United States General Accounting Office

GAO

Report to Congressional Committees

September 2000

ILLEGAL ALIENS

Opportunities Exist to Improve the Expedited Removal Process

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United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-283759

September 1, 2000

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The Honorable Patrick J. Leahy
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Senate Committee on the Judiciary

The Honorable Jesse Helms, Chairman
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Senate Committee on Foreign Relations

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The Honorable John Conyers, Jr.
Ranking Minority Member
House Committee on the Judiciary

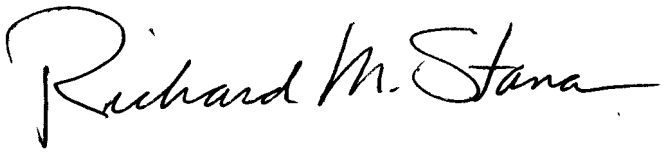
The Honorable Benjamin A. Gilman, Chairman
The Honorable Sam Gejdenson
Ranking Minority Member
House Committee on International Relations

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, among other things, included new provisions establishing an expedited removal process for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or those who arrive with fraudulent, improper, or no documents (e.g., visa or passport). The new process went into effect on April 1, 1997, and reduced aliens' rights to seek review of decisions not to admit them. As part of this new process, aliens who are subject to expedited removal and assert a fear of being returned to their home country or country of last residence are to be provided a credible fear interview. The purpose of this interview is to identify aliens whose asylum claims have a significant possibility of succeeding.

The International Religious Freedom Act of 1998 (P.L. 105-292) required us to address selected issues related to aliens who are subjected to the expedited removal process and the detention of such aliens. We make a recommendation for the Immigration and Naturalization

Service to reevaluate its policy for deciding when to release aliens who have a credible fear of persecution or torture.

Copies of this report are being sent to the Honorable Janet Reno, the Attorney General; the Honorable Doris Meissner, Commissioner, Immigration and Naturalization Service; the Honorable Jacob J. Lew, Director, Office of Management and Budget; and other interested parties. Major contributors to this report are listed in appendix IV. If you need any additional information or have any questions, please contact me on (202) 512-8777.



Richard M. Stana
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Executive Summary

Purpose

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 1996 Act) included provisions to deal with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport). This process,[1] which is called expedited removal, gives Immigration and Naturalization Service (INS) officers the authority to formally order these aliens removed from the United States.

The expedited removal process reduces aliens' rights to seek review of removal orders. Aliens who are subject to expedited removal but who express a fear of persecution or torture if they are returned to their home country or country of last residence are to be provided a credible fear interview with an asylum officer. The purpose of this interview is to identify aliens whose asylum claims have a significant possibility of succeeding. If the asylum officer determines that the alien has a credible fear of persecution or torture, the alien is referred to a hearing before an immigration judge where the alien can make a request for asylum. Under the 1996 Act, INS may either continue to detain or release aliens who are awaiting their hearings with an immigration judge.

The International Religious Freedom Act of 1998 (P.L. 105-292) requires GAO to study issues relating to aliens who are subject to expedited removal and those who have claimed a fear of persecution or torture in their home country. GAO is to issue its report to the Senate and House Committees on the Judiciary, the Senate Committee on Foreign Relations, and the House Committee on International Relations. As agreed with these committees, this report addresses, among other things,

- INS' management controls over (1) the expedited removal process and (2) the credible fear determination process, including those determinations relating to aliens' decisions to recant their claims of a fear of persecution or torture, and
- analysis of aliens who failed to appear before an immigration judge for their removal hearing after being released from detention.

Results in Brief

GAO's analysis of documentation in 365 randomly selected case files of aliens who were processed for expedited removal in fiscal year 1999 indicated that INS inspectors were generally complying with requirements of the expedited removal process at the Los Angeles, John Fitzgerald

[1] On April 1, 1997, the expedited removal process was established.

Kennedy (JFK), and Miami airports and the San Ysidro port of entry.[2] These requirements include asking aliens if they feared being returned to their home country, having a supervisor review the inspectors' decisions to remove the alien, and having aliens sign their sworn statements.

In the Los Angeles, Miami, and New York asylum offices, GAO reviewed all 45 cases in which an asylum officer determined that the aliens did not have a credible fear of persecution or torture (negative credible fear determinations). In these cases, asylum officers generally complied with documenting the credible fear process. For example, asylum officers documented that they generally read mandatory information to the alien during the interview, and supervisors documented their review of asylum officers' decisions.

INS guidance requires that asylum officers document an alien's wish to withdraw a claim of a fear of persecution or torture (recanting the claim) by having the alien (1) make this request in writing or (2) sign a statement indicating that the decision was voluntary. At the time of GAO's review, the guidance did not require that asylum officers document the reasons aliens stated for the withdrawal. While supervisors were to review expedited removal orders, they did not have to review aliens' decisions to recant their claims. In 8 percent of 10,755 cases, aliens recanted their claims of a fear of persecution or torture between April 1, 1997, and September 30, 1999. Some aliens recanted their claims after asylum officers had determined that their fears were credible and referred their cases to immigration judges. GAO's review of 133 randomly selected case files of aliens who recanted their claims in Los Angeles, Miami, and New York showed that asylum officers generally complied with INS guidance. However, the asylum offices varied in the amount of documentation they obtained from aliens recanting their claims of a fear of persecution or torture. On the basis of discussions with GAO, in July 2000, INS required that asylum officers document the alien's reason for not asking for protection from being removed from the United States.

