



## ACCESS TO JUSTICE

# One Refugee: A Commercial Litigator's Pro Bono Experience With Immigration Law

by Kenzo Kawanabe

On a sunny Colorado day, I proceed up the concrete steps and ring the front door buzzer of a three-story Victorian-style house near Colfax Avenue on Gaylord Street in Denver. This large house serves as the offices of the Rocky Mountain Survivors Center ("RMSC"), an organization dedicated to assisting refugees who have escaped brutal treatment in other countries. RMSC offers legal training, asylum law mentorship, research support, translators, and meeting space. RMSC also provides mental health services and legal assistance to refugees. The sidebar accompanying this article includes information about the types of cases available to attorneys who volunteer their services to RMSC.

Through the legal services office of RMSC, I have agreed to represent an individual on a *pro bono* basis in his quest for asylum. On this day, I am meeting my client for the first time.<sup>1</sup> My client ("Mr. X") is from Africa ("Country Z"), and is in his early thirties. He displays a kind smile as we shake hands, but I detect a certain sadness in his eyes.

Mr. X previously represented himself *pro se*. He already had filed his application for asylum and attended the interview in Denver with an officer from the U.S. Citizenship and Immigration Service of the Department of Homeland Security.<sup>2</sup> Although this officer could have granted asylum to Mr. X, she instead chose to refer Mr. X's case to the Immigration Court for determination. Subsequently, RMSC requested that I assist Mr. X in his proceeding before the Immigration Court.<sup>3</sup>

I am a commercial litigator, and my last experience in immigration law matters was in law school. Prior to meeting Mr. X, and by way of "refresher" preparation for handling his case, I attended a day-long training hosted by RMSC. Mr. X's story is poignant and moving.

### Political Situation in Country Z

The conditions in Country Z are horrific.<sup>4</sup> In the 1960s, the country's president ("President Y") overthrew the existing government in a bloodless military coup. Political parties were banned, and all constitutional processes were suspended. Since that time, President Y and his family have ruled Country Z with a tight military grip.

Starting in the late 1980s, opposition parties to President Y began to gain popularity. In the early 1990s, President Y's government and security forces continued to persecute and kill political opposition members. In the 1998 presidential election, the government again (as it had done in previous years) prevented citizens from effectively exercising the right to vote. President Y was declared the winner. The government and the state remained highly centralized, as President Y's national government appointed the country's acting officials and controlled the budgets of all subnational government entities.

Another election was held in 1999. Because the opposition boycotted the election, the ruling party won almost all of the seats in the National Assembly. These legislative elections were plagued with procedural problems and significant fraud. In 1999, President Y pledged to respect the constitution and not seek another term as President after his current one expired in 2003. He did not abide by his pledge.

The opposition boycotted the 2002 elections, after the government broke promises about the supervising of the preparations for the elections. This resulted in the government party winning more than two-thirds of the seats in the National Assembly. At the end of 2002, the government amended Country

*The Access to Justice column provides information about poverty law and other areas of the law as they relate to low-income clients; reports on the Access to Justice Commission and local and national Access to Justice Committees; and testimonials from lawyers about their pro bono experience. Readers interested in contributing an article on legal services, pro bono, and Access to Justice topics should contact Kathleen Schoen at [kshoen@cobar.org](mailto:kshoen@cobar.org).*



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Z's constitution, allowing President Y to run for an unlimited number of terms.

President Y died in 2005. The military leadership violated the country's constitution and swore in President Y's son ("President Y2") as the new President. President Y2 relinquished his presidency only after condemnation by other African leaders, sanctions, and pressure from the international community. However, President Y2 was named the ruling party's candidate in the next presidential election, and he continued to act with authority as he occupied the offices of the President.

President Y2 was declared the winner of the 2005 elections. These elections were marred by violence and accusations of vote tampering. Since the 2005 election, thousands of people have fled Country Z. My client, Mr. X, came to the United States in 2003.

## Client Background

Mr. X was born in Country Z. In 1997, when he was an accounting student at Country Z University, Mr. X joined the political opposition party ("POP"). He joined the POP because of its democratic platform and agenda, and he became one of the party spokespeople. POP is a primary political opposition party to the regime of President Y's ruling, military-backed party. Because of his leadership in the POP, Mr. X was persecuted and tortured in Country Z during his four separate arrests.

