

‘Marriage of convenience’ or a ‘match made in heaven’: lawyers and social workers working with asylum seekers

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Asylum seekers face many hurdles during the process of refugee status determination, particularly if they have experienced some form of trauma. By preparing cases as a team, lawyers and social workers can reduce the stress for asylum seekers while at the same time improve the quality of information made available to decision makers within the refugee determination process. This article presents a model which utilises the knowledge and skills that lawyers and social workers are able to bring to working with asylum seekers and assists asylum seekers to present a comprehensive case with a focus both on supporting their credibility and maximizing their ability to actively engage in the process.

Introduction

This article presents a model of working with asylum seekers in preparing their applications for refugee status. It was developed through practice by a community legal centre and torture treatment centre in Western Australia. The model seeks to reduce the stress for asylum seekers, while at the same time improve the quality of information made available to decision makers within the refugee determination process. It promotes an interdisciplinary approach to working with asylum seekers.

The framework of international refugee law is based upon a desire to protect people who are vulnerable to human rights violations. However, recent concerns about terrorism, global economic recession and state security have seen Australia along with other refugee receiving countries seek to tighten procedures for assessing asylum seekers (Crisp 2003) — with the effect that the procedures for receiving and assessing asylum seekers that are meant to protect and preserve rights of those who have been subject to human rights violations very often further traumatise or in some instances, such as detaining asylum seekers during the process, can be a violation in itself. At its worst, wrong decisions may be made and people are sent back to their country of origin to face further violations.

Australia has signed and ratified the 1951 *Convention relating to the Status of Refugees* (the Refugees Convention), as amended by the 1967 Protocol relating to the Status of Refugees, which prohibits the return or expulsion of an asylum seeker to another country where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (Refugees Convention, art 31). Further, any person claiming asylum may not ordinarily be sent away without careful investigation of their need for protection (Refugees Convention, arts 31-33). In carrying out refugee status determination, states can make a more accurate assessment if they have good information and a client who is integrated and able to answer questions.

The title of this paper is tongue in cheek. While lawyers¹ and social workers² both have a client’s interests as central to the work they perform, traditionally lawyers and

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social workers are often viewed as addressing a client's problems from very different perspectives. In our view it is these differences in perspectives and training that makes social workers and lawyers a good team or 'match'. Asylum seekers face a complex set of problems in both the social and legal arenas, and are likely to have contact with both lawyers and social workers during the application process. However, lawyers and social workers often do not have more than sporadic and limited contact with each other. In most cases social workers refer their clients to lawyers in situations involving legal problems and lawyers refer clients to social workers when they have social problems. It is our belief that when lawyers and social workers work together on a case as a team, the quality of both professions' work is significantly improved.

It should be noted at the outset that this model was developed for working with asylum seekers in the community and not those in detention. A similar model could be developed for such work but would have to take into account complicating factors such as shorter timelines and the additional stresses of the detention environment (Steel & Silove 2001; Sultan & O'Sullivan 2001).

The paper will begin with a brief overview of the process of applying for a protection visa in Australia. This is followed by a discussion of some of the problems asylum seekers encounter during the process. The second half of the paper is the step by step presentation of the model.

A case study is used throughout the paper to act as an illustration of a typical case. The case study is a fictional composite case. It contains characteristics of a number of cases but is not intended to be the case of any real person.

Kyin is a 42 year old Burmese woman of Karen ethnicity. She has come to Australia with her two young children on a visitor visa and has some family in Australia. She says that she cannot return to Burma. After she left her husband was arrested and is now in jail. She and her husband have been under surveillance by the authorities in Burma since the pro-democracy uprisings in 1988. They are both members of the National League for Democracy (NLD).

Overview of Australia's process for refugee status determination

When a person arrives in Australia with a valid visa and wants to apply for asylum they lodge an application for a protection visa with the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). The application is assessed to see whether the applicant meets the definition of a refugee.³ A refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [sic] nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it [Refugees Convention, art 1A(2)].

