

STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL
As Authorized by Section 605 of the International Religious Freedom Act of 1998

**STATISTICAL REPORT ON IMMIGRATION COURT PROCEEDINGS,
FY 2000-2004**

FEBRUARY 2005

Special Tabulations Prepared with Assistance from the
U.S. Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

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PREFACE

The Study of Asylum Seekers in Expedited Removal (the Study) was undertaken by experts appointed by the U.S. Commission on International Religious Freedom (the Commission) to respond to four questions posed by Congress in Section 605 of the International Religious Freedom Act (IRFA) of 1998. Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. 1225(b)) with respect to aliens, who may be eligible to be granted asylum, are engaging in any of the following conduct:

- (A) Improperly encouraging such aliens to withdraw their applications for admission.
- (B) Incorrectly failing to refer such aliens for an interview by an asylum officer for a determination of whether they have a credible fear of persecution (within the meaning of section 235(b)(1)(B)(v) of such Act).
- (C) Incorrectly removing such aliens to a country where they may be persecuted.
- (D) Detaining such aliens improperly or in inappropriate conditions.

The Study has several components, including collection of statistics; thorough sample file review; direct observations of the removal process; surveys of Department of Homeland Security (DHS) officials and detention center personnel; as well as interviews with individuals seeking asylum.

The present report consists of a compilation of administrative data tabulated by the experts for the Study with support from the U.S. Department of Justice Executive Office for Immigration Review (EOIR). EOIR reviewed an earlier draft of this report and provided comments that have been taken into account in the final report. The compilation and accompanying descriptive summaries were prepared under my general direction by Susan Kyle, Cory Fleming, and Fritz Scheuren. Let me also take this opportunity to express my deep appreciation for the care, diligence, speed, and expertise of the EOIR team including Deputy Chief Immigration Judge Thomas Pullen, Ana Mann, Steven Lang, Charles Adkins-Blanche, Pam Calvert, Isabelle Chewning, Brett Endres, Cecelia Espenosa, and especially Marta Rothwarf.

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Special Tabulations Prepared with Assistance from the U.S. Department of Justice

DESCRIPTIVE SUMMARY

This Report consists of a compilation of special tabulations produced with assistance from the Executive Office of Immigration Review (EOIR) within the U.S. Department of Justice (DOJ). The tables included here were designed as background for the Study of Asylum Seekers in Expedited Removal (the Study) being undertaken by experts designated by the U.S. Commission on International Religious Freedom (the Commission), pursuant to section 605 of the International Religious Freedom Act (IRFA) of 1998.

The tabulations are quite extensive and hence some summarization is warranted. The charts provide an overview of immigration court proceedings for asylum seekers subject to Expedited Removal: (1) the outcomes of immigration court asylum proceedings; (2) EOIR review of negative credible fear determinations; (3) immigration court asylum proceeding outcomes for represented and unrepresented aliens; (4) failure to appear frequencies for released aliens; (5) withdrawals of asylum applications by detention status; (6) the outcome of appeals before the Board of Immigration Appeals (BIA); and (7) the outcome of cases referred to EOIR from the Affirmative Asylum process (for comparative purposes). The data lay out the geographical composition of aliens seeking asylum in the U.S and the court proceedings during a five-year period from fiscal year (FY) 2000-2004. The data universe is based on the number of credible fear receipts from the Department of Homeland Security (DHS) in FY 2000-2003 matched with the correlating EOIR completed cases, which span pre-FY 2000-2004.¹

Confidentiality requirements restrict the public versions of these basic and text tables to report only cell counts of six (6) or more for nationality statistics. All nationality nonzero cells of less than 6 are asterisked (*). Zero cells are identified by a dash (-). Percentages representing less than six (6) divided by the total are represented by a pound (#). Summary totals have also been examined to ensure indirect disclosure does not occur.

The data examine the outcomes of cases of asylum seekers subject to Expedited Removal by nationality, application decision, and fiscal year during pre-FY 2000-2004 (basic table set 1).² Text table A reveals 28 percent of aliens were granted relief from FY 2000-2004, similar to 30 percent cite by GAO in 2000.³

¹ Since the data reflects completed EOIR cases over time, in some cases FY 2000 has fewer cases than subsequent years because many cases received in FY 2000 were completed after FY 2000.

² Note that all charts and text tables in this summary are based on data presented in the table sets, available at www.uscirf.gov.

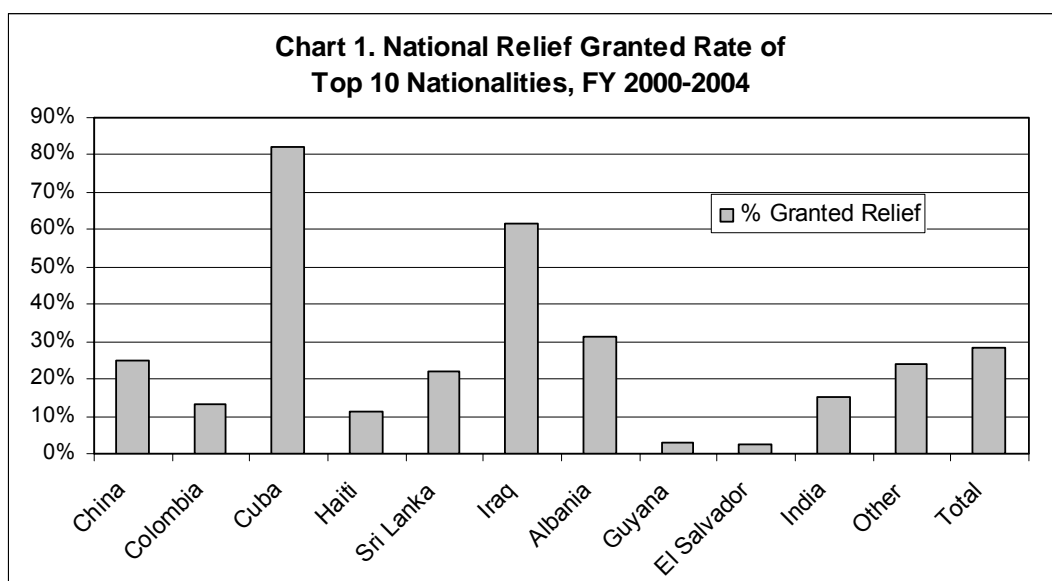
³ United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000.

Table A. Outcome of Cases of Aliens Referred to EOIR Post Credible Fear Determination by Nationality, FY 2000-2004

| Nationality | FY 2000-2004 | | | | |
|-------------|-------------------|--|--------------------|----------------|-----------------------|
| | Asylum Granted | CAT Withholding or Deferral Granted ^a | Adjustment Granted | Granted Relief | Total Cases Completed |
| China | 2285 | 37 | * | 25% | 9277 |
| Colombia | 407 | * | 8 | 13% | 3152 |
| Cuba | 35 | * | 2495 | 82% | 3079 |
| Haiti | 292 | * | * | 11% | 2675 |
| Sri Lanka | 374 | 23 | - | 22% | 1785 |
| Iraq | 464 | 29 | - | 61% | 803 |
| Albania | 199 | * | * | 31% | 652 |
| Guyana | 16 | - | - | 3% | 510 |
| El Salvador | * | 6 | * | 3% | 476 |
| India | 62 | * | * | 15% | 448 |
| Other | 1554 | 84 | 18 | 24% | 6978 |
| Total | 5690 ⁿ | 197 | 2528 | 28% | 29835 |

(*) = 5 or less, (-) = 0, ^a CAT: Convention Against Torture, ⁿrounded total >5688 & <5693
Based on Basic EOIR Tables 1.