INS favors releasing aliens from detention, in cases when an asylum officer determined those aliens to have a credible fear of persecution or torture if INS determines the aliens do not pose a risk of flight or danger to the community. According to 29 of 33 responses of INS district offices to GAO's survey, an estimated 3,432 of 4,391 (78 percent) of the aliens, in cases when asylum officers determined those aliens to have a credible fear of persecution or torture, were released in fiscal year 1999. GAO's analysis

[2] These ports handled about 44,400 (or 50 percent) of the expedited removal cases in fiscal year 1999.

of data on aliens who were found to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999, showed that 2,351 aliens were released and had received an immigration judge's decision. Of the 2,351 aliens, 1,000 (or 42 percent) of them had not appeared for their removal hearings. Department of Justice officials pointed out that over time more cases will be closed in which aliens will have appeared for their removal hearings; and consequently, this would result in a reduction of the failure to appear rate, to as low as 25 percent. INS currently has efforts under way to increase aliens' appearance rates.

GAO makes a recommendation for INS to reevaluate its policy for when to release aliens who have a credible fear of persecution or torture. The Department of Justice stated that the report was fair and accurate.

Background

Aliens seeking admission to the United States at a port of entry generally are to present documents to INS inspectors showing that they are authorized to enter. INS can prohibit aliens from entering the United States for several reasons (e.g., criminal activity or failing to have a valid visa or passport).

In the years preceding passage of the 1996 Act, concerns were raised about the difficulty of preventing illegal aliens from entering the United States and the difficulty of identifying and removing illegal aliens after they had entered this country. Under expedited removal, INS inspectors can issue expedited removal orders to aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive with fraudulent, improper, or no documents. As part of the expedited removal process, INS inspectors are to provide the aliens with certain information about the expedited removal process and to ask them specific questions, such as whether they fear being returned to their home country or country of last residence. With few exceptions, aliens cannot request an immigration judge's review of INS inspectors' removal decisions. However, before the orders are issued to the alien, supervisors are to review inspectors' removal decisions. In those situations in which an asylum officer has determined that the alien has a credible fear of persecution or torture, INS has the option of releasing or continuing to detain the alien. INS favors release of such aliens provided that the aliens do not pose a risk of flight or danger to the community.

In conducting its study, GAO reviewed INS' procedures aimed at helping ensure that inspectors comply with its expedited removal procedures. GAO interviewed officials at INS headquarters, one land port of entry (San Ysidro, CA), and three airports (Los Angeles International, Miami

International, and New York's JFK International). In addition, GAO obtained and reviewed headquarters and local guidance on the processes and procedures for processing aliens who recant their claims of fear. GAO also reviewed 133 randomly selected files of 232 aliens who recanted their claims of fear between October 1, 1998, and September 30, 1999, at the Los Angeles, Miami, and New York asylum offices. Furthermore, for aliens found to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999, GAO determined the number and rate of aliens who did not appear before an immigration judge for their removal hearings after being released from detention.

GAO's Analysis

INS Generally Followed Its Procedures for Documenting the Expedited Removal Process at Selected Ports

GAO's review of 365 case files randomly selected from 47,791 fiscal year 1999 case files of aliens who attempted entry at Los Angeles, JFK, and Miami airports, and San Ysidro port of entry and were charged under the expedited removal provisions showed that inspectors at these ports generally complied with INS' procedures. Specifically, depending on the port,

- inspectors documented that they had asked the aliens the three required questions designed to identify a fear of returning to their home country in 84 to 100 percent of the files,
- supervisors reviewed the expedited removal orders in 97 to 100 percent of the files, and
- the aliens' signed sworn statements were in 95 to 100 percent of the files.

INS Generally Followed Its Procedures for Documenting the Credible Fear Process at Selected Asylum Offices

GAO's review of all 45 negative credible fear determinations at the Los Angeles, Miami, and New York asylum offices showed that the asylum officers documented reading to aliens mandatory information regarding the (1) purpose of the credible fear interview, (2) the review by the immigration judge, and (3) torture. For example, the number of times the asylum officers documented reading mandatory information about the interview ranged from 21 of 24 times in Los Angeles to all of the times in the other two offices.

INS Clarified Requirements for Documentation Needed for Aliens Who Recant Their Fear of Persecution or Torture

According to INS data on closed cases, between April 1, 1997, and September 30, 1999, about 8 percent of 10,755 aliens who inspectors referred for a credible fear interview with an asylum officer later recanted their claims of a fear of persecution or torture.

INS guidance requires that asylum officers document an alien's wish to recant a claim of a fear of persecution or torture by having the alien (1)

make this request in writing or (2) sign a statement indicating that the decision was voluntary. The guidance does not, however, require that asylum officers document the reason for the withdrawal. However, INS has the responsibility under the 1996 Act to identify aliens who claim to have a fear of persecution or torture if they are returned to their home country and not to return aliens who are found to have such a fear. Without documentation on the reasons aliens recanted their claims, along with supervisory review, INS has little assurance that some aliens who recanted their claims would not be improperly returned home where they might be subjected to persecution or torture.

