

COMMITTEE TO INQUIRE INTO IMMIGRATION CONTROL

Introduction

Refugee Support Group Devon (RSG) is a local charity providing support to asylum seekers and refugees in the Devon County area. We operate an enquiry and signposting service and on a daily basis receive requests for help regarding asylum applications and appeals. We do not provide legal advice or services, but in the remit of referring to other agencies and assisting individuals to make sense of correspondence, we are made aware of difficulties and errors within the immigration processes. It is with this knowledge and evidence we are submitting a report to this enquiry.

Summary

RSG would like to bring to attention of the committee concerns in 5 areas:

Quality of initial decisions

There are poor quality initial decisions due to mistakes at initial interviews – this could be through interpreters, dates, no allowance for the trauma individuals have suffered. There also appears to be a lack of knowledge of the cultural, social and political reality of the country of origin which has led to poor decisions based on assumptions of what could have occurred.

Appeals and Judicial Reviews

Changes in the legal system and access to public funded legal help have forced many asylum seekers to pursue cases without solicitors. Without expert legal help individuals are finding obtaining advice difficult, and at times receiving poor advice, particularly with regard to timescales and deadlines for appeals.

Immigration statistics

We refer to arguments in Mary Coussey's Independent Race Monitor report of July 2005.

The extent of implementation of recommendations of recent reports and enquiries

Recommendations from the above report and UNHCR guidelines on Burden and Standard of Proof (1998) clearly call for better training for asylum caseworkers and yet errors as detailed earlier are still occurring.

Lessons to be learnt from the operation of the current system

Again we refer to The Independent Race Monitor Report and reiterate that the initial decision process is not working. Asylum applications and appeals are time consuming and costly, and contribute to continued hardship of asylum seekers and refugees.

1. Quality of initial decisions from the Home Office (Asylum Claims)

1.1 An accumulation of small mistakes takes away credibility at this early stage and it is difficult to re-establish. There are poor quality initial decisions due to many mistakes at initial interviews

1.1.1 There are understandable reasons for claimants making mistakes.

After exhausting harrowing journeys, lack of sleep and food and money, disorientation, not able to speak English, little or no advice, legal or otherwise, applicants have to find own way to Croydon and wait.

1.1.2 Frequently mistakes occur through inaccuracies in remembering or translating the dates (eg from Islamic to Western Calendar.) These have seriously undermined credibility. These mistakes are often acknowledged at Appeal and can lead to overturning the initial decision, though it can take considerable effort, time and expense to do so.

1.1.3 Language problems. Interpreters not always appropriate eg Farsi speakers for Kurdish speaking Iranians or Afghanis, or differences of dialect.

1.1.4 Some clients also complain that interpreters seem hostile.

1.1.5 There is an apparent lack of independent assessment of the interpreters

1.1.6 Applicants who more or less understand their translator, rarely state that they are not happy even if they are. It is often not till the refusal letter comes in that they realise that certain points have been misunderstood or mis-communicated by the interpreter.

1.1.7 Before the Asylum Interview (or Court/Tribunal appearance) applicants need to be better informed that it is important to let the HO (or IAA or AIT) interviewers know that there are communication problems. *It is crucial that applicants realise they need to make this clear as soon as possible* not weeks/months later, after the refusal letter has arrived (and credibility lost). We suggest this is best done by an independent person like a solicitor or Refugee Council rep) who is able to spend enough time with them (i.e. significantly more than a pro forma 3minute chat).

1.1.8 A real concern has been expressed by one applicant that he did tell the interpreter he was not happy with her services but he could not tell whether or not she passed this on to the HO interviewer. He suspects she didn't as the interview carried on as if he hadn't said anything. He was concerned that the interpreter in question was reluctant to pass on information that could appear to suggest that she was concerned that if she had passed on his remark this would have impacted her future career as a HO translator. There is a real potential for a conflict of interest and abuse of position.

1.1.9 Now interviews can be tape-recorded this danger is less, as long as all applicants are made aware of this option and are explained in detail how important the interpretation issue is.

1.2 Home Office Caseworkers.

1.2.1 A lack of knowledge of the cultural, social and political reality of the country of origin has led to poor decisions based on assumptions of what should have occurred.

