A Rare Examination of Typically Unobservable Factors in US Asylum Decisions

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The United States has obligations under international law and US statutory law to adhere to the legal principle of nonrefoulement to consider asylum claims. Under these laws, a person who qualifies as a refugee may be eligible for asylum and may avoid being deported to his or her country of origin if the applicant meets specific legal requirements. Because of congressional limitations to asylum case information, few studies have used individual level data and none have been able to include evidentiary factors or applicant characteristics. Using an original database of asylum applicants from a Dallas, Texas based NGO we examine individual, case and country factors to explore factors that affect the likelihood of receiving asylum in the immigration system in 1998–2005.

Keywords: asylum determination, US immigration courts, availability of socio-demographic data

Introduction

The United States has obligations under international law (Article 33 of the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol) and US statutory law (the Refugee Act of 1980) to adhere to the legal principle of nonrefoulement to consider asylum claims and not to force an alien to return to a country where his or her life or freedom would be threatened (189 U.N.T.S. 137 (Apr. 22, 1954); 606 U.N.T.S. 267 (Jan. 21, 1967); § 101 (a)(42) of INA; 8 USC. § 1101). Under these laws, a person who qualifies as a refugee may be eligible for asylum if the applicant meets specific legal requirements. Both law professors and political scientists (e.g., Gibney 1988, 2002; Ramji-Nogales et al. 2007; Rosenblum and Salehyan 2004; Welch and Schuster 2005) have increasingly turned their attention to asylum outcomes, particularly as immigration issues have come to the forefront in the post-Cold War and post-September 11 policy arenas, under circumstances that have not been particularly friendly toward immigrants.
The asylum literature has demonstrated huge variations in US immigration courts grant rates that appear to depend more upon the particular deciding judge or the geographical location of courts than on the validity of the asylum seeker claims (see Ramji-Nogales et al. 2007). Indeed, the US Commission on International Religious Freedom (CIRF) concludes that ‘the outcome of the asylum seeker’s case also seems to depend largely on chance; namely, the IJ [immigration judge] who happens to be assigned to hear the case’ (Annual Report 2008: 115).

Because of congressional restrictions to asylum case information, individual level immigration decision data is very rare (Neumayer 2005: 50), and therefore, only a few studies in the literature, to our knowledge, have used individual level data and none have been able to include evidentiary factors or applicant characteristics. The only asylum data available to the public is the outcome of the case, relevant dates, the country of origin, and the judge name or non-identifying asylum officer code. Congress has passed a mandate that allows the US Commission on International Religious Freedom to have exclusive but very restricted and controlled access to religious identification. The troublesome empirical findings, coupled with the limited access to asylum case information, have led us to seek an alternative, and in many ways more appropriate, source of case data. Specifically, we are able to examine a rich variety of factors related to asylum grants for asylum seekers represented by a Dallas NGO, Human Rights Initiative of North Texas (HRI), for the period 1998–2005. The small number of cases in our study (81) and the selection bias of the sample (HRI only takes on cases deemed to have a good prospect of success) means that our findings are suggestive only. Our analysis of this NGO’s experience uncovers surprising findings that beg replication. Doing so, however, would require greater access to the US asylum data than is currently allowed by law, or gaining access to the archives of other NGOs, both of which represent rather significant hurdles for scholars studying asylum outcomes. Consequently we have taken the option of publishing these findings in the form of a research note, to draw attention to the need for more wide-ranging analysis of this kind.

**Increasing Asylum Restrictions**

The Refugee Act of 1980 codified into US law the international definition of a refugee and instructed the US Attorney General to establish uniform procedures for the treatment of asylum claims. While the expectation of immigration lawyers, human rights activists and asylum seekers might be that such codification and related regulatory procedures would make individual rights claims and presentation of credible testimony or evidence the paramount determinants in US asylum decisions, a growing body of empirical evidence suggests that asylum outcomes, at least in the aggregate, have been weighted more heavily by foreign policy considerations than these normative concerns (Gibney 1988). Clearly geo-political concerns have
influenced US asylum policy and decisions throughout the 1980s, with count-
less persons fleeing repressive but pro-US countries, such as Guatemala and 
El Salvador, refused asylum.