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The applicant is required to set out in their application how they meet these criteria. The application form must be completed in English and requires the applicant to respond to a number of questions including: why they left their country of origin; why they cannot return; and who they fear will harm them if they return, and why. While the definition of a 'refugee' is about what would happen to the asylum seeker if they were sent back to their country of origin this is usually determined by looking at what persecution has happened to them or their family and associates in the past and the current country situation. A case officer from DIMIA, acting as a delegate for the Minister for Immigration and Multicultural and Indigenous Affairs, will review the application and may conduct an interview with the applicant, but is not obliged to do so.⁴

Applicants only need to show that their fears of being persecuted are well founded, rather than needing to show certainty, or even probability, that they would be persecuted. It is sufficient for an asylum seeker to face a 'real chance' of persecution.⁵

If the application is successful the person is normally granted a permanent protection visa. If it is unsuccessful the asylum seeker has a right to seek a review of the decision by the Refugee Review Tribunal (RRT) (*Migration Act 1958* (Cth) (the Act), s 414). The RRT assesses the application afresh against the same criteria. If they cannot make a decision that is favourable to the applicant on the written material they must give the applicant an opportunity to attend a hearing (s 425 of the Act).⁶

If the person is unsuccessful at the RRT level appeal options are much more limited and beyond the scope of this paper. A person who is unsuccessful in their application and who has exhausted all avenues of appeal must make arrangements to depart Australia or face detention and removal.

The process of application and appeal can run anywhere from six months to three or four years. The time lines for determination are unpredictable.

Kyin applied for a protection visa soon after arriving in Australia. Her brother in law helped her to fill in the forms as she did not speak English. Five months later, Kyin was interviewed by a male DIMIA officer for three hours. She has just received a letter saying that she was not successful. She is very distressed and believes that she will have to go back to Burma. Her sister takes her to a doctor as she won't stop crying and they are worried about her. The doctor refers her to a specialist refugee agency.

Critique/Problems

There is no doubt that the refugee determination system in Australia has become more difficult for those seeking asylum in Australia. Political concerns about people entering the country with 'fraudulent claims' have led to various amendments to the Act and *Migration Regulations 1994* (Cth) that have attempted to effect restrictions in terms of the interpretation of the refugee definition. Amendments were also introduced regarding the drawing of adverse inferences based upon the manner and

demeanour of an applicant in giving information (s 91V of the Act), and restricting the ability to obtain review of decisions by the courts (s 474).

Procedures for refugee determination in Australia has been the subject of criticism that the information gathering and assessment process fails to satisfactorily take into account the difficulties experienced by asylum seekers in putting forward their case⁷ and that instead of performing an inquisitorial investigation into an applicant's claims the hearing and interview processed are often confrontational and adversarial (Kneebone 1998; Mares 2002: Ch 6). While any legal process can cause individuals difficulties the asylum seeker's experience is compounded by unique issues in relation to proof of their case despite the low standard of proof required.

Asylum seekers are often not able to bring documents (such as identity cards, evidence of membership of political party, prison certificates) that would provide objective evidence to support their applications. This may be due to the circumstances of hasty departure, the dangers in holding such documents if discovered by the authorities, or that such documents are not issued.

The United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedures and Criteria for Determining Refugees Status highlights this point:

It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his (sic) statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents [UNHCR, para 196].

This lack of independent proof means that whether asylum seekers are considered by the decision maker to be credible is central to the success or failure of their application. Many refusals are on the basis that the asylum seeker's credibility has been undermined by inconsistencies within their claims (Kneebone 1998: 88-92; Kagan 2003: 3-7; Cohen 2001: 293).

Various factors make it difficult for an asylum seeker to present a comprehensive account of their claims, including the following.

- The applicant lacks understanding of the legal system and the complexities of that system.
- The asylum seeker has limited access to legal representation.
- The interview process with immigration officers or tribunal members, while intended to be inquisitorial instead of adversarial, is nevertheless rigorous and designed to test the claims put by an applicant. A study of the decisions and processes of the RRT concluded 'the RRT, which is described as a "non-adversarial" body is, in many aspects of its current culture and practices, too confrontational or adversarial' (Kneebone 1998, 78). Even when a government official is sympathetic, interviews

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may replicate interrogation and other traumatic events experienced by an asylum seeker.