Chart 1 below shows the top ten nationalities and their rate of relief granted, including asylum, Convention Against Torture (CAT) withholding or deferral, and adjustment of status granted. The *total cases completed* consists of applications for asylum granted, CAT withholding or deferral granted, adjustment of status granted, asylum or CAT relief withdrawn, and ordered removed including deportation order, exclusion order, removal order, voluntary departure orders, and Immigration and Naturalization Service (INS) or DHS Expedited Removal orders.



Note: China n=9277, Colombia n=3152, Cuba n=3079, Haiti n=2675, Sri Lanka n=1785, Iraq n=803, Albania n=652, Guyana n=510, El Salvador n=476, India n=448, Other n=6978, Total n=29835
Based on Basic EOIR Tables 1.

The same case outcome classification information as basic table 1 is further divided by 14 immigration courts in jurisdictions visited by Commissioners and/or Commission experts in the course of the Study (basic table sets 1.1 to 1.14).⁴ These 14 immigration courts⁵ represent 83 percent of the total cases adjudicated from FY 2000-2004 for asylum seekers subject to Expedited Removal.⁶ Below are 13 summary tables listing the top five nationalities in each immigration court⁷.

Table B. **Miami:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Cuba | 14 | * | 2155 | 87% | 2505 |
| Haiti | 190 | * | * | 11% | 1705 |
| Colombia | 195 | - | 8 | 12% | 1642 |
| Sri Lanka | - | - | - | - | 291 |
| Guyana | 6 | - | - | 2% | 264 |
| Other | 173 | * | 12 | 13% | 1403 |
| Total | 578 | * | 2176 | 35% | 7810 |

(*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.8.

Table C. **New York:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|-------------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | 1625 | 25 | - | 25% | 6542 |
| Sri Lanka | 7 | * | - | 4% | 214 |
| Colombia | 64 | - | - | 31% | 205 |
| Albania | 76 | * | - | 60% | 128 |
| Guyana | * | - | - | # | 76 |
| Other | 148 | * | 8 | 28% | 572 |
| Total | 1925 ^a | 33 | 8 | 25% | 7736 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total, ^arounded total >1920 & <1925
Based on Basic EOIR Tables 1.10.

⁴ Basic tables 1.1-7 to 1.14-7 discuss case outcome by Immigration Judge and application decision for FY 2000-2003. These tables are discussed in *Selected Statistical Analysis of Immigration Judge Rulings on Asylum Applications, FY 2000-2003*, Baier, February 2005.

⁵ EOIR determined that providing the complete data for all immigrations courts nationwide would be too large a task; hence a (non-random) sample of 14 courts was selected and provided for the Study. This report does not aim to make any inferences to other courts not part of this study.

⁶ The percentage determined by the total number of cases adjudicated in the 14 courts (the aggregate of basic EOIR tables 1.1-2 to 1.14-6) divided by the total number of cases adjudicated nationally (the aggregate of basic EOIR tables 1-2 to 1-6).

⁷ Guaynabo is not included in the summary tables because the majority of the sample would be suppressed to adhere to the confidentiality rule of five (5).

Table D. **Elizabeth and Queens** (Detention Facilities): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Sri Lanka | 207 | * | - | 56% | 370 |
| Colombia | 12 | * | - | 5% | 256 |
| China | 66 | - | - | 29% | 225 |
| Nigeria | 26 | * | - | 17% | 155 |
| Haiti | 6 | - | - | 6% | 106 |
| Other | 372 | 8 | - | 28% | 1360 |
| Total | 689 | 12 | - | 28% | 2472 |

(*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.3.

Table E. **San Diego**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Iraq | 239 | 16 | - | 66% | 389 |
| Ukraine | 17 | * | - | 13% | 150 |
| China | 8 | - | - | 8% | 101 |
| Guatemala | 6 | * | - | 12% | 57 |
| El Salvador | - | - | - | - | 47 |
| Other | 62 | 8 | 16 | 16% | 531 |
| Total | 332 | 28 | 16 | 29% | 1275 |

(*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.11.

Table F. **Krome** (Detention Facility): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|--------------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Haiti | 28 | * | - | 7% | 404 |
| Colombia | * | - | - | # | 173 |
| Guyana | * | - | - | # | 57 |
| Dominican Republic | - | - | - | - | 28 |
| Ecuador | - | - | - | - | 25 |
| Other | 13 | * | - | 7% | 206 |
| Total | 47 | * | - | 6% | 893 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

Based on Basic EOIR Tables 1.5.

Table G. **Newark:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | 77 | * | - | 28% | 283 |
| Colombia | 14 | - | - | 8% | 170 |
| Haiti | 6 | * | - | 11% | 72 |
| Sri Lanka | 8 | - | - | 15% | 54 |
| Albania | 8 | - | - | 30% | 27 |
| Other | 42 | * | 7 | 21% | 253 |
| Total | 155 | 9 | 7 | 20% | 859 |

(*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.9.

Table H. **San Francisco:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Sri Lanka | 84 | 9 | - | 37% | 254 |
| China | 62 | * | - | 47% | 134 |
| India | 32 | * | * | 51% | 67 |
| Afghanistan | 29 | * | - | 84% | 37 |
| El Salvador | - | * | * | # | 37 |
| Other | 126 | 9 | 6 | 51% | 276 |
| Total | 333 | 23 | 8 | 45% | 805 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

Based on Basic EOIR Tables 1.12.

Table I. **Los Angeles:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Sri Lanka | * | - | - | # | 147 |
| China | 49 | * | - | 40% | 128 |
| Armenia | 10 | * | - | 16% | 82 |
| Colombia | 20 | * | - | 40% | 52 |
| Cuba | * | - | 37 | 76% | 50 |
| Other | 121 | * | * | 37% | 345 |
| Total | 202 | 11 | 40 ^a | 31% | 804 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total, ^arounded total >37 & <42

Based on Basic EOIR Tables 1.7.

Table J. **Chicago**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | 17 | - | * | 12% | 151 |
| Sri Lanka | - | * | - | # | 73 |
| Ukraine | - | - | - | - | 39 |
| Albania | 12 | - | * | 34% | 38 |
| Pakistan | * | - | - | 14% | 35 |
| Other | 69 | * | 11 | 28% | 290 |
| Total | 103 | * | 13 | 19% | 626 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total
Based on Basic EOIR Tables 1.2.

Table K. **Atlanta**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | * | - | - | # | 159 |
| Sri Lanka | 8 | - | - | 10% | 79 |
| Colombia | - | - | - | - | 61 |
| Haiti | * | - | - | # | 36 |
| El Salvador | - | - | - | - | 29 |
| Other | 25 | * | * | 12% | 243 |
| Total | 37 | * | * | 7% | 607 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total
Based on Basic EOIR Tables 1.1.

Table L. **Lancaster** (Mira Loma Detention Facility): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | 19 | * | - | 18% | 119 |
| Armenia | * | - | - | # | 40 |
| Sri Lanka | 7 | * | - | 23% | 39 |
| India | * | - | - | # | 13 |
| Colombia | - | - | - | - | 12 |
| Other | 16 | * | - | 22% | 88 |
| Total | 46 | 8 | - | 17% | 311 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total
Based on Basis EOIR Tables 1.6.

Table M. **Houston**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| Colombia | 8 | - | - | 10% | 78 |
| China | * | - | - | 13% | 23 |
| Cuba | * | - | 8 | 41% | 22 |
| El Salvador | - | - | - | - | 21 |
| Sri Lanka | * | * | - | 33% | 18 |
| Other | 31 | - | - | 23% | 133 |
| Total | 48 | * | 8 | 19% | 295 |

(*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.4.

