

MEMBERS' DECISIONS

EXPLANATORY NOTE

The Immigration and Refugee Board of Canada (IRB) is Canada's largest independent quasi-judicial administrative tribunal. It is composed of three divisions: the Refugee Protection Division (RPD); the Immigration Appeal Division (IAD); and the Immigration Division (ID).

The RPD hears refugee protection claims; the IAD hears appeals regarding sponsorship applications, removal orders, residency obligations and Minister's appeals of admissibility decisions; and the ID holds admissibility hearings and detention reviews. IRB Members are independent decision-makers.

The outcomes of decisions vary from one member to another because members render decisions based on the evidence presented in each case. Each case is unique and is therefore determined on the basis of its individual merit.

There are many factors that can impact on a decision. Each division will have its own variables that affect the trends of outcomes between members, between regions, or over different periods of time. The following information is a detailed illustration of how this applies to one division – the RPD.

Refugee Protection Division

Some of the factors that can impact on a decision are the claimant's country of origin; the region or city where the claimant lived; the claimant's ethnicity/nationality, gender and age; whether the claimant spent time in a third country before coming to Canada without claiming refugee status in that country; and the evidence presented (or not presented) by the claimant or the claimant's counsel. Moreover, each claimant has an individual right to present their own case as they see fit, so the evidence presented may vary widely from claim to claim, even among similar claim types. Also, different claim types may exist within the same country. For example, in a given country, a particular group may be mistreated while other groups may not experience any problems. Clusters of claim types from one country may migrate to different IRB offices and the situation of one group may be different from that of another group.

Also, the decision will depend on the reasons for which a person is asking for Canada's protection. The person may fear persecution because of race, nationality, religion, political opinion, or because of membership in a particular social group. In addition, people could claim protection on the basis of their fear of torture, risk to life or risk of cruel and unusual treatment or punishment.

The claimant's credibility can be a determining factor; cases that appear to be very similar or identical at first glance may end up being quite different. For example, two claimants who come from the same region with very similar stories may be issued different decisions because one claimant may be credible and the other may not.

Members of the RPD are often grouped into specialized geographical teams so that they can develop expertise in specific country conditions. They may be assigned to a different team at any time depending on the organization's operational needs.

Some members, by nature of their particular assignment, may do a large number of expedited cases. Expedited cases will bring about mostly positive decisions since they involve cases that appear to have a manifestly well-founded basis. Expedited cases must meet specific criteria and involve an interview and recommendation for either acceptance without a hearing or determination at a full hearing. The final determination always rests with the member deciding the claim.

For several reasons, the statistics provided on claim types are not necessarily reliable for determining the basis for a decision on a claim. The information is collected as a case management tool to triage case load. Reports reflect the data *as it was entered* in the database system. Changes are not made to this information once a file has been triaged.

"Claim type" categories are generic and may not be accurate for any specific case, but may be the "best fit" given the categories. Claim types may change along the way. For instance, the information contained in a Personal Information Form may identify a fear of persecution that, during the adjudication of the case, may not be the determining factor. The IRB's practice is not to go back and change the information in the database as its usefulness as a case management tool would have expired once the case had been heard. The information in this report cannot, therefore, necessarily inform the reader of the basis for the decision in a particular case.

In summary, the number of claims that an individual member may accept or reject is related to the nature of the claims that the member hears and the countries of origin involved. Conclusions or inferences should not be drawn from acceptance rates. For example, a member with a large caseload for countries that are democratic with a respect for the rule of law may have a lower overall acceptance rate than a member with a large case load from countries where the rule of law is not respected.

A member's acceptance rate for a given country can even vary from year to year. In fact, a member's acceptance rate can vary based on the various factors already mentioned, such as changes in the conditions in the country in question and changes in the type of refugee protection claims from that country heard by the member.

Consequently, high acceptance rates or high rejection rates are not synonymous with competence or incompetence.

Members in all three divisions must make their decisions in accordance with the law as our mission statement indicates: "Our mission, on behalf of Canadians, is to resolve immigration and refugee cases efficiently, fairly and in accordance with the law." IRB decisions are subject to review by the Federal Court of Canada.