PSYCHOLOGICAL EVALUATIONS IN FEDERAL IMMIGRATION COURTS:

Fifteen Years in the Making—Lessons Learned

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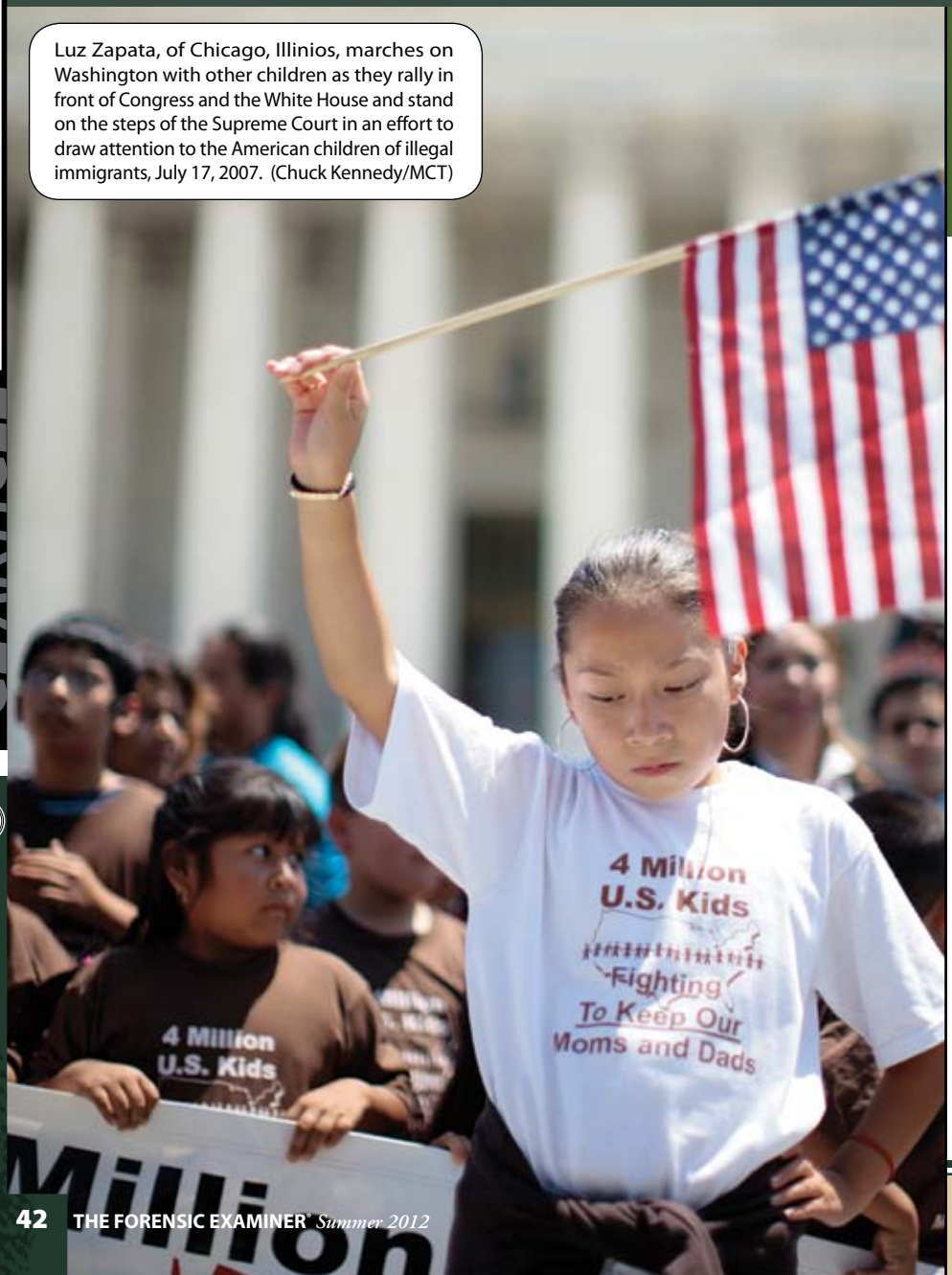

Luz Zapata, of Chicago, Illinios, marches on Washington with other children as they rally in front of Congress and the White House and stand on the steps of the Supreme Court in an effort to draw attention to the American children of illegal immigrants, July 17, 2007. (Chuck Kennedy/MCT)

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ABSTRACT

The increased adjudication of immigration cases involving discretionary waivers for inadmissibility and removal proceedings of undocumented aliens contested by claims for constitutional protections from hardship to qualifying relatives created a demand for psychological evaluations that would provide accurate assessment of aliens and their relatives. The psychological evaluation in federal immigration courts requires the forensic psychology expert to become familiar with the terms used in immigration law, to understand the legal dilemmas faced by immigration authorities, and to know the standards governing the evidence provided by the expert to immigration authorities. The forensic psychology expert must maintain an unbiased perspective to avoid ethical pitfalls and develop a study that considers the questions relevant to the dilemma faced by immigration authorities for each unique case. Careful selection of tools and procedures will guarantee valid information is collected, and the outcomes of the evaluation and opinions developed must be recorded in a written report, which will offer clear recommendations for the immigration authorities to consider.

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AFTER STUDYING THIS ARTICLE, PARTICIPANTS SHOULD BE BETTER ABLE TO DO THE FOLLOWING:

1. Define the terms utilized by federal immigration courts.
2. Describe the legal dilemmas faced by immigration authorities.
3. Identify the common ways in which the standards of hardship are applied to immigration petitions by immigration authorities.
4. Explain how typical ethical problems can be effectively dealt with in conducting psychological evaluations for immigration purposes.

