

Taken from the Top of the Chrystal Macmillan Building



Workshop on Asylum Procedures in the UK and France

School of Social and Political Science
Chrystal Macmillan Building
The University of Edinburgh

30-31 March 2009



Arts & Humanities
Research Council



Diasporas,
migration
& identities

The Conversion of Asylum Applicants' Narratives into Legal Discourse in the UK and France: A Comparative Study of Problems of Cultural Translation

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Project Themes and Objectives

- How is the legal representation of asylum applicants affected by past, present and future changes in national legislation and administrative processes?
- What are the effects of the differences in the respective legal systems (e.g., between inquisitorial and adversarial legal proceedings)?
- The roles of NGOs in both countries, including: impact of recent legislation; relationships between NGOs and the state; inter-NGO cooperation in lobbying, information-sharing, and influencing government policy.
- What problems of cultural translation arise in converting asylum applicants' narratives of persecution into legally-acceptable forms of discourse?

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The UK Asylum Process: An Outline

Anthony Good

SCHOOL of SOCIAL and POLITICAL SCIENCE
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Applying for Asylum (Schematic)

Arrive in UK -->

Apply for asylum to UK Border Agency (UKBA) -->
(formerly Immigration & Nationality Directorate [IND])

Screening interview (+ SEF form) -->

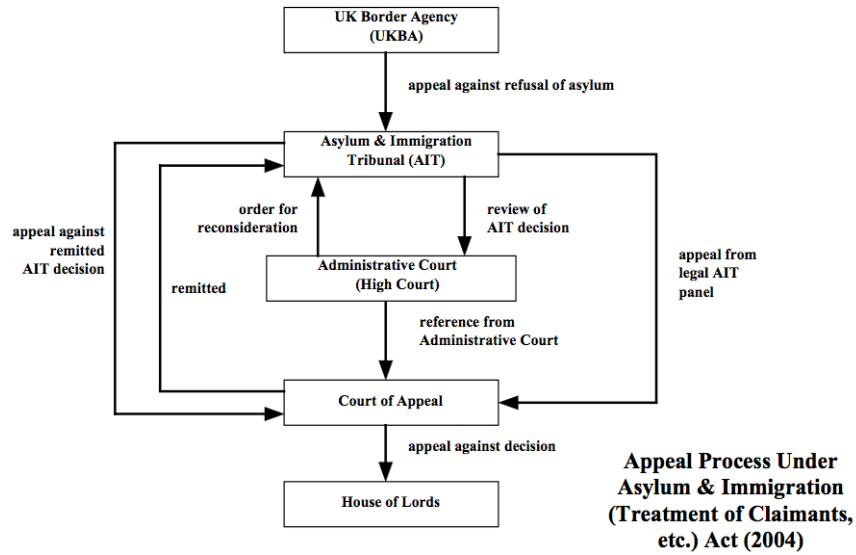
Asylum interview -->

Refugee status granted/Reasons For Refusal Letter -->

Appeal to Tribunal

Legacy Cases

New Asylum Model (NAM)

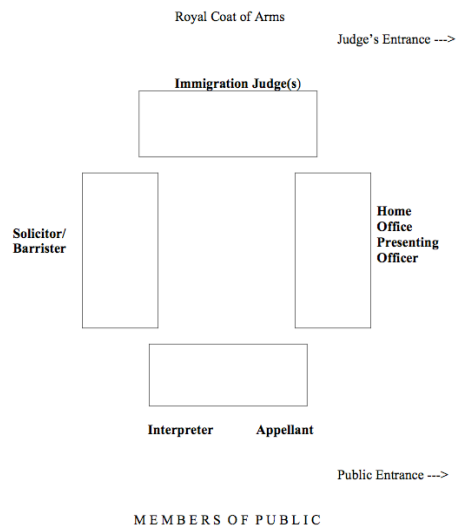


UK Asylum Applications 2004-2007

Outcomes of Asylum Claims	2004	2005	2006	2007
Asylum applications	33,960	25,710	23,610	23,430
Initial decisions	46,020	27,395	20,930	21,775
Granted Asylum	1,565 (3%)	1,940 (7%)	2,170 (10%)	3,545 (16%)
Humanitarian Protection/ Discretionary Leave	3,995 (9%)	2,800 (10%)	2,305 (11%)	2,200 (10%)
Refused	40,465 (88%)	22,655 (83%)	16,460 (79%)	16,030 (74%)
Withdrawn	2,205	2,545	1,780	1,230
Appeals determined by IAA/AIT	55,975	33,440	15,955	14,935
Appeals allowed	10,845 (19%)	5,605 (17%)	3,540 (22%)	3,385 (23%)
Appeals dismissed	43,760 (78%)	26,555 (79%)	11,595 (73%)	10,735 (72%)
Appeals withdrawn	1,370 (2%)	1,285 (4%)	820 (5%)	820 (5%)

