

Advocating for Clients with Mental Health Issues

with

Aimee Mayer-Salins

Christine Lin

Dr. Pratyusha Tummala-Narra

May 13, 2022

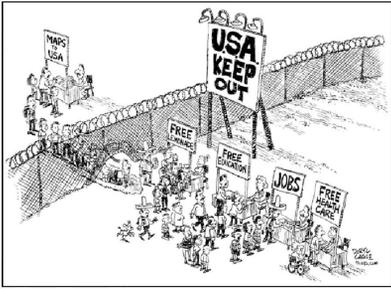
Overview

- Immigrant Experience and Mental Health Issues
- Identifying Mental Health Issues in Clients
- Due Process
- Competency Assessment and Safeguards
- Rehabilitation Act and Accommodations
- Case Study
- Working with Mental Healthcare Professionals

Immigration and Mental Health

- ❖ Reasons for why people migrate (e.g. family reunification, parental employment, education, poverty, war, persecution, environmental disaster)
- ❖ Separation from family and friends, and familiar context
- ❖ Optimism co-exists with sense of disorientation and sometimes disillusion
- ❖ Xenophobia, anti-immigrant sentiment and policy, racism

Prevailing Stereotype



"illegal immigration" overwhelming the nation

Key Issues in Mental Health

- ◆ **Immigrant Paradox:** Studies suggest that 1st generation immigrants may experience **less psychological distress** compared to 2nd generation immigrants (American Psychological Association, 2012, 2017).
- ◆ Psychological distress is going **unnoticed**.
- ◆ Many of the mental health problems particular to the immigrant experience can be linked to **acculturation, discrimination, and trauma**.
- ◆ Immigrants **underutilize** mental health services.



Acculturative Stress

- ◆ Stressful events/appraisal of events related to the acculturation experience
- ◆ Linked to psychological outcomes (depression, anxiety, suicidal ideation, substance abuse, eating disorders)
- ◆ Discrimination is a component of acculturative stress; Variations in discrimination-related stress across generations and across documentation status



Trauma-Based Presenting Problems

- ❖ Migratory trauma
 - ❖ Pre-migration
 - ❖ Migration
 - ❖ Post-migration
 - ❖ Deportation
- ❖ Interpersonal violence
- ❖ Vulnerable groups: Undocumented Immigrants, Asylum Seekers, Women, LGBTQ+, Survivors of Trafficking



Trauma-Based Presenting Problems

- ❖ Depression, anxiety, post-traumatic stress disorder
- ❖ Compromises identifications with country of origin and adopted country
- ❖ Interpersonal difficulties
- ❖ Feelings of persecution and distrust of authorities and institutions
- ❖ Lack of trust in adults' ability to provide and protect
- ❖ Fear of Deportation



Discrimination- & Racism-Based Presenting Problems

- ❖ Discrimination (overt and aversive); Microaggressions
- ❖ Profiling



*Poster by Ester Hernandez against SB 1070



Discrimination- & Racism-Based Presenting Problems

- ❖ Contribute to atmosphere of fear and anxiety and compromise in sense of safety
- ❖ Overt and subtle or aversive forms of racism both have detrimental effects
- ❖ Feeling of “second class” person
- ❖ Lack of sense of belonging (e.g. perpetual foreigner)
- ❖ Decreased use of mental health services



Barriers to Seeking Help

- ❖ Sociocultural Barriers
 - Stigma and shame associated with seeking professional help; Silence about trauma (including racism)
 - Mistrust of providers
- ❖ Systemic Barriers
 - Financial barriers
 - Legal barriers
 - Problems with cultural competence within mental health care
 - Lack of access to education about mental health



Identifying Mental Health Issues

- Ask about:
 - Prior hospitalizations, treatment
 - Supportive housing
 - Medications
 - Head injuries
 - Substance use
 - Exposure to violence/trauma
 - Self-injurious behavior
- Be aware that many people may minimize their symptoms



Common Indicators of Trauma

- Anger
- Anxiety
- Avoidance
- Confusion
- Disassociation
- Fear
- Flashbacks
- Flat Affect
- Nightmares
- Preoccupation
- Feelings of guilt, self-blame, shame, worthlessness
- Loss of control over own life
- Suicidal Ideation



Impact of Mental Health Issues on Client's Immigration Case

- Communication
- Ability to participate in process
- Trust/rapport
- Memory
- Decision-making/choices
- Ability to testify
- Re-traumatization
- Competency
- "Credibility"





Legal Standards



Due Process

- Due process requires that proceedings be fundamentally fair.
- Noncitizens must at least be afforded the specific rights provided in the INA.
- But procedural rights are only real and sufficient if a person can exercise them.



INA § 240(b)(4)(B)

The noncitizen “shall have a *reasonable opportunity* to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government . . .”



