

Testimony of Jan C. Ting,
Professor of Law,
Temple University Beasley School of Law,
Philadelphia, Pennsylvania

(Former Assistant Commissioner for Refugees, Asylum and Parole,
Immigration and Naturalization Service,
United States Department of Justice)

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“Asylum Fraud: Abusing America’s Compassion?”
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Thank you, Mr. Chairman and members of the committee, for the invitation to testify on the subject of asylum fraud as an abuse of U.S. immigration law.

In May, 2011, the world's attention was focused on the story of Nafissatou Diallo, a hotel housekeeper in New York, who claimed she was raped by Dominique Strauss-Kahn, then the head of the International Monetary Fund and thought to be a likely future president of France. How did Ms. Diallo, who was born in West Africa, come to be working in New York? She admitted that while in the U.S. illegally, she concocted a totally false story about being raped in her home country of Guinea, in order to obtain legal asylum status in the U.S.¹ Prosecutors concluded that prosecution of Mr. Strauss-Kahn could not proceed in light of that admission.

While the U.S. has numerical limits on the numbers of legal immigrants it admits every year, it has no numerical limit on the number of refugees it accepts every year on the basis of their claim for asylum because they face persecution in their home country on account of race, religion, nationality, social group, or political opinion. Illegal immigrants, once they enter the U.S. either illegally or by overstaying a temporary visa, have a strong incentive to lie in making an asylum claim in order to obtain permanent legal status to work legally and qualify for becoming a U.S. citizen.

Asylum claims are currently ruled upon either by officers of the Department of Homeland Security or by immigration judges of the Department of Justice in the course of deportation proceedings. If the story is found to be credible and convincing, and to meet the legal standard of a well-founded fear of persecution on account of race, religion, nationality, social group, or political opinion, and if the story-teller has not been convicted of a crime, the request for legal permanent residence in the U.S. on grounds of asylum is usually granted.

¹ <http://www.dailymail.co.uk/news/article-2018772/Nafissatou-Diallo-Dominique-Strauss-Kahn-lawyers-accuse-maid-using-media-campaign.html>

Outside groups monitor the adjudicators to identify and apply political pressure on any whose asylum approval rate is lower than the average, or who approve some nationalities less than others, even though each case is supposed to be decided on its own set of facts.

Ms. Diallo is not the only successful asylum claimant whose lies are subsequently exposed. Back in 1999 another immigrant, also named Diallo, died in New York City as the result of police gunfire, and was discovered to have made numerous false claims to gain asylum in the U.S. Amadou Diallo had claimed to be an orphan whose parents were murdered, though his parents showed up at his funeral, and he claimed to be Mauritanian, though he was actually from Mali.²

While many are believed to obtain legal asylum status by lying, most go on to eventually become U.S. citizens, and the lies they tell to get status are never uncovered.

The August 1, 2011, issue of the New Yorker contains an article, beginning on page 32, called "The Asylum Seeker" by Suketu Mehta, which tells in detail how illegal immigrants educate themselves on how to construct stories which make them sound like victims of persecution.³ The article features an asylum claimant from Africa who is making a completely bogus claim of having been raped. To strengthen her case, she attends group therapy sessions for rape victims at a public hospital and receives taxpayer-funded medications for her supposed depression, which she throws away.

Other stories of brazen lies told by illegal immigrants in pursuit of asylum include the case of Adelaide Abankwah, championed by feminist and human rights figures. The U.S. Court of Appeals for the Second Circuit granted asylum to Abankwah in 1999 over the objections of the Immigration and Naturalization Service, which later proved fraud in her application including a stolen name and false passport. She was tried and convicted of perjury and passport fraud.⁴

² <http://www.nytimes.com/1999/03/17/nyregion/his-lawyer-says-diallo-lied-on-request-for-political-asylum.html>

³ http://www.newyorker.com/reporting/2011/08/01/110801fa_fact_mehta

⁴ Mary Beth Sheridan, "Ghanian Woman Convicted of Fabricating Tale", Washington Post, Jan. 17, 2003, page A1, <http://www.highbeam.com/doc/1P2-246521.html>

See also the case of the Nigerian imposter calling himself Edwin Mutaru Bulus whose bogus asylum claim was exposed only after a sympathetic story was published in the New York Times.⁵ Xian Hua Chen, an illegal immigrant from China was convicted of perjury on his asylum application.⁶

Such convictions and exposures of false asylum claims are difficult and expensive to attain. And the difficulties are compounded when the number of asylum applications is increasing.⁷ The total number of affirmative asylum applications has more than doubled in the last five years, exceeding 80,000 in FY2013. Over the same five years, so-called “credible fear” asylum applications made at the border have increased sevenfold from less than 5,000 to more than 36,000 in FY2013.⁸ I have seen statistics from USCIS Asylum Division showing an approval rate of 92% for credible fear claims in FY 2013.⁹

The concept of “credible fear” was instituted by the former Immigration and Naturalization Service as an informal screening device for the large numbers of Haitian people interdicted via boats on the high seas headed for the United States after the Haitian coup of 1991. The idea was that people interdicted via boats who could not articulate a credible fear that could qualify them for asylum would be repatriated to Haiti without further deliberation.

At that time it was unclear whether the U.S. had any legal obligation to boat people interdicted on the high seas under the Convention and Protocol Relating to the Status of Refugees or under U.S. law. It was hoped that the credible fear determination would satisfy any basic requirement for an individual hearing that might subsequently be required by U.S. courts.