Indeed Rosenblum and Salehyan (2004) found that during the Cold War 
applicants from communist countries were more likely to receive asylum 
grants but not after its end. They also found that during the Cold War 
human rights practices in the countries of origin did not make a difference 
in asylum rates, although they did seem to matter after the Cold War ended. 
In addition, they found that US domestic interests influence grant rates, 
demonstrating that the presence of US trade interests decreased asylum 
rates, as did being from a country that is one of the top ten sources of illegal 
immigration in the United States. US interests also seem to be implicated in 
studies which have found that the general social and economic conditions of 
the applicants’ countries of origins influence grants rather than or more than 
human rights conditions do (Hassan 2000: 190; Gibney 2004: 132). Thus, 
those applicants who are perceived to be economic migrants or opportunists 
appear to be more likely to be rejected; Gibney (2004) notes that refugees 
from Haiti, as well as others, have been rejected seemingly because they 
are considered economic migrants or opportunists (156, 157). As Davergne 
points out

the most reviled of asylum seekers of the global era is ‘economic refugee,’ under 
suspicion of fleeing poverty and poor prospects in search of a ‘better life’ rather 
than fleeing because of the fear of persecution (2008: 65).

Pressures to change US asylum laws have grown as the profile of the 
typical asylum seeker has changed. Since 1990 the US government has 
taken more deterrent and preventative actions to discourage asylum appli-
cants, such as the promulgation of the Illegal Immigration Reform and 
era of ‘jet age asylum seekers’ as one of crushing backlogs of hundreds of 
thousands of cases, suspected economic migrants, and cash strapped bureau-
cracies. Rosenblum and Salehyan (2004: 680) note continued concern over 
economic migrants or opportunists masquerading as asylum seekers (see also 
extent of the 1996 US reforms, which include: a one year time limit, expedited 
removal of ineligible applicants, ineligibility of convicted criminals or danger-
ous or previously settled people, limits on review, robust enforcement of safe 
third-country principles, and the denial of a work permit during the asylum 
proceedings. More far-reaching, as Barnett notes, the 1996 reforms allow 
asylum applicants who cannot establish ‘credible fear’ in their initial interview 
with an asylum officer to be deported under expedited removal proceedings 
without a right to judicial appeal (2002: 154–155). After September 11, 2001, 
additional restrictions were placed on the asylum process in the United 
States; Kerwin (2005) reports that asylum seekers have been prosecuted for
documents fraud and have faced more stringent safe third country requirements. They have also faced the tougher restrictions under the Real ID Act that

requires asylum seekers to demonstrate that their race, religion, nationality, membership in a social group, or political opinion represents a ‘central reason’ for the persecution they suffered or fear (2005: 756–757).

In addition, Welch and Schuster posit that the detention of 15,300 asylum seekers at the border as a part of the Department of Homeland Security’s Operation Liberty Shield between September 11th and December 2003 may be due to the fact they came from countries where Al Qaeda was suspected of operating (2005: 404). These increased restrictions coupled with the troubling empirical findings concerning asylum grants and grant rates reinforce the need to empirically examine a richer set of variables that can capture more fully the true set of factors influencing US asylum decisions. Below we examine briefly the current status of these empirical studies.

Studies of Asylum Patterns and Outcomes

A growing body of empirical analysis has sought to examine expectations about asylum grants. The majority of these studies typically have had to rely on aggregate country level data, instead of being able to examine individual level case data. Several recent studies examine systematically the fate of asylum seekers in the United States and Europe analysing aggregate national data. Rosenblum and Salehyan examine the success of asylum seekers by country of origin from 1983 to 1998, measured by the ‘proportion of asylum applicants approved, by nationality and year’ (2004: 685). They test whether national interests or normative (legal) commitments matter most in aggregate US asylum decisions and find that several country of origin attributes increase the odds of being granted asylum: poor human rights conditions, an authoritarian regime, sanctions against the regime, and communist regime. Other variables, such as being a democratic regime, a recipient of US military aid, or a trading partner of the US decrease the probability of receiving asylum. However, their analysis does not include individual applicant or judge specific variables. In general, they find that despite the belated regulations in 1990 that

explicitly prohibited foreign policy considerations from influencing asylum decisions, state interests such as instrumental state security, diplomatic and economic concerns do continue to influence asylum decisions (2004: 685, 693).

And indeed, national interests seem to matter more than normative concerns such as the humanitarian needs of applicants.

Rottman et al. (2007) examine grant rates of US asylum officers and immigration judges from 1999–2004. They too find evidence of the influence
of humanitarian concerns as well as strong connections to US international economic and strategic interests, along with domestic policy interests. While they find that human rights conditions are only marginally significant in judges’ rates, fleeing an autocratic regime does increase the odds of a grant of asylum. On the other hand, they find that asylum seekers from countries with economic trade with the US or from a country that is in the top ten set of country sources of illegal immigration are less likely to be granted asylum. They also find diminished probability of a grant for asylum seekers from Spanish-speaking and Arabic-speaking countries.

