tip, I think, too to think about overall what's the purpose of preparing them for the interview.

Part of it is so they know what's coming. They're not like a deer caught in headlights even when the asylum officer is reviewing the I-589 with them. I think it's just good to go from beginning to end, to know that you're going to have to stand up and raise your right hand. They're going to ask you maybe about the naming convention for your name. It'd be good to just have that prepared to get out of the way so you can get to the heart of the claim. That's another thing I would add.

**AD:** Thank you. I'll jump to another question. Then we have a bunch more that came in. These are some that came as we were talking.

[What are options for getting a copy of the sworn statement if the officer refuses to provide a copy at the interview? Would a FOIA request produce the sworn statement? Anyone have experience with that?](#)

**KN:** I've been lucky. I've always had the officer provide a copy at the end of the interview. I haven't looked this up myself. I'll be honest. There is some requirement either in the asylum practice manual or in the regulations that say that they do have to provide a copy of the sworn statement. I would contact the office and say, "Hey, under this regulation or this part of the asylum manual, you're supposed to turn over a copy of the sworn statement."

If they don't do, yes, a FOIA would definitely produce a copy of the sworn statement. It wouldn't be something that would be redacted that you regularly turn them over. It's not a background investigatory-type paperwork in their documentation in their file, so they would turn over and you could get a copy of it that way.

**AD:** Thank you, Kristen. Okay, moving to some of these other ones that have been coming in. Our lovely panelists, have any of you ever had an extension request for a NOID refused?

**MM:** For me, no, I haven't, but I haven't submitted any actually. I don't have experience.

**KN:** Then just related to that, I would just go back to the policy manual on asking for extensions. They're supposed to grant the extension unless your extension request is abusive or repetitive. If you're continually asking for extensions or if you're doing it to somehow delay the case in a way that would be improper, then they can deny it. Otherwise, if you have a genuine need for the extra 30 days, they're supposed to grant it. In that case, if the officer isn't granted, I'd ask for supervisor review.

**AD:** Okay, thank you.

[Is it not possible to inquire about the reason for a second interview? Having to arrange for travel is a huge ask if it's only for something minor. Is a telephonic or virtual second interview an option?](#)

**AD:** Does anyone know the answer to that? That might be more. Got to look it up.

**KN:** Not for the client. The client will have to be there in person. You as the attorney, you could appear telephonically for the second interview. I do that regularly because I live in Washington State. My clients are in Northern California generally at the San Francisco Asylum Office. If I can't travel, then I'll appear telephonically. Honestly, I have not ever had an issue with that. That doesn't mean there can't be issues, but I feel very lucky to be at the San Francisco Asylum Office. [chuckles] You don't necessarily have to be there for the second



interview in person as the representative, but your client does.

**AD:** Then is it possible to ask the asylum officer or asylum office why there's a second interview or do you always go into a second interview blindly?

**MM:** I think that with a lot of this, you can ask, but there's no guarantee that you're going to get a response. It doesn't hurt to ask. I think it's going to vary. Usually, you go into it pretty blind.

**AD:** Thank you, Michelle.

**KN:** Just to add to that, your communications are usually through their main email address or the OAW email address. Those are not necessarily going directly to the officer. Other than in the interview, it's very rare to speak to an officer directly. When you're asking, "What is the context for the second interview?" the person responding to the email inquiry may not be able to answer that.

**MM:** Yes, and I think for the second interview, it's less likely to get a response. I was also thinking for the sworn statement, it doesn't hurt to ask in a friendly way at the end of the interview, "Oh, so were you concerned about," I don't know, "his political activities or his work duties?" Again, you don't know if they're going to respond or not, but it doesn't hurt to ask. They might give you a heads-up.

**AD:** Thank you, Michelle. Okay, our next question, I feel like we might not be able to answer, but I'm going to throw it out there just in case.

**What is the percent of cases that were approved after responding to a NOID?**

**AM:** I don't know if that information is available. I know if you go on the USCIS website, you can see their statistics from the Ahmed v. DHS settlement. Every month, they have to provide updates on how many OAR cases have been adjudicated and how long it's taking. In there, they do have the number of grants and denials. If it helps generally, I just pulled up the August numbers. The total number of denials are 83. Of those, I'm sure not all of them. Well, maybe some of them got a NOID. I'm not sure, but that is a small fraction out of the almost 20,000 that have been adjudicated. Hopefully, that's a little bit of a relief. I don't know if we have that NOID and then final decision number unless someone else knows otherwise.

**AD:** Thank you, Aly. I don't think we have that either. Let's skip that one question. It's off-topic.

**How negatively will a NOID be impacting the processing time on the case, and what percentage of the cases receive a NOID? Does a NOID add additional processing time?**

**AD:** Of course, it adds more processing time. But does it add a lot of time afterwards for the office to consider the NOID, or do they issue responses pretty quickly once you respond to a NOID?

**AM:** I think people have had mixed experiences with this. I submitted my NOID rebuttal back in April and I'm still waiting on a decision. I know some people got responses pretty quickly and I know some people wait even longer. I think, Michelle, you were going to say something?

**MM:** Yes, I can tell you from the perspective of an asylum officer, former asylum officer, and this was a long time ago that I was an asylum officer, so things might have changed. I would say count on it adding time to the processing. The reason I said before that second interviews are strongly discouraged is because the asylum office has a procedure and a formula for how long adjudication is supposed to take.