- The asylum seeker may have difficulty with memory recall and in telling painful and often traumatic experiences to person(s) in a position of authority. This is sometimes complicated by the effects of particular medical and psychological conditions from which asylum seekers may suffer, for example, post traumatic stress disorder (PTSD):

In the case of asylum seekers, especially, it is clear that great caution needs to be exercised in denying credibility. The normal variability of memory is likely to be exacerbated by ... medical factors ... and a general impairment of recall is to be expected as a result of their traumatic experiences and physical and mental state [Cohen 2001: 308].

- Cultural perspectives differ, for example some cultures do not place much significance on dates and times as western European cultures do, other cultures have an embedded tendency for individuals to downplay the significance of events that occur to themselves, preferring to focus on other members of the group.
- Women may face special problems in making their case and require gender sensitive techniques in order to obtain information during the refugee determination process. Particularly as they often experience persecution and human rights abuses that are particular to their gender. These can include rape, molestation, domestic violence, sexual harassment, and sexual slavery.⁸

The following is revealed in the tape of Kyin's interview with the DIMIA officer.

- She is quietly spoken and gives very short answers to questions asked by the officer.
- Questions are often put to her several times, particularly about the details of her involvement with the NLD. Kyin talks about her husband's activities and is not specific about what she has done. She does not speak of individuals but refers to 'we'.
- The DIMIA officer obviously has difficulty believing that her husband has been imprisoned since she left as she has not been able to find out the reason why; Kyin says that she doesn't feel safe to talk to friends on the telephone to find out what happened.
- She gives some information in her interview that she was arrested and detained for some time last year. She is vague about the details of the detention, saying it may have been at Insein prison, and that she can't remember when or for how long she was imprisoned. The DIMIA officer asks why she did not include such important information in her original application form. It is clear from the officer's questions and responses that he doubts the authenticity of her claim.

During the time asylum seekers are awaiting an outcome they have the right to live in the community. There are several types of bridging visas that an asylum seeker may hold; each category has a variety of rights and obligations attached to it, such as the

ability to work or study, access to Medicare, and access to income support. Some bridging visas entitle the holder to a reasonable range of supports, while others permit little more than being out of detention. It is a complicated system and it is not uncommon for asylum seekers to be living in great financial and emotional hardship due simply to not knowing what their rights are or how to access various supports (Mares 2002, Ch 6).

Additionally, many asylum seekers will be experiencing significant loss of status. They may have been a journalist, lawyer, or businessperson in their country of origin. They will likely have been part of an important kinship network, political network and other social structures meaning they will have been carrying responsibilities and a recognised position in their society. Very often, the migration experience, particularly when undertaken in a hurry with limited opportunities for planning, means losing this status and having no recognised role in the new society. Many asylum seekers have reported feeling a great loss of self esteem as they moved from a respected position to one of needing help from their new community.

Kyin lives with her sister's family. Her sister is married with three children. They have been providing Kyin and her children with accommodation and food. They are struggling financially as the husband is the only income earner. The pressures are beginning to take their toll, and Kyin's sister and brother-in-law are arguing more and more.

When Kyin first meets the social worker she cries throughout the interview while her sister tells the worker about her and Kyin's problems. The worker is able to link Kyin up with the Australian Red Cross and helps Kyin to apply for financial help through the Asylum Seeker Assistance Scheme. The ASAS scheme provides eligible asylum seekers with fortnightly payments calculated at 89 per cent of the Centrelink equivalent, and Kyin soon has a source of income.

Kyin's sister says that Kyin lacks confidence in leaving the house due to her lack of English and her experiences with security forces in Burma. She does not have any contacts outside her family. Kyin sits at home each day becoming increasingly depressed and anxious.

Delays in processing, coupled with a lack of social support and little or no meaningful structure to an asylum seeker's day, often have a deleterious affect on the asylum seeker's mental health. This, in turn, affects their ability to engage in the immigration process.

All of these factors mean that asylum seekers require both legal and broader human rights advocacy in order to maximise their chances of success and to manage the process with the minimum of stress.

The model

In essence, the model utilises the respective skills that lawyers and social workers are able to bring to working with asylum seekers and assists asylum seekers to present a

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comprehensive case with a focus both on supporting their credibility and maximizing their ability to actively engage in the process.

