



Center for Immigration Studies

Research by Others: State Department High Denial Rates and Illegal Maritime Migration

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Although we rarely write about it, the Center for Immigration Studies is not the only outfit in town doing our kind of work. While we routinely disagree with the policy recommendations of the Cato Institute (libertarian and pro-Chamber of Commerce) and those of the lushly funded, leftish Migration Policy Institute, each sometimes has something interesting to say about migration trends.

This week's examples deal with differential agency responses to somewhat similar sets of immigrant applications (Cato) and the increase in sea-going illegal migration (MPI).

Cato reports, with ill-disguised horror, that the State Department has much higher rates of denials of immigrant petitions for those overseas who would work in the U.S. compared to the Homeland Security decisions about adjusting the status of temporary workers to permanent ones.

According to Cato:

Since 2008, about 8 percent of employer-sponsored immigrants were denied while adjusting status. Meanwhile, workers abroad were about 8 times more likely to be denied. The average denial rate abroad was 63 percent.

There is an apples-and-oranges aspect to these numbers; the State Department data is for EB-2 and EB-3 applicants only, while the DHS data is for all five of the employment-based classes; I cannot immediately tell how significant this is.

But I do know this: The diplomats overseas are dealing with an entirely different situation than the DHS officials here. The local officials are working in a situation in which the worker is well known to the employer, having, usually, worked for the boss for years. The worker presumably does not have a troublesome police record. That there is a genuine worker-employer relationship is well known.

On the other hand, the State Department personnel are facing someone who *wants* to work in the U.S., and has probably never done so; who may or may not be well-known to the potential employer, and who may or may not please the employer once granted a visa. Further, there is often the problem that the visa is being sought on behalf of a U.S.-based relative, something that is often hidden.

Given these totally different circumstances, one would expect the denial rate overseas to be higher than the one here.

Further, one of the real-life factors that Cato does not consider is the difference between denying a benefit to someone who does not have it — that’s what the consular officers are doing — and taking away a benefit (legal status in the U.S.) that the applicant has had for years, which a DHS officer would be doing if she denied the adjustment application.

In the first instance, the alien is told he cannot have the goodie he wants; in the second, the alien is told that after years of living legally in the U.S. he has lost legal status. Only the most hardened officers — or libertarians — would not notice the difference between the emotional toll of the two sets of decisions on the decision-makers involved.

Another possible reason for the differential in approval rates may well be that the State Department people are more correct than the DHS. Cato’s report does not even get near thinking about that possibility.

A third variable is that the State Department decisions, made overseas, are not subject to the U.S. judicial system, which often leans toward U.S. employers and aliens who are present in the States.

Cato uses a couple of statements of retired Foreign Service officers to speculate that one reason for the differential rates of denials is because some too many FSOs are biased against what they regard as overly casual DHS and Department of Labor decisions. Maybe they are right about this, and maybe the FSOs have something there.

David J. Bier’s Cato report is entitled “Consulates Deny 61% of Employer-Sponsored Immigrant Visas”.

As to maritime illegal arrivals, MPI’s report points out:

While the 14,500 maritime migration attempts in fiscal year (FY) 2021 were just 1 percent of the encounters at the southwest border that year, U.S. interdictions of Haitians and Cubans at sea have collectively reached a level not seen since the 1990s.

The article mentions the interesting role played in these sea-borne, would-be arrivals by the Coast Guard. Since people picked up at sea are not covered by U.S. law, they can be — and are — shipped home outside the powers of our judicial system, a situation deplored by the writers.

Years ago, when I was paying more attention to these movements, I wrote about the utility of our (presumably paid) ally the Royal Bahamian Defense Force, that nation’s coast guard. It patrols the waters between Haiti and the States and certainly operates (for better or for worse) outside the jurisdiction of our courts. I do not know how active it is now, but eight or 10 years ago it was a major player in lowering illicit maritime migration.

The title of the MPI report is “Rise in Maritime Migration to the United States Is a Reminder of Chapters Past” and is by Muzaffar Chishti of New York University (a sparring partner of years ago) and Jessica Bolter.

So both Cato and MPI have noticed the (I think) useful, if controversial, non-role of the courts in managing those parts of our immigration system that do the screening in the consulates and on the high seas.