KEYWORDS: Immigration, psychological evaluation, qualifying relatives, hardship
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INTRODUCTION

The Immigration Reform and Control Act (IRCA) was enacted by Congress on November 6, 1986, and signed into law by President Reagan that year. IRCA required employers to attest to their employees' immigration status; granted amnesty to certain illegal immigrants who entered the United States before January 1, 1982, and have resided here continuously, and provided a path towards legalization to certain agricultural seasonal workers and immigrants (govguru.com, 2010). The 1986 IRCA also resulted in unintended consequences. It gave great impetus for increasingly larger numbers of illegal immigrants to cross the U.S. borders and stay in the country illegally (Bean, Edmonston & Passel, 1990). There were many reasons for the increase.

First, it gave new immigrants hope that if they managed to stay long enough in the U.S. illegally, the next "amnesty" program enacted will be sure to include them and pave their way for naturalization, just as the recently enacted reform act had for others in the past (DeLaet, 2000; LeMay, 2006). Second, many of the immigrants, who up to the 1986 reform held jobs that American citizens would not hold, now could move up the employment ladder to more desirable jobs that were previously closed to them by virtue of their illegal status (Chavez, 2008). In turn, jobs vacated by formerly illegal workers created a vacuum and a new demand in the marketplace to fill with new undocumented aliens who would perform these jobs (Hing, 2004). Third, the promises of free mandatory education to their offspring and free mandatory medical care vis-a-vis Medicaid programs and emergency medical services proved irresistible to many coming from impoverished countries (Coutin & Chock, 1997).

This was particularly true for immigrants whose countries of origin did not provide accessible medical services or educational opportunities, or countries where such basic needs were not affordable to most. It is estimated by the U.S. census bureau the first year following IRCA resulted in an increase of 10.11 percent in illegal immigration. It is further estimated that in the five years between 1986 and 1991, the increase in illegal population in the U.S. was in the magnitude of 44.89 percent (Mulder, 2002).

Another unintended consequence of IRCA was the increased occurrence of mixed marriages, where one member of the couple possessed an illegal status and the other was either a lawful resident in the U.S. or a U.S. citizen (Wepman, 2008). This was made possible simply by the increase in the order of hundreds of thousands of additional illegal immigrants in the U.S. in the years following IRCA. Most importantly, the modal age of illegal immigrants coming into the United States is 18 years old, which is commonly considered a marriage-eligible age (Smith & Edmonston, 1997). Furthermore, those illegal immigrants who did not marry either a lawful resident or a U.S. citizen, more often than not, sired thousands of U.S. born American children, thus creating hundreds of thousands of "split families" (LeMay, 2006; Wepman, 2008). The most pronounced unintended consequence of 1986 IRCA was the creation of massive numbers (possibly in the order of millions) of families in which the parents were illegal aliens, but their children were U.S. citizens by birthright. Lesser in numbers, but still a substantial number, were families in which one of the two adults legally married is an illegal alien, while the other is typically a U.S. citizen (Passel & Taylor, 2010; Kerwin, 2010).

The Immigration Reform and Control Act (IRCA)

- Required employers to attest to their employees' immigration status.
- Made it illegal to knowingly hire or recruit unauthorized immigrants.
- Granted amnesty to certain seasonal agricultural illegal immigrants.
- Granted amnesty to illegal immigrants who entered the United States before January 1, 1982 and had resided there continuously.

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In the years after IRCA, a flurry of cases adjudicated by federal immigration authorities naturally followed, eventually creating a precedence for handling cases of split-families, where one or more members of the family unit is an illegal alien, and one or more members of the same family unit is a U.S. citizen (*Contreras-Buenfil v. INS,* 1983; *Ramirez-Gonzalez v. INS*, 1983; *Sanchez v. INS*, 1985; *Ramirez-Durazo v. INS*, 1986; *Cerrillo-Perez v. INS*, 1987). Although some cases preceded the increased need for adjudications of this kind (*Anderson v. INS*, 1978; *Wang v. INS*, 1981; Kessner & Caroli, 1983), the decisions rendered by immigration judges during the late 1980s and early 1990s, shaped by precedence the interpretation and the application of immigration laws still in effect today (*Palmer v. INS*, 1993; *Shooshtary v. INS*, 1994; *Ige v. INS*, 1994; *Gutierrez-Centeno v. INS*, 1996; *L-O-G v. INS*, 1996; *O-J-O v. INS*, 1996; *Pilch v. INS*, 1996; Yardum-Hunter, 2011).

Children rally in front of Congress and the White House and stand on the steps of the Supreme Court on July 17, 2007. (Chuck Kennedy/MCT)

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THIS ARTICLE'S ORDER AND STRUCTURE

The purpose of this article is to familiarize the reader with a set of definitions which form the conceptual vocabulary (see Chapter 1), as well as provide an explanation of the role of the forensic psychology expert in federal immigration courts (see Chapter 2). In Chapter 3, the forensic assessment methodology is presented with the logical connection between procedures and the questions to be answered by the forensic assessment, followed by illustrations with hypothetical examples in Chapter 4. The process of reporting on the findings to immigration courts is presented in Chapter 5, along with the rationale for the use of a written report format, and, ethical considerations for evaluations for federal immigration courts are presented in Chapter 6.