This model not only reduces the level of distress for asylum seekers, but the two agencies that have worked together using this model have had a reasonably high rate of success. Over the last three years the agencies have worked together on 20 cases (representing 34 people including family members) and received a positive decision at DIMIA or RRT level in 17 cases (an 85 per cent success rate). Fifteen out of 17 cases involved overturning a rejection at the primary level (Crock & Saul 2002: 54). The success rate generally for asylum applications in the community is generally low. In 1999–2000 only 5 per cent of people succeeded in their primary application claims. Of those who appealed 13 per cent had adverse decisions overturned. It is important to add that there are a number of reasons why the general statistics are low as there are many cases where an application for a protection visa is filed but an applicant does not proceed with their application.

There have been no empirical studies in Australia on the effect of representation. However study of asylum cases in the United States in 1993 concluded that applicants with counsel were ‘more than three times as likely to receive asylum in immigration court or proceedings than [were] applicants unrepresented by counsel’ (Anker 1993: 521-27).

This paper will ‘walk through’ the model in the stages required to prepare an asylum seeker’s case. The pace at which this process progresses is largely determined by outside forces, primarily by deadlines set for the DIMIA interview or RRT hearing. The process remains essentially legally driven and so therapeutic aims must at times take a ‘back seat’. The client may want to take longer to tell their story, but this will not always be possible. Alternately, and more commonly, they may feel frustrated by the slow progress of their case.

Preparing a case

The asylum seeker will usually have met either the social worker or the lawyer first, who will have invited the other to join the work. This model picks up at the first meeting with everyone together.

Prior to meeting an asylum seeker

Before meeting the asylum seeker for the first time, the lawyer and social worker should discuss how to conduct the first interview. The first interview is critical in establishing rapport and trust. A chaotic or disorganised first interview will do little to instill confidence or trust in either professional.

Interviews

Interviews with an asylum seeker are the first step in preparing their case. The interviews begin by explaining to the client the criteria they will need to meet in order to be found to be a refugee and the procedure of how this will be assessed. This assists

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clients to understand and participate more fully in the process. It is important that the lawyer and the social worker take the time to explain their respective roles to the asylum seeker and how each worker will assist them to prepare their case. The interviews are also used to gather information to prepare a detailed statement setting out the asylum seekers' claims.

While these issues may seem to be the province of a lawyer or a migration agent we have found that a social worker's participation can be invaluable, particularly in regard to deciding how best to present information to the client, and assisting in maintaining the client's sense of safety during the interview. This is especially true where the asylum seeker has experienced some type of trauma or the death of a significant other. Feedback and debriefing between workers afterwards is also essential to identify issues and to develop a plan for working with the client.

Before moving on to taking a statement of claims it is suggested that these steps be followed.

- Explain that there will be questions about what happened to them in their country of origin.
- Acknowledge that the information will probably be upsetting and it can be difficult to talk about it.
- If possible give the client a choice in how they give the information. For example, some people prefer to spend a whole day and tell everything at once, while others prefer to have several shorter meetings over a long period of time. Some may prefer to begin with relatively safe material, while others find the anticipation of telling of their traumatic experiences stressful and prefer to cover this material first. In short, wherever possible let the client be in control of the process.

There may be cases where clients (particularly women who have experienced sexual violence) have chosen to tell what happened to the social worker without the lawyer present. Indeed if the client has already provided this information in sufficient detail to the social worker there may be no need to obtain the details again and it saves the client having to provide multiple accounts. In such instances this will also forewarn DIMIA and the RRT that these matters are especially sensitive or difficult for an applicant to discuss. In our experience this means that the decision maker was willing to accept the torture/trauma worker's report and not address the details of the incident during the interview.

By the time Kyin meets with the social worker at the refugee specialist agency, she has only a short time left in which to lodge an appeal against DIMIA's decision. A meeting is arranged with the lawyer, social worker, Kyin and an interpreter. The lawyer discusses Kyin's options with her, though Kyin is already certain she must appeal. The lawyer takes some basic details and prepares an appeal form with a note that more comprehensive submissions will follow. Based on the documents already on her file (which were sent to the lawyer at the time of referral) and the discussion with the social worker about Kyin's level of distress the lawyer has decided not to ask any

questions about the substance of her claim in the first meeting and reassures Kyin of this at the outset. Kyin relaxes significantly knowing that the meeting will not address painful memories.

