

Feds look to streamline backlogged immigration courts

By Meghan McCarthy / Cronkite News Service | Thursday, June 28, 2012

WASHINGTON - Government officials have adopted a series of recommendations to streamline federal immigration courts, where a record-high number of backlogged cases has brought the "fairness and effectiveness" of the courts into question.

Changes proposed by the Administrative Conference of the United States are aimed at easing the more than 300,000 pending cases in the courts, where it can take an average of 519 days from introduction to a judge's decision.

"That's almost a year and a half when you're just waiting for your case to be heard," said Funmi Olorunnipa, an attorney adviser at the conference, an independent federal agency that provides nonpartisan legal advice and expertise to government agencies.

The conference worked with the Departments of Justice and Homeland Security for more than a year, looking for ways to make immigration courts more "timely, efficient and fair."

The recommendations ranged from finding more efficient ways for short-handed judges to use their time to doing a better job of informing detainees of their rights in court and letting judges sanction poorly performing attorneys - a power they do not now have.

"Judges sometimes feel like a school master without the ability to suspend or grade a student," said Lenni Benson, a New York Law School professor and one of two outside consultants who worked on the report. "They see bad behavior and are powerless to do anything."

The 37 recommendations were vetted by a selection of federal officials, administrative law experts and private-sector individuals at an ACUS meeting this month. After they are published in the Federal Register, Olorunnipa said, the conference will work with the affected agencies to implement them.

Most of the proposals were aimed at Justice's Executive Office of Immigration Review, which was created in 1983 to decide whether foreign-born individuals charged with violating immigration law, should be removed from the U.S. or permitted to stay here.

More than 59 immigration courts nationwide conduct "removal proceedings." Suspected [illegal immigrants](#) who are ordered to appear are not provided with an attorney by the government, although they can seek one on their own.

Olorunnipa said that 85 percent of the people who appear before immigration judges do not have an attorney. Many cannot afford to pay for a lawyer or have trouble understanding the procedures because of a language barrier, she said.

"There are some pro bono groups and organizations who will work for free, but those resources are limited," Olorunnipa said.

One major issue is a shortage of judges - one of six positions was vacant in March 2011, according to the Transactional Records Access Clearinghouse.

"What these courts do is really important and Congress has given them a tough mission," Benson said. "We were looking for ways to achieve a lot with the resources they have."

Benson said she and Russell Wheeler, a visiting fellow at the Brookings Institution who helped with the report, spent more than a year surveying judges, advocates and government officials looking for ways to improve the process.

Besides recommending that judges be allowed to sanction lawyers, Benson and Wheeler recommended that judges no longer have to be there in person when someone files for asylum. Benson said that could save judges "days and days."

The committee also said that EOIR should "enhance the number and value of know-your-rights presentations" for detained immigrants, saving judges time they would have to spend explaining rights during proceedings, Benson said.

The report said judges should be allowed to address attorneys' "lack of preparation, lack of substantive or procedural knowledge or other conduct that impedes the courts operation" and require some to attend legal education classes.

Benson said some of the changes can take effect immediately while other could take years.

Olorunnipa expects the recommendations to have a "profound impact" on improving the process in immigration courts.

"All the officials involved are very interested in improving the process," she said. "These are things they have been thinking about for a while."

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