Asylum Statistics 2007 (www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf; accessed 17/03/2009)

Layout Of Asylum Appeal Court



Asylum Appeal Hearing

- examination-in-chief of applicant by barrister/solicitor (establishing the witness statement)
- cross-examination of applicant by Home Office Presenting Officer (HOPO)
- re-examination by barrister/solicitor
- submissions by HOPO
- submissions by barrister/solicitor

Deciding Asylum Appeals

- determining the credibility of the evidence;
- weighing that evidence to assess its probative value;
- determining whether the standard of proof has been met

‘reasonable degree of likelihood’

Credibility

The asylum seeker’s account should be ‘coherent and plausible’ and ‘not run counter to generally known facts’ (UNHCR 1992: §204)

Internal Credibility (1)

the applicant's evidence must be 'internally coherent and consistent with past written and verbal statements, and consistent with claims made by witnesses and/or dependants and with any documentary evidence submitted in support of the claim'

(*Asylum Policy Instructions*,
www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/)

Internal Credibility (2)

It is reasonable to assume... that an applicant relating an experience that occurred to them will be more expressive and include [more] sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience. [...]

It is reasonable to assume that an applicant who has experienced an event will be able to recount the central elements in a broadly consistent manner. An applicant's inability to remain consistent throughout his written and oral accounts of past and current events may lead the decision maker not to believe the applicant's claim (*ibid.*).

External Credibility

(Country of Origin Information [COI])

The applicant's account should be 'consistent with generally known facts and country of origin information'. If 'there is objective country information that clearly contradicts the material claimed fact(s), this is likely to result in a negative credibility finding' (*ibid.*).

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Contexts for Narrating Account of Persecution

- screening interview
- (witness statement)
- substantive asylum interview
- (witness statement)
- medico-legal examination
- (supplementary witness statement)
- cross-examination

Witnesses who adopt a *rule-oriented* approach ‘evaluate their problems in terms of neutral principles whose application transcends differences in personal and social status.’

Witnesses who display a *relational orientation* tend to define rights and responsibilities in terms of ‘a broad notion of social interdependence rather than on the application of rules’.

John M. Conley & William M. O’Barr (1990) *Rules versus Relationships: the Ethnography of Legal Discourse*, Chicago: University Press

“A ‘story’ does not exist fully developed on its own, but only emerges through a collaboration between the teller and a particular audience ... a research interviewer asking questions, a judge presiding in an informal court, a lawyer talking with a client”.

(Conley & O’Barr *op. cit.*: 171)

The physical pain of torture ‘does not simply resist language but actively destroys it, bringing about an immediate reversion to ... the sounds and cries a human being makes before language is learned’

(Elaine Scarry, 1985. *The Body in Pain*, Oxford: University Press)

Torture also has an ‘ability to shatter relationships [and] destroy trust’

(Stuart Turner, 1995. ‘Torture, refuge, and trust’, pp 56-72 in Daniel, EV and Knudsen, JC (eds), *Mistrusting Refugees*, Berkeley: Univ of California Press)

Inconsistencies

The assumption that inconsistency of recall means that accounts have poor credibility is questionable. Discrepancies are likely to occur in repeated interviews. For refugees showing symptoms of high levels of post-traumatic stress, the length of the application process may also affect the number of discrepancies. Recall of details rated by the interviewee as peripheral to the account is more likely to be inconsistent than recall of details that are central to the account. Thus, such inconsistencies should not be relied on as indicating a lack of credibility.

Jane Herlihy, Peter Scragg & Stuart Turner (2002) 'Discrepancies in autobiographical memories: implications for the assessment of asylum seekers: repeated interviews study', *British Medical Journal* 324 (7333): 324–7