Over a period of two months Kyin meets three more times with the lawyer, interpreter and social worker to complete her statement. She has gradually been building trust in the workers and her statement for review includes a significant amount information, critical to the claim, that was omitted in her original application. Kyin had described a number of violent raids on her home when Military Intelligence (MI) arrested her husband. In at least two of these incidents, Kyin was physically assaulted by the MI. Kyin also reported that she herself has been arrested and detained a number of times. However, she is unable to give details about any of her periods of detention in regards to exactly when and how long these periods of detention were. She is able to describe in her statement why she cannot give this information in detail and describes how when she tries to remember she becomes confused and distressed. She gives details of how she suffers from headaches and nightmares when she tries to recall these incidents.

In undertaking interviews the effects of PTSD should be considered as they affect the manner in which an asylum seeker will present their claims.

Effects of PTSD

Many asylum seekers have experienced significant trauma prior to arriving in Australia and many display symptoms of PTSD. Several studies suggest that between 65 per cent and 75 per cent of onshore asylum seekers are suffering from PTSD (Gorst-Unsworth & Goldenberg 1998; Steel, Silove, McGorry & Mohen 1998; Silove & Steel 1998). Symptoms most commonly reported include sleep disorders (insomnia and nightmares), hyper-arousal and anxiety, depression, fearfulness, intrusive recollections, poor concentration and poor short term memory. It is not uncommon for survivors of torture and trauma to experience flashbacks and to dissociate (Herman 1997). Understandably, interviewing a person who is experiencing these symptoms needs to be done with great care.

Information about past persecution that will most strongly support an asylum seeker's claim is usually the same information that triggers trauma responses. These trauma responses can significantly impact on the asylum seeker's ability to disclose information and to respond to questions in an interview.

It is beyond the scope of this paper to outline the many effects and symptoms of PTSD, though we recommend that people working with asylum seekers familiarise themselves with some of the literature.⁹ We will discuss three common trauma responses that have a significant impact on the information gathering process and the assessment interview, with particular regard to credibility include avoidance, delayed disclosure and breakdown of narrative.

Avoidance

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Recalling traumatic experiences may trigger distressing post traumatic responses. There may be both conscious and unconscious avoidance of such memories. Avoidance is a well documented feature of PTSD.

Dr Judith Herman proposes that establishing both physical and psychological safety is a prerequisite for remembrance and recovery from trauma. Asylum seekers do not have the certainty that they will not be returned to the country where they experienced their trauma. In this framework, avoidant reactions in asylum seekers can be seen as expected, an important psychological defense mechanism, and indeed even as a feature of PTSD (Turner 2000). To an interviewer testing the credibility of a claim, the asylum seeker's avoidance may be interpreted as elusiveness.

Delayed disclosure

Some types of torture and trauma, particularly sexual assaults and forms of torture where the person experienced significant humiliation, very often trigger a profound shame response. This shame response is a major impediment to disclosure of the event. It may be several months before a person feels safe enough in the relationship to talk about the assault (Turner 2000).

An interview by a lawyer or an immigration official, whom the person has met less often and who is in a position of authority, is far less likely than an ongoing therapeutic relationship to create an appropriate environment for disclosure. As such, in the asylum determination system, it is often only at appeal, when an asylum seeker's fear of return outweighs shame of disclosure, that such disclosures are made. Without framing such disclosures in relevant trauma literature and theory, this delayed disclosure of information clearly relevant to the claim can be interpreted as fabrication to strengthen the claim only after a rejection.

Breakdown of narrative

There is an ever growing body of evidence that memories of traumatic events are physiologically stored and retrieved differently from non-traumatic memories. Non-traumatic memories are likely to have a clear narrative structure which can be recalled at will and controlled by the person. Traumatic memories however, are likely to be fragmented, primarily sensory, have a high affective (emotional) content, and lack a narrative structure (Van de Kolk & Fisler 1995).

This often means that asylum seekers giving testimony about traumatic experiences may find it difficult to retell the experience in a coherent, logical manner and may not be able to present a clear narrative. The asylum seeker is likely to be able to relate non-traumatic memories in a structured manner, but this narrative may break down when the story reaches a traumatic memory. This needs to be presented to the assessor with appropriate supporting evidence so that the fragmented story and apparent 'gaps' in information (such as time, place and other details that would otherwise support the asylum seeker's credibility) can be understood in context.