CHAPTER 1 - Conceptual Vocabulary

SPLIT FAMILIES

Split families became the judicial nightmare immigration judges faced, in that they represent the inherent conflict created by efforts of immigration authorities to apply federal immigration laws against a potential humanitarian catastrophe. At the core of the conflict are two contradictory legal demands: On one hand, the demand in a democratic civil society to apply existing laws (federal immigration laws in this case) that call for the removal of illegal aliens residing in the country evenly and fairly across the board (US-CIS, 1952). On the other hand are the constitutional protections from hardship afforded all U.S. citizens (and to a lesser extent to lawful residents in the U.S.), which could potentially befall family members of undocumented aliens removed from the country (US Government Manual, 2010; Bodenhamer & Ely, 2008).

DEFINITION OF "UNDOCUMENTED ALIEN"

Federal immigration rules generally consider an "undocumented alien" a person who violated United States immigration laws, in that the person does not have in their possession documentation that could prove their legal stay in the country (US-CIS, 1952). The principle that is ordinarily applied by federal immigration rules is that an "undocumented alien" is typically deemed "inadmissible," and therefore, the most common order that emanates from federal immigration courts and other immigration authorities is the removal from the U.S. of the "undocumented alien" based on "inadmissibility" status. When an "undocumented alien" is deemed "inadmissible" by immigration authorities, the undocumented alien is therefore ordered to leave the U.S. (Usually to their country of origin). A legal inadmissibility definition, or inadmissibility finding as a result of a legal process, would typically bar the undocumented alien found inadmissible from returning by legal means into the United States for ten (10) years, or more (Kerwin, 2010; Bodenhamer & Ely, 2008). That means that an undocumented alien found inadmissible or defined as inadmissible once removed will not be able to apply for any visa (tourist, immigration, work, etc.) for entry into the U.S., and would have to remain in another country outside the U.S. for at least ten years.

CONSTITUTIONAL PROTECTIONS FROM HARDSHIP

Federal immigration rules are cast against a backdrop of robust and unequivocal constitutional protections for all United States citizens, and to a lesser extent, to lawful U.S. residents from undue hardship (US-CIS, 1952). In the case of the split families, the U.S. citizen immediate relatives of an undocumented alien who could be potentially harmed by the removal of the undocumented alien are henceforth protected by law. The Constitution of the United States generally protects a U.S. citizen from hardship due to forceful removal from the country against their will; protects against general undue hardship; protects against undue economical, educational, and health losses; and protects from undue personal pain and suffering (Brabeck & Xu, 2010). Within the definition of "personal pain and suffering," all manner of psychological pain and emotional suffering is considered valid for constitutional protections. An additional layer of constitutional protections often exists in the case of split families because the United States citizens are also often times minors, who enjoy even greater protections from harm in both statutes and precedence because of their minor status (Brabeck & Xu, 2010).

To illustrate the depth and extent of constitutional protections for U.S. born American minors that are considered in federal immigration courts, the case of Marconi is a good example. In that case (Marconi vs. DHS, 2009), a ruling of a lower, California Family court awarding the undocumented alien woman physical and legal custody over her adopted minor—a U.S. born step-daughter—was accepted by federal immigration court as meeting the definition of a "qualifying relative" of the undocumented alien. In considering the petition of Marconi, the immigration court in Los Angeles, California extended protections from hardship "based on the special and psychologically important relationship" between the undocumented alien step-mother and the U.S. citizen adopted step-daughter. In so doing, the immigration judge ruled against the interests of immigration authorities for inadmissibility finding and removal of the undocumented alien step-mother (*Marconi vs. DHS*, 2009).

DEFINITION OF "QUALIFYING RELATIVES"

In recognition of constitutional protections from hardship, federal immigration rules set forth a definition for those U.S. citizens and lawful residents who are connected by familial ties to the undocumented alien or aliens. The term typically used is the "qualifying relative" where the qualifications are that the familial ties between the undocumented alien and their U.S. citizen relative or relatives are legitimate and real, and that those ties can be demonstrated with admissible evidence to the court (Vasic, 2009). Furthermore, the definition also presumes some degree of physical, emotional or otherwise connection, dependence, or interdependence between the undocumented alien and the qualifying relative to the extent that removal of the illegal alien would either disrupt the familial relationship, or a removal of the undocumented alien will force the removal of the qualifying relative, against their will, with the undocumented alien (Brabeck & Xu, 2010).

"DISCRETIONARY WAIVER"

The precedence created in federal immigration rules allows for qualifying relatives (those who are either U.S. citizens, or lawful residents and are connected to the undocumented alien by immediate familial ties) who stand to be adversely affected by application of immigration laws upon the undocumented alien relative (usually by a removal order), to petition for a "discretionary waiver" (Vasic, 2009; Office of the Federal Register, 2010). A permissible petition for discretionary waiver can be directed in contest of inadmissibility findings (as in petition for discretionary waiver of inadmissibility through a I-130 application) based on constitutional protections from hardship, or a permissible petition for discretionary waiver from a removal order (as in petition for discretionary waiver of removal order through a I-485 application) based on constitutional protections from hardship (Bray, Evans & Lieberman, 2009). It is important to stress that the protections from hardship are for the qualifying relatives of the undocumented alien, not for the alien.

THE MEASURE OF HARDSHIP

With the creation of precedence allowing for hardship to be invoked by qualifying relatives of undocumented aliens adjudicated by federal immigration courts, a judicially formulated measure of hardship also emerged. There are currently two standards of hardship generally applied to qualifying relatives of undocumented aliens adjudicated by federal immigration courts and other immigration authorities:

1. *Extreme and unusual hardship*, which is applied to qualifying relatives of persons whose legal violations involve immigration laws (e.g., visa overstay, unlawful entry, etc.), as well as directly applied to the petitioning alien who is an asylum seeker; and
2. *Exceptional and unusually extreme hardship*, which is applied to qualifying relatives of persons whose legal violations involve, in addition to immigration violations, more serious violations (e.g., DUI, assault, child abuse, theft, drug-trafficking, etc.) (Cervantes, Mejia & Mena, 2010).

