



U.S. Department of Justice
Executive Office for Immigration Review
Office of Management Programs

Office of Legislative and Public Affairs

5107 Leesburg Pike, Suite 2653
Falls Church, Virginia 22041

September 21, 2004

By e-mail to:

Stuart Drown
City Editor
The Sacramento Bee
P.O. Box 15779
Sacramento, California 95852

Dear Mr. Drown:

Your recent article ("Immigration Appeals Swamp Federal Courts," Sept. 5) unfortunately failed to accurately describe our agency's successful implementation of an initiative that is reducing the pending caseload of the Board of Immigration Appeals (BIA). The selective use of information, including discredited analysis from another newspaper, has created an erroneous conclusion that streamlining of the BIA's procedures are shortchanging those who appeal their cases, which is simply not accurate.

Streamlining of the BIA's procedures began in 1999 under the former Attorney General and was expanded and refined by Attorney General John Ashcroft in 2002. Since then, the pending caseload has been steadily reduced from 56,000 to approximately 32,000 at present, and greatly reduces the time that a respondent must wait for a decision, including those who merit relief from deportation.

The regulation expanded the existing streamlined procedures to resolve more cases with single Board Member decisions, which can be quite detailed. They are not the same as summary affirmances (or affirmances without opinion (AWO) as they are also known), a distinction not made in the article. The fact is that only about one-third of the BIA's decisions fall into the category of AWO. The vast majority of other decisions are single Member decisions that are not AWOs, with the balance involving three-Member panels for specific types of cases spelled out in the BIA restructuring regulation.

I should note that Federal courts have rejected every challenge brought against the restructuring regulation. Each circuit court has issued a decision holding that the regulation is permissible and does not violate due process. In fact, most, if not all, of these courts employ similar summary affirmance mechanisms in the interest of efficient, yet effective jurisprudence.

The criticism raised in the article that the restructuring regulation has shifted the Board's case load to the Federal courts is misplaced. It is true that the number of appeals from Board decisions has increased dramatically, but less than 10 percent of that rise is due to the increased number of the Board's adjudications; the rest is due to the rate of appeal, which has jumped from 5 percent to almost 25 percent. As a minority of Board decisions (and appeals from those decisions) are AWOs, it is also not fair to say that this is the cause of the increase in the rate of appeal since most aliens are seeking

review of non-AWO decisions. Furthermore, in those cases that are summarily affirmed, the immigration judge's decision is clearly designated as the final agency decision on the merits of the case.

Furthermore, there is no evidence that the Federal courts' reversal/remand rates of BIA decisions have changed significantly since the new procedures were instituted. This indicates that the quality of the BIA's jurisprudence has remained consistent and unaffected by the use of AWOs and single Board Member review. Finally, we note that only aliens, and not the Government, may appeal decisions; Federal courts never see cases where an alien is granted relief.

Much of this information was available on our Web site and provided to your reporter while your article was under development. Unfortunately, it was not included and resulted in a misleading article that was a disservice to your readers, particularly those who have a personal interest in the integrity of the appeals process. The BIA Members and attorney staff are dedicated professionals who take their jobs very seriously and recognize the personal implications of the work of the BIA, which is often the last recourse before an individual faces removal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry Levine', with a long horizontal flourish extending to the right.

Larry Levine
Counsel for Legislative
and Public Affairs

Copy to:
Scott Lebar
Assistant Managing Editor, Metro