Only a few empirical asylum studies examine individual level data. Ramji-Nogales et al. (2007) find wildly divergent grant rates by judge or particular asylum officer. They find that judge’s gender, the judge’s prior work experience (particularly prior INS experience), and legal representation strongly influence asylum outcomes. And while data restrictions do not allow these scholars to control for individual applicant and case details, the mere evidence of these associations suggests that considerations beyond the worthiness of the evidentiary claims are in play. Holtzer et al. (2000) examine pools of asylum applicants to Switzerland that share similar socio-demographic backgrounds to see if they receive similar results in different cantons, taking into account linguistic affiliation, residents’ views of asylum seekers, and the concentration of foreigners in particular cantons. They expect and find that persons with a profile similar to that of a perceived economic migrant (i.e. young, male, and unmarried) are indeed less successful in obtaining asylum (2000: 260, 269). Although both of these studies are groundbreaking for the depth of their analysis and for the use of individual level data or characteristics of the judge, neither are able to include evidentiary factors in their analyses.

While some legal scholars and human rights activists might expect that human rights conditions and evidence of credible fear of persecution would be the most important factors in the determination of whether to prevent a particular asylum seeker from being returned to a situation that would threaten their life or physical integrity, these empirical studies suggest that outcomes are more likely to be based on economic and security concerns of the state than the merit of the claim. Again, our unique data set allows us a rare opportunity to explore further these competing expectations in the US context.

Descriptive Analysis

We have been granted access by the Human Rights Initiative of North Texas (HRI) to the complete set of cases in which their asylum seeking clients have received final decisions in 1998–2005. HRI is an organization based in Dallas, Texas and is the only NGO in the area that provides representation to asylum seekers without charge. Its mission is to ‘promote international human rights through local service to refugees and immigrants who have
suffered human rights abuses.’ Through 2005 they have 81 cases with an adjudicated outcome (20 per cent denied asylum, 76 per cent granted asylum, 4 per cent withholding of removal). The dataset we have created from these cases is rich in socioeconomic and demographic details in regard to each individual applicant and includes descriptions of the available evidence. In addition, we have added country of origin data, which we expect may be linked to the credibility of the applicant’s claim or may serve as indications to the adjudicator as to whether the asylum seeker’s claims are legitimate or bogus.

HRI applicants, in general, have a much higher success rate than other applicants in the Dallas and national immigration courts. Table 1 presents HRI, Dallas, and national grant rates and numbers of decisions. After September 11, there does seem to be a decrease in the success rate of applicants in both Dallas cases generally and in the HRI cases, although nationally, grant rates remain stable. Some consideration must be taken in generalizing the results from the HRI dataset. Because all HRI applicants are represented by attorneys, and the HRI staff identify, and select to represent, those applicants who they consider are the most worthy or credible, there is only a 20 per cent denial rate for HRI’s clients, which limits the variation in outcome and may also create a selection bias. We do not have information about potential clients that HRI interviewed and declined to assist in the asylum process. Nonetheless, we believe our data are a valuable and richly detailed source, particularly given the extreme Congressional limitations on access to asylum data.

Table 2 presents the success rate of HRI applicants by type of legal representation. Since HRI relies heavily on pro-bono legal representation and conducts a yearly pro-bono training programme, we examine success rate by type of representation. Cases with in-house representation had a slightly higher success rate than those with pro-bono representation. Table 2 also presents the level of freedom in the applicant’s country of origin; those from countries which Freedom House rated the least free are

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**Table 1**

<table>
<thead>
<tr>
<th>Asylum Grant Rates and Number of Decisions by Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>HRI grant rate</td>
<td>100%</td>
<td>100%</td>
<td>92%</td>
<td>81%</td>
<td>75%</td>
<td>75%</td>
<td>67%</td>
<td>100%</td>
</tr>
<tr>
<td>HRI decisions</td>
<td>1</td>
<td>9</td>
<td>12</td>
<td>21</td>
<td>8</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Dallas grant rate</td>
<td>45%</td>
<td>47%</td>
<td>38%</td>
<td>34%</td>
<td>33%</td>
<td>22%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dallas decisions</td>
<td>286</td>
<td>315</td>
<td>417</td>
<td>517</td>
<td>347</td>
<td>229</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National grant rate</td>
<td>36%</td>
<td>40%</td>
<td>37%</td>
<td>37%</td>
<td>38%</td>
<td>38%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National decisions</td>
<td>25,186</td>
<td>24,760</td>
<td>29,303</td>
<td>35,775</td>
<td>33,800</td>
<td>30,903</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: HRI and numerous EOIR Statistical Yearbooks*
more likely to be granted asylum than those rated only partly free. As Gibney
notes, there is no denying that the ‘overwhelming majority of refugees in the
world has been from countries experiencing gross levels of human rights
abuses’ (2002: 18). However, the mere presence of human rights abuse does
not necessarily translate into a bona fide asylum claim; the applicant must
show an individualized fear that is ‘something more’, which few are able to

