

ILPA Submission on Immigration Statistics

The Immigration Law Practitioners Association is the representative body for immigration practitioners. Its members include legal practitioners and immigration judges as well as academics whose special interests concern research on immigration law and policy and the social science of migration practice. ILPA has itself been closely involved sponsoring, facilitating and overseeing research into particular aspects of immigration practice, including currently research into prosecution policies on persons entering without travel documentation, the determination of age of disputed unaccompanied minors and social service outcomes for trafficking victims. ILPA therefore has a concern and interest in the publication of immigration statistics and appreciates the opportunity to contribute to this investigation into statistical needs.

It is a truism that the Home Office is embarked on a project to demonstrate its migration management. They have initiated a raft of administrative and legal changes to give effect to these objectives, including:

- an increased emphasis on 'fast-track' processing of asylum claims and the detention of applicants during such processing. This processing is associated with a corresponding, significant drop in the number of claimants recognized as refugees or granted discretionary leave on human rights grounds;
- a segmentation system for asylum processing, whereby applicants are screened on application and processed 'end to end' by the same Home Office case management team. The applicants are 'segmented' by reference to early, screening assumptions on the merits of their claims (for example: if an applicant has delayed making an asylum claim, the claim is assumed to lack bona fides) as well as their 'high' or 'low barriers to removal' - whether by reason of the applicant's lack of travel documentation or his/her citizenship of a country which is

reluctant or slow to accept responsibility for readmitting its own undocumented citizens;

- the imposition of additional strictures limiting immigration change of status applications from within the UK. This has the effect of placing a corresponding emphasis on offshore visa processing by UK Visas. Many more applicants are forced to travel to their home countries to make applications to remain as spouse or to switch to skilled and employment visa categories as these applicants must show they have entry clearance as a spouse or worker; and
- the adoption of point based criteria for ascertaining skilled applicants. As with the asylum segmentation system, this is a generic processing model under which applicants are evaluated by reference to objective ascertainable criteria such as their qualifications, work experience and age.

In this context the process of migration management itself has become the focus of interest. The UK, as with other developed countries, is experimenting with how migration can best be managed and wishes to demonstrate that it is effective in choosing particular types of immigrant, and in deterring and removing the 'wrong' sort of immigrant. It is assumed that this management model will engender public confidence in immigration.

ILPA recommends that the NSO accommodate this changed immigration focus when collecting, collating and presenting data for the Command Papers. We predict that future immigration assessments will require more detailed, evaluative data not only on immigrants and immigration itself, but also on the practice of immigration control. As the management agenda is clear and has a discernable public purpose, ILPA recommends that the NSO widens its focus so that it not simply recording data on immigrants and immigration but providing vital information on immigration management.

This requires NSO to give careful consideration to the outcomes which are measured. It is all too easy to focus on the onshore immigration processing arrangements in Britain and lose sight of the fact that the bulk of processing outcomes is to be generated offshore by UK Visas.

It is also misleading simply to measure settlement, 'turnaround' and removal figures without consideration of the large numbers of people who will have long term temporary status and therefore may be living and working in the UK for extended periods without being counted as 'settled'. It is as important in this context to measure and note those accepted, as well as those rejected, for settlement. ILPA recommends that the NSO acquire data to show who is attaining settlement, who is being removed, the numbers living in the UK with long term temporary status, those detained and the terms of such detention – these outcomes should be measured by reference to the age, gender and nationality of the subjects. We would strongly recommend statistical practices which seek to reveal the identity and characteristics (the humanity) of those being counted, the qualitative outcomes and not simply the trumpeted reductions in asylum applicants, their shorter processing times and improved removal figures.

As the National Statistics Quality Review Series Report No. 23 on International Migration Statistics stated, the UK has relatively rich existing data sources for immigration. (In the report 'migrants' include refugees and this assumption is maintained in our commentary). We would agree with this report that more can be done to exploit the complementary strengths of the different data sources in compiling a better picture of the characteristics of migrants. The NSO is the obvious repository to collate and present such consolidated data. While the readily ascertainable characteristics of nationality and gender provide some migration measures, we are most concerned to see data on age so that children are properly featured in all the data evaluations. Children in family groups and unaccompanied children are an important segment in the migration mix.

ILPA also advises looking again at and beyond the existing rich data sources to mine the information held there. There is important data for

example, held by Home Office files. To take but two sources, the Home Office screening forms for asylum applicants and visa application forms - these contain detailed information on the family and personal circumstances of applicants which, in a disaggregated form, should give real insight into the background, skills and characteristics of immigrants and refugees. This information should provide the underpinning for any longitudinal survey of immigrants and immigrant contributions. We would anticipate it is likely to be far more useful than the household survey proposed by the Home Office.

The NSO report mentions the Home Office, Department of Work and Pensions and NHS data sources and, as stated, we agree that there is much useful qualitative information to be gleaned from these sources. We would also suggest the Greater London Authority surveys on those living and working in the UK who were not born in the UK. This is an important data source that should highlight not only the settled but also long term temporary residents who will be an important component in all future immigration pictures. The GLA have considerable, useful statistical data and their survey should serve as a model for any Home Office household survey.