The social worker has an important role both in assisting the asylum seeker to reach a level of resolution in which they are more able to talk about their experiences in a supportive environment with the dual aims of including this testimony in their claims as soon as possible, and to help the person towards healing their wounds. Second, the social worker can submit a report to DIMIA or the review body contextualising the asylum seeker's testimony within relevant trauma literature and accepted knowledge. If people are experiencing significantly intrusive symptoms and have made little or no gains in controlling these reactions, it may be helpful for a further report predicting the asylum seeker's possible reactions during interview (when trauma is likely to be triggered) again, in context of relevant trauma theory.

The workers decide to refer Kyin to a doctor to get a medical assessment and report of injuries she sustained in the raids. When she is with the doctor, Kyin asks for a gynaecological check and through this tells the doctor that she was raped when she was in prison. Kyin asks that the doctor tell the lawyer and social worker about the assault.

Kyin becomes significantly more traumatised following disclosure of the rape. She feels more fearful than ever and has an increase in the frequency and intensity of nightmares. She begins to keep herself awake at night to avoid the nightmares.

The social worker continues to see Kyin for counselling but the legal interviews are immediately suspended. After about six weeks of counselling and some medication to assist with her sleep, Kyin is able to construct a narrative to accompany her memories of the rape. Rather than her retelling the story to the lawyer, the social worker and the doctor each write a report linking Kyin's disclosure, its delay and her reaction to the disclosure with a model of PTSD.

Kyin meets once more with the lawyer to finish checking the accuracy of her final statement and to discuss the next steps in the process.

Submissions

Once a statement has been completed the migration agent or lawyer may prepare written submissions in support of the application. Many agents and lawyers simply submit a statement of their client's claims with no accompanying submissions. However we believe that it is important to advocate for the client in order to convince the decision maker that the client meets the criteria for the grant of a protection visa. The submissions should detail the client's circumstances, clearly stating what persecution has happened to the client in the past and what the client fears would happen to them if they were to return to their country of origin. The submissions should also link the client's case with the relevant legal principles and case law as well as up to date, specific country of origin information from a range of sources¹⁰ in support of the client's case. The submissions should also include other documentary evidence, such as medical reports, client documents (if any) such as identity documents, letters and witness statements.

The lawyer should take some time to explain the content of the submissions to the asylum seeker. Many lawyers do not consult with their clients when preparing submissions and the client may be unaware that submissions and country information have been provided. The decision maker may refer to the material submitted in questioning the asylum seeker about their case and if they are unaware of the content it could lead to the asylum seeker becoming confused during the interview. Care should be taken when discussing the submissions with the asylum seeker as material contained in country of origin information may cause distress so it is important to discuss with the social worker how to approach discussing these issues with the asylum seeker.

Social support

As stated earlier, the process can take some time and it is important that the asylum seeker has proper support while they wait for a decision. Unfortunately in our experience it has been difficult to influence the timeframe of the assessment process. During this time the social worker has an important role in helping the asylum seeker cope with the slow processing of their claims. It is important for all human beings to have a meaningful structure to their day. Asylum seekers in a new culture do not necessarily know how the system works or have contacts that can assist them in rebuilding their lives. Asylum seekers may be socially isolated. The social worker can assist the asylum seeker to create social networks, participate in their local and/or ethnic community, study English, undertake other forms of education and training, or perhaps to look for work. It is important to check all activities with the lawyer to ensure no bridging visa conditions are inadvertently breached.

The social worker can do a full social assessment and link the asylum seeker with services such as doctor, physiotherapy, welfare support, social and cultural support, recreation programs and other services as appropriate. Asylum seekers' entitlements to these services are often not automatic and so it may take some advocacy on the social worker's behalf to gain access for the client.

Kyin's confidence has improved and she is becoming interested in her new host country. She would like to learn English, but is not eligible for TAFE classes. Kyin's children initially attended their local primary school, but soon withdrew as they had no English language support and felt alienated and frightened at school. Kyin would like them to resume their schooling. With some advocacy and contacting people in a network of 'asylum seeker' friendly educators, the children are enrolled in a nearby Intensive Language Centre within a mainstream primary school and Kyin is enrolled in part time English classes at her local community centre. Through this she also becomes involved in a women's craft group and begins establishing a social network.