1.2.2 There are examples of assumptions about family life, how relatives or neighbours might behave, how informers and secret police work, how homosexuality is treated, how converts to Christianity might be treated.

- *“it is not accepted that the incident happened as you stated” **There are no reasons given for not accepting the account.***
- *The Home Office offers no evidence to discredit oral statement of events. The arguments the HO uses to discredit statements rely on distorting the picture through misinterpretations, assumptions, omissions and errors and everywhere lack of knowledge and understanding of the reality of life in Iran. (Refer to United Nations guidelines on Standard of proof.)*
- *The objective evidence from Iran does show that bribery is common, but without any other evidence it is assumed that it is “Highly unlikely - that any individual officer would take the risk ”*

1.2.3 Caseworkers **ignorance of basic facts** about the Country of Origin or specific information has added to the accumulation of doubts that have undermined credibility.

A simple example is where the claimant gave the ‘wrong date’ for Christmas: but in fact he had converted to Orthodox Christianity so his answer was ‘right’.

- *“The adjudicator says that my activities for the KDPI were at a low level.. In fact the village people like me and my family who support Peshmerga are very important to the Kurdish struggle. People who help the fighting men of Peshmerga do “attract adverse attention” from the Eleaat (Iranian authorities). The Peshmerga are young men who hide in the mountains. They are difficult to find. They only survive with the help from Kurdish villages. The best way, the only way the Iranian government has to fight them is to frighten people like my family who support them”. **Country of origin reports supported this but was not sufficient to re-establish credibility on Appeal.***
- *The activities “were sufficiently low-level” and would not “have brought you to the adverse attention of the authorities” **Country of Origin reports are ignored.***
- More complex was the claim by the Home Office that a particular group had had no leader since 1978, when in fact a simple internet search showed that the leader the claimant was talking about had been killed only a few years ago. The Caseworker had obviously researched but not found accurate information.

1.2.4 There have been recommendations made about training of Caseworkers in making initial decisions in the attached reports. The UNHCR guidelines on Burden and Standard of Proof deal with the matter of credibility, assumption and country of origin information. Do they play a part in any training?

2 Appeals and judicial review

2.1 Solicitors and legal advice agencies are experiencing serious pressure to advise and process claims in a very short time scale. The changes to the access to legal aid make it difficult to present the best case.

2.2 There have been many changes to procedures which are not clearly understood it seems even by officials employed to implement them.

2.3 We have come across examples of this particularly with the right to appeal to decisions. The deadlines to do this are already short. There are times when people are not given time-lines or relevant forms/information or the right address for return. This confusion adds to the pressure and ability to respond.

2.4 Acceptable evidence. People supporting asylum cases are not being told of the unspoken change in standards of proof. For example

- fax version of an arrest warrant, for example, is no longer acceptable - only original. Do they know how hard that is to get if it is issued after your escape? Families are put at risk in trying to send the original so some won't even ask to have it sent. This is another example of applying western standards and assumptions completely ignorantly and inappropriately (2 years ago faxes were accepted!)

-only a consultant, not a doctor's statement is acceptable; a psychiatrist's not a counsellor. Some could get this "higher " standard of evidence but don't know they should until it is too late. If they introduce it later it is seen as "imbellishment" and therefore the applicant not "credible"

3 Immigration statistics

Please consider the arguments in Mary Coussey's Report which raise concerns about the justification for the increase in refusal of claims for Asylum.

“3.4. The overall proportion granted asylum in the initial decision was 3%, a further fall from 2003 when the proportion was 6% and 2002 when the proportion was 10%. The drop in 2003 was attributed to falls in grants of asylum to nationals of Sri Lanka, Iraq and Zimbabwe.⁸ The overall allowed appeal rate has also declined, although less steeply, from 22% in 2002, 20% in 2003 to 19% in 2004. (These do not include appeals and decisions to grant Exceptional Leave to Remain, now replaced by Discretionary Leave, and Humanitarian Protection). The question which arises is why the initial grant rate has gone down. This is especially pertinent, as the numbers of claimants has dropped significantly. If it is correct that economic migrants and other invalid claimants have been deterred from using the asylum process by the introduction of tighter controls, one might expect an increase in the success rates of remaining claimants, as a larger proportion should be genuine.”