Although the Executive Office for Immigration Review (EOIR) does not
release demographic characteristics of asylum seekers, we do have access to
this information for HRI asylum clients. We also have access to the type and
amount of the evidentiary record, as presented in Table 3. A number of
patterns are surprising. Family, whether in terms of being part of a family
application or having family in the area, seems to hurt asylum chances.
Rather than being an indication of a source of financial support for the
applicant, the presence of family may instead make the applicant seem
more like an economic opportunist. Interestingly, there is no clear difference
in case outcome due to the existence of indirect or direct evidence of threats.
On the other hand applicants with physical evidence of torture received
asylum at a rate of 95 per cent. As expected, applicants who relocated
within their country, which legally is seen as an indicator that the applicant
made an attempt to avoid the persecution, were more successful, but only
slightly. Interestingly, there is almost no observable difference in asylum
success based on the ability to speak English, as we can see in Table 4.

The HRI data present a somewhat surprising finding that women are much
less successful than men in receiving asylum. This finding may suggest cul-
tural differences in some women’s demeanor that make the woman’s testi-
mony less credible or it may suggest a bias in the adjudicator’s perception of
the likelihood of women being targets of persecution due to their political
opinion and group status.

HRI’s rich case archive also allows us to examine asylum success by race,
religion and education level of the applicant, which we present in Table 5.
In terms of religious affiliation, with one exception, the lowest rate of success
was for Catholic applicants, followed by non-Catholic Christian applicants.
Muslim and Baha’i represented by HRI had 100 per cent success in this

<table>
<thead>
<tr>
<th>Type of Lawyer</th>
<th>Asylum denied</th>
<th>Asylum granted</th>
<th>Freedom House Status</th>
<th>Asylum denied</th>
<th>Asylum granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house</td>
<td>4 (12%)</td>
<td>30 (88%)</td>
<td>Free</td>
<td>0 (0%)</td>
<td>1 (100%)</td>
</tr>
<tr>
<td>Pro-bono</td>
<td>6 (21%)</td>
<td>22 (79%)</td>
<td>Partly Free</td>
<td>12 (44%)</td>
<td>15 (56%)</td>
</tr>
<tr>
<td>Both</td>
<td>5 (28%)</td>
<td>8 (62%)</td>
<td>Not Free</td>
<td>7 (14%)</td>
<td>44 (86%)</td>
</tr>
<tr>
<td>Overall</td>
<td>15 (20%)</td>
<td>60 (80%)</td>
<td>Overall</td>
<td>19 (24%)</td>
<td>60 (76%)</td>
</tr>
</tbody>
</table>
time-period. The two Jehovah’s Witnesses were both denied. Interestingly, Hispanics were the least successful applicants and Asians the most successful; this may represent the model minority bias concerning Asians and a bias against Hispanics as economic opportunists. Surprisingly, applicants with a primary or middle school education had greater success than higher educated applicants, although we must note that the sample size is small in the primary and middle categories. Overall, there does not seem to be much variation in the grant rate due to educational attainment, at least in the bivariate analyses.

Table 3

<table>
<thead>
<tr>
<th>Family application</th>
<th>Family in area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Individual</td>
</tr>
<tr>
<td>Denied</td>
<td>10 (19%)</td>
</tr>
<tr>
<td>Granted</td>
<td>43 (81%)</td>
</tr>
<tr>
<td>Total</td>
<td>53</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Corroborated evidence of threats</th>
<th>Physical existence of threats</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Denied</td>
<td>3 (25%)</td>
</tr>
<tr>
<td>Granted</td>
<td>9 (75%)</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Evidence of torture</th>
<th>Prior relocation in country</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Denied</td>
<td>13 (25%)</td>
</tr>
<tr>
<td>Granted</td>
<td>39 (75%)</td>
</tr>
<tr>
<td>Total</td>
<td>52</td>
</tr>
</tbody>
</table>

Table 4

<table>
<thead>
<tr>
<th>HRI Grant Rate by English Speaker and Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speaks English</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>Denied</td>
</tr>
<tr>
<td>Granted</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
Data and Multivariate Analysis

To examine whether or not these relationships hold beyond simple bivariate comparisons, we create a logit model. The dependent variable is a dichotomous measure of whether the asylum seeker was granted asylum (1) by the judge or asylum officer or denied it (0). As suggested by our review of the literature, we model three sets of independent variables: 1) the types of evidence offered by the asylum seeker, 2) personal characteristics of the asylum seeker and case factors, and 3) factors related to the asylum seeker’s country of origin.

Evidence Offered by Asylum Seeker

We expect that the level of evidence presented by the asylum seeker will influence the likelihood of receiving a grant. We gathered eight indicators of the types of evidence presented by the asylum seekers: we coded whether or not applicants could provide documentation of their membership in the category that makes them eligible for asylum (i.e. a membership card to a political party), if there was any physical or corroborated evidence of threats to the applicant or their family, if there was physical evidence of torture of the applicant or their family, if there was corroborated evidence of fear,
and finally whether or not the applicant had relocated within their country of origin before leaving to seek asylum elsewhere.

