

## Sometimes the System Works

Sometimes, justice is not as elusive as it may seem.

By **Neil A.F. Popovic** of Sheppard Mullin Richter & Hampton.

Just when you're ready to give in to cynicism and admit that real justice is rarer than the San Francisco Giants winning the World Series, the system sometimes proves you wrong. And so it happened, that on Sept. 23, the Department of Homeland Security, U.S. Citizenship and Immigration Services, approved our client's request for asylum in the United States, thus allowing him and his family to remain in the country, safe from the dangers they would face if forced to return home. With one stroke of bureaucratic enlightenment, our government saved a family of four from persecution, vindicated our nation's commitment to the rule of law, and provided a team of big-firm attorneys with an indelibly gratifying opportunity to do some good.

How, you may ask, did this come to pass? It started in an out-of-the way African country with a population of 20 million, where our hero worked as an environmental scientist on a government-sponsored conservation project. In 2005, he brought his young family to the United States and enrolled in a Ph.D. program at the University of California, hoping to bolster his capacity to help save his native land's unique biodiversity. Part way through his studies, in 2009, his country experienced a coup d'état, in which the mayor of the capital city, assisted by the military, overthrew the popularly elected president, forcing the latter into exile. There followed a reign of brutal repression — which continues — with supporters of the old regime targeted by the new regime, including violence, harassment, torture and widespread (and well-documented) disregard for due process and human rights.

Among other things, the new regime reversed course on the environmental conservation measures that were being pursued by the old regime, and began selling off the country's irreplaceable natural wealth. Our client's brother had been chief of staff to the ousted president. The brother fled the country, and the rest of our client's family has been in hiding since the coup. Among other things, that meant they could no longer send money to our client to support his educational pursuits, and he had to withdraw from the Ph.D. program after completing his Master's degree.

Further complicating things, before making his mark as a scientist, our client had been a rock star (literally), co-founding and fronting a band that became famous domestically, partly based on its powerful protest songs

and support for the now-ousted former leader when he was running for president. The band was a fixture at campaign rallies, and its music videos were widely viewed. As a consequence, our client could not simply slip back into his county unnoticed. His face and name are well-known, and his family name is well-known to be associated with the old regime.

The more our client heard of the dangers he and his family would face if they tried to return home, the more he realized he could not return. Things got so bad that when his mother passed away, his father told him it was not worth the risk to travel home for her funeral. Unsure how he could protect his family, our client eventually found his way to the Asylum Program of the Lawyers Committee for Civil Rights of the San Francisco Bay Area. This program connects indigent refugees with lawyers at private firms who represent them pro bono, with assistance from experienced immigration lawyers who serve as mentors. That's how we got involved, and how our client's personal saga became a legal matter.

Much of the popular discourse about immigration law in the U.S. centers on how to prevent foreigners from taking advantage of the benefits of U.S. residency and citizenship, such as how to keep "illegal aliens" from entering the country. But there is another side of immigration law, the purpose of which is to provide benefits to certain non-citizens, namely refugees.

The international legal obligation to assist refugees derives historically from the great refugee flows associated with World War II. It derives doctrinally from the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The United States is a party to the 1967 Protocol, which incorporates the substantive provisions of the 1951 Convention. Congress has incorporated those obligations into domestic law. The key substantive standard for asylum, that an applicant must demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion," is drawn straight from the treaty provisions.

That is the standard we had to meet for the government to grant our client asylum. We faced two particularly daunting challenges, both tempered substantially by the extraordinary perseverance (and patience) of our client and his family. First, as is often the case in asylum matters, much of the relevant evidence to support our client's well-founded fear of persecution was located in his home country, i.e., the very place he was afraid to return. Second, and this was more unique to our client's case, he had no history of past persecution, because when he left his country, "his side" was still in power.

Our team set to work putting together the case.



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Among the documents gathered in support of our client's case, were reports from the Department of State and Amnesty International that both confirmed the dire human rights situation on the ground. Our client filled in the details, including the rags to civil servant story of his father and the notoriety and success of his several siblings. In relatively short order, the government scheduled our client's asylum interview. Our team trudged over to the Department of Homeland Security office in San Francisco on the appointed date. We negotiated a phalanx of security measures, checked in, and waited. Three hours after the time scheduled for the interview — during which time our client's two young children quietly read books, while the grown-ups grew increasingly impatient — they finally called our client's name. We filed into the small, windowless office of the asylum officer.

The officer was well-prepared, polite, respectful and tough. Among other things, she asked our client to sing one of his protest songs, presumably to confirm his claim to having been a rock star. The lawyers made opening and closing statements, but our client's performance, musically and in response to the officer's questions, was the main event. After an hour or so of questioning, it was over, and we were told to come back in two weeks to receive the decision on our client's application.

We came back and enjoyed another lengthy wait, this time due to reported problems with the Citizenship and Immigration Services computer system. Finally, our client and his family were called to the window. The clerk verified our client's identity, asked his wife and children a few questions and then handed me a letter. I quickly scanned the letter for the result, and as I started to show it to our client's wife, the clerk waved me off, so she could deliver the news: asylum granted.

The clerk visibly relished her role as the bearer of such good news, and I couldn't blame her for shushing me when I started to spill the beans. Watching our client and his family react to the decision was moving beyond compare, and rewarding in ways one cannot even approach in other types of legal work.



**Neil A.F. Popovic** is a litigation partner in the San Francisco office of Sheppard Mullin Richter & Hampton, and a lecturer at UC Berkeley School of Law, where he teaches international litigation and arbitration and international environmental law.