Table N. **San Pedro (Detention Facility)**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

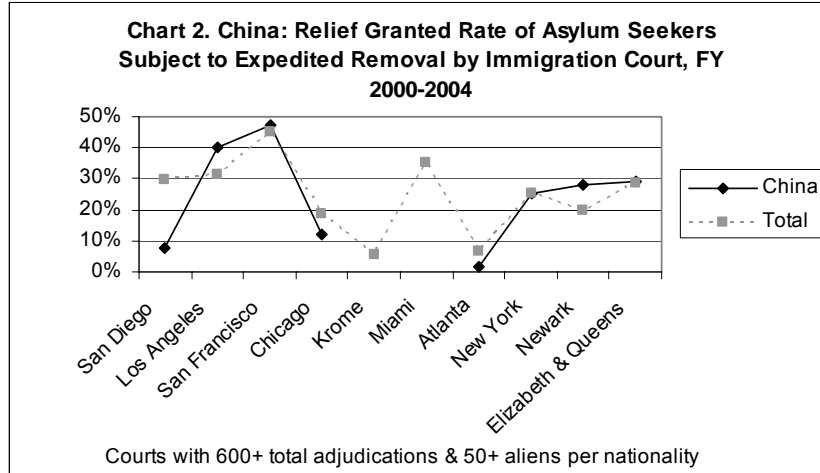
| Nationality | Asylum Granted | CAT Withholding or Deferral Granted | Adjustment Granted | Granted Relief | Total Cases Completed |
|-------------|----------------|-------------------------------------|--------------------|----------------|-----------------------|
| China | 16 | - | - | 25% | 63 |
| Armenia | 26 | - | - | 53% | 49 |
| El Salvador | - | * | - | # | 16 |
| Mexico | - | - | - | - | 11 |
| Colombia | * | - | - | # | 8 |
| Other | 20 | * | - | 35% | 65 |
| Total | 64 | * | - | 33% | 212 |

(*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

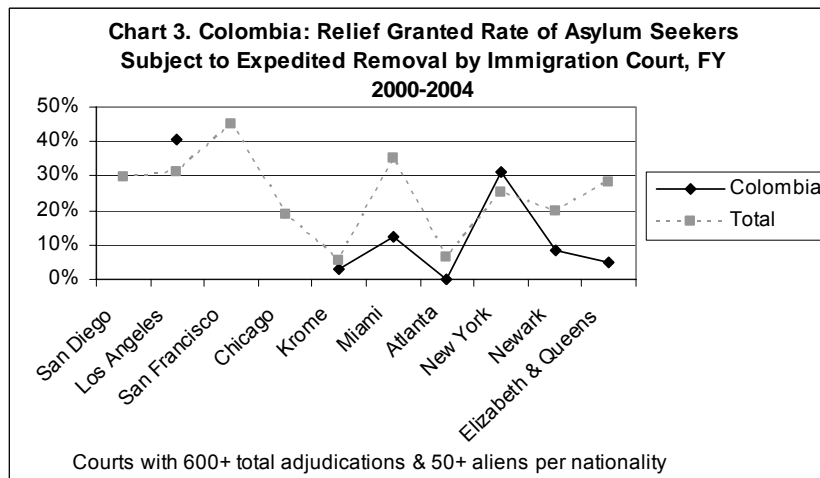
Based on Basic EOIR Tables 1.14.

Through analyzing the above text tables, three nationalities were determined to appear most frequently in these courts, China, Colombia, and Haiti. Chart 2, 3, and 4 below reveal the disparity between the rate of relief granted to asylum seekers subject to Expedited Removal by the national total and these three nationalities. Grant rates for asylum seekers from the People's Republic of China follow the respective court averages closer than Colombians or Haitians. Colombian and Haitian grant rates differ significantly from the Miami, Newark, and Elizabeth and Queens immigration court averages. Additionally, San Francisco, Miami, and New York grant rates are significantly higher than those of Krome and Atlanta.⁸

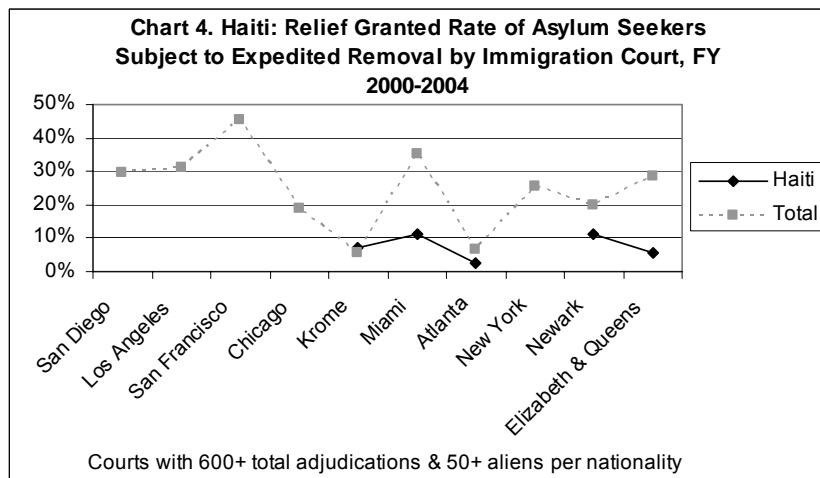
⁸Differences from city to city may be explained by different approaches by different courts, but may also be attributed to other factors. For example, a certain city may receive many members of a certain nationality, who may then move to another area and not appear for court in that city. A large number of cases denied for failure to appear would reveal a low grant rate. In contrast, a "destination city", which attracts members of certain nationalities, may have a higher grant rate attributable to a higher appearance rate. For an examination of variations among judges within the same courts See *Selected Statistical Analysis of Immigration Judge Rulings on Asylum Applications, FY 2000-2003*, Baier, Feb. 2005.



Based on Basic EOIR Tables 1.1-1.14.

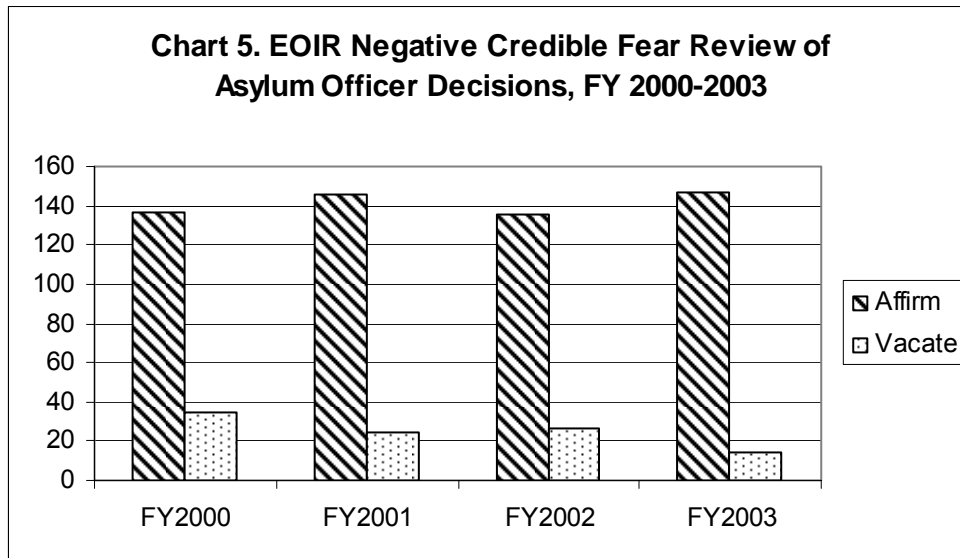


Based on Basic EOIR Tables 1.1-1.14.