The Los Angeles, Miami, and New York asylum offices varied in the amount of documentation that they obtained from aliens withdrawing their claims of a fear of persecution or torture and generally complied with INS guidance. Two locations, New York and Miami, had aliens sign a standardized letter stating that the alien did not want to go through the credible fear process and would be allowed to go home as soon as travel arrangements could be made. The letter also noted that the alien had been advised that he or she would be barred from reentry into the United States. The letter also stated that the alien was making the decision freely and voluntarily and had not been coerced by an immigration officer or any other person. In Miami, 15 of the 45 files also contained a memorandum prepared by the asylum officers that summarized the aliens' reasons for recanting their claim of fear. In Los Angeles, 37 of the 40 case files contained statements written or signed by the aliens that described why they were recanting their claims, or they showed evidence that asylum officers had asked the aliens about their original claims of a fear of persecution or torture and recorded the aliens' responses.

Due to the various ways in which the offices document withdrawals, GAO could not determine the reasons why aliens recanted their claims of a fear of persecution or torture for the majority of cases. Therefore, INS also cannot determine whether it is returning some aliens to a country where they could be persecuted or tortured.

In discussing this documentation issue, INS said that (1) procedures requiring a more detailed record of reasons for which aliens recanted their claims of fear of persecution or torture should implemented and (2) review by a supervisory asylum officer should be documented. INS said that a more extensive record might provide a clearer chronology in cases similar to those that we sampled. Subsequently, on July 26, 2000, INS required that when an alien decides to stop pursuing protection from removal, an asylum officer will question the alien about his or her reason and will

explain the process for removal and the ability of that alien to pursue protection at any time prior to removal. Further, the asylum officer is to complete a form that includes the alien's reason for not asking for protection from removal and the signature of the supervisory asylum officer.

Many Released Aliens Did Not Appear for Their Hearing

In cases when an asylum officer determines that an alien has a credible fear of persecution or torture and the alien is released from INS custody, the alien is required to appear at a removal hearing before an immigration judge. At the removal hearing, the alien is to present his or her claim for asylum and the immigration judge is to rule on the merits of the claim. Aliens whose claims are denied are to be removed from the country and returned to their home country. GAO's analysis of data on aliens who were found to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999, showed that 2,351 aliens were released and had received an immigration judge's decision. Of the 2,351 aliens, 1,000 (or 42 percent) of them had not appeared for their removal hearings. In all 1,000 cases in which aliens did not appear for their removal hearings, immigration judges ordered them removed from the United States in absentia.

Department of Justice officials pointed out that over time more cases will be closed in which aliens appeared for their removal hearing; and consequently, this will result in a reduction of the 42 percent failure to appear rate. They determined that the failure to appear rate was 34 percent, as of August 10, 2000. They estimated that eventually the rate would be as low as 25 percent when all the cases are completed. These data and other studies suggest that many aliens may be using the credible fear process to illegally remain in the United States.

Aliens who INS did not detain were not likely to be removed from the country, according to a 1996 report by the Department of Justice's Office of the Inspector General. The report stated that, on the basis of its analysis of fiscal year 1994 data, only 11 percent of aliens who were not detained were actually removed at the end of removal proceedings, versus well over 90 percent of those aliens who were detained throughout the process.

Recommendations

GAO recommends that the Attorney General direct INS to analyze the characteristics of those aliens who appear and who do not appear for their removal hearing and to use the results to reevaluate its policy for deciding when to release aliens in cases when an asylum officer determined the aliens to have a credible fear of persecution or torture.

The report contains another recommendation to help ensure aliens appear at their removal hearings.

Agency Comments

We provided a draft of this report to the Attorney General for review and comment. On August 10 and 14, 2000, we met with Department of Justice officials to obtain Justice's comments. Overall, the officials stated that the report was fair and accurate. They suggested a modification of one of our recommendations to help ensure aliens appear at their removal hearings. They also provided technical comments, which have been incorporated in this report where appropriate.

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Abbreviations

A-number	alien number
ACA	American Correctional Association
AAP	Appearance Assistance Program
ANSIR	Automated Nationwide System for Immigration Review
APSS	Asylum Pre-Screening System
EOIR	Executive Office for Immigration Review
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
INSpect	Program for Excellence and Comprehensive Tracking
JFK	John Fitzgerald Kennedy International Airport
OIA	Office of Internal Audit
SPC	Service Processing Centers
UNHCR	United Nations High Commissioner for Refugees

Introduction

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the 1996 Act), which amended the Immigration and Nationality Act (INA),[1] as amended, was enacted September 30, 1996, (P.L. 104-208). Among other things, the 1996 Act included a provision, which is called expedited removal, for dealing with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or those who arrive with fraudulent, improper, or no documents (e.g., visa or passport). The expedited removal provision, which went into effect on April 1, 1997, reduces an alien's right to seek review of a determination of inadmissibility decision.

In the years preceding the passage of the 1996 Act, concerns were raised about the difficulty of preventing illegal aliens from entering the United States and the difficulty of identifying and removing illegal aliens after they had entered this country. The expedited removal process was designed to prevent aliens who attempt to enter the United States by engaging in fraud or misrepresentation or who arrive without proper documents from entering this country at our ports of entry.