Mr. X was first arrested in May 1998, when he was leading a political march while campaigning for the POP on matters dealing with the presidential elections. He was taken to a mili-

tary camp for questioning. Mr. X was detained and tortured for three days. He was released after signing a statement saying that he would not continue to assist the opposition party in the South. Mr. X was warned that there would be "dire consequences" if he were arrested again.

Mr. X was arrested by the military a second time in 1998, after he participated in a political protest march organized by the POP. He was detained for thirteen days, fed once a day, and subjected to daily beatings that left him with scars. Mr. X was a college student at the time of his 1998 arrests. Because of his second arrest, he almost missed his final exam, but ultimately took the test and graduated with an accounting certificate. After graduation, Mr. X went to City V in Country Z.

In 2000, Mr. X met and married a woman from City V. Their first daughter was born in 2002. Additionally, Mr. X and two friends started an accounting business, where he was employed until 2003, when he fled Country Z. From 2001 until his flight from Country Z in 2003, Mr. X also worked in financial services for a large natural resources company. He became a manager for this company's internal bank. At the time of his flight, Mr. X was earning nearly \$500 per month. (Country Z has a per capita income of \$270 per year.)<sup>5</sup>

Mr. X's third arrest occurred in 2001, while he was distributing POP invitations to a political rally. He was taken to the Division of Judiciary Police and placed in a small cell with at least ten other prisoners. The area was cramped and there were no bathroom facilities. He was beaten daily and fed very little. The police detained him for nine days, until a friend negotiated his release.

Mr. X's final arrest occurred in 2003. In City V, he was speaking to more than 100 people about the POP's boycott agenda for the upcoming summer presidential election. The military arrested Mr. X, along with a fellow POP member ("Mr. S"), and took them to a central holding area in City V. The next day, they were transferred to a prison in City V. During the third week of imprisonment, guards ordered Mr. X and Mr. S to fight two other prisoners. When they refused, the guards brutally beat them with belts, wood, and shoes—killing Mr. S. Mr. X suffered multiple wounds and bears a large scar on the bridge of his nose from the beating.

A guard from the South, who was bribed by Mr. X's wife and friends, helped Mr. X escape. One night, the guard opened the cell, gave him clothes, and advised him to go into hiding and to find a way to leave the country as soon as possible. Mr. X's wife arranged transportation for Mr. X to a farm outside City V, where he hid for approximately one month. During this time, his injuries were treated by a physician.

In April 2003, Mr. X obtained an American tourist visa. Because the police were looking for him, Mr. X's wife and friend arranged for his exit with a lorry driver who transported goods between City V and another major city in a neighboring country. Mr. X was able to catch a flight to Ohio, arriving in May 2003. From Ohio he relocated to Denver, where he now works at a warehouse. After his departure, Mr. X's pregnant wife was subjected to harassment. She and her two daughters now live in hiding in a village in Country Z.

## The Merits Hearing for Asylum

At the Merits Hearing for Asylum,<sup>6</sup> I argue on behalf of Mr. X that Mr. X is a political refugee, subject to political persecution by the government of Country Z, who fled Country Z in order to save his life. To succeed in the hearing, I must show that Mr.

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PEW103297-000

INDIVIDUAL OPTIONS

X: (1) has a well-founded fear of future persecution; (2) suffered past persecution sufficient to give rise to a presumption of future persecution; or (3) suffered past persecution so severe that it supports an unwillingness on the applicant's part to return to that country.<sup>7</sup>

I assert that Mr. X is an educated person who became a leader in the POP party. Consequently, he was detained and beaten by Country Z security forces on four occasions. Clearly, Mr. X was persecuted by the government of Country Z for his political beliefs. As a result, Mr. X left his homeland, where he had a family, a good job, a business, and a house that he was building. I contend that no reasonable person would have left such a life but for actual persecution and a real fear for one's life.

A university professor who is a political expert on Country Z volunteered her time and submitted a three-page, single-spaced affidavit that detailed the dictatorial regime of President Y, and confirmed the credibility of Mr. X's statements. The professor explained that there have been no fundamental changes in circumstances in Country Z since Mr. X fled and that the same political party still controls the government and armed forces and continues to persecute political opponents. She also explained how the Country Z government seeks to suppress the opposition or eradicate it. Government tactics include arrests, beatings, torture, and killing of members of the opposition party. She opines that Mr. X has been singled out on multiple occasions as an advocate for democracy and a POP member, and that it is undisputed that the government is aware of Mr. X's beliefs. The expert concludes that Mr. X would be a target and that his life would be at risk if he were returned to Country Z.