ILPA also strongly recommends that the NSO have regard to social services and private fostering data as a key source for useful information concerning the many unaccompanied and abandoned migrant children as well as those whose family placements have broken down. The GLA also published information on social services provision for asylum seeking children. There is a National Register of unaccompanied asylum seeking children and Europe wide data on this claimant group. It would be useful to have a comprehensive source. Certain data on the representation of children is kept by the Legal Services Commission and by the Immigration Appellate Authority (the Asylum and Immigration Tribunal). The Home Office should have data on children and on those whose age is disputed and assumed to be adult. Their figures should show detention rates, children, 'turned around' in France or Belgium and denied entry to the UK

as well as the terms of stay, immigration and case outcomes for children and young adults. It is not clear that the figures in all the agencies accurately record those applicants subsequently found by social services or the Courts to be children, even though the Home Office initially treated them as adult. As stated, this vulnerable immigrant group should not be overlooked in the collection of data.

The social services/ private fostering data is particularly important as providing some better insight into the scope of trafficking for sexual and domestic labour purposes. There is international recognition of the need to collect data on this problem to provide appropriate indicators on the scale and practice of this trade. Reception States are encouraged to document and measure the extent of their trafficking problem as well as outcomes for trafficking victims. Social services have been a key agency assisting trafficked victims. (UN Trafficking Protocol see also: US State Department reports on International Trafficking)

Processing Outcomes

The Fast Track and Asylum Segmentation Systems

ILPA's primary concern is for the collection of data to elucidate management practices and outcomes. Although the Home Office has operated 'fast track' systems for asylum processing for some little time, these arrangements are being extended and modified so that all asylum and human rights claims will be subject to screened, generic, segmented processing. This is very different from the individual case assessment previously followed for the bulk of asylum claims. As stated, these management arrangements are experimental and should be analyzed for their efficacy.

Also we are well aware from our case experience that there can be real injustices if cases are inappropriately screened, are assumed to be without merit and are processed in circumstances where traumatized clients are unable to disclose or competently narrate their accounts. The injustices produced by fast track outcomes are very difficult to remedy within or after the appeal process. The current limited information shows that very few of the fast track applicants are accepted as refugees

or given discretionary leave. This in itself is a worrying indicator. If all cases are so screened and processed, the prospects of even higher rejection rates are of real concern.

The asylum 'fast track' processing systems have been challenged before the Courts as inherently unfair. The Courts have held that the risk of unfairness from fast track processing must be reduced to an acceptable minimum and that so long as these systems operate flexibly - as the Home Office accepts they should – the systems can operate without an unacceptable risk of unfairness. The Courts place great stress on the need for fairness and flexibility in such processing and on claimants' rights to a 'fair-minded decisions ' and emphasized the potential for unfairness in an early screening processing system which screens particular applicants for speedy, 'priority' processing when no more is known of each one than, for example, that he is an adult male asylum-seeker from a country on a departmental 'white list'. [*The Refugee Legal Centre, R (on the application of) v Secretary of State for the Home Department* [2004] EWCA Civ 1481 (12 November 2004); *ZL & Anor v Secretary of State for the Home Department and Lord Chancellor's Department* [2003] EWCA Civ 25 (24 January 2003)] ILPA submits that these judicial observations support independent data collection and analysis of the workings of these decision –making systems. We would recommend the NSO's close involvement in this regard.

According to Home Office evidence to the Court, the fast track arrangements to date have been reserved for young, single men from particular countries deemed to be 'safe' and that applicants shown to be ill or traumatized are removed from the fast track system and detention. The fast track now includes women and families with children. Now that all asylum cases are to be 'segmented' and processed 'end to end' by specific management teams, it is even more important to ascertain who is being placed within the particular, high or low priority processing queues, whether applicants will be moved from one segment to another and the outcomes for the different segmented processing teams. These outcomes should be ascertained from data recording the nationality, gender and age of the applicants. We also need to know the Refugee Convention ground (whether political opinion, nationality, religion or particular social group) under which successful claimants were found to be in need of protection.

It is important to publish the age, gender and nationality of detainees and their terms of detention, the case outcomes for detainees by reference to time spent in detention as well as the time applicants spend in detention after the conclusion of the appeal process when awaiting removal. Under the new management arrangements it is important to note:

- the times taken for processing cases and appeals from adult males, adult females and children who are detained, or on strict or relaxed reporting conditions
- the case outcomes analyzed by gender, age, nationality and whether the person was detained or released into the community.
- for those who are unsuccessful claimants the time spent thereafter in the UK and the detention term prior to removal

It is important for the Home Office practitioners, Courts and Tribunals to be able to analyze whether the detention of applicants or particular types of applicant during case processing affects case outcomes. As with all such evaluations, if there are comparative figures on say, the processing time and case outcome for Iranian women applicants who are not detained and those detained, this allows for inferences to be drawn concerning the impact of detention. It can be assumed that the Home Office and Legal Services Commission (which funds legal representation for immigration detainees) has data on these matters and it should be publicly accessible.