As had been previously indicated, immigration law is fluid and changeable by precedence and is not necessarily applied uniformly across the country (Frumkin & Friedland, 1995). For example, the U.S. Court of Appeals for the Eighth Circuit recently joined two other circuits in ruling that a conviction for misuse of a Social Security number is a "crime involving moral turpitude," and has the effect of precluding foreign nationals from becoming lawful permanent residents. In a unanimous decision, the Eighth Circuit (covering Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) rejected an appeal to cancel the deportation of a Salvadoran man who was found guilty of misusing a Social Security number, labeling his act a "crime of moral turpitude" (CIMT). A CIMT, unlike most misdemeanors and some felonies, makes a foreign national inadmissible (ineligible to enter the United States) and deportable (removable from the United States if already here). In so doing, the Eight Circuit adopted the approach long held by the Board of Immigration Appeals (BIA), the administrative appellate court that hears from decisions of the immigration courts. The Sixth and Ninth Circuits have also previously adopted this interpretation; however, not all courts of appeals have done this (Yardum-Hunter, 2011). Thus, for some foreign nationals who appeal their cases, their matters will be governed by this interpretation, whereas for others it may not. Consequently, for some petitioners who have been convicted of misusing Social Security numbers the measure of hardship may be held to a higher standard by immigration courts than for others convicted of the same. The psychological forensic expert should consult an attorney to determine the standard of hardship against which the case will be evaluated before commencing an evaluation.

CHAPTER 2 - The Role of the Forensic Psychology Expert

Emily and Logan Guzman lead their family and friends to the gate of the Stewart Detention Center in Lumpkin, Georgia. The visit will be their last with their father before the court decision either to deport or to free Pedro Guzman. (Don Bartletti/Los Angeles Times/MCT)

IMPORTANT QUESTION FOR EVALUATORS

An immigration judge in federal court must weigh which is more important for U.S. society by and large: to process the removal of an illegal alien or to spare his or her U.S. citizen relatives from undue hardship. Increasingly then, judges in removal proceedings and inadmissibility hearings were tasked with assessing claims of extreme hardship to qualifying relatives invoked by petitioners on their behalf. As immigration judges and immigration attorneys adjudicating such cases were not trained in psychological assessments, the need for psychologically based evaluations of hardship to qualifying relatives increased (Vaisman-Tzachor, 2003). The issues before the courts are clearly extra-judicial and require a psychological evaluation: One important question is the degree of connectivity and the extent of interdependence between the qualifying relative and the undocumented alien. A corollary question is whether the "qualifying relative" claiming on behalf of the undocumented alien is indeed related to the undocumented alien, or are they being claimed as a "front" in the service of the undocumented aliens' immigration aspirations (Vaisman-Tzachor, 2003).

WHO IS A "LEGITIMATE" RELATIVE?

A forensic psychologist evaluating these questions must take into consideration culturally-specific definitions of who is considered a relative or a member of the family of the undocumented alien as well as the personal and cultural value ascribed to that connection (Rosenblum & Travis, 2008; Fadia, 2006; Paniagua, 2005). Generally speaking, federal immigration courts traditionally tended to more readily accept immediate, nuclear family and biological relations as potentially valid for protections from hardship. As mentioned above, however, other relations, such as those borne out of legal adoptions and other legally binding arrangements, may be considered as well (Marconi vs. DHS, 2009).

HOW WILL "HARDSHIP" BE EXPERIENCED?

A separate but equally important question is the extent and the manner in which hardship is expected to be experienced by the qualifying relative (Cervantes et. al, 2010; Brabeck & Xu, 2010). As previously mentioned, there could be various sources of hardship (medical, economical, educational, forceful removal, etc.) and assessments and predictions made about them are in the realm of the forensic psychological evaluation with the exception of purely medical considerations. When medical conditions indirectly weigh upon the psychology of the qualifying relative/s (as they so often do), they too can come within the scope of the forensic psychological evaluation. The potential impact of sharply reduced economical standards upon the emotional well-being of a qualifying relative, or the potentially devastating effects of elimination of educational opportunities to a qualifying relative minor forced to migrate with their undocumented alien parent can be best assessed by a forensic psychology expert (Vaisman-Tzachor, 2003).

PSYCHOLOGICAL EVALUATIONS IN FEDERAL IMMIGRATION COURTS

Indeed, in 2003, the author published the protocol for psychological evaluations in federal immigration courts, after hundreds of cases were assessed and presented to immigration authorities (Vaisman-Tzachor, 2003). The published protocol offered basic guidelines for the appropriate way to conduct an evaluation in order to provide the federal immigration court the necessary information it requires to adjudicate a case. The evaluations based on the proposed protocol which were presented by the author over the last fifteen years had been largely welcomed by judges of federal courts for immigration and other immigration authorities because they validated the "qualifying relatives" petitioning on behalf of undocumented aliens, and they also offered objective measures of hardship against which to weigh other evidentiary and legal considerations when adjudicating a particular case (Vaisman-Tzachor, 2003).

However, since the middle of the 1990s, changes to immigration laws increased the diversity of cases adjudicated by immigration courts, which required the use of psychological evaluations in more ways than originally proposed by the author (Magana, 2003). Consequently, the current article will address most typically found variations and the ways in which the forensic psycho-

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logical evaluation can effectively address the challenges before immigration judges and provide the necessary information for the courts' ultimate decision.

