

Big Disparities in Judging of Asylum Cases

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Asylum seekers in the United States face broad disparities in the nation's 54 [immigration](#) courts, with the outcome of cases influenced by things like the location of the court and the sex and professional background of judges, a new study has found.

The study, by three law professors, analyzes 140,000 decisions by immigration judges, including those cases from the 15 countries that have produced the most asylum seekers in recent years, among them China, Haiti, Colombia, Albania and Russia. The professors compared for the first time the results of immigration court cases over more than four years, finding vast differences in the handling of claims with generally comparable factual circumstances.

In one of the starker examples cited, Colombians had an 88 percent chance of winning asylum from one judge in the Miami immigration court and a 5 percent chance from another judge in the same court.

“It is very disturbing that these decisions can mean life or death, and they seem to a large extent to be the result of a clerk’s random assignment of a case to a particular judge,” said an author of the study, Philip G. Schrag, a professor at Georgetown University Law Center.

The study offers an unusually detailed window into the overburdened and often erratic immigration courts. Though the immigration bill now being considered does not propose major revisions in asylum laws, those courts serve as the judicial backbone of the immigration system that would take on an immense new workload if the bill becomes law.

The legislation would offer a road to legal status to an estimated 12 million illegal immigrants, eliminate backlogs of legal immigration cases and step up enforcement, among other measures. Experts predict countless legal snags that would land before the immigration judges.

Officials at the Executive Office for Immigration Review of the Department of Justice, which oversees the immigration courts, declined to allow interviews about the study with David L. Neal, the chief immigration judge, citing a policy that immigration judges do not speak with the news media about their rulings.

The study found that someone who has fled China in fear of persecution and asks for asylum in immigration court in Orlando, Fla., has an excellent — 76 percent — chance of success, while the same refugee would have a 7 percent chance in Atlanta. Similarly, a Haitian seeking refuge from political violence is almost twice as likely to succeed in New York as in Miami.

Immigration lawyers acknowledge that the judges have difficult work, with huge dockets of cases that must be decided speedily on the basis of scant or subjective information. Often the asylum seeker is the only witness to crucial events.

But because immigration law is federal, the study's authors argued, some uniformity could be expected in judges' asylum rulings across the country, particularly in cases of people fleeing a country, like China or Colombia, where the conditions of political oppression or civil violence are publicly known.

"It's such a high-volume system where the participants have so little time to test cases and make decisions, you become much more subject to the general viewpoint of the judge," said Bo Cooper, a lawyer at Paul, Hastings, Janofsky & Walker who is a former general counsel of the Immigration and Naturalization Service. That has created a risk, Mr. Cooper said, that "the system will not be good enough at providing refuge to those in need or identifying the claims of those who are not in need."

The wide discretion exercised by immigration judges can be disheartening to lawyers and disastrous for immigrants facing threats to their lives if they are forced to return home, immigration lawyers said.

"Oftentimes, it's just the luck of the draw," said Cheryl Little, a lawyer and executive director of the Florida Immigrant Advocacy Center, a legal assistance group in Miami that represents many asylum seekers. "It's heartbreaking," Ms. Little said. "How do you explain to people asking for refuge that even in the United States of America we can't assure them they will receive due process and justice?"

While immigration officers at Citizenship and Immigration Services, the federal agency, can grant asylum, the majority of asylum cases are decided by the immigration judges. Under the immigration system, refugees are foreigners coming from abroad who win residency in the United States for protection from religious persecution or political threats. Asylum is granted to foreigners who apply for refuge when they are already in the United States.

The study is based on data on judges' decisions from January 2000 through August 2004. It will be posted today on the Web site of the Social Science Research Network, www.ssrn.com, and published in November in the Stanford Law Review.

In addition to Professor Schrag, the authors are Andrew I. Schoenholtz, also a professor at Georgetown University Law Center, and Jaya Ramji-Nogales, a professor at Beasley School of Law at Temple University.

According to the study, great differences also prevail among judges sitting on the same court and hearing similar asylum cases. In the Miami immigration court, one judge granted 3 percent of the asylum cases, while another granted 75 percent.

One of the most significant factors determining whether a judge would be likely to approve asylum petitions was sex, the study found. Female immigration judges grant asylum at a 44 percent higher rate than their male colleagues.

The study by the three professors did not examine the judges' political affiliation or the administration that appointed them.

The study suggests that the different willingness to grant asylum between male and female judges may in part have to do with their backgrounds. Of 78 female judges in the study, 27 percent had previously worked for organizations that defended the rights of immigrants or the poor, while only 8 percent of 169 male judges had similar experience. .

Though the study does not identify judges by name, profiles of immigration judges were drawn up separately by the Transactional Records Access Clearinghouse, a research group at Syracuse University. They show that the 24 judges who sit today in Miami (21 in court and 3 based in a detention facility) include some of the most likely and least likely to grant asylum.

According to the Clearinghouse profiles, one immigration judge currently on the Miami court, Mahlon F. Hanson, granted 3 percent of the asylum cases he heard. He was the second-toughest judge in the nation on asylum issues, the group found. Judge Denise N. Slavin, who hears cases at the Krome North detention center in Miami, granted 59 percent of the asylum claims she considered, placing her in the top 15 percent of judges approving such claims.

Lawyers said the variations may in part have to do with the cases particular courts are handling. Miami immigration courts see a large number of asylum claims from Haiti, and the judges may have differing outlooks and disagree about the possibilities for Haitians to face persecution in their country.

The variations between courts and among judges were particularly troubling, the authors of the study argued, because of the impact of procedural changes introduced by the Bush administration in 2002 at the Board of Immigration Appeals, the appellate body that reviews decisions by the immigration court judges.

Those changes led to a "sudden and lasting decline" in appeals that were favorable to asylum seekers, the study found, raising doubts as to whether the board was providing fair appeals.

In 2002, Attorney General John Ashcroft made streamlined the work of the appeals board, reducing the number of board members to 11 from 23 and encouraging more decisions by single members and without explanation.

The study looked at 76,000 decisions by the appeals board from 1998 through 2005. Asylum applicants who were represented by lawyers received favorable appeals decisions

from the board in 43 percent of cases in 2001, the year before the changes took effect. By 2005, asylum seekers with lawyers won their appeals in 13 percent of cases.

“The judges handle a very large caseload, they’re human, they are not going to catch every detail,” said Mary Meg McCarthy, director of the National Immigrant Justice Center, a legal assistance group in Chicago. “But once they streamlined the Board of Immigration Appeals,” Ms. McCarthy said, “there was a failure of the board to review those cases, to check on what the immigration judge had found. When that failed, we had a real crisis in the system.”

As a result of the trends at the appeals board, there has been a new surge of asylum appeals to the federal circuit courts, in practice the last resort for immigration cases. Over all, the number of people winning asylum in the United States has declined, dropping by about 12 percent from 28,684 in 2003 to 25,257 in 2005, the last year when complete figures are available.

The immigration courts have been in the spotlight after Justice Department officials said last week that the investigation of Monica M. Goodling, a former aide to Attorney General Alberto R. Gonzales, has been expanded to include her role in helping to appoint immigration judges.

Ms. Goodling testified last week that she had “crossed the line” in applying political considerations to candidates for nonpartisan legal jobs. Immigration judges are appointed by the attorney general, and 49 of 226 current judges were appointed during the tenure of Mr. Gonzales.