It is also increasingly common for applicants to be unrepresented or to have legal representation or assistance only for part of the decision-making or appeal process. Again it is very important for full data on this to be kept, so that using the same example, the outcomes of Iranian cases with representation can be compared with the Iranian cases without representation. This should give some reliable indicia as to the efficacy or otherwise of legal representation. It allows comparison of like cases. Again this information should be available from Legal Services Commission, Home Office and Immigration Appellate Authority files. The data needs to be coordinated and published.

In overseas jurisdictions (such as Canada and Australia) there has been analysis of cases where immigration applicants were unrepresented and unassisted. This data shows that unrepresented litigants often withdraw their cases or do not attend all the proceedings. Such cases are either concluded with no or very short hearings or they take a disproportionate amount of Court and Tribunal time. The overseas data shows that unrepresented parties either do not engage with the appeal process or that they battle on against the odds, depending on the confidence and tenacity of the unrepresented person. Research by ILPA members on trafficked victims shows similar patterns of engagement when trafficked victims are unrepresented in the appeal process. This information is important for the Home Office, for appellate authorities, the Legal Services Commission and practitioners. It is important to ascertain if there are atypical outcomes for unrepresented parties. The Home Office has consistently stated that it is committed to fair processing. The Courts have made clear they have ultimate oversight concerning the fairness of systems. It is imperative for applicants that the new system produces accurate, just and fair results.

The Off-Shore Processing of Applications

There is limited information on the immigration decision-making undertaken by entry clearance officers at British Embassy posts abroad or in the juxtaposed controls in France and Belgium. As stated, the government has made many changes to the immigration rules, which have the effect that increasing numbers of asylum seekers are turned away before entry and many applicants cannot successfully make application to vary their immigration status in the UK, but must travel abroad and make application for entry clearance (rather than application from within the UK to stay). Again these are management devices to produce 'orderly queues' abroad, rather than allow applicants to have access to the more elaborated appeal system available if they are in the UK. There is a compelling need in these circumstances for more and better statistical data on overseas immigration processing and controls. At the very least, if the spouse of a British citizen is required to make application from abroad, the family needs to know how long it will take to process this application. They may need to budget for the term of overseas stay, make child care arrangements or seek leave from their employment. It is the same for workers in UK companies. If they need entry clearance, their employers will want to know how long it will take for their workers to return and take up or resume their employment. They

may have to consider employing temporary staff. It is only fair that applicants and their British sponsors are given information which allows them to make these essential arrangements.

In comparable countries operating similar, high volume off-shore processing systems, such as Australia, it is routine to provide regular, detailed statistics from each entry clearance post abroad showing the types of visa applications made (spouse, dependent children or student, skilled or employment applications) and the average or mean times required for processing applications of each type. The dissemination of this processing information allows applicants and their advisers to plan their return and re-entry. The data sheets also illustrate anomalies and differentiations in the system (certain posts with lengthy processing times – some of which may occur for good reason, while others need administrative attention and remediation). Again it is ILPA's recommendation that we produce and publish similar data, as an essential attribute of accountable, migration management.

Deportations and Removals

ILPA also recommends that there be better data published to show those who are being deported or removed from the UK and the reception country to which they are removed. Again this data should be presented by reference to the age, gender and nationality of the persons removed. The data should also show the claims advanced by those removed – that is the proportion who are failed asylum seekers, student or visitor overstayers or persons who sought family settlement. Again returning to our theme concerning children, the data should differentiate between children removed in company with their families and unaccompanied children, here without family, whom the Home Office now proposes to remove while they are minors. In our view, any meaningful analysis of migration trends requires consideration not only of persons selected for stay but those rejected and why. The Home Office currently collects this type of data. Our concern is to have it made public and accessible.

ILPA also notes the importance of keeping data on deportations. A deportation is the more serious penalty as it not only requires the person to be removed but also prevents the person's return to the UK. Again there appears to be a changing practice on deportations which should be documented. Most deportations in recent

years have been reserved for criminal offenders. Most recently it has been proposed to deport persons acquitted of terrorist offences.

The EU Arrangements

It is fair to assume that the UK immigration system will have an increasing interface with the immigration and asylum arrangements operating within Europe. There are already co-coordinated, cooperative European removal systems. Again, although the data is collected and available, it is not routinely published. ILPA considers that it is important to publish data showing the nationality, age and gender of persons removed within Europe for asylum processing under the Dublin Regulation (“Dublin II”), as well as the characteristics of those removed in conjunction with European partners to their home countries (often on flights chartered by particular European countries.)

Summary

ILPA recommends that in addition to the current data, the Command Papers focus on processing outcomes, that the existing data be elucidated by reference also to gender and age of the subjects, that the NSO aligns and augments the data with EU definitions and comparative figures so that a more complete ‘narrative’ of migration can be disseminated in a comprehensive way. These statistical outcomes should be made readily available on Home Office, UK Visa or NSO websites. The information may be required to be organized by topic headings as well as in tabular form. Some of the data, such as offshore processing times, needs to be regularly updated to have continuing utility for applicants and sponsors. We emphasize the need for transparency concerning immigration processing.

ILPA would wish to be included on any user group advising on the development and dissemination of immigration statistics.

15 June 2005