FEDERAL IMMIGRATION COURT LEGAL PROCEEDINGS

Unlike other legal proceedings, hearings in federal immigration courts tend to be intimate and involve an immigration judge, an attorney representing the federal government, and sometimes an attorney representing the undocumented alien and his or her family (Immigration Court Practice Manual, 2010; Office of the Federal Register, 2010). The burden upon the immigration judge is dual in managing the legal proceedings case and in rendering a ruling in each case. Both attorneys (petitioner and respondent) argue before the judge his or her respective views on the case. The role of the forensic psychology expert in federal immigration courts is to assist the immigration judge in the determination of the case by answering the typical referral questions for which the expertise has been sought out:

1. To *authenticate* the relationship between the undocumented alien/s and the qualifying relative/s.
2. To *calculate* the potential hardship that would befall the qualifying relatives under the various possible scenarios (undocumented alien leaving the country alone, qualifying relatives leave the country with undocumented alien, etc.) (Vaisman-Tzachor, 2003).

The federal immigration judge will render a decision that will take into consideration important factors presented by the forensic psychology expert about the *nature* and *quality* of the *relationship* between the undocumented alien/s and qualifying relative/s. In particular, the immigration judge is likely interested in the *psychological significance* of this relationship. An immigration judge will consider what a loss of the undocumented alien could potentially do to the qualifying relative/s and what a significant deterioration in the undocumented alien's functioning (e.g., significant reduction in parenting prowess; substantial deterioration in ability to provide emotional support, etc.) could do to their qualifying relative/s (Cervantes et. al, 2010; Frumkin & Friedland, 1995).

Ultimately, the immigration judge will render a decision about a case based on the *anticipated damage* the qualifying relative/s of the undocumented alien/s are likely to incur by a removal order of the undocumented alien/s. Henceforth, it is the task of the forensic psychology expert to anticipate consequences of a removal order before it actually happens. This presents the forensic psychology expert with a substantial challenge because by and large, psychologists are not better than the average person at predicting the future. It may become apparent to the reader at this point why there is a need to adhere to a scientific methodology and a tested protocol that would increase the predictive validity of the information the forensic psychology expert presents to the immigration court (Ackerman, 1999; Weiner & Hess, 2006; Vaisman-Tzachor, 2003).

FEDERAL RULES OF EVIDENCE

Federal rules of evidence (FRE) are the standards by which all testimony, including psychological testimony, is admitted into evidence in legal proceedings at federal immigration courts. These rules sometimes conflict with specific state rules of evidence in civil or criminal courts and demand that the forensic psychology expert be familiar with their requisites (American Bar Association, 2010; Weiner & Hess, 2006; Buckles, 2003). Federal rules of evidence are, by definition, consistent with the professional standard of care as is required of all psychologists, and as such, would be intuitively acceptable to most readers. They are based on two essential premises, subsumed under the rulings that gave rise to their existence in precedence:

1. 1923 *Frye Test of Evidence*, which established that the scientific principle or discovery upon which testimony offered in federal immigration courts is *widely accepted* and *well recognized* in the respective scientific community.
2. 1993 *Daubert Standard*, which established that testimonial evidence offered to federal immigration courts is deemed admissible when reached with *reasonable degree of psychological certainty*, which would be above 50%, or better than chance (Weiner & Hess, 2006; Buckles, 2003).

Emanating from federal rules of evidence are specific demands for a particular disposition on the part of the forensic psychology expert when selecting the types of instruments and procedures to be used to extract relevant information from the clients in federal immigration proceedings. When it comes to the selection of psychological tests, the test must be commercially available; the tests' reliability must be considered; the tests must be relevant to the legal issue/s before the court; a test's administration must be done in the standard fashion; the test must be applicable to the population (by norms) and for the purpose being used; and preference should be given to objective tests, even more so to those instruments which incorporate response style (validity scales) into their scoring and interpretation scheme (Babitsky, Mangraviti & Babitsky, 2006; Weiner & Hess, 2006; APA, 1991; APA, 1985).

CHAPTER 3 - The Forensic Psychology Assessment Methodology

"Ultimately, the psychological assessment protocol must generate theories about the persons involved and predictions about the future(s) of the qualifying relative(s) potentially affected by an adverse decision regarding the undocumented alien(s)."

As is the case with most other forensic psychological evaluations, the psychological assessment protocol for federal immigration courts (Vaisman-Tzachor, 2003) comprises relevant assessment procedures which address specific clinical constructs that are pertinent to the legal questions being considered. More importantly, the psychological assessment protocol is designed to access aspects of the psychological make-ups of the persons evaluated and illuminate upon psychological potentials ordinarily not available to others adjudicating the case. The assessment protocol calls upon the forensic psychology expert to develop hypotheses and null hypotheses to evaluate against the psychological evidence that emerges from the individuals assessed. Ultimately, the psychological assessment protocol must generate theories about the persons involved and predictions about the future(s) of the qualifying relative(s) potentially affected by an adverse decision regarding the undocumented alien(s) (Vaisman-Tzachor, 2003). Whenever possible, corroboration from alternative sources must be sought (with interviews and collateral sources) to increase the "psychological certainty" of the conclusions drawn to above pure chance (or 50%) (Weiner & Hess, 2006; Otto & Heilburn, 2002; Ackerman, 1999).