Competency



Standard for Competency

- “The test for determining whether an alien is competent to participate in immigration proceedings is whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney or representative if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses.”
 - *Matter of M-A-M-*, 25 I&N Dec. 474, 484 (BIA 2011)



Competency is Fluid

- May change based on medications, treatment, triggering events, etc
- May need to be reassessed at multiple points during the representation
- May need to strategize about when to request a competency hearing



When to Assess Competency

- Presumption of competency:
 - If there are no indicia of incompetency, “no further inquiry regarding competency is required”
- Where there are indicia of incompetency, IJ must conduct a competency assessment.



Indicia of Incompetency

- Behavioral observations:
 - inability to understand and respond to questions
 - inability to stay on topic
 - high level of distraction
- Record evidence:
 - assessments or medical reports from past medical treatment or from criminal proceedings
 - testimony from medical health professionals
 - school records regarding special education classes or individualized education plans
 - reports or letters from teachers, counselors, or social workers
 - applications for disability benefits
 - affidavits or testimony from friends or family



Safeguards



Safeguards: Notice

Matter of E-S-I-, 26 I&N Dec. 136 (BIA 2013).

- Where there are manifest indicia of incompetency, DHS generally should serve the NTA on:
 1. the noncitizen
 2. a person with whom the noncitizen resides, and
 3. a relative, guardian, or person similarly close to the noncitizen.
 - Where the noncitizen is confined in a custodial setting of any type, then "a person with whom the incompetent . . . resides" means someone who is in a position of demonstrated authority in the institution or his delegate. Where the noncitizen is not confined, then the statutory language refers to a responsible person in the household.
- If DHS did not comply with 8 CFR § 103.8(c), and indicia of mental incompetency arise or are manifest at master calendar hearing, IJ should grant a continuance so DHS may serve properly.
- If indicia of incompetency become apparent later, IJ should evaluate whether re-serving the NTA in compliance with 8 CFR § 103.8(c) would be an appropriate safeguard, and if so, grant a continuance for DHS to re-serve the NTA.



Statutory and Regulatory Safeguards During the Hearing

- INA § 240(b)(3) directs the AG to "prescribe safeguards to protect the rights and privileges of the alien."
- 8 CFR §§ 1240.4, 1240.10(c), 1240.43.
 - allowing an attorney, legal representative or guardian, near relative or friend to appear on the noncitizen's behalf if it is impracticable for noncitizen to be present at the hearing.
 - If such a person cannot be found or will not appear, then IJ may request that the noncitizen's custodian appear.
 - IJ cannot accept admission of removability from noncitizen who is mentally incompetent and not accompanied by an attorney or legal representative, near relative, legal guardian, or friend.
 - IJ cannot accept an admission of removability "from an officer of an institution in which a respondent is an inmate or patient."



Safeguards Stemming from *Matter of M-A-M-* and Its Progeny

- IJ has "discretion to determine which safeguards are appropriate, given the particular circumstances in a case before them."
- *M-A-M-* provided a non-exhaustive list of safeguards:
 - refusal to accept an admission of removability from an unrepresented respondent;
 - identification and appearance of a family member or close friend who can assist respondent and provide information to the court;
 - docketing or managing case to facilitate the respondent's ability to obtain legal representation and/or medical treatment;
 - participation of a guardian;
 - continuance for good cause shown;
 - closing hearing to the public;
 - waiving respondent's appearance;
 - actively aiding in development of the record, including the examination and cross-examination of witnesses;
 - reserving appeal rights for the respondent.



Testimony Safeguards

- No adverse inference if client does not testify
- Nature of questioning (leading questions, appropriate tone, etc.)
- Flexibility in assessing credibility

Matter of J-R-R-A-, 26 I&N Dec. 609, 611–12 (BIA 2015):

- "[W]here a mental health concern may be affecting the reliability of the applicant's testimony, the Immigration Judge should, as a safeguard, generally accept that the applicant believes what he has presented, even though his account may not be believable to others or otherwise sufficient to support the claim."
 - "inconsistencies, implausibility, inaccuracy of details, inappropriate demeanor, and nonresponsiveness—may be reflective of a mental illness or disability, rather than an attempt to deceive the Immigration Judge."



Rehabilitation Act

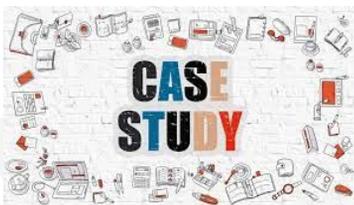
- The Rehabilitation Act prohibits federal agencies from discriminating based on disabilities. 29 USC § 794.
- It is unlawful for a public entity to “[p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 CFR § 35.130(b)(1)(iii).