DIMIA/RRT interview

Prior to interview

The lawyer meets with the client a few days prior to the interview to review the refugee criteria, the purpose of the interview and roles of the lawyer and social worker

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during the DIMIA or RRT interview, and to revisit the client's written testimony. The social worker can work with the client around identifying and predicting possible trauma triggers and responses, methods to help them remain in control and manage their symptoms during a time of elevated stress, and rehearse what to do if they feel they cannot proceed (often a hand or verbal signal to their lawyer). In some instances the social worker and client can visit the hearing room prior to the interview. This helps to familiarise the asylum seeker with the room prior to the hearing and can help them to feel safer in that environment.

The interview

The asylum seeker can have both their lawyer and a support person of their choice present in the interview. The interviews are conducted by the DIMIA officer/RRT member. Given the inquisitorial nature of the proceedings this means that the representative generally does not intervene during the interview except to clarify a point or where they believe there has been some misunderstanding/unfairness. At the end of the interview a representative is usually given an opportunity to make any points or oral submissions that they believe are relevant. The support person generally is unable to speak during the interview.

At Kyin's RRT hearing she has both her lawyer and social worker with her. She feels extremely anxious and worries that she won't be able to express herself.

Prior to the hearing the lawyer has submitted Kyin's statement, the doctor's and social worker's reports, her own legal submissions linking Kyin's story to relevant legal principles and several country reports and reports from credible human rights organizations such as Amnesty International, the United Nations and Human Rights Watch addressing the human rights violations perpetrated against people of Karen ethnicity, women, members of the NLD and other political opponents.

The submissions have drawn particular attention to Kyin's disclosure of the rape and the impact this memory has on her functioning and ability to maintain a narrative. The lawyer links this to country information from several sources that report the sexual assault of women in Burmese prisons. The RRT member accepts this evidence and agrees that she will not need to ask Kyin about the details of this particular incident.

Kyin copes well at the interview and is able to answer all questions put to her.

After interview

The role for both social worker and lawyer following the interview is largely determined by what transpired during the interview. Debriefing immediately after the interview is very important. Clients often accept the offer of an appointment with the social worker for the next day or shortly after the interview to debrief further.

Even when an interview has gone well and the interviewer acknowledged that they accept the asylum seeker's claims as credible, the asylum seeker is likely to doubt

their positive impressions of the interview within a few hours. It is often useful to verbally reinforce the positive elements of the interview, particularly focusing on things that the client was responsible for (such as answering difficult questions, maintaining control and so on) and complementing them on these strengths. It may also be useful to write this feedback in a letter to the client so they have something concrete to refer to between appointments. It is likely that the asylum seeker will remain in an elevated state of arousal for several hours, and often several days following the interview. Normalising this and talking through some strategies for dealing with this can be very helpful.

Issues may have arisen in the interview that may require the asylum seeker to make another statement in order to clarify certain issues and/or the legal representative make further submissions about the law or country of origin information.

If issues have arisen during the interview where the asylum seeker has not provided clear information or it was apparent that the decision maker had difficulty accepting their evidence it may be important to gather further evidence addressing particular concerns raised in the interview (for example, the impact of PTSD on memory and recall).

Post-decision

Acceptance of claim

If the decision is to accept the case put forward by the asylum seeker and they are found to be a refugee it is important for all involved to celebrate the achievement. It also means that the lawyer's role will taper off and shortly end. There remain some administrative tasks up until the issue of the visa and may be other follow up actions required depending on the individual circumstances of the refugee. The social worker's role usually does not end with the decision, but changes from one of maintenance and symptom management within a legal framework, to one of healing within more traditional therapeutic models.

Refusal of claim

If a claim is refused the asylum seeker will need to be advised of the reasons for the refusal, about appeal options and the likelihood of success. Timing is important, as there are strict time limits for lodging appeals.