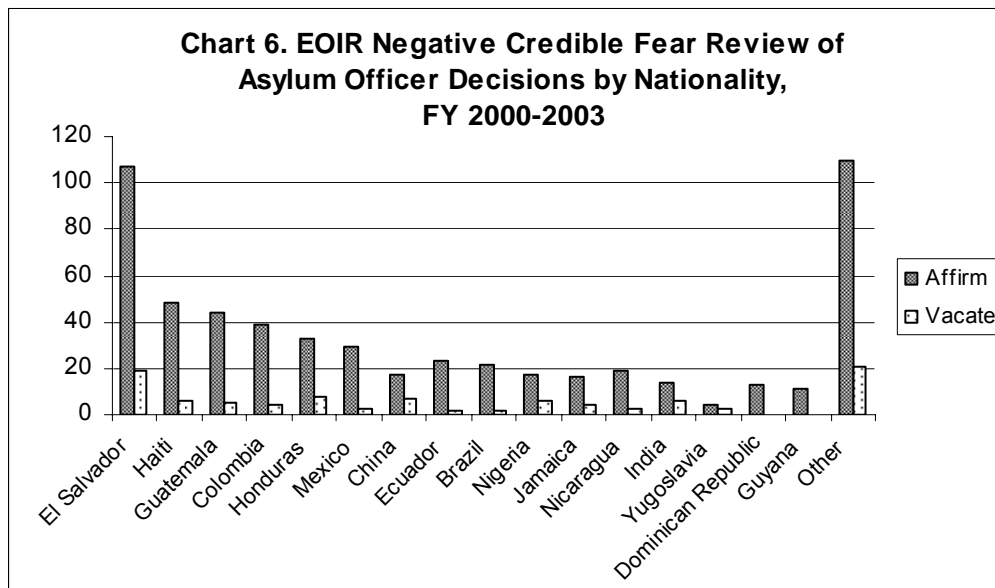
Based on Basic EOIR Tables 1.1-1.14.

Whereas basic table sets 1 and 1.1-1.14 show the outcome of immigration court asylum proceedings, the Study also analyzed the decisions of the immigration court review of negative credible fear determinations by asylum officers separated by nationality and base city, FY 2000-2003 (basic table set 2). While the vast majority of such negative credible fear determinations are affirmed by immigration judges, regardless of nationality or location, the percentage of vacated cases is not insignificant, as seen below in Chart 5.



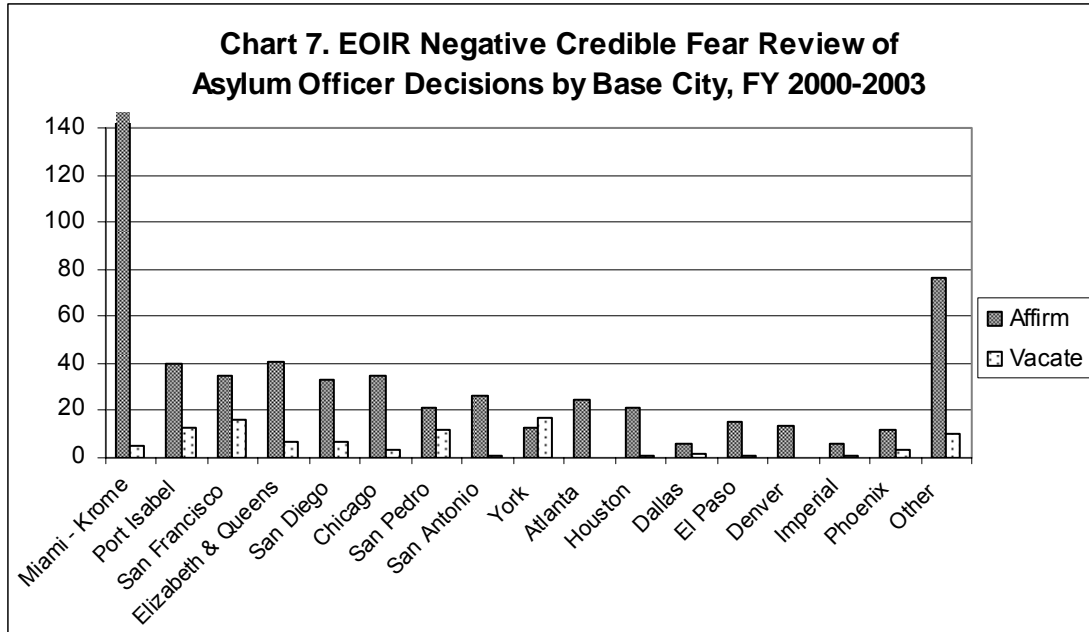
Affirmed: Immigration Judge agrees with negative credible fear determination
 Vacate: Immigration Judge overturns negative credible fear determination
 Based on Basic EOIR Tables 2.

Additionally, chart 6 shows the number of Salvadorian cases reviewed are more than double the number of cases reviewed of any other nationality.



Based on Basic EOIR Tables 2.

When examining the number of negative credible fear reviews by base city in Chart 7, Miami overshadows all other cities 3 to 1, reflecting the significantly higher number of credible fear referrals in Miami.⁹

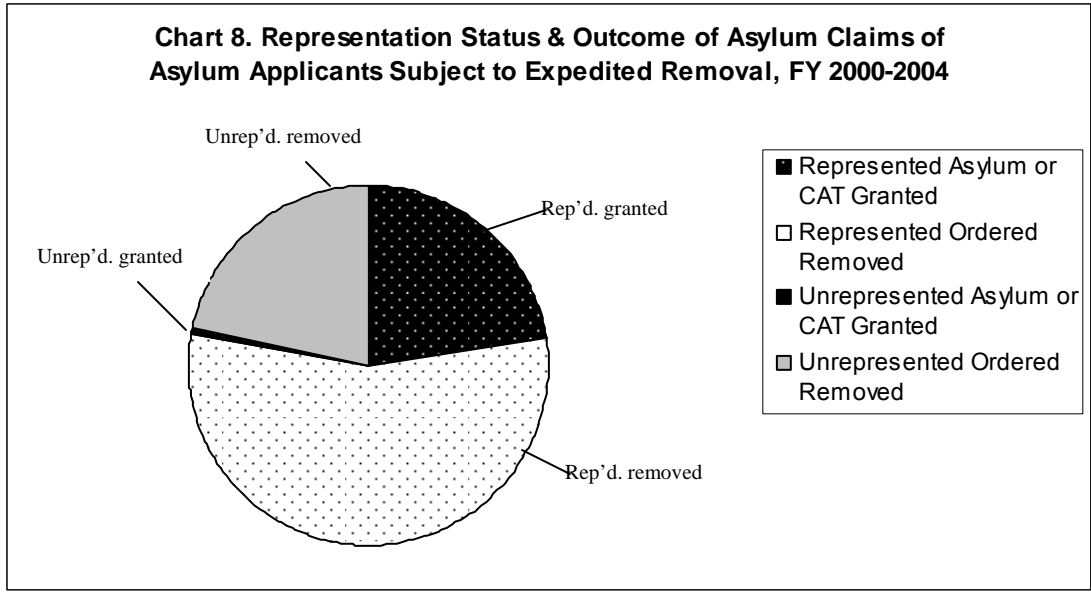


Based on Basic EOIR Tables 2.

The Study further analyzed the outcome of cases for asylum seekers subject to Expedited Removal during pre-FY 2000-2004 by adding the relationship of representation status and base city (basic table set 3). This information is summarized for FY 2000-2004 in basic table 3-1. Nearly all aliens granted asylum were represented by an attorney or a BIA accredited representative (98 percent of 5,693 total cases). Whereas when the total cases adjudicated¹⁰ are combined the percentage of represented aliens decreases (78 percent of 29,835). Chart 8 below shows that while about 25 percent of adjudicated cases concerned unrepresented aliens, this population was granted asylum or CAT relief less than 2.3 percent of the time.

