

Citations from Virgil Wiebe for "Sanctuary! Stratagems To Winning In Asylum Practice" session 2

#### I. Miscellaneous citations.

University of St. Thomas Immigration Law Practice Group website  
<http://www.stthomas.edu/iccls/immigrationlinks.cfm>. Includes connections to the USCIS Affirmative Asylum Procedures Manual.

For the unpublished Attorney General's decision on the one-year filing deadline changed circumstances exceptions. *In Re Bassel Marshi*

<http://www.lexisnexis.com/practiceareas/immigration/pdfs/web482.pdf>

*Loulou v. Ashcroft*, 354 F.3d 706 (8th Cir. 2003). Corroboration case on documents and witnesses. Addresses issue of telephonic witnesses.

#### II. Recent caselaw concerning authentication of documents in asylum cases.

##### First Circuit.

*Yongo v. INS*, 355 F.3d 27 (1st Cir. 2004). Congolese man claimed asylum based on opposition to President Mobuto, allegedly resulting in arrest, imprisonment, and physical abuse. At issue were purported German Immigration records related to the applicant including a signed asylum application, photos, and fingerprints offered into evidence by the INS to discredit applicant's testimony that he had not applied for asylum in Germany. To authenticate the documents, the INS offered testimony by an INS agent who served in Germany who was familiar with German record keeping and who had received the records from a German border patrol agent. Applicant objected that the documents had not been authenticated under 8 C.F.R. § 287.6.

The Court ruled that the documents had been properly authenticated. "[A]uthentication requires nothing more than proof that a document is what it purports to be and, even though the Federal Rules of Evidence spell out various options, the rules also stress that these options are not exclusive and the central condition can be proved in any way that makes sense in the circumstances." (at 30-31). 8 C.F.R. § 287.6 "offers 'one, but not the exclusive method' for authenticating a document in an INS proceeding. *Iran v. INS*, 656 F.2d 469, 472 (9th Cir. 1981), see also *Georgis v. Ashcroft*, 328 F.3d 962, 969 (7th Cir. 2003). In fact, the subpart in which the regulation appears says that the regulations do not create 'any right, substantive or procedural.' 8 C.F.R. § 287.12." (at 31).

##### Third Circuit.

*Liu v. Ashcroft*, 372 F.3d 529 (3d Cir. 2004). "8 C.F.R. § 287.6 is not an absolute rule of exclusion, and is not the exclusive means of authenticating records before an immigration judge." (at 533). Chinese couple claimed asylum based on being Christian and on basis of two forced abortions. They submitted two certificates to confirm the abortions were

performed. Liu's counsel explained that he had been "told by the Chinese officials at the provincial level that no such authentication was performed at that level." A letter submitted from the US consulate in China also explained that "no authentication can be performed until documents have been signed and notarized by a local Chinese foreign affairs official"). The IJ allowed the documents into evidence but gave them little or no weight because 8 C.F.R. § 287.6 states that documents "shall be" certified.

The Court found that the IJ had effectively excluded the documents. In response to the Court's request at oral argument, the government provided its official interpretation of the regulation in a supplemental brief. The government, represented by DOJ's Office of Immigration Litigation in DC, stated in its brief that "8 C.F.R. § 287.6 is not an absolute rule of exclusion, and is not the exclusive means of authenticating records before an immigration judge." (at 532). It relied on *Khan* (9th Cir) and *Georgis* (7th Cir.). See Below. The Court found that the government's reading of the regulation was not plainly erroneous or inconsistent. "Moreover, we fully agree, as the government states in its supplemental brief, that 'asylum applicants can not always reasonably be expected to have an authenticated document from an alleged persecutor.'" (at 532).

#### Seventh Circuit

*Georgis v. Ashcroft*, 328 F.3d 962 (7th Cir. 2003) (BIA streamlining case decided in June 2002). Georgis, an Ethiopian, claimed persecution based on political opinion and race. The Seventh Circuit found that most of the inconsistencies in the applicant's testimony were minor and largely the result of confusion between the Gregorian and Ethiopian calendar. An additional rationale, that Georgis failed to submit corroborating evidence, was found to be unpersuasive. Georgis "attempted to submit a copy of a letter from the Ehtiopian Transitional Government Second Police Station that she said corroborated the the facts and circumstances of her husband's arrest." (at 966). The letter was not admitted because it was filed the day of the hearing (having arrived after the 10 day filing deadline), was not certified under 8 C.F.R. § 287.6, and the government was not provided with a copy of the translation.

The Court first stated that "[a]s an initial matter, it is not necessary for an asylum applicant to submit corroborating evidence in order to sustain her burden of proof." *Citing to* 8 C.F.R. § 208.13(a). (at 969). It went on to state that "we are uncertain whether the letter qualifies as an 'official record' within the meaning of 8 C.F.R. § 287.6, but even if it does, § 287.6 is not the only way that Georgis could authenticate the document." *citing to Khan v. INS*, 237 F.3d 1143, 1144 (9th Cir. 2001). The Seventh Circuit found that it was error to exclude the letter where the IJ had explicitly stated that lack of corroboration was a basis for a negative credibility finding. (at 969).

#### Ninth Circuit

*Khan v. INS*, 237 F.3d 1143 (9th Cir. 2001). A Bangladeshi asylum seeker presented official records of four arrests and detention at the hands of the Bangladeshi government, presumably for his involvement in student protests. The immigration judge *sua sponte*

excluded the documents for lack of authentication under 8 C.F.R. §287.6(b) and denied asylum in part due to lack of corroborating evidence. The BIA affirmed the immigration judge's decision. *Id.*, at 1144. The Ninth Circuit remanded the case, stating that “[d]ocuments may be authenticated through any ‘recognized procedure, such as those required by INS regulations or by the Federal Rules of Civil Procedure’” and that the “procedure specified in ‘8 C.F.R. § 287.6 provides one, but not the, exclusive method.’” (citations omitted).

#### Tenth Circuit

*Sviridov v. Ashcroft*, 358 F.3d 722 (10th Cir. 2004). (BIA streamlining case, apparently pre-2002 changes). Russian of Jewish ancestry submitted a medical document to support his claim of being severely beaten by the police, as well as two summonses directing him to appear before the “militia department.” Among several reasons the IJ found the documents unreliable were that they “were not authenticated as permitted by 8 C.F.R. § 287.6” and that there were “no recognizable indicia of authenticity on those documents.” The Tenth Circuit held that the IJ's conclusion was supported by substantial evidence and was substantially reasonable. This case seems to suggest that in the Tenth Circuit authentication under 8 C.F.R. § 287.6 is one permissible but not required route to document authentication.