

DETAILED TABLE OF CONTENTS

Summary Table of Contents.....	v
Preface.....	vii
About the Authors.....	xi
Acknowledgments.....	xvii
Subject-Matter Index.....	277
CHAPTER 1: INTRODUCTION TO IMMIGRATION COURT.....	1
SUBSTANTIVE LAW ESSENTIALS.....	2
Sources of Law.....	2
Burdens of Proof.....	4
The Importance of Establishing Credibility in Immigration Court.....	5
GETTING STARTED IN IMMIGRATION COURT PRACTICE.....	7
The Life Cycle of a Removal Case.....	8
The Personnel Involved in Removal Proceedings.....	10
TYPES OF WITNESSES.....	11
Filing a Witness List.....	12
Requesting Telephonic or Video Testimony.....	12
CONDUCT OF THE HEARING.....	14
Opening Statements.....	14
Marking Exhibits into Evidence.....	15
Amending the Application.....	16
Calling Witnesses.....	17
CONCLUSION.....	17
CHAPTER 2: CASE ANALYSIS.....	19
BUILDING A THEORY OF THE CASE.....	19
THE NUTS AND BOLTS OF CASE ANALYSIS.....	20
WHEN TO ENGAGE IN CASE ANALYSIS.....	21
PROOF CHARTS: A TOOL FOR CASE ANALYSIS.....	22
Facts vs. Evidence vs. Conclusions.....	23

Addressing Bad Facts in the Proof Chart.....27

Incorporating Law into the Proof Chart.....27

CONCLUSION28

CHAPTER 3: RULES OF EVIDENCE29

THE RULES OF EVIDENCE THAT APPLY TO REMOVAL PROCEEDINGS ...29

WHEN DO THE RULES OF EVIDENCE APPLY IN IMMIGRATION COURT?.31

HOW THE FEDERAL RULES OF EVIDENCE APPLY TO REMOVAL PROCEEDINGS32

RELEVANCE.....33

HEARSAY34

PRIVILEGE: CONFIDENTIALITY PROTECTIONS36

PERSONAL KNOWLEDGE.....38

OPINION TESTIMONY38

THE SCOPE OF DHS OPLA CROSS-EXAMINATION.....39

AUTHENTICATION.....39

 Immigration Regulations on Proof of Official Records—8 CFR §1287.639

 Regulations on Proof of Official U.S. Records.....40

 Regulations on Proof of Official Foreign Records41

 Proof of Convictions42

 Authentication of Other Documents43

ADMINISTRATIVE NOTICE44

EOIR GUIDANCE TO PRACTITIONERS AND IJs48

CONCLUSION50

CHAPTER 4: DIRECT EXAMINATION51

ORGANIZATION OF THE DIRECT EXAMINATION.....51

 Specific Techniques for Organizing Direct Examination.....52

 Headnotes.....52

 Exhausting the Topic55

EFFECTIVE QUESTIONING TECHNIQUES ON DIRECT EXAMINATION55

 Asking Open-Ended Questions.....56

 Non-leading Question Starters57

DETAILED TABLE OF CONTENTS	xxi
Foundational Questions.....	58
Laying a Foundation for Questions.....	59
Using Foundational Taglines Sparingly, If at All.....	60
Looping.....	61
Being a Good Listener.....	62
THE IMPORTANCE OF ELICITING NEGATIVE FACTS.....	63
AVOIDING POOR DIRECT EXAMINATION.....	65
Questions to Avoid—“Did You. . .?” “Are you. . .?” “Were you. . .?”.....	65
Questions to Avoid—“What Happened Next?”.....	67
Questions to Avoid—Wide-Open Questions.....	69
Questions to Avoid—Negatives and Double Negatives.....	70
Questions to Avoid—Long Questions.....	71
Avoid Commenting on the Testimony.....	72
Avoid Asking for Conclusions Rather than Facts.....	73
USING EXHIBITS DURING DIRECT EXAMINATION.....	74
SOFT IMPEACHMENT.....	76
Rephrasing the Question.....	77
Referring to Evidence in the Record.....	78
Explaining Poor Memory.....	79
Soft Impeachment after Inconsistent Testimony—Poor Memory.....	80
PREPARING THE DIRECT EXAMINATION QUESTIONS.....	80
CONCLUSION.....	81
CHAPTER 5: REFRESHING RECOLLECTION.....	83
APPLICABLE RULES FOR REFRESHING RECOLLECTION IN IMMIGRATION COURT.....	84
Process for Refreshing Recollection during Witness Examination—Establishing Memory Loss.....	85
Process for Refreshing Recollection during Witness Examination—Steps for Showing the Witness a Document or Other Item.....	87
Items the Practitioner Can Use to Refresh a Witness’s Recollection.....	89
PREPARING IN ADVANCE FOR REFRESHING RECOLLECTION.....	90
POTENTIAL ARGUMENTS IF AN IJ DOES NOT ALLOW REFRESHING RECOLLECTION.....	90
CONCLUSION.....	91