⁹ See Chart 3, Credible Fear Claims Made at Top 10 Airports, *Statistical Report on Expedited Removal, Credible Fear, and Withdrawal FY 2000-2003*, Felming and Scheuren, Feb. 2005.

¹⁰ Total cases adjudicated includes asylum granted, CAT withholding or deferral granted, application for asylum or CAT relief withdrawn, ordered removed, and adjustments of status granted.



Based on Basic EOIR Table 3-1.

*Adjustments and Withdrawals not included.

Further details on representation status by base city, pre-FY 2000-2004 are provided in basic tables 3-2 to 3-13. Text tables P¹¹ and Q¹² show that the ratio of unrepresented aliens generally fared nearly as poorly in sites with low rates of legal representation as in the sites with high rates of legal representation. Only in the smallest site represented, Imperial, California, did unrepresented asylum seekers do as well or better than the national average of represented asylum seekers.

¹¹ Base cities chosen by selecting the top 15 cities with the highest percentage of represented aliens, with total adjudicated cases > 20.

¹² Base cities chosen by selecting the top 15 cities with the highest percentage of unrepresented aliens, with total adjudicated cases > 20.

Table P. Representation Status of Aliens Granted Asylum or CAT Relief by Base City with Highest Percentage of Represented Aliens, FY 2000-2004

| Base City | Rep Total Adj | Unrep Total Adj | Rep Asylum or CAT Granted | Unrep Asylum or CAT granted | Total Adjudicated |
|----------------------------|---------------|-----------------|---------------------------|-----------------------------|-------------------|
| Memphis, TN | 85% | 15% | 23% | 13% | 104 |
| Lancaster, CA | 82% | 18% | 19% | 12% | 311 |
| Hartford, CT | 83% | 17% | 25% | 12% | 149 |
| Detroit, MI | 88% | 12% | 34% | 12% | 585 |
| Bloomington (St. Paul), MN | 81% | 19% | 35% | 9% | 117 |
| San Francisco, CA | 86% | 14% | 50% | 8% | 805 |
| Mean | 86% | 14% | 31% | 5% | 2575 |
| New York City, NY | 94% | 6% | 27% | 3% | 7737 |
| Seattle, WA | 88% | 12% | 27% | 2% | 334 |
| Median | 85% | 15% | 27% | 2% | 323 |
| Average (all cases) | 78% | 22% | 25% | 2% | 29835 |
| Elizabeth, NJ | 82% | 18% | 31% | 1% | 1423 |
| Boston, MA | 81% | 19% | 26% | 1% | 539 |
| Newark, NJ | 85% | 15% | 22% | 1% | 866 |
| Honolulu, HI | 95% | 5% | 67% | - | 107 |
| Phoenix, AZ | 93% | 7% | 68% | - | 70 |
| Philadelphia, PA | 93% | 7% | 19% | - | 293 |
| Varick SPC, NY | 82% | 18% | 8% | - | 177 |

Ranked by Top 15 highest percentage of unrepresented aliens granted asylum or CAT relief (-) = 0
Based on Basic EOIR Table 3-2 to 3-12.

Table Q. Representation Status of Aliens Granted Asylum or CAT Relief by Base City with Highest Percentage of Unrepresented Aliens, FY 2000-2004

| Base City | Rep Total Adj | Unrep Total Adj | Rep Asylum or CAT Granted | Unrep Asylum or CAT granted | Total Adjudicated |
|----------------------------|---------------|-----------------|---------------------------|-----------------------------|-------------------|
| Imperial, CA | 57% | 43% | 17% | 33% | 21 |
| El Centro SPC, CA | 26% | 74% | 7% | 9% | 58 |
| El Paso SPC, TX | 58% | 42% | 30% | 8% | 92 |
| Houston SPC, TX | 57% | 43% | 25% | 6% | 162 |
| Mean | 52% | 48% | 23% | 5% | 1925 |
| Florence SPC, AZ | 44% | 56% | 41% | 5% | 72 |
| Port Isabel SPC, TX | 15% | 85% | 13% | 4% | 54 |
| New Orleans, LA | 60% | 40% | 23% | 4% | 198 |
| Orlando, FL | 62% | 38% | 35% | 4% | 353 |
| Median | 57% | 43% | 23% | 4% | 82 |
| San Antonio, TX | 38% | 62% | 15% | 4% | 87 |
| Harlingen, TX | 48% | 52% | 28% | 4% | 52 |
| East Mesa, CA | 52% | 48% | 23% | 3% | 77 |
| Average (all cases) | 78% | 22% | 25% | 2% | 29835 |
| Krome North SPC, FL | 60% | 40% | 8% | 2% | 893 |
| Atlanta, GA | 61% | 39% | 9% | 1% | 599 |
| El Paso, TX | 55% | 45% | 57% | - | 38 |
| Batavia SPC, NY | 57% | 43% | 11% | - | 47 |

Ranked by Top 15 highest percentage of unrepresented aliens granted asylum or CAT relief (-) = 0
Based on Basic EOIR Table 3-2 to 3-13.

The frequency of court decisions based on failure to appear (FTA) of asylum seekers subject to Expedited Removal, released from DHS custody, is broken down by fiscal year and nationality for FY 2000-2003 (basic table set 4). In text table R, the top 14 nationalities are ranked by highest frequency of decision based on FTA, and in text table S by the total number of FTA.¹³ This frequency is based on the total FTA in relation to the total immigration court decisions made. This however, is not a measurement of the number of aliens who failed to appear for court. Rather, it is a measurement of the number of orders issued for a failure to appear out of the total number of orders issued. In addition, according to EOIR, an alien who changes venue may be ordered removed in the original court on the basis of failure to appear, but then subsequently appear in court at the second venue. FTA statistics are not adjusted for appearances in subsequent years at a second venue. Nevertheless, the frequencies are useful to indicate nationalities with higher and lower propensities to appear for their hearings.

As is evident from text tables R and S, Sri Lankan nationals have by far the highest number of negative decisions for FTA. While only 6 percent of total immigration judge decisions for released aliens relate to Sri Lankan applicants, 28 percent of immigration judge decisions for FTA related to Sri Lankan applicants. The national total shown below, 22 percent, is significantly lower than the rate reported by GAO in 2000, 42 percent.¹⁴ This is likely due to the statistics for the Study represent a longer duration of time, more than four years, while the GAO statistics represent a 30 month snapshot. A disproportionate number of cases completed within such a snapshot are likely to be closures for FTA, since many cases that proceed to an asylum merits hearing are not decided in the same year they are commenced.

¹³ Nationalities were selected with more than 100 total FTA.

¹⁴ United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000, 6. It is interesting to note that the Department of Justice commented to GAO that the high FTA rate calculated by GAO was attributable to the relatively short time frame of the study; and that “over time more cases will be closed in which aliens will have appeared for their removal hearings, and consequently, this would result in a reduction of the failure to appear rate, to as low as 25 percent.”