**Personal Characteristics of the Asylum Seeker and Case Factors**

We expect that the personal characteristics of the asylum seeker will influence the decision whether to grant asylum or to deny it. Included in our model are six personal characteristics that are recorded by HRI in their case files; these data were gathered and coded by Holmes (2007).

*Gender (female)*: This variable is a dichotomous measure delineating gender as female (1) and male (0). Under the law there is no reason to expect that a female applicant for asylum will be less likely to succeed than a male but our descriptive analysis suggested otherwise. While Holtzer *et al.* (2000) found that in Switzerland a young male was less likely to be granted asylum, presumably because he fits the profile of a perceived mere economic migrant, we expect that a female will be less likely to receive asylum due to possible cultural biases of the decision makers concerning women as viable threats to government and due to possible cultural differences that affect women’s credibility (Coven 1995; Cianciarulo 2006). Henderson notes that much of the literature on political repression implicitly assumes that most victims of repression are male since political activists are largely males (2004: 1031). He goes on to show that when women do become threats to a regime they become targets of an even wider variety of repressive tactics then men, and because of their cultural and socio-economic status they are even more vulnerable than men (2004: 1030). We believe that this mistaken perception is likely to be held by US adjudicators as well (2004: 1030).

*Educational attainment*: We denote the asylum seeker’s highest level of educational attainment with an ordinal measure: primary school or less (0), middle school or equivalent (1), high school or secondary school (2), and post-secondary or college (3). Again, under the law, educational attainment should not matter in these decisions; however, there is the possibility of the confounding effect of the adjudicators’ association of certain characteristics with an economic migrant. This association would predict that the more educated person would be more likely to receive a grant than the one with minimal educational attainment.

*Occupational status*: We denote the asylum seeker’s occupational status with an ordinal measure: professional (3), blue collar or skilled worker (2), unskilled labourer (1), and unemployed or student (0). Again, under the same assumptions in regard to education, we would expect that the more skilled the applicant is the less likely he or she will be perceived as a mere economic opportunist and thus the chances of asylum will be greater. Similarly, more skilled and educated applicants would be less likely to be viewed as future recipients of welfare aid.

*Non-Judeo-Christian religion*: While religious affiliation as a source of persecution clearly makes an applicant eligible for asylum, religious affiliation in
and of itself does not. Unfortunately we do not have the data to differentiate between them. We do know from our descriptive analysis, which explored several options for coding religion and engaged in a series of initial statistical analyses, that Muslim and Baha’i asylum seekers were much more likely than Christian asylum seekers to receive an asylum grant. We engaged in several analyses to determine which delineation was most justified statistically. These analyses included dummy variables for each of the major religious categories represented in the asylum seekers under study here, as well several additional configurations. Ultimately we settled on a delineation of non-Judeo-Christian (1) and Judeo-Christian (0). We expect that having a non-Judeo-Christian religious affiliation will increase the likelihood of a grant.

**Marital status (married):** This variable is a dichotomous measure distinguishing married asylum seekers (1) from non-married (0). Holtzer et al. (2000) predicted and found that non-married applicants were less likely to gain asylum, presumably due to the perceptions of an economic migrant. We continue with that expectation.

**English speaker:** This dichotomous measure distinguishes English-speaking asylum speakers (1) from those who are unable to speak English (0). Our assumption is that persons speaking English will be more likely to receive a grant of asylum for two reasons: 1) they will better able to give testimony before the judge or officer, increasing their credibility or 2) they will be perceived as being less of a potential burden on society in terms of a getting a job and integrating into US culture.

**Family in area:** This dichotomous measure delineates whether the asylum seeker reports having family members that live in the area (1) or not (0). Traditionally, immigrants that have family in the area are perceived as being less of a potential burden as they will have a support system in place. We expect that these persons will be more likely to receive a grant of asylum.

**Contacts in area:** This dichotomous measure delineates whether the asylum seeker reports having contacts in the area (1) or not (0). Our expectations here follow those for persons having family in the area.

**In-house lawyer:** We know that applicants that are represented by counsel have much better odds of being granted asylum (Trac 2006), but here all clients are represented and we are particularly interested in controlling for the influence of in-house representation, which presumably will have the advantage of immigration court experience and repeat-player status, over representation by pro-bono attorneys who often lack this specific experience and may not able to devote as much time to the case as the in-house attorneys. Some asylum seekers were represented totally by an in-house attorney, others solely by an outside pro-bono attorney, and some by a combination of in-house and pro-bono. As with the religion measures, we examined various dichotomous measures as well as several combinations in a series of analyses. The results suggested that the best delineation was whether an in-house attorney represented the client either solo or in tandem with a pro-bono
attorney (1) or whether the asylum seeker was represented solely by a pro-bono attorney (0).