The Immigration and Naturalization Service (INS) and immigration judges have roles in implementing the provisions of the 1996 Act relating to the expedited removal of aliens. INS' responsibilities include (1) inspecting aliens to determine their admissibility and (2) reviewing the basis and credibility of aliens who are subject to expedited removal but who claim a fear of persecution or torture if returned to their home country or country of last residence.[2] Aliens can request that immigration judges review INS' negative credible fear determinations. Immigration judges, who report to the Chief Immigration Judge, are in the Executive Office for Immigration Review (EOIR), within the Department of Justice. The immigration judges are located in immigration courts throughout the country.

Aliens Attempting to Enter the United States at Ports of Entry

Aliens who want to be admitted to the United States at a port of entry are required to establish admissibility to an inspector. INS has about 4,900 inspectors and about 250 staffed ports of entry. Generally, aliens provide inspectors with documents that show they are authorized to enter this country. At this primary inspection, an INS inspector either permits the aliens to enter the country or sends the aliens to another inspector for a more detailed review of their documents or for further questioning. The

[1] 8 U.S.C. 1101, et seq.

[2] For the purposes of this report, we use the term "home country" in referring to the aliens' home country or their country of last residence.

more detailed review is called secondary inspection. In deciding whether to admit the alien, the INS inspector is to review the alien's documents for accuracy and validity and check INS' and other agencies' databases for any information that could affect the alien's admissibility. After reviewing the alien's documents and interviewing the alien at the secondary inspection, the inspector may either admit or deny admission to the alien or take other discretionary action. INS can prohibit aliens from entering the United States for several reasons (e.g., criminal activity or failing to have a valid visa, passport, or other required documents). Inspectors have discretion to permit aliens to (1) enter the United States under limited circumstances although they do not meet the requirements for entry (paroled)[3] or (2) withdraw their applications for admission and depart the country.

Expedited Removal Provision

Under the 1996 Act, an INS inspector can issue an expedited removal order to aliens who (1) are denied admission to the United States because they engage in fraud or misrepresentation or arrive without proper documents when attempting to enter this country and (2) do not express a fear of returning to their home country. INS is to remove the alien from this country.[4] Generally, aliens who do not express a fear of being returned to their home country cannot have a review of INS' decisions.[5] Between April 1, 1997, and September 30, 1999, about 190,000 aliens who attempted to enter the country were given expedited removal orders.[6] Further information on the characteristics of aliens who were removed can be found in appendix I. The specific violations (i.e., aliens attempting to enter the United States by engaging in fraud or misrepresentation or arriving without proper documents) under the 1996 Act that could subject the alien to an expedited removal order are discussed in appendix II.

[3] Parole is a procedure used to temporarily admit an inadmissible alien into the United States, for emergency reasons or when in the public interest.

[4] There are other reasons why INS may find an alien inadmissible (e.g., criminal activity). However, expedited removal orders can only be issued to aliens whom INS finds inadmissible because the aliens attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents at the U.S. ports of entry. If INS includes any other charge against an alien, the alien cannot be processed under expedited removal procedures. INS is not required to charge an alien with all of the grounds under which it finds the alien inadmissible. With its new authority under the 1996 Act to issue expedited removal orders, INS' guidance to its inspectors states that, generally, if aliens are inadmissible because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents, additional charges should not be brought, and the alien should be placed in the expedited removal process.

[5] An alien can request an immigration judge's review of an inspector's decision if the alien swears under oath to be a U.S. citizen or to have lawful permanent residence, refugee, or asylee status. If the judge finds that the alien is not a U.S. citizen or does not have lawful permanent residence, refugee, or asylee status, then the alien will be subject to expedited removal.

[6] Expedited removal orders were issued to about 23,100 aliens in fiscal year 1997 (April through September), to about 76,700 aliens in fiscal year 1998, and about 89,000 aliens in fiscal year 1999.

Under the 1996 Act, aliens who are issued an expedited removal order generally are barred from reentering this country for 5 years. However, under the 1996 Act aliens are allowed to request permission to reapply for admission to this country during the 5-year period.[7]

The expedited removal provision also established a process for aliens who express a fear of being returned to their home country and who are subject to expedited removal. Inspectors are to ask specific questions and to look for signs from the aliens of fear of being returned to their home country and, if aliens exhibit such a fear, inspectors are to refer the aliens to an INS asylum officer for an interview to determine whether the aliens have a credible fear of persecution or torture or harm if returned to their home country. This is called a credible fear interview. The term "credible fear of persecution" is defined by statute as "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208" of the INA.[8]

INS has about 400 asylum officers who are involved with the asylum process. About 300 of these officers have been trained to conduct credible fear interviews. INS has eight asylum offices nationwide.

From April 1, 1997, to September 30, 1999, INS inspected about 28.3 million aliens per month at ports of entry.[9] INS referred about 601,000 of these aliens to secondary inspection; about 62,900 were not admitted.

Expedited Removal Process

Under the 1996 Act, on behalf of the Attorney General, the Commissioner of INS carries out the responsibilities to issue expedited removal orders against aliens classified as "arriving aliens." Justice regulations have defined arriving aliens as those who seek admission to or transit through the United States at a port of entry[10] or those who are interdicted in international or U.S. waters and are brought to this country. The 1996 Act also allows expedited removal orders to be issued to aliens who have entered the United States without being inspected or paroled at a port of

[7]The 1996 Act also increased the penalties for aliens who were removed under other provisions of the law.