Table R: Failure to Appear for Released Aliens Referred to EOIR Post Credible Fear, FY 2000-2003

| Nationality | Failures to Appear (FTA) | | | Total IJ Decisions for Released Aliens Plus Administrative Closures | FTA Decision Freq. |
|-------------------------|--------------------------|-------------------------|-----------|---|--------------------|
| | In Absentia Orders | Administrative Closures | Total FTA | | |
| Sri Lanka | 876 | 33 | 909 | 1118 | 81% |
| Dominican Republic | 64 | * | * | 82 | 79% |
| Ecuador | 120 | * | * | 156 | 79% |
| Georgia | 60 | - | 60 | 89 | 67% |
| El Salvador | 88 | 22 | 110 | 167 | 66% |
| Turkey | 105 | - | 105 | 165 | 64% |
| Brazil | 56 | - | 56 | 90 | 62% |
| Guyana | 162 | - | 162 | 263 | 62% |
| Ukraine | 71 | * | * | 123 | 60% |
| India | 73 | * | * | 160 | 47% |
| Colombia | 427 | * | * | 1284 | 34% |
| Haiti | 157 | 29 | 186 | 1591 | 12% |
| Cuba | 81 | 17 | 98 | 1144 | 9% |
| China | 432 | 26 | 458 | 6348 | 7% |
| Other | 250 | 24 | 274 | 1958 | 14% |
| Total ALL Nationalities | 3022 | 165 | 3187 | 14738 | 22% |

(*) = 5 or less, (-) = 0

Ranked highest to lowest by Top 14 nationalities with highest frequency of decision based on FTA Based on Basic EOIR Table 4-2.

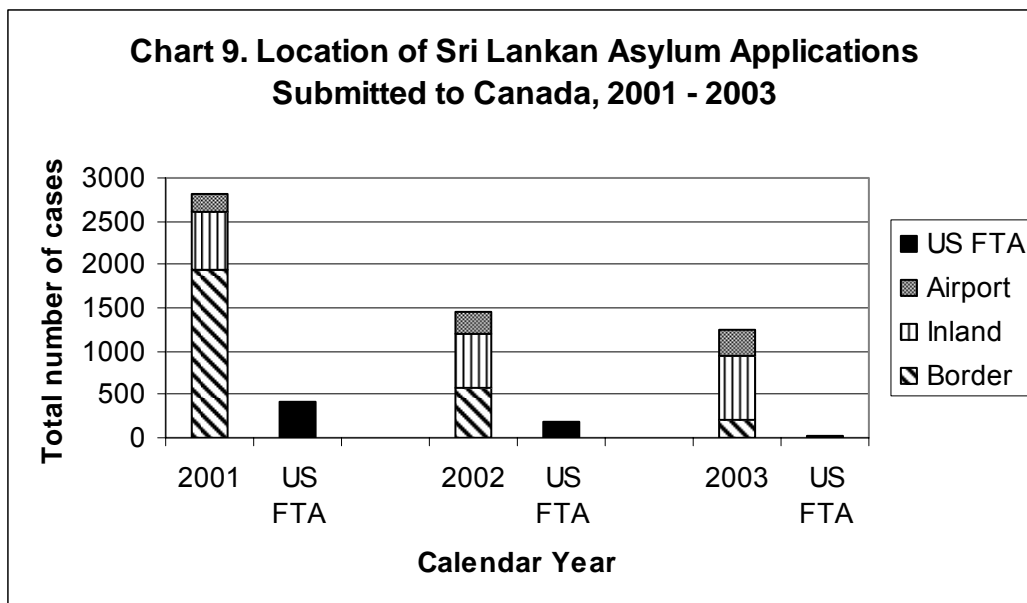
Table S: Failure to Appear for Released Aliens Referred to EOIR Post Credible Fear, FY 2000-2003

| Nationality | Failures to Appear (FTA) | | | Total IJ Decisions for Released Aliens Plus Administrative Closures | FTA Rank |
|-------------------------|--------------------------|-------------------------|-----------|---|----------|
| | In Absentia Orders | Administrative Closures | Total FTA | | |
| Sri Lanka | 876 | 33 | 909 | 1118 | 1 |
| China | 432 | 26 | 458 | 6348 | 2 |
| Colombia | 427 | * | * | 1284 | 3 |
| Haiti | 157 | 29 | 186 | 1591 | 4 |
| Guyana | 162 | - | 162 | 263 | 5 |
| Ecuador | 120 | * | * | 156 | 6 |
| El Salvador | 88 | 22 | 110 | 167 | 7 |
| Turkey | 105 | - | 105 | 165 | 8 |
| Cuba | 81 | 17 | 98 | 1144 | 9 |
| India | 73 | * | * | 160 | 10 |
| Ukraine | 71 | * | * | 123 | 11 |
| Dominican Republic | 64 | * | * | 82 | 12 |
| Georgia | 60 | - | 60 | 89 | 13 |
| Brazil | 56 | - | 56 | 90 | 14 |
| Other | 250 | 24 | 274 | 1958 | |
| Total ALL Nationalities | 3022 | 165 | 3187 | 14738 | |

(*) = 5 or less, (-) = 0

Ranked highest to lowest by Top 14 nationalities with highest total number of decisions based on FTA Based on Basic EOIR Table 4-2.

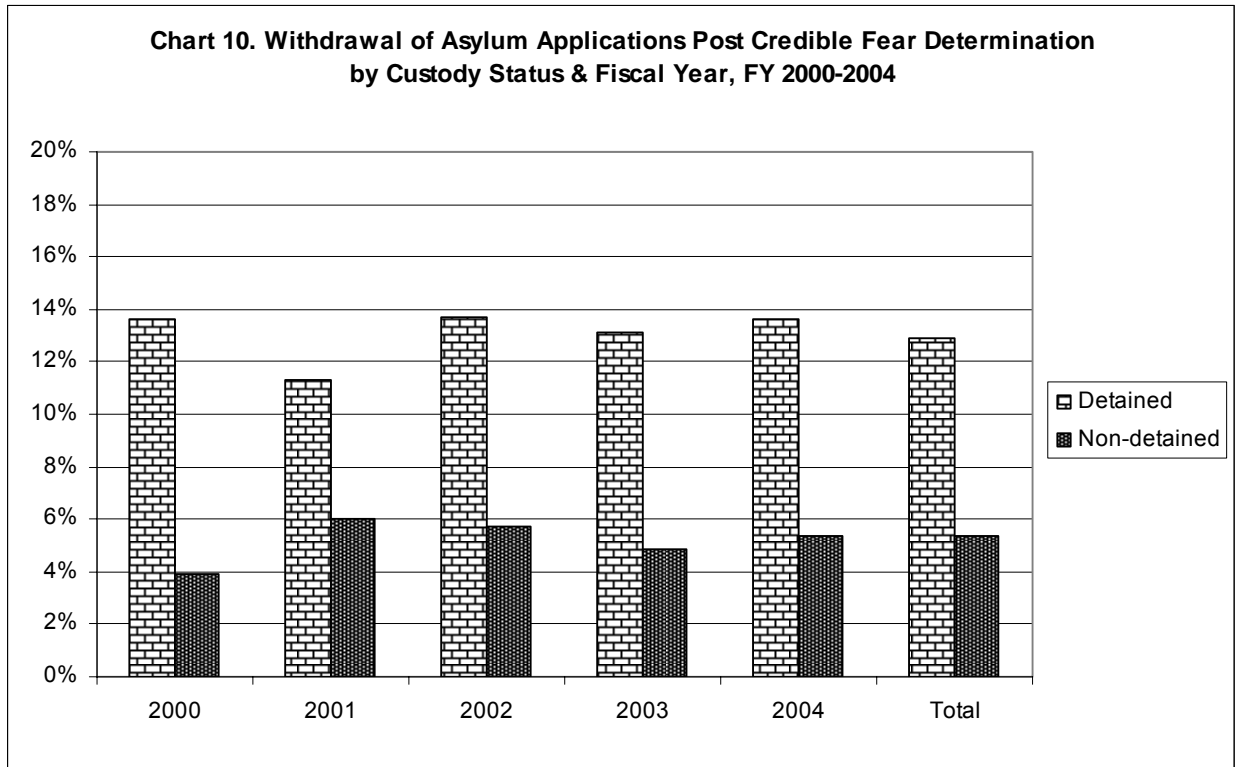
A variety of sources reported that the high failure to appear rate among Sri Lankans is attributable to their desire to use the U.S. as a transit country to apply for asylum in Canada, where there is a strong Sri Lankan Community. Consequently, the Study obtained statistics from the United Nations High Commission on Refugees (UNHCR) Canada office in Ottawa (basic table 4-3), to examine whether there is a correlation between the Sri Lankans who fail to appear for asylum proceedings in the U.S. and Sri Lankans who apply for asylum in Canada. Indeed, the number of Sri Lankan asylum seekers in Canada applying at the boarder and inland is consistently higher than the number of Sri Lankan FTAs in the U.S. Also note that in preparation for the implementation of the U.S.-Canada Safe Third Country Agreement, in January 2003 Canada made it less attractive for aliens to apply for asylum at the border.¹⁵ In addition to the overall decrease in applicants, there was an increase in the number of Sri Lankan asylum applicants applying in the interior of Canada while the number of Sri Lankan asylum applicants applying at the border decreased.