AN ILLUSTRATIVE EXAMPLE

An example will help in explaining the process: An undocumented alien is being claimed on his behalf by his lawful U.S. citizen wife who is 52 years his senior, based on hardship to her. In this case, the federal immigration court looked upon this claim with suspicion, requesting a psychological evaluation. The forensic psychology expert may hypothesize that the undocumented alien is insincere and taking advantage of the much older spouse for his immigration aspirations, as would be expected from a person with antisocial traits. Such personality characteristics could be effectively assessed with an objective personality inventory and could answer the study hypothesis (Caldwell, 1996). The null hypothesis, on the other hand, would propose this was an honest, romantic relationship of persons who have variant preferences for a much older woman/much younger man respectively. The null hypothesis could be studied by interviews, meticulous history taking (particularly focusing on previous romantic relations), and corroborating with other sources such as mutual friends or pictures they may have together.

To some extent, the psychological assessment protocol for federal immigration courts resembles the typical custody evaluation in family courts, in that it attempts to predict the best possible resolution for a custody dispute. The psychological assessment protocol for federal immigration courts attempts to predict the consequences of an adverse decision by the court upon the persons affected. Similarly, typical custody evaluations are designed to attend to the best interests of the most vulnerable persons involved—namely, the children of the family having a dispute. The psychological evaluation for federal immigration courts follows the same, with particular attention to the protection of those qualifying relatives who stand to be harmed and are entitled to such constitutional protections. Hence, psychological tests and measures, which have established predictive validity and adequate reliability coefficients, would be preferably selected for the task (Weiner & Hess, 2006; Otto & Heilburn, 2002).

AREAS OF INQUIRY COMMONLY STUDIED ARE:

1. The personality characteristics of the persons involved in an immigration petition to the court, calling for the use of personality inventories such as the MMPI-2 (Regents of the university of Minnesota, 1989) or the MCMI-3 (Millon, Millon & Davis, 1994).
2. The psychological propensities of the persons involved in an immigration petition to the court, calling for measures of psychopathological tendencies, such as the BDI-2, BAI, TSI, EMAS, etc. (Meyer, Finn, Eyde, Kay, Moreland, Dies, Eisman, Kubiszyn & Reed, 2001).
3. The nature of the familial ties between the persons involved, particularly the relationships between the undocumented alien/s and the qualifying relative/s, calling for use of measures that tap into the relationship between the persons involved, such as the PASS (Bricklin, 1990) and the PORT (Bricklin, 1989), PSI-3 (Abidin, 1995), Relationship Report Cards, Projective Drawings, Double Blind Family Observations, etc. (APA, 1991).
4. The psychological resources and strengths that persons involved in an immigration petition to the court possess (calling for intelligence measures such as the WAIS and the WISC, K-BIT, etc., and the inquiry into the history of achievements and coping).
5. *The post-traumatic sequella of persons petitioning for asylum in the United States (calling for use of measures that measure PTSD, anxiety and depression, such as the TSI, TSCC, EMAS, etc.).

* Remark: The petition for asylum in the United States involves a different set of priorities and considerations which this article does not fully address.

CHAPTER 4 - A Hypothetical Example

A hypothetical example will be entertained here to illustrate the process by which the psychological assessment protocol attempts to provide accurate and relevant information to federal immigration judges and authorities to render their decisions.

Consider a "split" family residing in the U.S., comprised of two undocumented adult parents in their early forties who immigrated from Mexico approximately twenty (20) years ago, married in the U.S. and sired two (2) U.S. born American citizen children, now ages fourteen (14) and eleven (11). The father is the petitioner making a claim of "exception from inadmissibility" based on "extreme hardship" to his "qualifying relatives," who are his U.S. born American citizen children. They hire an immigration attorney who refers them to a forensic psychology expert for an evaluation. The forensic psychology expert must first consider a few possible permutations resulting from an adverse decision by federal immigration court:

1. The father goes to Mexico, leaving his family in the U.S. without him for an extended period of time (at least ten years).
2. The two parents go to Mexico, leaving the U.S. born American citizen children with relatives in the U.S. for an extended period of time (at least ten years).
3. The entire family migrates to Mexico with the U.S. born American citizen children at tow, for an extended period of time (at least ten years).

THE ASSESSMENT QUESTIONS

From these possibilities, a new set of questions emerge for consideration: The questions essentially address the quality and importance of the relationships between the undocumented alien parents and their U.S. born American citizen children, including the possibility that the children are claimed fraudulently for the immigration aspirations of the father (where there is no real relationship between the undocumented alien father and the U.S. born American citizen children). Further study questions involve the types of connections that the U.S. born American citizen children have to their current life in the U.S., the types of tolls that the U.S. born American citizen children are likely to experience in a loss of one or both undocumented alien parents, and the types of adaptations and their psychological costs that the U.S. born American citizen children are going to be facing in the event that they have to move to Mexico. Corollary questions involve the parenting prowess of the undocumented alien parents, the potential effects upon their parenting capacities in the event of a move of one or both parents to Mexico, including the economical effects that are expected to result from an adverse decision, and how all that will affect the parenting experiences of the U.S. born American citizen children at the receiving end. Additional relevant questions before the forensic psychology expert are about the scholastic attainments and educational potentials of the U.S. born American citizen children, the educational opportunities available to them in Mexico, and their ability to resume their studies in Mexico in Spanish without serious disruptions.