4. The extent of implementation of recommendations of recent reports and inquiries;

4.1 RSG recommends to the Committee that they look at the following report and consider implementing the recommendations

Annual Report 2004-5
Independent Race Monitor
Mary Coussey
5 July 2005

4.2 In particular we would like to draw attention to the following paragraphs
Executive Summary Report on authorisations: asylum decisions (paragraphs 16 -21).
“I reviewed samples of initial decisions and concluded that there was evidence of inappropriate decision-making”

and Section 3 Asylum Decisions:

“3.11. Another regular feature noted was for refusal letters to contain assumptions without explanation on what could or could not have occurred.

3.12. Several such unsupported assumptions in one refusal letter give the impression that whatever the claimant’s experience, some grounds for refusal will be found. It is troubling that assumptions about whether an applicant’s action was plausible seem to be based on western metropolitan experience.

3.23 Several refusals relied on small discrepancies in a claimant’s statement as the basis for disbelieving the account. Sometimes the discrepancies could have been clarified with further probing by the case officer. The impression given was that the officer was going to reject the claim, and was looking for evidence to justify a refusal.”

3.24. Determining credibility is difficult. This small analysis has demonstrated to me that case officers make apparently irreconcilable decisions on very similar facts. It confirms my view that there are indications that some case officers may become cynical and discount similar stories or the authenticity of documents.

4.3 These observations in the Coussey Report are substantiated by many of the concerns raised by Claimants who have come to RSG Exeter for help in understanding their Refusal decisions. Examples given earlier – paragraphs 1.2.2 and 1.2.3 These assumptions are common in initial decisions and continue at Appeal.

5. The lessons to be learnt from the operation of the current system that might inform the implementation of the new Government policy.

5.1 It is well documented now by the above report and other organisations and in the media (Refugee Action, File on 4) that the initial decision process is not working well. If 20 per cent of all decisions made at Magistrates Courts were found to be wrong and overturned on appeal, then there would be an understandable outcry and the system would be dismantled.

5.2 The experiences that individuals have had going through the process and their reaction to negative decisions has led to real disillusion on their part that our government does not seriously uphold the Refugee Convention. There is now a

prevailing belief that there are hidden quota systems and that their individual fears of persecution are being considered in a political climate that seeks first and foremost to get the numbers down.

5.3 The reputation of the UK's Asylum policy rests on the quality of the decisions made.

5.4 At RSG we are concerned that Asylum Law is now viewed cynically. It cannot be good either for our society, the individuals involved or for the credibility and respect for International law in the long term.

5.5 The prolonged Appeal process is a drain on public funds.

5.6 It leads to real hardship on the part of refused Asylum claimants, who will not agree to return voluntarily as they truly believe their lives to be at risk. It is not a simple matter to deport these individuals for many reasons,(essentially lack of documentation) and detention is financially prohibitive and not a real alternative on such a scale.

5.7 Prohibiting asylum seekers from working contributes to this hardship. Even where asylum seekers may be eligible for permission to work, they have not necessarily been made aware, eg those who arrived prior to March 2002. The general views of asylum seekers RSG meets is that they would prefer to work than accept government support.

5.8 We agree with the conclusion of Mary Coussey's report that some independence in initial decisions would be welcome. In the long run this could mean less time and particularly less expense in determining claims as sounder initial decisions would lead to less appeals.

5.9 We also recommend with Mary Coussey the need for a balanced public discussion.

"7.1. As indicated in my previous reports I am concerned about the effect of hostile, inaccurate and derogatory press comment and comments by a few politicians. I do not doubt that this negative atmosphere can affect decision-making on individual cases, as it makes caution and suspicion more likely. The Government has an important role to play in helping to set the tone and encouraging balanced and well-informed discussions on immigration. Repeated references to abuse and reducing the numbers of asylum applicants tend to reinforce popular misconceptions that abuse is enormous in scale when in fact it is a small proportion of people who enter the UK."