Based on Basic Table 4-3.

The Study also examined detention and asylum withdrawal rates over pre-FY 2000-2004 (basic table set 5). Chart 10 below shows withdrawal rates are significantly higher for detained aliens and there is no significant change of withdrawal rates over time.

¹⁵ Specifically, on January 23, 2003 Citizenship and Immigration Canada (CIC) directed that, after scheduling asylum claimants for asylum interviews at land border posts, Canadian immigration officials would no longer seek assurances from the United States that the asylum seeker would not be detained while waiting in the United States for his or her Canadian asylum interview. U.S. Committee for Refugees, “Canada” in *World Refugee Survey 2004*, (2004). This appeared to be a step in preparation for the U.S.-Canada Safe Third Country Agreement, officially known as the “Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.”



Note: Detained n=4614, Non-detained n=15575, FY 2000 n=849, FY 2001 n=3965, FY 2002 n=6172, FY 2003 n=6561, FY 2004 n=2642, Total n=20249
Based on Basic EOIR Tables 5.

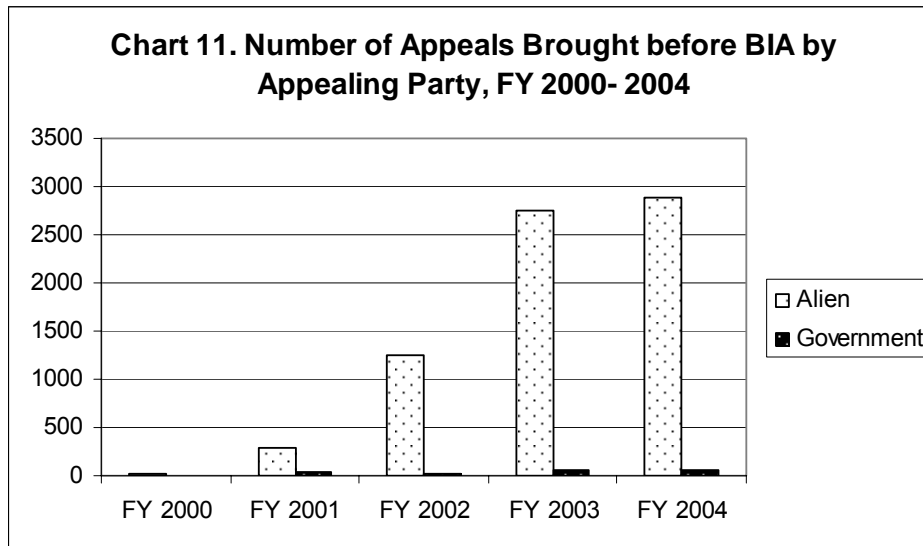
The appealing party and outcome of asylum cases of aliens subject to Expedited Removal before the Board of Immigration Appeals (BIA) during pre-FY 2000-2004 is illustrated in basic table 6. When an alien or DHS disagrees with an immigration judge’s decision in an asylum case, either party may appeal the decision to the BIA. The BIA is not a separate appellate entity, but is the administrative appellate authority located within EOIR, the same organization which administers the immigration judges.¹⁶

Appeals by the alien made up 98 percent of the appeals decided from FY 2002 – 2004. The high percentage of appeals by the alien does not represent the actual occurrence of denials of asylum claims, which is lower, 72 percent. Rather, it shows that many approved cases are not appealed by the government. Chart 11 further shows a significant increase in the number of asylum cases subject to Expedited Removal brought before the BIA from FY 2002 to 2003. In FY 2004, the BIA received and adjudicated 50 percent more cases than in 2001.¹⁷ As shown in Chart 12, while 23 percent of appeals brought by aliens referred for credible fear were sustained

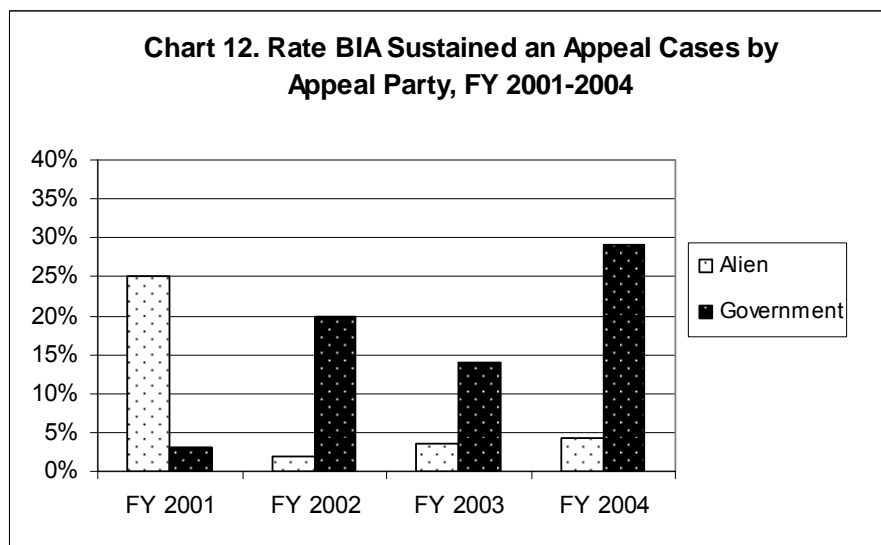
¹⁶ According to EOIR, while the Board “is a component of EOIR, the Board nevertheless is comprised of independent adjudicators. No one in EOIR, not even the Chairman of the Board, may influence the Board’s decision making authority. The Board’s decisions are governed only by law or regulation, and Board members are charged to exercise their independent judgment and discretion.” See 8 C.F.R. 1003.1(d) (2004).

¹⁷ Figures provided by EOIR, January 12, 2005. In 2001, the Board received 27,900 new appeals and adjudicated 31,800. By 2004 the Board received 41,300 new cases and adjudicated 48,700. Letter to Mark Hetfield, USCIRF, from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR), January 12, 2005.

in 2001, in the last three years the BIA has sustained on average 3 percent of appeals brought by such aliens.¹⁸ The sustain rate for the government, with a much smaller number of appeals filed, is significantly higher, averaging 19 percent in the last three years. Appeals in which both the alien and the government filed an appeal or the appeal was certified to the BIA constituted less than a fraction of 1 percent of all appeals heard, and are not included in the summary table.¹⁹



Based on EOIR Table 6.



Note: Alien n=7171, Government n=160, FY 2001 n=331, FY 2002 n=1280, FY 2003 n=2813, FY 2004 n=2951

Based on Basic EOIR Table 6.

¹⁸ In a Memorandum written to Board Members on March 15, 2002, BIA chairman Lori Scialabba authorized the use of single Board Member affirmance without opinion, for asylum, withholding of removal, and CAT cases.

