

Expert Evidence in Asylum Appeals



DGLE^{LEGAL}

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Agenda

- Welcome and Introduction
- When to use expert evidence
- Choosing the right expert
- Providing instructions
- How to best use expert evidence to support the claim

Presenter

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Sean is a Barrister at Garden Court North Chambers in Manchester (Call 2009, IT).

Previously Sean was the Casework Team Leader (Appeals) at IAS, before taking over as the Immigration Supervisor at a Law Centre, where he qualified as a Solicitor. He worked for a number of years as a Solicitor specialising in Immigration and Asylum work, before joining the Bar.

To view Sean's full bio, please visit: <https://gcnchambers.co.uk/barrister/sean-ell/>



Overview

- Today general overview on expert evidence in asylum claims
 - Expert evidence can assist the Home Office / Tribunal about the country situation
 - A good expert report can make a big difference in a case
 - A bad report can cause more problems
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- Article 3 ECHR health cases - how to run the appeal Webinar on 8th March 2021

When to use expert evidence...

- Different circumstances might want to utilise expert evidence
- Plan from the outset
- Information:
 - (i) Medical – diagnosis, treatment, prognosis
 - (ii) Country situation
 - (iii) Internal relocation
 - (iv) Sufficiency of protections
 - (v) Foreign Law

When to use expert evidence (2)...

Verification:

- (i) Client's account
- (ii) Documents
- (iii) Language
- (iv) Challenge HO evidence / Previous findings

Choosing the right expert - Sources

- Expert Directories
- RLG
- Colleagues – useful to have a directory of experts?
- Other experts – particularly those in academia

Choosing the right expert

❁ IMPORTANT

❁ Is your proposed expert – an expert?

❁ Area of study / qualifications / experience – Is their expertise beyond that to be expected of the Tribunal (AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) at 116)

“We accept that he is not one who has conventionally come to be described as a 'country expert'; but his considerable personal and recent experience of Afghanistan, and of the political situation within that country, together with the objectivity that is implicit in his professional qualifications and experience, give the authority to his evidence”

Choosing the right expert...

- Discuss matters with the expert – is the report within their expertise?
- Can you see a previous report?
- Check history - 'In simple terms an "expert" is only as good as her or his last report' LP (LTTE area - Tamils - Colombo - risk?) Sri Lanka CG [2007] UKAIT 00076
- However see - Cherbal v SSHD [2002] UKIAT 02014 judges must exercise caution before dismissing an expert's report because similar evidence from him was not accepted in an earlier case

Instructions

🌀 Role of the expert – to assist the Tribunal

“10.2 It is the duty of an expert to help the Tribunal on matters within the expert's own expertise. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid”

🌀 Role of the Rep – to assists the expert?

“10.1 A party who instructs an expert must provide clear and precise instructions to the expert, together with all relevant information concerning the nature of the appellant's case, including the appellant's immigration history, the reasons why the appellant's claim or application has been refused by the respondent and copies of any relevant previous reports prepared in respect of the appellant”

Instructions (2)

- In MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) the Upper Tribunal set out the duties of an expert in the following terms:
- (i) to provide information and express opinions independently, uninfluenced by the litigation;
- (ii) to consider all material facts, including those which might detract from the expert witness' opinion ;
- (iii) to be objective and unbiased;
- (iv) to avoid trespass into the prohibited territory of advocacy;
- (v) to be fully informed;
- (vi) to act within the confines of the witness's area of expertise; and
- (vii) to modify, or abandon one's view, where appropriate.

Instructions (3)

- PD 10 and MOJ (paras 23-27) should be provided to expert
- Be clear with the expert
 - are they familiar with what is required?
 - are they based in UK or overseas
- In PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC), UT criticized the experts (and those instructing them) for failing to comply with the requirements for expert evidence in their written reports, but UT did accept that the witnesses were experts and gave weight to the evidence. RISKY!

Instructions (4)

- Instruct as early as possible
- Take into account time for revisions
- Be clear what you want from the expert
- Do you require them to comment on alternatives?
- Avoid “...the impropriety of putting leading questions to experts who are required to advise impartially”
- Remember – an expert should not be being asked to reach a conclusion on the truthfulness of the client or if they are a refugee. Causes questions about impartiality.

How to best use expert evidence...

- Type of case – Application / Appeal / Fresh Claim
- ROAD MAP – the decision
- Oral evidence?
- Check the report for errors / mistakes - R (on the application of Hoxha and Others) v Secretary of State for the Home Department (representatives: professional duties) [2019] UKUT 00124 (IAC) the UT identified duty of rep to check reports received from experts for accuracy:

17. We are clear...that it is the role of a legal representative to ensure that any expert report accurately reflects the way in which the information in it came to be obtained. This is not something which can be simply left to the expert. Reports must be read and checked for accuracy on this point by the representative, and indeed for anything else within the knowledge of that representative. Representatives have professional duties in this respect and are not simply a postal service via which this evidence reaches the Secretary of State

Best use expert evidence (2)...

- HO common complaints / objections
 - (i) Qualifications – rare challenge
 - (ii) Been to the country recently?
 - (iii) Met the client?
 - (iv) HO country info preferable
 - (v) Partisan / campaigner?
 - (vi) Stepped into role of the Tribunal

Any Questions?

Thanks for watching!

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