Two physicians also volunteered as expert witnesses on behalf of Mr. X. They submit reports that verify that Mr. X's scars are consistent with the beatings and torture he reports having suffered, and diagnose Mr. X with post-traumatic stress disorder from this persecution.

### The Bench Ruling

After the morning's testimony, presentation of evidence and experts, cross-examination, and closing arguments, the Judge rules from the Bench. Time slows down as the Judge sets forth the applicable judicial standards. Mr. X and I hang on every word for what seems like an eternity. Suddenly, the Judge comes to the end of his ruling. New adrenalin comes rushing in as I hear the Judge holding that Mr. X satisfied his burden of proof and granting Mr. X asylum.

After the record is closed, a tearful and stunned Mr. X thanks the Judge, interpreter, and everyone else in the courtroom. Mr. X and I leave the courtroom and have a celebratory lunch. As

we discuss the procedure for applying to get his family to the United States, I cannot help but think about and hope for the day when Mr. X is reunited with his family and introduced to his second daughter whom he has never met.

This was one of the most challenging and rewarding cases that I have ever worked—*pro bono* or billable. I have a new perspective and respect for immigration judges, the immigration court system, and attorneys who specialize in immigration and asylum law. And I have a renewed appreciation for the freedom that we Americans have and often take for granted.

## Rocky Mountain Survivors Center Welcomes Volunteer Attorneys

RMSC conducts periodic trainings for volunteer attorneys and holds monthly asylum breakfasts for volunteers and seasoned practitioners. Attorneys who are interested in representing an asylum seeker are welcome to attend. A mentor attorney is made available for every volunteer. RMSC has a library of resources and training materials about the asylum process, including videos and DVDs. Attorneys who are interested in asylum work or want to learn about future trainings or breakfasts can subscribe to RMSC's listserv. Send contact information to: [rgermain@rmscdenv.org](mailto:rgermain@rmscdenv.org). Please consider donating your time or financial support to this worthy organization. For complete information about RMSC, contact Regina Germain at: Rocky Mountain Survivors Center, 1547 Gaylord St., Denver, CO 80206; (303) 321-3221, ext. 220.

### NOTES

1. Because of the sensitivity of the matter and to maintain confidentiality, actual names of people and locales are not used in this article.
2. For more information about the U.S. Citizenship and Immigration Service, visit <http://www.uscis.gov>.
3. Rocky Mountain Survivors Center's ("RMSC") legal, mental health, and medical staff meet with potential clients and screen their cases to determine if they are appropriate for a volunteer lawyer. After an asylum client is accepted by RMSC, the legal director communicates with volunteer attorneys regarding the facts of case, the timeline for the case, and the type of proceeding involved. RMSC also assists in obtaining medical and mental health experts for the asylum proceeding. See accompanying sidebar for information about the types of cases available to attorneys who volunteer their services to RMSC.
4. Information about the country primarily was obtained at the U.S. Department of State's website at <http://www.state.gov>.
5. *Id.*
6. See generally 8 U.S.C. § 1229a; see also 8 CFR §§ 1208.2(b) and 1240.1(a).
7. See *Yuk v. Ashcroft*, 355 F.3d 1222, 1232-33 (10th Cir. 2004). ■

### Cases Available to Volunteer Attorneys by RMSC

- Volunteer attorneys can select an affirmative case, which is less adversarial and is conducted in an interview setting before an asylum officer.
- Attorneys wishing to gain courtroom experience can choose to represent an asylum seeker before an immigration judge in a removal (deportation) hearing.
- Attorneys seeking to hone their appellate litigation skills may choose to represent asylum seekers before the Board of Immigration Appeals or the U.S. Court of Appeals for the Tenth Circuit in Denver.

Each volunteer also has access to a mentor attorney and a library of resources dealing with the asylum process, including training materials, videos, and DVDs. For complete information, contact Regina Germain at: [rgermain@rmscdenv.org](mailto:rgermain@rmscdenv.org).