¹⁹ It is important to note that EOIR does not maintain statistics of whether the BIA decision results in the removal or relief for the alien, just whether the appeal was sustained or dismissed. An alien's appeal does not necessarily mean the alien was denied relief by the Immigration Judge. For example the alien may be appealing a decision in which (s)he was denied asylum but granted protection against removal under the Convention Against Torture.

Table T: Outcome of Appeals for Asylum Seekers Subject to Expedited Removal by Alien Appeal, FY 2001-2004

| FY Appeal Decided | Alien Appeal | | | | Total Cases Adjudicated |
|-------------------|--------------|---------|--------|-------|-------------------------|
| | Sustain | Dismiss | Remand | Other | |
| FY 2001 | 23% | 66% | - | 16% | 291 |
| FY 2002 | 2% | 93% | - | 5% | 1251 |
| FY 2003 | 3% | 94% | - | 4% | 2750 |
| FY 2004 | 4% | 93% | 1% | 4% | 2879 |

(-) = 0

Based on Basic EOIR Table 6.

Table U: Outcome of Appeals for Asylum Seekers Subject to Expedited Removal by Government Appeal, FY 2001-2004

| FY Appeal Decided | Government Appeal | | | | Total Cases Adjudicated |
|-------------------|-------------------|---------|--------|-------|-------------------------|
| | Sustain | Dismiss | Remand | Other | |
| FY 2001 | 2% | 79% | - | 18% | 38 |
| FY 2002 | 19% | 45% | - | 35% | 20 |
| FY 2003 | 12% | 55% | - | 31% | 51 |
| FY 2004 | 27% | 55% | 2% | 14% | 51 |

(-) = 0

Based on Basic EOIR Table 6.

The Study analyzed national statistics on the outcome of affirmative asylum cases for FY 2000-2003 (basic table 7). Affirmative asylum applicants are not, by definition, Expedited Removal cases. Rather, they are applications filed by asylum seekers who have already entered the U.S. Asylum applicants in immigration court face a DHS attorney who usually argues against approving the application for asylum. In contrast, affirmative asylum seekers are interviewed in a non-adversarial hearing by an asylum officer. The asylum officer will either approve the application or refer it to an immigration judge for further consideration in an adversarial removal proceeding.

Shortly after the implementation of Expedited Removal, the Department of Justice considered implementing a proposal to allow asylum officers to approve asylum for eligible applicants at the time of the credible fear determination, also a non-adversarial interview. Asylum seekers for whom asylum officers found a credible fear who had not yet demonstrated eligibility for asylum would be referred to an immigration judge for an adversarial asylum proceeding. One concern with this proposal was that an asylum officer's decision to refer, rather than approve, an application from an asylum seeker subject to Expedited Removal might prejudice the immigration judge. The Study requested the statistics in text table V to determine the extent to which immigration judges approve affirmative cases which are referred, but not approved, by asylum officers.

Immigration judges approve asylum for approximately 20 percent of affirmative asylum applicants referred to them, approximately the same approval rate as asylum seekers referred to immigration judges after a positive credible fear determination, 19 percent, as illustrated in basic

table set 1.²⁰ These statistics do not demonstrate that immigration judges are prejudiced by an asylum officers decision to refer, rather than approve, an affirmative asylum application.

Table V: Affirmative Asylum EOIR Case Completions by Disposition, FY 2000 - 2003

| FY | Grant | % Grant | Deny | % Deny | Abandon | % Abandon | Withdraw | % Withdraw | Other** | % Other | Total |
|-------|--------|---------|--------|--------|---------|-----------|----------|------------|---------|---------|---------|
| 2000 | 6,701 | 18% | 10,570 | 28% | 3,624 | 10% | 6,883 | 18% | 9,960 | 26% | 37,738 |
| 2001 | 6,781 | 21% | 8,558 | 27% | 3,390 | 11% | 4,890 | 15% | 8,511 | 26% | 32,130 |
| 2002 | 7,665 | 20% | 9,904 | 26% | 3,924 | 10% | 6,741 | 18% | 9,706 | 26% | 37,940 |
| 2003 | 9,910 | 20% | 12,794 | 26% | 3,926 | 8% | 12,392 | 25% | 10,146 | 21% | 49,168 |
| Total | 31,057 | 20% | 41,826 | 27% | 14,864 | 9% | 30,906 | 20% | 38,323 | 24% | 156,976 |

**Includes Administrative Closures and Asylum Applications Not Acted On Based on Basic EOIR Table 7.

SOURCES AND LIMITATIONS

Unlike the Department of Homeland Security (DHS), the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has one statistical reporting system. However, no integrated statistical reporting system currently operates between DHS and DOJ. To create the universe of files used to create the basic tables DHS provided EOIR with a file of 40,694 credible fear receipts for the period October 1, 1999 through September 30, 2003. EOIR manipulated the file to eliminate duplicate records, and was left with a file of 40,206 records. Of these, EOIR was able to match 36,799 in its ANSIR system (91.5 percent).

Although the source data from DHS was based on receipts, the EOIR data reflects the completion of each EOIR case. Fiscal years reflected in the basic tables indicate the year EOIR completed the case. Due to this, the number of cases for FY 2000 is smaller than following years because many cases received in FY 2000 were completed in subsequent years. Additionally, FY 2004 was not complete at the time of EOIR reporting, thus the relevant FY 2004 computations may not be complete. Even though the DHS data file covered the period FY 2000 - FY 2003, basic tables show some pre-2000 completions because of anomalies in matching the file. The charts in this report include FY 2000-2004, while the complete basic table set includes tables initiating from pre FY 2000.

The basic tables that discuss the outcome of cases have minor discrepancies where a few cases that did not fit into the designed categories.²¹ Also the categories created are not mutually exclusive; the same case may be counted in more than one category.²² For this reason some of these cases may be counted more than once in such basic tables.

²⁰ Text table V represents cases referred to EOIR from the DHS Asylum Office. The category *other* includes administrative closures and asylum application not acted on.

²¹ Cases granted some other form of relief.

²² For example, an alien who withdraws an application for relief may subsequently file for another form of relief, or may be ordered removed by the Immigration Judge. Another possible example is an alien was ordered removed for a failure to appear in one court, then subject to another order in another court in a subsequent year.

To calculate the withdrawals of asylum application by detention status EOIR matched the above DHS records to its ANSIR system and found that 1,950 aliens withdrew their asylum application or their application for relief under CAT (basic table set 5). Some aliens actually withdrew applications for both types of relief, therefore are counted twice.

To create statistics for the Board of Immigration Appeal (BIA) (basic table 6) EOIR took the file of 36,799 ANSIR records, and matched it to the Board of Immigration Appeals Processing System. Of the cases identified in the ANSIR system, 10,399 had filed appeals, of which 7,419 had been decided by the BIA as of the date of the report.

With the expert assistance of the EOIR staff, we were in able to display comparable information on the adjudication of aliens subject to Expedited Removal in a way that is useful for the Study's purposes.

Confidentiality requirements restrict the public versions of tables representing nationality to report only cell counts of six (6) or more. All nonzero cells of less than 6 are asterisked (*). Zero cells have been identified by a dash (-). Percentages representing less than five (5) divided by the total are represented by a pound (#). Summary totals in the tables have also been examined to be sure that indirect disclosure (e.g., disclosure by subtraction) did not occur.

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4. Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, *Statistical Policy Working Paper 22 - Report on Statistical Disclosure Limitation Methodology*, May 1994.
5. United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000.
6. U.S. Committee on Refugees, "Canada" *World Refugee Survey 2004*, 2004.

BASIC TABLE SETS

The EOIR Table Sets are over 200 pages in length, therefore not included with this report. The Table Sets are available at www.uscirf.gov.

The Table Sets are summarized in the above report.