THE RESULT OF THE ASSESSMENT

The assessment must result in a theoretical total sum of the predicted loss and suffering that the U.S. born American citizen children are likely to experience in the event of an

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adverse decision by the federal immigration court on the petition of their undocumented alien father. As previously stated, the measure of hardship is subjective and determined in precedence by immigration courts (Yardun-Hunter, 2011). As of the time this article is written, the jury is out on the question of whether the definition of extreme hardship, or the definition of extreme and unusual hardship for that matter, are a "legal" definition (hence, in the purview of the federal immigration authorities) or a "psychological" definition (hence, in the purview of the forensic psychology expert). The obligation of the forensic psychology expert in federal immigration courts is nevertheless to offer an unequivocal opinion about the extent of emotional damage and psychological suffering that the U.S. born American citizen children will suffer in terminology relevant to the court. Hence, the outcome of the psychological evaluation will result in an assertive opinion whether an adverse decision by the immigration court will or will not result in extreme hardship or extreme and unusual hardship to the qualifying relatives who are, indeed, U.S. born American citizen children of the petitioner (Vaisman-Tzachor, 2003).

HYPOTHETICAL HARDSHIP FINDING

Going back to the example entertained before; assume that the family is determined to migrate back to Mexico in case an adverse decision by immigration court is reached because they would not be able to sustain themselves without their father in the U.S. Assume further that the U.S. born American citizen children cannot speak, read, or write Spanish to a level necessary to begin First (1st) grade in Mexico, let alone continue their studies in the Ninth (9th) grade (for the fourteen years old child), and in the Sixth (6th) grade (for the eleven years old child) respectively. The forensic psychology expert may consider this a weighty factor in the overall definition of hardship that is likely to be experienced by the U.S. born American citizen children if they had to migrate with their undocumented alien parents to Mexico. Even if we assume that in the example given the parents may be able to economically sustain continued education for their children in Mexico, an immigration authority's adverse decision upon the petitioning undocumented alien father could spell the end of the educational opportunities for the two U.S. born American citizen children because of language deficits. Furthermore, this could portend a life-long sentence of diminished occupational opportunities due to inferior educational attainments and subsequently relegation to life in poverty for no fault of their own. Of course, the picture becomes even clearer if the undocumented alien parents are not expected to be able to provide the necessary economical means to sustain their ongoing U.S. born American citizen children's education in Mexico anyhow.

In addition, if the forensic psychology expert considers the hypothetical result of the U.S. born American citizen children's below average intelligence scores in the evaluation tests, then the prediction can be made that a move for the U.S. born American citizen children to Mexico would be devastating. Since intelligence tests are commonly recognized predictors of future adjustment (Grisso, 1986), the prediction can be made that with lesser intelligence resources, and with inferior language proficiencies, the challenge of resuming the educational efforts of the U.S. born American citizen children in Mexico would indeed prove insurmountable. Hence, a conclusion will be reached by the forensic psychology expert that an adverse decision by federal immigration court upon the petition of the undocumented alien father would qualify for "extreme hardship" in case the whole family would have to move to Mexico.

CHAPTER 5 - Report on the Findings

The culmination of the psychological evaluation process will be in the presentation of the findings to the appropriate immigration authorities. There are essentially two ways in which the forensic psychology expert is likely to be expected to present the results of the psychological evaluation: (1) A written report; (2) In-person testimony in court. Ordinarily, the appointing attorney requesting the evaluation will instruct the forensic psychology expert what is expected in each case. There are many good reasons for the production of a written report at the end of a forensic psychological evaluation for federal immigration authorities. The first and most obvious is that there are many instances in which there is not going to be a hearing held in the matter evaluated and the decision is going to be made by a judge pro-term, sometimes far away from the place where the evaluation was physically held. A typical example is the evaluation of undocumented aliens who are claiming through marriage to a U.S. citizen (e.g. a Canadian national married to a U. S. Citizen). Often times the decision is going to be rendered in a federal immigration office in a large urban area of the alien's country of origin or where the U.S. consulate is located (e.g., Ciudad Jaurez, for a Mexican national; Vancouver for a Canadian national, etc.). In these instances, the written psychological evaluation report is all that will be possible to offer immigration authorities attempting to render a decision in a case.

However, there are other reasons which are no less important for a psychological evaluation report to be submitted, even for cases where a court hearing is going to be held in the matter for which a psychological evaluation was sought. It is quite common for cases which had been adjudicated in federal immigration courts and where a decision was rendered to be later appealed by either the federal government or by the petitioner. The appeal process is usually initiated by the party that did not prevail in the court and is seeking redress based on a variety of reasons (legal, technical, etc.). Whatever the reasons may be, the hearings held in an immigration case at the Federal Circuit Court of Appeals are always without expert in-person testimony. Therefore, in order for the opinions and recommendations offered by the forensic psychology expert to be heard or even considered at the appellate court level, it is essential that a written report be produced and introduced into evidence at the lower, federal immigration court hearing first (Yardun-Hunter, 2011).

There is yet one more reason to insist that the impressions and opinions developed by the forensic psychology expert during the evaluation process be recorded in a comprehensive written report and that the report would be submitted into evidence to federal immigration court: When the forensic psychology expert is called upon to testify, the opposing counsel will attempt to limit the scope and weight of the testimony of the expert by limiting the questions to only those necessary to attempt to discredit the expert. Consequently, it is very likely that oral testimony given by the forensic psychology expert in any hearing in federal immigration court would fail to encompass the breadth and importance of the findings and recommendations offered by the expert in any given case. If, in addition to verbal testimony, there is no accompanying document that expands on the opinions and offers adequate justifications for the opinions of the expert, the ruling judge may disregard the recommendations of the psychological evaluation or may not give them the appropriate weight in the final deliberations.