Country of Origin Factors

Finally, we include in our models five to six country of origin factors that capture the level of domestic threat to the regime, the type of regime, the level of democratization, human rights conditions, and socio-economic indicators.

Non-violent domestic protest: We hypothesize that the presence of non-violent protest in the country of origin will increase the applicant’s odds of asylum as it may serve as indicator that there is a serious voice of opposition in the country. This dichotomous measure denotes the presence of non-violent protest ‘in which a mostly unarmed opposition regularly confronts the regime over one or more of its policies using demonstrations, riots, and other unconventional forms of political participation to express disagreement’ (Keith and Poe 2004: 1084; Poe et al. 2000).

Violent opposition: While we believe that non-violent opposition in the country of origin may legitimize the applicant’s claim, we believe that the presence of guerilla movements and terrorist activities will increase the perception of threat that the applicant might pose to the US government (Welch and Schuster 2005). Alternatively, judges could fear the beginning of a flood of applicants fleeing a particular conflict. This dichotomous measure denotes the presence of violent opposition or rebellion where ‘there is a substantial organized movement that seeks to alter the governmental system, bringing about a significant change in the constitution or other political institutions through armed attacks, including terrorist activities, guerilla movements, and most attempted coups, but not full scale war’ (Keith and Poe 2004: 1085; Poe et al. 2000). We also tested the effect of civil war, but ultimately decided against including it in the final model because of collinearity problems and a consistent failure to achieve statistical significance.

Military regime: We expect that countries that are run by military regimes will be perceived as more repressive, all things being equal, and thus that applicants from those countries will be more likely to be granted asylum. This dichotomous measure indicates ‘regimes with a military person in power as the chief executive, or mixed regime with a military presence apparently controlling a civilian leader behind the scenes’ (Poe et al. 1999: 296).

Freedom House status: Empirical evidence of the impact of human rights and democratic governance on asylum rates has been rather mixed. In order to make sure our analyses are robust, we considered numerous measures of civil liberties, human rights, and democratization, including Freedom House’s civil liberties scores, Polity democracy and autocracy measures, Freedom House measures of political rights, Gibney’s Political Terror Scale, and Cingranelli and Richard’s Physical Integrity Measures and Index. None of these measures were statistically significant in any of our models. Ultimately, the Freedom House Status measure, which simultaneously controls for the
level of democratization and civil liberties restrictions, was the most robust and appropriate measure. While this measure is not as finely delineated as the individual scales are, it seems that this rougher approximation may more closely match the adjudicators’ perceptions. We assigned the following scores: Free (2), Partly Free (1) and Not Free (0). Under the law we would expect that applicants from countries with stronger records of human rights abuse and those from authoritarian regimes would have more valid claims to asylum than those from democratic and generally rights-protecting regimes where the odds of persecution would appear to be quite low. We predict that the lower the level of freedom the more likely the applicant from this country will receive a grant of asylum.

World Bank Development Level: Following Holtzer et al. (2000) we expect that those persons perceived to be economic migrants will be less likely to receive a grant, and we believe that the economic development of the country of origin may serve as a surrogate measure or cue of this status to the asylum adjudicator. The World Bank categorizes countries, based upon 1995 GDP per capita, into low income (<US$765), lower-middle income ($766–3,035), upper-middle income ($3036–9,385) and high income (>9,386). We predict that applicants from countries with higher GDP per capita will be accepted at higher rates.

Methodology

We estimate the models using logit since the dependent variable is the dichotomous measure. The tables report the standard logit coefficients. We draw upon the work of Roncek and Swatt to interpret the coefficient; they demonstrate that for dichotomous or polytomous logit ‘if we multiply the coefficient by 100, we can then interpret this new \( b \) coefficient as the percentage change in the cumulative odds for a change in the independent variable’ (2006: 736). Thus, if the decimal point on the coefficients reported in each table were moved over two places, we would have the percentage change in the cumulative odds of an asylum seeker receiving asylum given a unit change in the independent variable. Following Roncek and Swatt (2006) we report the untransformed logit coefficients but will interpret the data using their simple transformation.