Back when I was there, they gave us, with the interview, eight applicants a week. We had four hours per case, which included reviewing it, doing background checks, conducting the interview, and writing an assessment. We had four hours total per case. They kept a tally of the number of interviews we had completed and



decisions we had issued. When you had to do a NOID, it took that particular case off the regular path. I don't remember there being a specific deadline for issuing the NOID and then issuing a decision after the rebuttal.

**AD:** It sounds like maybe you get lucky and get a quick one, but plan on it taking, like Aly said, maybe four months or more. Don't expect things to move quickly. Thank you both for answering that.

One of my clients was old, 67 years old, and not literate. She was called for a second interview and it was really difficult to prepare her. Is there another way to prepare her? Any resource that can maybe help? Because she was having trouble remembering things or memorizing her answers to the asylum application or her declaration.

**AD:** I guess what tips do you have when working with a client who might be older or just based on circumstances may have difficulty with memory issues?

**KN:** For me, I would say the best place to bring this up is at the very beginning of the interview, the opportunity to ask the applicant, "How are you feeling today? Is there anything that would keep you from being able to answer questions today?" That's usually a good point too. You can step and the applicant can explain that they're having memory problems, anything like that. Just anything that you think that would impact the applicant's ability to tell all the necessary information at the interview. Definitely if you have any sort of doctor's notes or diagnoses, that also helps to explain to the officer the context, but you don't necessarily have to have that.

**AD:** Michelle, as an asylum officer, if you were working with an applicant that the attorney or applicant disclosed that there were memory issues, is there anything particular that you would do or would that change how you worked at all?

**MM:** Yes, absolutely. Aly mentioned the credibility lesson plan. I would also direct folks to look at the eliciting testimony lesson plan. There's also how to interview-- I have the title exactly right, but how to interview survivors of torture. These are all RAIO lesson plans that are available publicly. There is guidance in there, very detailed guidance about taking all sorts of things into consideration, age, memory issues, trauma.

To add on to what Kristen said, it would be helpful to an officer for the representative to point that out ahead of time somehow, either in writing or right before the interview starts. I think the question was related to a second interview. It all goes back to the first time around. When you prepared the declaration the first time around, you're taking into consideration how much detail to put in that declaration, given how your client initially tells you the story and what they're able to respond to when you prepare them for the interview. Sorry, I don't know anything else to add.

**AD:** No, I think that's helpful. Thank you, Michelle. So sorry, I got a little lost in the questions. We probably have time for about one more. I'm going to read this one.

Before the officer goes into their sworn statement or Q&A mode, can the attorney or representative ask the officer to talk to the client privately to explain the purpose before continuing? Is there any room for the representative or attorney to step in and help their client before that sworn statement gets taken?

**MM:** I'm not aware of that. I'm not quite sure I understand the question. Once the officer has said, "I'm going into sworn statement," can you ask for a time out to talk to your client? Yes, I'm not sure that that would be possible. It probably depends on the asylum officer, but I would be doubtful.

**AD:** Kristen or Aly, do you have experience with that at all?



**KN:** I don't know that you can officially do that. Keep in mind that you can ask for breaks to use the restroom or the client needs a moment to prepare. Right before going to a sworn statement could be a natural time to take a restroom break. You usually get an opportunity, you and the client, to go outside the room. You could talk to your client at that point.

**AD:** Thank you. Then I am going to ask this one last question that we have.

**What is the basis for the asylum office to provide a copy of the sworn statement?**

**MM:** Kristen or Aly, I don't know if you know the answer. I just know it's written somewhere, I think, in the procedures manual that it's a requirement. I don't know what the basis is for that. I do know that it ends up being helpful to you as the legal representative in the case because it gives you an indication if there is a second interview, what the topic of the second interview might be. It may or may not give you an indication that there will be a NOID in the case.

**AD:** Kristen or Aly, anything to add? It's okay if not. I just don't want to--

**KN:** Yes, I was looking for the exact citation. I don't have it in front of me. There is a written procedure in the asylum practice manual, I'm pretty sure, on how to request a copy of a sworn statement if they don't give one to you.

**AD:** Thank you. Thank you, so this is perfect timing. We're at about time to move on. There are no further questions that we've got flagged. I'm jumping back to our slides.

## Conclusion

### Reviewing Learning Objectives

**AD:** After these conversations we just had, we hope you are now able to explain what a sworn statement during an affirmative asylum interview is, identify reasons why a client might be called in for a second interview, and write an effective response to a NOID. We do ask that you take a quick moment, pull out your cell phone or tablet, click the link in the chat, and please access our feedback survey. It is five questions. It should take you about a minute. It helps us to improve future training and technical assistance. We'd really appreciate you taking a moment to complete that.

### Recommended Resources

**AD:** Okay. Our recommended resources have a lot of things that we've talked about. First, there's an asylum manual from Immigration Equality. VECINA, we have a course on affirmative asylum for Afghan nationals. Then we've got a couple of USCIS links. The Affirmative Asylum Procedures Manual, which was referenced a few times. The R-A-I-O or RAIO note-taking training module, the credibility training module. Michelle mentioned a few others that you can search for as well. Then we've got types of affirmative asylum decisions and affirmative asylum FAQs.

### Stay Connected

**AD:** That is everything for today. For more training and technical assistance, stay connected with Switchboard. You can email us at [switchboard@rescue.org](mailto:switchboard@rescue.org). Visit [www.switchboardta.org](http://www.switchboardta.org) and follow us on social media @SwitchboardTA. On behalf of all of us at Switchboard and VECINA, thank you for learning with us, and we hope to see you again soon.



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