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U.S. IDENTIFIES SOME SEEKERS OF ASYLUM

Sending Files to Home Countries Jeopardizes Safety

By Sandra Hernandez
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LOS ANGELES - Shortly after an Egyptian national was turned down for asylum, he was sent to a detention center where he discovered confidential details of his case had been turned over to the Egyptian government.

"I got a call from the Egyptian embassy," he said. The caller kept asking, "Why did you say all the terrible things about your country? Why did you ask for asylum?"

That call made him feel like "it was all over for me," he said. "It was a terrible moment. I know that, if they deport me to Egypt, I am dead."

Fear of Persecution

Two years after seeking asylum, the man says he still fears for his safety and requested anonymity.

His case was reopened after the disclosure was discovered and still is pending.

Asylum applications are based on a fear of persecution, and Department of Homeland Security regulations prohibit disclosing details that could put an applicant in danger.

The Egyptian's case is not isolated, a Department of Justice official said. It raises questions about how immigration officials handle asylum applications at a time when fewer foreigners qualify and deportations are on the rise.

'Worst-Case Scenario'

Last year, a Belarusian man learned immigration officials had provided details of his asylum application to a Belarus consular officer.

"This is incredibly serious because most asylum seekers are in fear of the authorities of their home countries," said University of Southern California law professor Neils Frenzen. "In the worst-case scenario, that information puts an individual's life in danger."

That the Belarusian government may have learned of the asylum application "through the actions of our own government" exposes the applicant "to enormous risk of persecution upon his return," Kenneth Yalowitz, former U.S. ambassador to Belarus, said in a statement supporting asylum for the man.

Moreover, some asylum experts said detecting this problem is extremely difficult.

"It isn't something that takes place in open court or where attorneys are present," said Karen Musalo, Hastings College of the Law professor. "This is happening when someone is in the process of being deported. So it is hard to know how pervasive this problem is."

Federal officials declined to discuss these cases because they have been reopened due to the disclosures. Deportation officers turned over court records to consular officers while trying to obtain travel documents to repatriate the men, officials said.

In the Egyptian's case, the U.S. attorney in Los Angeles admitted the Egyptian government officials obtained information about the asylum seeker after a deportation officer inadvertently included a judge's one-page summary order in documents sent to the consulate.

Less than a year later, immigration officials turned over a Salvadoran asylum seeker's file to a consular officer. In a sworn deposition, deportation officer Jay Jimenez said he gave El Salvador's consulate in Los Angeles an immigration judge's order with references to the man's asylum and Convention Against Torture applications.

Leon Hazany, a Beverly Hills attorney representing the Egyptian and the Salvadoran, is demanding the Department of Homeland Security investigate these breaches of confidentiality.

"I believe this is happening routinely," said Hazany, of Asherson, Keline & Darbinian.

He contends a second immigration officer in charge of coordinating travel for deportees may have turned over vast portions of his client's immigration file inadvertently to the Salvadoran consular official.

"Based on the conversation my client had with the official, I believe she gave him the whole file," Hazany said.

Although two documented breaches of confidentiality took place in Southern California, immigration officials said information from an asylum "case never leaves the office."

"We never use it," said Arthur Edwards, a deportation supervisor in San Pedro. "We do not offer that information. Even if we are asked, we can't provide it."

Deportation officers routinely contact consulates or embassies and provide information such as names, fingerprints and criminal background, Edwards said. He said employees are routinely reminded of the strict confidentiality regulations involving asylum cases, and he said that deportation officers were retrained three months ago.

Experts say the regulations allow for some exceptions, but the U.S. attorney general or the head of the Department of Homeland Security must approve such disclosures.

"When we would learn of situations where these types of disclosures took place, we considered it a problem," said Bo Cooper, former general counsel of the old Immigration and Naturalization Service. "There is a rule against disclosure, both for the protection of the individual and the system. People's safety was at stake."

Deportees to El Salvador "are assumed to have ties to gangs," said Thomas Davies, a retired professor of Latin American history at San Diego State University. "The Salvadoran government will take them aside, often strip-search them and interrogate them. Those interrogations can include torture."

Disclosing confidential information also causes headaches for immigration officials.

"Someone may have a weak asylum case that would and should on its merits be denied," said Stephen Yale-Loehr, a professor at Cornell Law School. "But if the U.S. government reveals the person applied for asylum, and now the home country takes an interest in the person and is more likely to persecute them, that person may have a stronger claim because the U.S. government revealed their asylum claim."

During the 1980s, federal officials inadvertently turned over the files of 3,000 Nicaraguan asylum seekers during a lawsuit in Florida. No regulations prohibiting such disclosures existed then, but the release

undermined a long-established practice of granting confidentiality to those applicants.

"We were allowed to review the entire file," said Florida immigration attorney Ira Kurzban.

In 2001, the New York-based Lawyers Committee for Human Rights cited several breaches, including one involving an Iranian man whose claim was denied. An immigration officer had sent the Iranian's reasons for seeking asylum to an Iranian consular official.

That information included a letter explaining danger the asylum seeker would face if sent back to Iran, the committee said in court papers.

These cases confirm the fears of many immigration attorneys, such as the American Civil Liberties Union's Judy Rabinovitz.

"You have to ask," she said, "Have we set up a system where people are applying for asylum at their own peril?"