CONTENTS OF THE REPORT

The written report must contain all information considered by the forensic psychology expert, be it from documents, interviews, or observations and psychological testing. Additionally, all professional considerations in reaching impressions, opinions, and recommendations must also be included. Because the written report will assist the court in its deliberations and the appointing counsel's questioning during in-person testimony, it must also contain the study questions (i.e., what did the forensic psychology expert attempt to answer in conducting the evaluation). There should be a section justifying the selection of certain study instruments and procedures in conducting the evaluation, given that the audience for which the report is written may not be familiar with the utility of particular inventories, nor will they have the understanding of the predictive validity of certain psychological tests. Moreover, the readers of the written psychological evaluation are not going to necessarily make the connections to infer the relevance of the findings the expert has collected to the questions of the case being adjudicated (Weiner & Hess, 2006).

QUESTIONS TO ADDRESS IN A WRITTEN REPORT:

The forensic psychology expert must provide the reader of the written psychological evaluation report clear answers to the following questions:

1. What is being studied and why?
2. What measures were used to assess the study questions?
3. What was the rationale for the use of the selected measures?
4. What kinds of answers are expected to be gleaned from the tests and procedures?
5. What was observed in the persons evaluated (descriptive)?
6. What was revealed about the persons evaluated (inferential)?
7. What kinds of conclusions did the expert reach and why (conclusive)?
8. What recommendations are being made based on the conclusions reached?

The language in the written report must be straight-forward and not include jargon and professional colloquialisms that are likely to be confusing to the reader who is not trained in psychology. Instead, the narrative in the written report must carry the reader through the evaluation process and onto the inevitable conclusions and recommendations in a logical and simple manner. Written reports submitted into evidence in federal immigration courts that are relevant and explanatory are likely to be well-received by immigration judges and attorneys, and are likely to spare the forensic psychology expert agonizing hours of cross-examination on the witness stand.

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CHAPTER 6 - Ethical Considerations

"Careful assessment of the facts in any case and meticulous study of the psychological evidence the forensic psychology expert collects will help the expert avoid ethical pitfalls such as becoming a gun-for-hire."

The question of ethics in the process of conducting a forensic psychological evaluation in federal immigration courts comes up frequently because the typical appointment of a forensic psychology expert is done by the attorney representing the petitioning alien/s. It is therefore easy to understand that some may view the position of the forensic psychology expert as inherently biased and therefore unethical. Some have even likened it to becoming a "gun-for-hire," and attorneys cross-examining experts at federal immigration courts frequently raise this very question.

Although the ethical question per-se does present the forensic psychology expert with a challenge, it also directs the evaluator's disposition in each case assessed. The obligation of the forensic psychology expert is to study the truth about the psychological aspects of the immigration case, regardless of the referral source. It is never the role of the forensic psychology expert to offer opinions about any legal matters regarding the case. Thus, the forensic psychology expert must offer opinions regarding the psychology of the persons involved and recommendations for consideration by the court, not opinions about how to decide on a case. Furthermore, the attitude of the forensic psychology expert must be that whenever information obtained during the evaluation about a case that does not seem to support the claim made by the hiring attorney representing the petitioner/s, the forensic psychology expert must stop the evaluation and refuse to continue.

AN ILLUSTRATIVE EXAMPLE

For example, a case which was referred to the author in which an undocumented alien man was claiming on his behalf by four children he sired in the U.S. with three different women he was separate from and whom he was not supporting financially or otherwise. At the conclusion of the evaluation it was revealed to the author that the man did not have any consistent physical contact with the ("Qualifying Relatives") children, and that he did not meet most parental obligations, nor did he maintain his parental legal rights over the children (e.g., visitation rights). The evaluation did not reveal substantial psychological connections between the biological children and the petitioner and no potential for hardship if the petitioner was removed from their lives. The author subsequently stopped the evaluation and contacted the referring attorney to notify the counsel of the information, which made it impossible to support a petition based on hardship to the qualifying relatives (the four children). It was clear that the children of a father they did not know and whom did not support them or their mothers, was not going to be missed to an extent that rises to the legal level of hardship (though perhaps, to a level of a minor nuisance).

In any case careful assessment of the facts and meticulous study of the psychological evidence the forensic psychology expert collects will help the expert avoid ethical pitfalls such as becoming a gun-for-hire. Furthermore, avoiding becoming personally invested in the outcomes of any case the forensic psychology expert is asked to offer opinions on will go a long way to prevent becoming biased. Lastly, it is often the case that forensic psychology experts may prefer certain measures and procedures, which can lead, over time, to the application of the same evaluation protocol for each case, regardless of the different circumstances and questions it posits. To the extent possible, the expert must "tailor" the evaluation protocol for each distinct case based on the questions offered by its circumstances, not by preference (Vaisman-Tzachor, 2003; Weiner & Hess, 2006).

CONCLUSION

A protocol for psychological evaluations for federal immigration courts was published by the author (Vaisman-Tzachor, 2003) and has been widely accepted by federal immigration authorities and tried in resolution of many legal immigration dilemmas. The current article proposes a more comprehensive set of recommendations for conducting psychological evaluations for federal immigration authorities and a more inclusive set of guidelines for the forensic investigative process involved, in light of fifteen years of cumulative experience. It calls upon the forensic psychology expert to be familiar with the terms used in immigration courts, to understand legal dilemmas commonly faced by immigration authorities, and to know federal rules of evidence. It also calls upon the forensic psychology expert to maintain an unbiased perspective to avoid ethical pitfalls and develop an evaluation study that considers the questions relevant to the dilemma faced by immigration authorities for each unique case. Further, it calls upon the forensic psychology expert to carefully select tools and procedures that will secure the information collected if the study is valid and that the results obtained are relevant to the questions presented by the judicial system. Finally, it calls upon the forensic psychology expert to record the outcomes of the evaluation and the opinions developed from it in a written report, which must offer clear recommendations for immigration authorities to consider. ■

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