Results

Ultimately, our model integrates the above evidence factors, the personal characteristics, and the country of origin measures. We ran some preliminary models to estimate the influence of the eight types of evidence presented by the asylum seekers. In our initial analyses we examined the influence of the level of evidence offered, creating additive indices that were theoretically justifiable. These indices captured the total level of evidence presented, the level of evidence of threat, the level of evidence of torture, the level of evidence related to the asylum seeker personally, and the level of evidence
related to the applicants’ family members. None of these indices proved to be statistically significant and when the variables were tested as separate dummy variables only one of the types of evidence produced an effect that is statistically significant at an acceptable level: physical evidence of torture. We thus have included in it the integrated model reported in Table 6. The coefficient for any evidence of torture is in the predicted direction but would only be significant at the .28 level. Four personal characteristics are found to be statistically significant in the integrated model and the coefficients are quite large: gender (-4.72), marital status (-4.10), English-speaker (2.67), and non-Judeo Christian (4.91). Being a female asylum seeker decreases the cumulative odds of an asylum grant by 472 per cent. Ironically, as Henderson (2004) has shown, women are just as vulnerable as men. Indeed many women in the HRI pool of applicants are from countries in which Henderson found there to be the highest levels of political repression (personal integrity abuse) of women (2004: 1048). Interestingly, being married decreases the cumulative odds of an asylum grant by 410 per cent (and would have been statistically significant if we had predicted this direction of influence). This status may

Table 6

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any evidence of torture (+)</td>
<td>.85</td>
<td>1.46</td>
<td>.28</td>
</tr>
<tr>
<td>Gender (female) (-)</td>
<td>-4.72</td>
<td>2.18</td>
<td>.02</td>
</tr>
<tr>
<td>Marital status (-)</td>
<td>-4.10</td>
<td>2.78</td>
<td>.07</td>
</tr>
<tr>
<td>Educational attainment (+)</td>
<td>-1.08</td>
<td>1.10</td>
<td>.17</td>
</tr>
<tr>
<td>Occupation status (+)</td>
<td>-.06</td>
<td>1.29</td>
<td>.45</td>
</tr>
<tr>
<td>Non-Judeo-Christian religion (+)</td>
<td>4.91</td>
<td>2.55</td>
<td>.03</td>
</tr>
<tr>
<td>Speak English (+)</td>
<td>2.67</td>
<td>1.68</td>
<td>.05</td>
</tr>
<tr>
<td>Family in area (+)</td>
<td>.64</td>
<td>2.17</td>
<td>.38</td>
</tr>
<tr>
<td>Contacts in area (+)</td>
<td>-1.92</td>
<td>1.95</td>
<td>.16</td>
</tr>
<tr>
<td>In house lawyer (solo or in combination) (+)</td>
<td>.08</td>
<td>2.02</td>
<td>.48</td>
</tr>
<tr>
<td>Domestic protest (+)</td>
<td>-.42</td>
<td>1.28</td>
<td>.37</td>
</tr>
<tr>
<td>Violent opposition (-)</td>
<td>-2.42</td>
<td>1.76</td>
<td>.08</td>
</tr>
<tr>
<td>Military regime (+)</td>
<td>3.77</td>
<td>2.66</td>
<td>.07</td>
</tr>
<tr>
<td>Freedom House status (-)</td>
<td>-2.22</td>
<td>1.43</td>
<td>.06</td>
</tr>
<tr>
<td>World Bank development level (+)</td>
<td>3.45</td>
<td>2.01</td>
<td>.04</td>
</tr>
<tr>
<td>Constant</td>
<td>6.25</td>
<td>4.36</td>
<td>.07</td>
</tr>
<tr>
<td>Number of observations</td>
<td>64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chi-sq</td>
<td>32.58</td>
<td>(p &gt;.005)</td>
<td></td>
</tr>
<tr>
<td>Pseudo-R-squared</td>
<td>.53</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
make the applicant’s claim seem more like that of economic immigrant. As one might expect, speaking English increases the cumulative odds of a grant by 267 per cent, which may suggest that the applicant is better able to communicate credibly their fears to the judge or it may simply be an indication to the judge that the applicant will assimilate more easily and be less of a drain on society. One additional personal characteristic makes a difference: the non-Judeo-Christian measure is statistically significant and produces a large coefficient (4.91) which suggests that asylum seekers who are not Jewish or Christian will have almost a 500 per cent increase in the cumulative odds of a grant outcome. Four of the five country of origin factors achieve statistical significance at least at the .08 level of probability. The presence of violent opposition, such as a guerilla movement or terrorist activity, decreases the likelihood of a grant decision: it decreases the cumulative odds by 242 per cent. This finding supports our hypothesis that country of origin may serve the adjudicator as a predictor of the threat to US domestic security. Being an asylum seeker from a state controlled by a military regime increases the cumulative odds of a grant by 377 per cent. Also, asylum seekers that come from countries with higher levels of freedoms and rights do have decreased odds of being granted asylum: the cumulative odds of a grant outcome decreases by 222 per cent with each step up the 3-point Freedom House scale. This result would support the normative expectation that asylum would be granted to those persons whose freedoms may be threatened. Thus, we find that at least two of the factors that may indicate the merit of the applicant’s claim do make a difference at least to the extent that the three-point Freedom House status indicator captures it. In addition, applicants who are fleeing a country that is controlled by a military regime are more likely to gain asylum. Finally, the World Bank level of economic development produces a coefficient of 3.45 which suggests that with each step up the 3 point development scale, the asylum seeker has 345 per cent greater cumulative odds of receiving asylum. This result suggests that adjudicators may perceive applicants from wealthier countries to be less likely to be bogus asylum seekers or economic opportunists in particular. The overall fit of the model is quite strong with a pseudo R-squared of .53 and a chi-squared of 32.58 which allows us to reject the null hypothesis at .005 level of confidence.