CHAPTER 6: RESPONDING TO OBJECTIONS.....93

PREPARING FOR DHS OPLA OBJECTIONS93

PROCEDURE FOR RESPONDING TO COMMON DHS OPLA OBJECTIONS ...94

HOW TO RESPOND TO COMMON DHS OPLA OBJECTIONS94

 Objections to the Form of the Question95

 Objection, Leading!95

 Objection, Compound!.....97

 Objection, Calls for a Narrative!.....98

 Objection, Asked and Answered!101

 Objection, Mischaracterizes the Evidence!.....104

 Objections to Elicited Substance of the Question105

 Objection, Lack of Personal Knowledge!105

 Objection, Calls for Speculation!.....107

 Objection, Improper Lay Witness Opinion!109

 Objection, Lacks a Foundation or Assuming Facts Not in Evidence!111

 Objection, Hearsay!112

 Objection, Relevance!.....113

OPTIONS IF THE IJ SUSTAINS THE OBJECTION.....114

8 CFR §1240.9115

 Offer of Proof.....115

CONCLUSION117

CHAPTER 7: MAKING OBJECTIONS.....119

BENEFITS OF OBJECTING119

OBJECTING TO DHS OPLA’S DOCUMENTARY EVIDENCE121

COMMON OBJECTIONS TO DHS OPLA’S DOCUMENTARY EVIDENCE121

 Untimely Filed.....121

 Violates Best Evidence/Original Documents “Rule”124

 Lacks Indicia of Reliability125

 Declarant Not Subject to Cross-Examination128

 Lack of Authentication129

 Unfair Prejudice130

COMMON OBJECTIONS TO DHS OPLA’S CROSS-EXAMINATION.....130

DETAILED TABLE OF CONTENTS	xxiii
Process for Objecting—during Cross-Examination.....	131
Objections Based on Form of the Question during Witness Examination	133
Leading	133
Compound.....	134
Vague or Confusing	134
Argumentative	136
Mischaracterizes Prior Testimony or Evidence	136
Assumes Facts Not in Evidence.....	137
Asked and Answered	138
Badgering.....	138
Objections Based on the Substance of the Question during Witness Examination	139
Relevance Objection	140
Calls for Privileged Communication	140
Lack of Personal Knowledge	141
Failure to Lay a Foundation.....	141
Calls for Speculation.....	142
Improper Lay Witness Opinion	143
Hearsay	143
Strategically Objecting.....	144
CONCLUSION	144
CHAPTER 8: WORKING WITH EXPERT WITNESSES	145
PLANNING FOR THE EXPERT’S TESTIMONY	146
QUALIFYING THE WITNESS AS AN EXPERT	146
Introducing the Expert	148
The Teaser.....	149
Qualifying the Expert.....	150
Responding to DHS OPLA’s Challenge of the Proposed Expert	155
THE TENDER	158
Using Multiple Tenders for Multiple Opinions	159
Examples of Tenders That Courts Have Accepted	160
ELICITING THE OPINION	161

