



**B E A C H - O S W A L D**  
Immigration Law Associates, PC

## Beach-Oswald Immigration Law Associates Newsletter

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Beach-Oswald is a full-service law firm, concentrating on immigration law. We have special expertise in work visas, family based visas, visa waivers, green cards through family and employment and asylum. We have staff members who speak many different languages to assist you.

**We succeed when others don't!**

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**October 2009**



# Asylum Officers' Assessments Do Not Count As Admissible Evidence



A September 2009 article in Bender's Immigration Bulletin outlined the debate about admissibility of assessments by asylum officers as evidence before the Immigration Judge.

The Office of the Chief Immigration Judge published an official document distributed to immigration judges and court administrators instructing them that absolutely no document containing any reference to INS credibility findings may be filed with the Immigration Judge. The Board of Immigration Appeals recently upheld this document as law and held that this document precluded assessments being admitted into evidence.

Despite these two sources of law, assessments are still frequently admitted into the Immigration Courts and there currently exists a split among the circuit courts as to whether or not admit these assessments as evidence.

## What Exactly is an Assessment by an Asylum Officer and How Does it Work?

When a refugee arrives in the United States and wishes to apply for asylum, the refugee will file a Form I-589 and a face-to-face interview will be scheduled with an Asylum Office. The Asylum Officer ("AO") conducts an interview with a refugee to determine their credibility, where the AO will take notes on various aspects of credibility of the refugee (the "AO assessment"). If asylum is not granted by the AO, the AO shall refer the application to the immigration judge.

## What Do the Courts Say About the Admittance of AO Assessments into Evidence?

In 1995, the Board of Immigration Appeals ("BIA") reversed and remanded a case where the Immigration Judge ("IJ") relied on the AO assessment. The BIA noted that the assessment was not meaningful, clear, and reliable, but rather was just a compilation of notes flawed with poor translation.

In an unpublished 2005 case, the BIA again reversed and remanded a case where the IJ relied on the AO assessment. The BIA, however, based its decision on the authority of the Office of the Chief Immigration Judge's document, Operating Policy and Procedures Memorandum Number 00-11 ("OPPM"). The BIA asserted that this document precludes the AO assessment from being admitted into evidence.

The Federal Circuit Courts, however, are currently split on whether AO assessments are reliable and therefore can be admitted as evidence before the Immigration Judge. Some circuits, including the second and ninth circuits, have frequently reversed and remanded cases where AO assessments were admitted into evidence, citing the absence

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## Answers to Crossword from Previous Issue

### ACROSS:

1. Naturalization
2. Infopass
3. Asylum
4. Support
5. Individual
6. Witnesses

### DOWN:

1. Notice to Appear
2. Hladylowycz
3. Master
4. Klok
5. USCIS
6. FOIA
7. Passport
8. Relative
9. US Citizen
10. Student
11. Fallon Federal



of questions in the notes and problems with translation. Other circuits, such as the third, sixth, and eighth circuit, have held that AO assessments can be admitted and relied on if certain aspects or certain assessments are clear, specific, and extensive.

The Fourth Circuit, where most appeals for Beach-Oswald clients are heard, has ruled that not only can Immigration Judges admit AO assessments as evidence, but the OPPM which would normally preclude the admittance of AO assessments does not actually have the force of law.

### **What Can a Client Do to Assure That Their AO Assessment Will Not Be Admitted Into Evidence?**

If a non-immigrant applying for asylum is afraid that their AO Assessment will be used against them in their trial before the Immigration Judge, then they can contact the associates at Beach-Oswald Immigration Law Firm for help. Our associates will use the OPPM and BIA opinions to support your case and assure that you are entitled to a fair and just hearing before the Immigration Judge under law.



**NEW!**

## Test Your Immigration Knowledge Quiz



- 1) How long does it take to become a citizen if you got your green card through marriage to a US citizen if you are separated?
- 2) What do you need at an adjustment interview if you and your spouse don't make the poverty guideline amount for the amount of family members in your home?
- 3) What do you need if you have gotten a divorce or are separated after being married less than two years since you got the green card?
- 4) If you are in status and you have a job offer but have limited time still in status what should you do?
- 5) How long do you have to wait after getting asylum to get the green card?