[8] 8 U.S.C. 1225.

[9] These inspections were done at primary inspection.

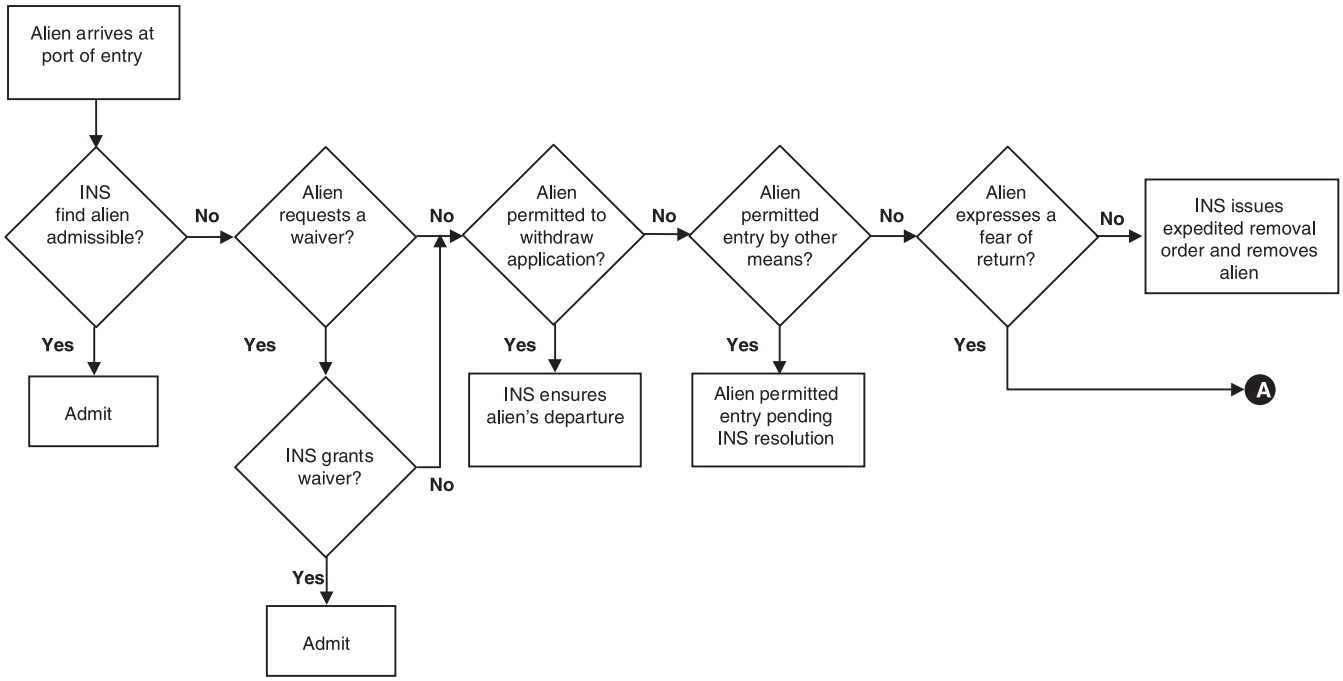
[10]The 1996 Act excludes from expedited removal Cuban nationals who arrive at a port of entry by aircraft.

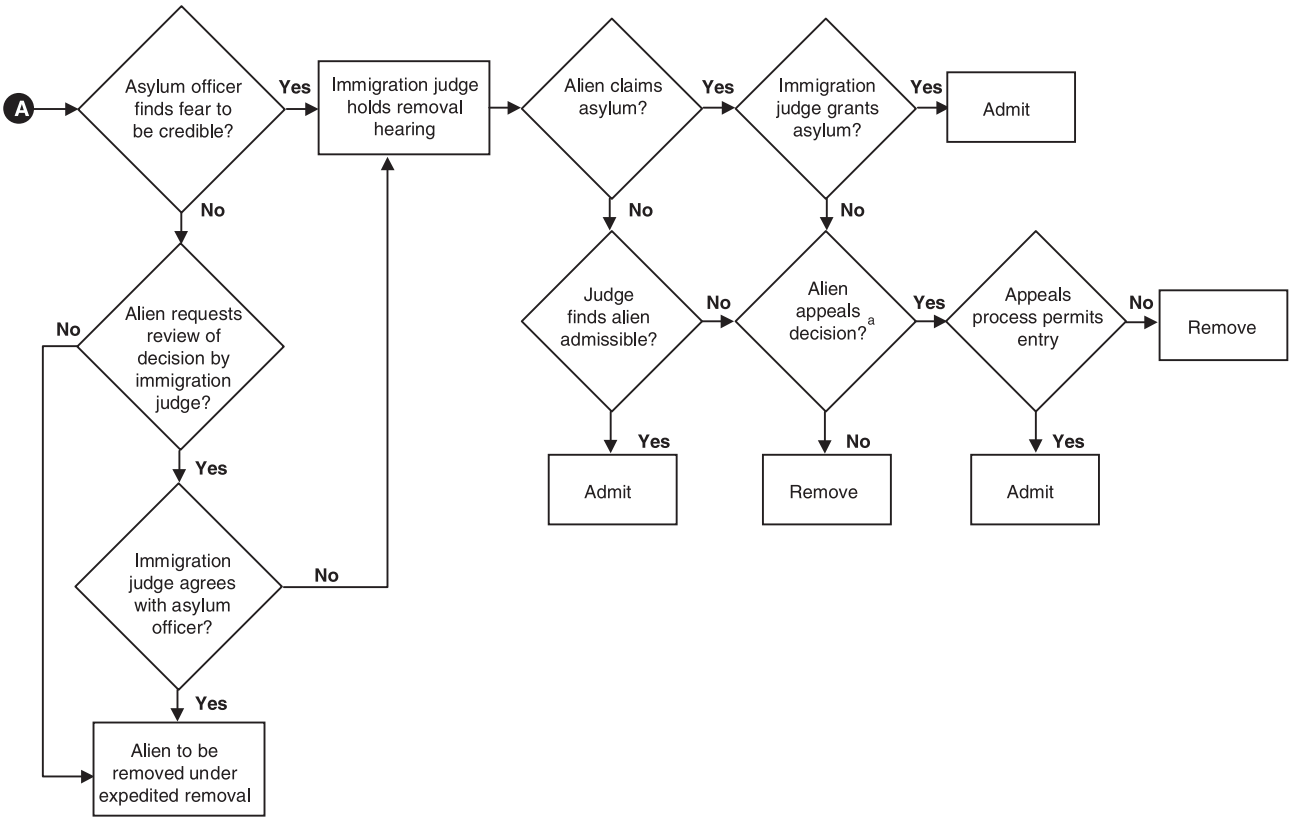
entry.[11] INS determined that it would not apply expedited removal orders to the last category of aliens—namely, those who entered the United States without inspection or parole.