Establishing the Basis for the Expert’s Opinion 162

Keeping the Testimony Conversational 163

Avoiding Technical Jargon 165

The Conclusion 166

COMMON CATEGORIES OF EXPERT WITNESSES IN IMMIGRATION COURT
..... 166

Eliciting Testimony from Country Condition Experts 167

Eliciting Testimony from Mental Health Experts 169

Eliciting Testimony from Medical Experts 171

OPINIONS THAT AN EXPERT WITNESS CANNOT GIVE 173

Testimony Beyond the Scope of the Tender 173

Legal Conclusions 174

CONCLUSION 175

CHAPTER 9: REDIRECT EXAMINATION 177

SCOPE OF REDIRECT EXAMINATION 177

OBJECTING DURING CROSS-EXAMINATION 178

THE GOAL OF REDIRECT: SPOTTING AND NEUTRALIZING NEGATIVE
INFERENCES 179

Note-Taking during Cross-Examination 180

REDIRECT DOs 181

Use Headnotes 181

Use Open, Non-leading Questions 182

Be Strategic—and Quick 183

REDIRECT DON’TS 183

Don’t Rehash Direct Examination 183

Don’t Use Legalese 185

Don’t Do Redirect without a Plan 185

Don’t Ask One Question Too Many 187

Don’t Go Beyond the Scope of Cross-Examination 188

RESPONDING IF THE IJ DOES NOT WANT TO ALLOW REDIRECT 188

BE READY FOR RECROSS 189

CONCLUSION 189

DETAILED TABLE OF CONTENTS	xxv
CHAPTER 10: CONDUCTING CROSS-EXAMINATION	191
COMMON DHS OPLA WITNESSES.....	191
MECHANICS OF CROSS-EXAMINATION.....	194
PURPOSE OF CROSS-EXAMINATION.....	195
Constructive Cross-Examination	195
Destructive Cross-Examination	196
CONDUCTING CROSS-EXAMINATION	197
Form of the Question	197
Content of the Question	199
Length of the Question.....	201
Organization.....	202
IMPEACHMENT	204
CROSS-EXAMINING EXPERTS	208
CONCLUSION	208
CHAPTER 11: CLOSING ARGUMENT	209
UNDERSTANDING HOW TO ARGUE	209
TELLING A STORY	213
Themes	214
Aristotle’s Three Pillars of Persuasion.....	215
Active Voice	215
ORGANIZING THE ARGUMENT	216
Open with a Theme	216
Roadmap of the Argument.....	217
Respondent’s Arguments	218
Dealing with Weaknesses or DHS OPLA’s Best Argument(s)	219
Concluding the Argument.....	220
CITATIONS IN A CLOSING ARGUMENT.....	220
Citing to the Documentary Evidence	220
Citing to the Law.....	221
THE IMPORTANCE OF REQUESTING A CLOSING ARGUMENT WITH THE IJ	222
PRACTICAL TIPS FOR DELIVERING A CLOSING ARGUMENT.....	223

CONCLUSION226

CHAPTER 12: PREPARING THE WITNESS FOR TESTIMONY227

EXPLAINING “THE BASICS”227

 In-Person Hearing Logistics.....228

 Internet-Based Hearing Logistics.....229

 How to Dress for the Hearing229

 The Format of the Hearing.....230

 Understanding How to Interact with the Immigration Judge.....231

EXPLAINING THE SUBSTANCE OF THE RESPONDENT’S CLAIM.....232

 Explaining the Theory of the Case.....232

 Explaining the Importance of Credibility233

 Explaining the Concept of “The Record”234

PREPARING THE RESPONDENT FOR DIRECT EXAMINATION234

 Preparing the Witness “In Role”234

 Preparing the Witness to Testify Through an Interpreter.....236

ADDRESSING SPECIFIC ISSUES THAT MAY ARISE WITH WITNESSES.....236

 Assisting the Witness to Reach a Better, Truthful Answer.....237

 Addressing Implausible Witness Testimony.....239

 Strategies for Respondents with Poor Memory242

 Preparing the Witness for Refreshing Recollection.....243

PREPARING THE RESPONDENT FOR DHS OPLA’S ROLE IN THE INDIVIDUAL HEARING244

 Preparing the Respondent for DHS OPLA Objections244

 Preparing the Respondent for Cross-Examination.....244

PREPARING THE RESPONDENT FOR REDIRECT EXAMINATION247

PREPARING THE RESPONDENT FOR THE IMMIGRATION JUDGE’S DECISION248

FINAL WORDS OF PREPARATION FOR THE RESPONDENT.....249

CONCLUSION249

APPENDICES251

Appendix 1: Sample Proof Chart: Asylum–Hypothetical Family-Based Case253

Appendix 2: Direct Examination Question-Starter Cheat Sheet259

Appendix 3: Using Exhibits Cheat Sheet261

Appendix 4: Refreshing Recollection Cheat Sheet263

Appendix 5: Objections Cheat Sheet265

Appendix 6: Annotated Closing Argument Sample267

Appendix 7: Sample Witness Preparation Timeline for Family-Based Asylum Claim
.....275