Safeguards and Accommodations Even Where Client is Deemed Competent

- Still may be appropriate to request safeguards or accommodations to ensure fairness
 - _ Safeguards may be useful without a formal finding of incompetency. *Matter of J-R-R-A*, 26 I&N Dec. 609, 611–12 (BIA 2015).
 - _ INA § 240(b)(4)(B) (the noncitizen “shall have a *reasonable opportunity* to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government ...”)
- Types of accommodations:
 - _ extra breaks during the presentation of testimony
 - _ permission to ask leading questions
 - _ scheduling accommodations (e.g. AM hearing)





“Pedro”



Pedro: Intake Preparation

- Pedro is scheduled for an intake with your office.
- You have the following information about Pedro based on a quick phone screen:
 - 22 year-old Salvadoran male who has attended several “quick” hearings in immigration court, but needs a lawyer
 - Says he’s feeling very depressed and desperate because he’s contacted many organizations and has not been able to find a lawyer
 - Wants to speak with a lawyer to explore his options
- **What steps would you take to prepare for the intake interview?**



Pedro: Intake Meeting

- Hearing notice shows his individual hearing is in less than 2 months.
- Has some aunts, uncles, and cousins in the US, but the rest of his family reside in his home country.
- Says he is afraid to go back to his home country because “bad people” there want to hurt him.
- He won’t say who the bad people are because he’s afraid they will find out he’s told on them.
- He is fidgety and keeps looking around the room when he is talking to you.
- When you ask him questions, he sometimes does not respond or says something unrelated.



Pedro: Subsequent Meetings

- Pedro misses 2 scheduled meetings with you.
- When you do meet, he tells you that he had nightmares several nights after your last meeting.
- He tells you he thinks some men have been following him so he was afraid to go outside and missed the 2 meetings.
- He was afraid to come to your office today, but knows it is important for his immigration case.



Pedro: Immigration Court Hearing

- Pedro's individual hearing is 3 weeks away.
- You have not been able to get much information about Pedro's immigration case because he missed 2 meetings and is very hesitant to discuss why he's afraid to go back to his home country.
- **What steps will you take before the individual hearing?**



Toolbox Techniques



- Be aware of the different ways trauma may impact an individual
- Active listening
- Observe client's behavior
- Identify problem/trigger areas
- Meet the client where they are at
- Acknowledge challenges/limitations
- Explore with client what would make them feel more comfortable
- Create timeline, charts, drawings, visual aids to help with memory
- "Homework" and interactive discussion
- Breaks, grounding exercises, breathing, meditation



Referrals

- Identify available resources and services
- Outreach and developing relationships with organizations/individuals working with similar client population
- Maintain list of referrals for various resources
 - Social services, medical, psychological, support groups, emergency contacts, education, other legal matters outside your expertise, etc.
- Provide appropriate referrals
 - Obtain confidentiality waivers



Collaboration with Health Professionals

- Provide mental health/medical support to individual going through the asylum process
- Serve as “Expert” Witness by conducting forensic evaluation of client and possibly testifying in court
- Corroborate mental health issues as well as documenting any physical and/or psychological harm
- Corroborate legal issues



Where Health Professionals' Expertise Can Be Critical

- Vulnerability Assessment
 - Children
 - Mental competency
 - Developmental disabilities
- Credibility
- Incomplete or inconsistent memory
- For asylum, withholding, Convention Against Torture claims, severity of past persecution/torture, e.g. physical scars, psychological trauma
- Overcoming bars to eligibility for relief
- Mitigating negative discretionary factors
- Discretion



Working with Mental Health Professionals

- Ascertain whether mental health professional has necessary expertise
- Communicate expectations
 - telephonic or in-person testimony
 - provide relevant filing and hearing dates
 - establish due dates for reviewing, editing, and finalizing any evaluation
 - set expectations around the frequency and means of communication
 - discuss compensation.
- Review the evaluation before submitting it to the Immigration Court.
 - Should address 3 prongs of *M-A-M*- competency test, what safeguards would help and why, and any issues necessary to establish noncitizen's eligibility for relief
- Prepare mental health professionals to testify, and anticipate and prepare for potential challenges to their qualifications or testimony.



Preparation: Minimize Surprises

- Discuss client's previous experiences with court/system
- Explain:
 - Purpose of interview/hearing
 - Interview/courtroom setting
 - Who present/role
 - Process
- Warn if need to discuss difficult topics and techniques for handling
- Manage client expectations



Preparation

- Review declaration in client's best language
- Moot and incorporate techniques discussed, such as asking to take breaks
- Identify problem areas
- Observe client's behavior



Who else may be impacted by client's trauma?

- Legal representative
- Interpreter
- Paralegal
- Social worker
- Expert
- Adjudicator
- DHS attorney
- Other individuals who interact with client



Burnout, Compassion Fatigue, Compassion Satisfaction, Vicarious Trauma

- **Burnout**
 - Characterized by emotional exhaustion and withdrawal due to general workload and occupational stress
- **Compassion Fatigue**
 - Physical and mental exhaustion and emotional withdrawal experienced by those who work with or care for traumatized individuals
- **Compassion Satisfaction**
 - Pleasure or positive feeling that comes from caring, helping others, or being able to contribute to the greater good of society
- **Vicarious Trauma**
 - May occur with second-hand exposure to disturbing or difficult stories or images



Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



Join Us!

Join a community of over 9,000 advocates dedicated to protecting and promoting the rights of immigrants in the United States.

To learn more, visit

www.immigrationadvocates.org

 twitter.com/immadvocates

 facebook.com/immigrationadvocates