⁵ <http://www.nytimes.com/1997/05/24/nyregion/doubts-cast-on-identity-of-nigerian-who-says-he-s-a-political-refugee.html>

⁶ U.S. v. Chen, 324 F.3d 1103 (9th C., 2003), <http://openjurist.org/324/f3d/1103/united-states-v-chen>

⁷For a recent story of how aliens are smuggled into the U.S. to make asylum claims, and the pressures on immigration judges who reject those claims, see Frances Robles, “Tamils’ Smuggling Journey to U.S. Leads to Longer Ordeal: 3 Years of Detention”, New York Times, Feb. 2, 2014, <http://www.nytimes.com/2014/02/03/us/tamils-smuggling-journey-to-us-leads-to-longer-ordeal-3-years-of-detention.html>

⁸ Cindy Chang and Kate Linthicum, “U.S. seeing a surge in Central American asylum seekers”, Los Angeles Times, Dec. 15, 2013, <http://articles.latimes.com/2013/dec/15/local/la-me-ff-asylum-20131215>

⁹ Data Provided by U.S. Citizenship and Immigration Services (USCIS) to House Judiciary Committee on December 9, 2013

Overwhelmed by increasing numbers of interdicted boat people, President George H.W. Bush in 1992 issued an executive order authorizing the direct return to Haiti of its nationals interdicted on the high seas, without any screening at all.¹⁰

That policy was harshly criticized by candidate Bill Clinton during the 1992 presidential campaign. Those of us who worked to implement President Bush's policies were gratified when the incoming Clinton administration announced on the eve of inauguration day, that despite earlier criticism, it would continue the Bush administration policy of repatriation to Haiti without any screening interview. The Clinton administration ended up defending that policy against its critics in federal court, and won a significant victory when the U.S. Supreme Court sustained the policy by an 8 to 1 vote and held that neither the Convention and Protocol on Refugees nor asylum and withholding provisions of U.S. immigration law apply to U.S. repatriations from the high seas.¹¹

My point is that the credible fear test was developed on the fly as a temporary screening device to facilitate repatriations from the interdictions of large numbers of people on the high seas headed for the U.S. without authorization. It is at best an unintended consequence for the credible fear test to be used to facilitate the entry into the United States of undocumented immigrants who present themselves at the border without having to prove their eligibility for asylum.

Two final points: The increasing numbers of asylum applicants is a not just a problem for the U.S. Anyone looking at recent developments in Western Europe, Australia, Canada, even Israel, can see that for many reasons including the worldwide recession, continuing turmoil and conflict, and rising expectations, the number of asylum seekers who need to be processed has risen and will continue to increase throughout the world. Policy planning should reflect this reality.

And it bears repeating that the international and U.S. legal standard for who is a refugee and therefore eligible for asylum in the U.S., at the discretion of the U.S. government, is more restrictive than the broader, more colloquially used concept of refugee. Those fleeing poverty, joblessness,

¹⁰ Executive Order 12807, 57 Fed.Reg. 23133 (1992).

¹¹ Sale v. Haitian Centers Council, Inc., 509 U.S. 155 (1993).

and economic stagnation in their home countries do not qualify under the legal standard for refugees. Those seeking better education, health care, and opportunities for their children do not qualify as refugees. Those fleeing high rates of crime and generalized violence in their home countries do not qualify as refugees. Those fleeing natural disasters, however acute, do not qualify as refugees.

What should be done?

First, all proposed grants of asylum should be routed through the U.S. Department of State for comment and an opportunity to object.

There's no simple solution to the false asylum claims, but I think the Department of State foreign service officers as a group are better able to determine actual conditions in various foreign countries, and therefore more likely to detect false stories and recognize the truth, than asylum officers or immigration judges based exclusively in the U.S.

The role of the Department of State in the adjudication of asylum claims was reduced and then eliminated because during the Reagan administration, that department was thought to favor asylum claims from countries whose governments the administration opposed, like Nicaragua, and to reject asylum claims from countries whose governments the administration supported, like El Salvador and Guatemala.

But the reality is there are always going to be some political pressures on these decisions, and there are strong political pressures today on the adjudicators at the Departments of Homeland Security and Justice. Political pressures on asylum adjudications can be mitigated by involvement of the State Department. Adjudicators with high rejection rates can defend themselves by presenting State Department comments.

I think we can only improve asylum adjudication by restoring a role for the diplomats we trust to represent us in foreign countries, who have first-hand experience in those countries, and who are required to study their languages and cultures. They can call upon specialized resources in every country to evaluate questionable asylum claims.

Second, Congress might want to reconsider the role of “credible fear” in the expedited removal provision of the immigration statute.¹² The statute already provides that “in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a (removal) proceeding under section 240.”¹³ That is the standard that should be applied to all arriving aliens.

Finally, just as the credible fear standard may originally have had some utility, but has lost value as alien smugglers game the system and spread the stories that “work” in demonstrating credible fear, so the asylum statute itself, INA Section 208, while a useful addition to our immigration law when added in 1980, may have lost some value as the stories have been spread that “work” in convincing an adjudicator to grant asylum.

How did the U.S. meet its obligations under the Convention and Protocol on the Status of Refugees before 1980? The answer is through withholding of deportation, now withholding of removal, Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. Section 1231(b)(3). That statute prevents the removal of an alien to any country if, “the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”

I would like to see Congress consider enhancing Section 241(b)(3) by adding to it some of the benefits of asylum, like adjustment of status to legal permanent resident, and following to join of spouses and minor children, under certain specified conditions, with the goal of replacing the asylum statute with a single enhanced withholding of removal statute for the protection of refugees. That statute has and will have a higher burden of proof than the asylum statute¹⁴, and should therefore be less susceptible to fraud.

That concludes my testimony, and I again thank the committee for the opportunity to testify.

¹² INA Section 235(b)(1), 8 U.S.C. Section 1225(b)(1).

¹³ INA Section 235(b)(2)(A), 8 U.S.C. Section 1225(b)(2)(A).

¹⁴ See *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).