As well as the practical implications of a refusal outlined above, a rejection has profound psychological consequences for the asylum seeker. There are many possible reasons for a refusal and each decision will outline which parts of the claim were and were not accepted and why. Some asylum seekers are able to critique these reasons. More commonly however, the asylum seeker simply experiences a rejection as a formal statement of disbelief in their story.

One documented technique of persecutory regimes is to consciously create dissonance and doubt in the person they are targeting. For example perhaps someone is arrested

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and tortured and this is denied by the authorities, or they are visited by military and threatened, but this threat is later denied or minimised. ‘No, we weren’t threatening you, we were warning you for your own safety’ — so that what the person experienced as threatening is later reframed and represented to them as protective. This causes great loss of confidence and leads to significant self-doubt. A refusal by an asylum assessor in Australia can easily compound this. A number of our clients have voiced their confusion about their experiences of the asylum system not matching their previously held perceptions, reinforced regularly by the public statements of politicians that Australia upholds human rights and has just and accessible systems, and their difficulty integrating the two.

Additionally, the asylum seeker may lose hope and believe that they will be returned to their country of origin. This can trigger strong traumatic responses for them, and lead to feelings of fear and hopelessness. The social worker needs to maintain an awareness of a heightened risk of suicide in the period following a refusal.

The asylum seeker often needs a period of more intensive support and an opportunity to talk through the implications and significance of the refusal. In the authors’ experience, asylum seekers have in most cases been able to integrate the rejection, find hope for their future and benefit from some external reassurance that they are believed, supported and valued.¹¹

Conclusion

Working with asylum seekers is both intellectually and emotionally challenging. It is an area that is significantly under-funded and so there are great demands on scarce resources. Clients’ claims are often very complex and there is little doubt it is getting harder to get through Australia’s asylum determination system. In spite of this, both authors recommend the work as immensely rewarding. We also recommend that lawyers and social workers team up to do this work. Each profession holds a different world view and value base. By working so closely together, we believe the whole becomes greater than the sum of its parts; the contributions and effectiveness of both professions are strengthened by the collaboration. But as well as the improved service for clients and the high success rate, we believe that working in a close partnership is more enjoyable, more rewarding and more supportive for the workers.

Notes

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1 The term 'lawyer' is used throughout this paper but it is important to note that this model would apply to other registered migration agents working with asylum seekers.

2 The term 'social worker' is used throughout the paper, but includes any appropriately trained or experienced helping professionals such as psychologists, nurses and counsellors.

3 Section 36(2) of the *Migration Act 1958* (Cth) states: 'A criterion for a protection visa is that the applicant ... is a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention.'

4 Note at this stage the DIMIA will also assess whether the applicant satisfies the health and character requirements as well as the Refugee Convention definition.

5 *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 at 388.

6 Note that most cases in fact do proceed to an oral hearing; see the monthly statistics reports available at <www.rrt.gov.au>.

7 For a further discussion of these issues see Ch 6 of P Mares, *Borderline: Australia's response to refugees and asylum seekers in the wake of the Tampa*.

8 In 1996 DIMIA issued 'Guidelines on the Gender Issues for Decision Makers' to provide decision makers at the DIMIA level with an understanding of the particular needs of women within existing policy frameworks for refugee and humanitarian applications. These guidelines are under review and a new set of guidelines is expected to be released by DIMIA in 2004. UNHCR has also issued a number of useful guidelines such as: UNHCR Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Protection and Response, Geneva May 2003 and UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of art 1A(2) of the Convention and/or its 1967 Protocol relating to the Status of Refugees HCR/GIP/02/01 7 May 2002

9 There is an ever growing body of literature available. The authors recommend the references at the end of this article as particularly relevant for PTSD and asylum seekers.

10 Useful sources of country information can be found in recent of the Refugee Review Tribunal (RRT) (some decisions are available at <www.austlii.edu.au>). The RRT also issues a regular bulletin of decisions of note by the RRT and the courts it can be accessed at <www.rrt.gov.au>. Other useful sources of country information can be found in reports available on the internet from such sources as Amnesty International, Human Rights Watch, US State Department

11 Note there are further appeals available beyond the RRT. Should an asylum seeker have exhausted all appeals or have decided not to appeal further, counselling and support in preparation

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for a return to the country of persecution is a specific area of work and beyond the scope of this paper.

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