Conclusions and Implications

While our examination of asylum decisions in the HRI cases has of necessity focused on a rather limited population of asylum cases, it has provided us with a unique opportunity to examine a variety of influences typically unobservable due to congressional mandated data restrictions. In addition to country of origin influences, we have been able to examine asylum seekers’ personal characteristics along with the type and level of evidence they are able to present in their defence. The most important finding this initial
analysis offers is the surprising lack of an observable impact of evidence once
we control for other important country and demographic factors. As we
noted early in the article, most of the HRI clients did not have substantial
levels of evidence to present and as Gibney and others note, this is typically
the situation for most asylum seekers. Many of the factors we found to
influence these decisions seem to have little to do with the legal basis for
asylum, especially the personal characteristics of the applicants, such as being
female or being married. This nexus is difficult to explain beyond the possi-
licity of gender and cultural biases of the adjudicator or the possibility that
these characteristics might indicate to the adjudicator that the applicant is an
economic immigrant or a ‘bogus’ asylum seeker. It seems more likely that it is
a gender bias in that a judge may perceive women to be less likely targets of
repression and less threatening to regimes. As Henderson notes, this would
not only be unfortunate, but incorrect since clearly women are indeed targets
of political repression. It is interesting to note that some personal character-
istics that might more clearly serve as cues to a bogus or economic
immigrant—educational attainment, occupational status, family or contacts
in the area—do not have an effect once we integrate the models. It is not
surprising that applicants that are able to speak English are more likely to be
allowed to stay; it may possible that they are better able to give credible
testimony; however, it seems more likely that they are perceived as being
more able to integrate into society and more able to be self-sustaining than
a non-English speaker. Additionally, we find strong evidence that non-Judeo-
Christian applicants have a higher chance of being granted asylum.

The influence of conditions in the country of origin suggests that at least in
part, applicants that are fleeing potentially abusive situations are more likely
to be granted asylum than those that are not, even without evidence to prove
personal threats. The presence of certain conditions within a country may
provide evidence of a credible fear generally. These factors include the pre-
sence of a military regime or a low level of political and civil rights in the
country. One country of origin factor that is linked to violence within the
state, decreases the odds of asylum: presence of a guerilla movement or
terrorist activity. We expect that such activity may make adjudicators cau-
tious to accept asylum seekers from these states due to one of two reasons:
either the applicant may be a terrorist seeking entry into the country as a
bogus asylum seeker or perhaps the adjudicator fears opening the flood gates
to a wave of applicants encouraged by the success of the first applicants. We
do find one country of origin factor that suggests that the adjudicators may
engage in a process of winnowing out mere economic opportunists; applicants
from countries of origin with higher levels of economic development are more
likely to be allowed to stay, other things being equal.

These findings build on other studies that suggest that factors independent
of the individual strength of the asylum seekers’ cases continue to be influ-
ential in terms of individual success. Whether those factors are due to state
level interests about foreign policy aims or reflect concerns about economic
migrants or security threats, we find that factors other than those specifically related to the merit of an individual’s rights claim are influential. Moreover, we find surprising evidence of individual characteristics unrelated to the merit of the case that help determine outcome, such as gender, the ability to speak English, marital status, and religion. Again, we must emphasize the uniqueness of this rare examination of such factors. Most work on US asylum behaviour has been limited to country of origin grant rates, with the exception of one study which examined individual decisions of immigration judges. Because of the congressional restrictions, none of these studies had access to case-specific data beyond the appropriate application and decision dates, the deciding judge’s name, the country of origin, and the case outcome. Our study highlights the importance of non-legal factors which we are not generally able to observe in the much broader set of decisions nationally. We hope that this first exploration will encourage cooperation among practitioners and NGOs who might make crucial non-identifiable data available and who might work with other scholars to better understand the factors that influence their clients’ ability to gain asylum fairly in the United States immigration courts. And even more importantly, we hope that the results of our study and presumably subsequent studies with other NGOs will encourage scholars, lawyers, and activists to continue to pressure Congress and the EOIR for the collection and release of non-identifiable socio-demographic data of asylum applicants for further study.

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