The 1996 Act defines when INS can use expedited removal orders for arriving aliens. As discussed below, INS has established procedures for implementing the provisions, such as requiring inspectors to read specific information to the aliens. Figure 1.1 shows the expedited removal process, including the credible fear process.

[11]The 1996 Act only permits INS to issue expedited removal orders against aliens who have been in the United States for less than 2 years.

Figure 1.1: Flowchart of the Expedited Removal Process Under the 1996 Act





Note: Withdrawals can also occur at later stages in the expedited removal process.

Sources: Information provided in discussions with INS officials and review of INS documentation.

Steps in the Expedited Removal Process

According to INS' regulations and implementing instructions, when an inspector plans to issue an expedited removal order to an alien, the inspector is to follow certain steps, as shown below:

- Explain the expedited removal process to the alien and read the statement of rights and consequences in a language the alien can understand. Included in this statement are the facts that the alien may be immediately removed from this country without a hearing and, if so, may be barred from reentering the country for 5 years or longer; that this may be the alien's only opportunity to present information to the inspector before INS makes a decision; and that if the alien has a fear or concern about being removed from the United States or being sent to his or her home country, the alien should tell the inspector during this interview because the alien may not have another chance to do so.

- Take a sworn statement from the alien, which is to contain all pertinent facts of the case. As part of the sworn statement process, the inspector provides information to the alien, interviews the alien, and records the alien's responses. The inspector is to cover and document in the sworn statement topics such as the alien's identity and reasons for the alien being inadmissible into the United States; whether the alien has a fear of persecution or torture or return to his or her home country; and the INS decision (i.e., issue the alien an expedited removal order, refer the alien for a credible fear interview, permit the alien to withdraw his or her application for admission, admit the alien into the country, allow him or her to apply for any applicable waiver, or defer the inspection or otherwise parole the alien).

  When the inspector completes the record of the sworn statement, he or she is to have the alien read the statement, or have it read to the alien, and have the alien sign and initial each page of the statement and any corrections that are made. The inspector is to provide a copy of the signed statement to the alien. The alien is to be given an opportunity to respond to INS' decision.

- Complete other administrative processes and paperwork, including the documents needed to remove the alien.

- Present the sworn statement and all other related paperwork to the appropriate supervisor for review and approval.

Need to Identify Potential Asylum Seekers

As previously discussed, INS instructions require that the inspector is to refer an alien for an interview with an asylum officer if, for example, the alien indicates a fear of returning to his or her home country or an intent to apply for asylum. The asylum officer is to determine if the alien has a credible fear of persecution or torture. Immigration officers referred 11,104 aliens who requested admittance to the United States between April 1, 1997, and September 30, 1999, for a credible fear interview.

According to INS, to determine if an alien should be referred to an asylum officer for a credible fear interview, the inspector is to consider any statement or signs, verbal or nonverbal, that the alien may have a fear of persecution or torture or a fear of returning to his or her home country. The questions that the inspector is required to ask and to record were designed to help determine whether the alien has such a fear. These questions are as follows:

- Why did you leave your home country or country of last residence?
- Do you have any fear or concern about being returned to your home country or being removed from the United States?
- Would you be harmed if you are returned to your home country or country of last residence?