*(See answers at the bottom of the newsletter.)*

## NEW! Advice Column

### Can Students and Non-Immigrants Obtain Driver's Licenses?



Non-immigrants with F, J, and M student visas and exchange visitor visas can obtain driver's licenses. They will have to show that their visas haven't expired, in addition to having supporting documentation to prove that they are still in lawful status.

Before going to the DMV, non-immigrant students and exchange visitors should:

1. Read their state's DMV requirements.
2. Go to their designated school official or responsible officer to get help with any unanswered questions regarding the process of obtaining a driver's license.
3. Make sure that they wait at least ten days after they've arrived into the United States before going to apply for a driver's license.
4. Nonimmigrant students and exchange visitors need to bring with them at least two documents (depending on the state) proving their legal status. The full list of accepted documents can be found on your state's DMV website. The most commonly used documents are:
  - A passport
  - Form I-94, Arrival-Departure Record
  - Form I-20
  - Form I-765, Employment Authorization Document
  - Form I-797, Notice of Action
  - Social Security Number or a letter from the Social Security Administration stating that you are ineligible for a Social Security Number

Look for other articles on driver's licenses concerning other issues coming soon. For more information and to find your state's DMV requirements, please visit:

[http://www.ice.gov/doclib/sevis/pdf/dmv\\_factsheet.pdf](http://www.ice.gov/doclib/sevis/pdf/dmv_factsheet.pdf)

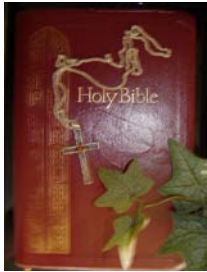
## Huge Successes This Month

- Physician discovers detainee Organ harvesting use for trafficking-US leading expert from UC Berkeley testifies - granted asylum
- 245 K adjustment granted to Korean family by briefing on technical violation
- Divorces - several
- Several Cameroonian cases granted asylum on SCNC,

UDC and UFDC

- Malian couple granted asylum based on FGM in Houston, TX
- BIA remands to Immigration Judges on asylum
- 204 C remand to CIS based on I -130 marriage - granted

## Religious Persecution In Ethiopia



An Ethiopian citizen named Ahmed has been thrown into prison for handing out Bibles to the Muslims in his community. Although religious tolerance is promised in the Ethiopian constitution, Ahmed's distribution of Bibles was labeled as "malicious" because the

Bibles' cover pages looked very similar to those of the Quran.

Whether this is a violation of copyright issues or an act of religious intolerance is still unknown, as Ahmed has been in prison for nearly four months, and still has not been tried in court. According to Article 19 of the Ethiopian constitution, "the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial." Ahmed has been denied his right to a speedy trial and is still detained.

People who have gone through experiences similar to Ahmed's may be eligible for asylum within the United States based on religious persecution. If you know someone that qualifies for this type of relief, please recommend them to BOILA P.C., where we have won hundreds of asylum cases.

## USCIS New Webpage

The United States Citizenship and Immigration Services have just redesigned their website. This new webpage is intended to make it more navigable for users in order for your searches to yield productive results.



The new home page has a section called "Customer Tools" that can answer many of your questions and prepare you for filing your applications. Also very useful is the section entitled "Where to Start", which gives you information about what you

can do while you are under your status. Last but not least, you can now sign up for "My Case Status". This new program will send you text messages and emails whenever there are updates on the status of your applications.

You can start exploring this new website right now at <http://www.uscis.gov/portal/site/uscis>. To see the Spanish version of this website, go to <http://www.uscis.gov/espanol>.

## Answers to Quiz

1. five years
2. need a co-sponsor to sign affidavit of support with their last three years of tax returns
3. see an attorney on waiver needed
4. see an attorney immediately as you may be eligible for an H-1B or other petition
5. one year

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