According to INS guidance, if the alien indicates that he or she has a fear or concern or intends to apply for asylum, the inspector may ask additional questions to ascertain the general nature of the alien's fear or concern. The alien does not need to use the specific terms "asylum" or "persecution" for the inspector to refer the alien for a credible fear interview, nor does the alien's fear have to relate specifically to one of the five bases contained within the definition of refugee, which are the legal basis for an asylum determination.[12] INS training materials note that there have been many cases in which asylum was ultimately granted that may not have initially appeared to relate to the definition of asylum. INS further requires that the inspector should not make eligibility determinations or weigh the strengths or credibility of the alien's claim. Additionally, the inspector should err on the side of caution and refer all questionable cases to the asylum officer.

When an inspector is going to refer an alien for a credible fear interview, the inspector is to process the alien as an expedited removal case.[13]

[12]As discussed later in this chapter, for an asylum officer to find that the alien has a credible fear of persecution or torture, the alien's fear must be related to one of the five bases (or grounds) listed in the refugee definition.

[13]The expedited removal order is not issued at this time.

Additionally, the inspector is to explain to the alien, in a language the alien understands, information about the credible fear interview, including (1) the alien's right to consult with other persons, (2) the alien's right to have an interpreter, and (3) what will transpire if the asylum officer finds that the alien does not have a credible fear of persecution or torture. This information is contained in an INS form that the inspector is to give the alien. The inspector also is to provide the alien with a list of free legal services, which is prepared and maintained by EOIR.

Removal of Aliens Served an Expedited Removal Order

Generally, INS requires that aliens who are subject to expedited removal should be processed immediately unless they claim lawful status in the United States or a fear of return to their home country. Those aliens who arrive at air and sea ports of entry who are to be removed from the United States are to be returned by the first available means of transportation. Aliens arriving at land ports of entry who are ordered removed usually should be returned to the country from which they tried to enter (i.e., Canada or Mexico). If the inspector is unable to complete the alien's case or transportation is not available within a reasonable amount of time from the completion of the case, the inspector is to send the alien to an INS detention center or other holding facility until he or she can complete the case or remove the alien. Parole may only be considered on a case-by-case basis for medical emergencies or for legitimate law enforcement purposes.[14]

Other Options Available in Lieu of Expedited Removal

An expedited removal order is not the only option available for the inspector to apply to aliens who are inadmissible because they attempted to enter the United States by engaging in fraud or misrepresentation or arrived without proper documents. Depending upon the specific violation, the options available to the inspector include (1) allowing the alien to withdraw his or her application, (2) processing a waiver, (3) deferring the inspection, or (4) paroling the alien into the United States. Normally, INS can refer these aliens to an immigration judge only if the alien is found to have a credible fear of persecution or torture or the alien swears under oath to be a U.S. citizen or to have lawful permanent resident, refugee, or asylee status, and that status has been verified. For those aliens whom the inspector cannot verify the alien's claim to be a U.S. citizen or to have

[14]A legitimate law enforcement purpose could include paroling the alien into the custody of another law enforcement agency for prosecution of the alien or for having the alien testify or assist the government in the prosecution of a criminal matter.

lawful permanent residence, refugee, or asylee status, the alien is sent to an immigration judge only for a review of the expedited removal order.[15]

On December 22, 1997, INS issued additional guidance on when an inspector should offer aliens an opportunity to withdraw their application for admission. According to this guidance, the inspector should carefully consider all facts and circumstances related to the case to determine (1) whether permitting withdrawal would be in the best interest of justice, or (2) whether justice would be ill-served if an order of removal (such as an expedited removal order) were issued. Factors to consider in making this decision may include, but are not limited to, previous findings of inadmissibility against the alien, the alien's intent to violate the law, the alien's age or health, and other humanitarian or public interest considerations. The guidance further states that ordinarily, the inspector should issue an expedited removal order when the alien has engaged in obvious, deliberate fraud. If the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa and did not conceal information during the course of the inspection, withdrawal should ordinarily be permitted. Between October 1, 1997, and September 30, 1999, about 151,000 aliens subject to expedited removal were permitted to withdraw their applications for admission.[16] For more information on the characteristics of aliens allowed to withdraw, see appendix I.

Guidance and Training

On January 3, 1997, INS issued proposed rules regarding the implementation of the 1996 Act, including the expedited removal process. On March 6, 1997, INS issued its interim rules on the implementation of the 1996 Act, including the expedited removal process.[17] According to an INS Headquarters official, these interim rules were still in effect at the time of our review.

INS developed and distributed specific guidance for its inspectors on how to implement the expedited removal process. This guidance was

[15] The inspector is to issue these aliens an expedited removal order and refer them to an immigration judge to review the order. If the immigration judge determines the alien has never been admitted as a lawful permanent resident or as a refugee, has not been granted asylum status, or is not an U.S. citizen, INS is to remove the alien. If the judge determines the alien was admitted as a lawful permanent resident or as a refugee, was granted asylum status, or is an U.S. citizen, the judge is to cancel the expedited removal order.

[16] INS did not begin to report data on the number of aliens subject to expedited removal who were permitted to withdraw until fiscal year 1998. About 72,000 were permitted to withdraw in fiscal year 1998, and about 79,000 were permitted to withdraw in fiscal year 1999.

[17] The effective date of these rules was April 1, 1997.

incorporated into the training that INS developed for its officers on the 1996 Act. The training information on the expedited removal process included instructions on who would be subject to expedited removal, what information should be obtained in a sworn statement, and when an alien should be referred to an asylum officer for a credible fear interview. According to INS, the agency has trained all of its inspectors on expedited removal. INS has modified its existing inspector basic training for newly hired employees to include the expedited removal process.

Credible Fear Process

Inspectors are to refer aliens who have expressed a fear of persecution or torture to an asylum officer for a credible fear interview. Under current operating instructions, that interview can be held no sooner than 48 hours after the alien has arrived to allow the alien an opportunity to recover from the rigors of travel and, if desired, to consult with friends, family, or other advisors, which may include attorneys.[18] Before holding the credible fear interview, asylum officers are required to (1) inform aliens about the credible fear and asylum processes; (2) inform aliens of their option to obtain a consultant who can be a lawyer, friend, relative, or anyone of the aliens' choosing; and (3) provide a list of people and organizations that provide legal services. According to an INS official, at some locations, this information is provided during an orientation. The regulations require INS to provide interpreters in the credible fear interviews, when necessary.

In a credible fear interview, the 1996 Act requires the asylum officer to decide whether there is a significant possibility that the alien could establish eligibility for asylum. To make this determination, INS requires the asylum officer to consider whether a significant possibility exists that (1) the alien's statements are credible (i.e., that the alien's testimony is consistent, plausible, and detailed); (2) the alien was persecuted in the past or there is a reasonable possibility the alien would be persecuted in the future;[19] and (3) the alien's fear is related to one of five bases for obtaining asylum—persecution or torture because of race, religion, nationality, political opinion, or membership in a particular social group. In addition, the asylum officer is to read mandatory information about the process, the right to appeal a negative credible fear determination to an immigration judge, and the fear of being tortured. The asylum officer is to

[18] However the alien can choose to waive this right and request an earlier credible fear interview.

[19] INS' regulations that took effect March 22, 1999, (64 Fed. Reg. 8, 478 (1999)) amended the credible fear screening provisions to ensure that an arriving alien subject to the expedited removal process will, when appropriate, be considered for protection under the Convention against Torture. The amended regulations expanded the credible fear screening to include a screening for credible fear of torture, as well as for credible fear of persecution.

read aloud the mandatory paragraphs from an INS form on which the officer also records the results of the credible fear interview.

INS' training materials state that it may be helpful to think of the standard as a net that will capture all potential refugees and individuals who would be subject to torture if returned to their country of feared persecution or harm. Such a protective net may also capture nonrefugees and individuals that may not be subject to torture. The purpose of this standard is to guarantee the identification of all persons who could be classified as refugees or who require protection from torture under the United States' international obligations. The materials also note that the legislative history of the 1996 Act indicated that the credible fear of persecution standard is intended to be a low screening standard for admission into the usual full asylum process.

The asylum officer is to record the results of the credible fear interview, including (1) a determination of the alien's ability to establish past harm or fear of future harm, with a potential connection between the harm experienced or fear to any of the five grounds for asylum or (2) where applicable, a determination of whether the alien has a significant possibility of establishing eligibility for protection under the Convention against Torture. INS requires supervisory review of asylum officers' credible fear determinations.[20]

If the asylum officer finds that the alien has a credible fear of persecution or torture, the alien will be placed in removal proceedings[21] before 1 of about 117 immigration judges. During these proceedings, the alien can make a formal application for asylum. The application for asylum generally must be submitted within 1 year of arriving in the United States.[22] During these proceedings, the immigration judge is to decide whether the alien's asylum claim warrants his or her being granted asylum in the United States. If the asylum officer finds that the alien does not have a credible fear, the alien has a right to request that an immigration judge review the negative credible fear determination. If the alien does not request a review of the credible fear determination, the alien is subject to expedited removal. According to INS, asylum officers have been instructed that aliens who refuse to sign papers or seem confused by the process or

[20]INS requires that when either an asylum officer or his or her supervisor determines that an alien has a credible fear, the alien is to be referred for a removal hearing before an immigration judge.

[21]The 1996 Act merged deportation and exclusion proceedings into a single removal proceeding.

[22] If the alien demonstrates the existence of changed circumstances relating to the delay in filing the application, the application does not have to be filed within the required period of time.

undecided about whether to request a review should receive a review unless they are requesting to be sent home.

In cases where the alien requests a review of an asylum officer's negative credible fear determination, the immigration judge is to review this determination. During this review, the immigration judge may receive into evidence any relevant written or oral statements. If the immigration judge agrees with the asylum officer's negative credible fear decision, the alien cannot appeal the immigration judge's decision and is to be removed through the expedited removal process. If the immigration judge disagrees with the asylum officer's negative credible fear decision, the alien is to be placed in removal proceedings, during which he or she can apply for asylum. During the immigration judge's review, at the discretion of the immigration judge, the alien may enlist the aid of a consultant in the review process.

In some cases, aliens decide to withdraw their requests for a credible fear interview later in the process. In such cases, INS requires that immigration officers document that the alien had not been coerced and was voluntarily withdrawing his or her claim. These aliens may then be placed in expedited removal.

Generally, the 1996 Act requires INS to detain aliens who are subject to expedited removal and who express a fear of persecution or torture until they are removed from the country or permitted to remain in the country.[23] These aliens are initially detained at the port of entry during the inspection process and then transported to a detention facility to await an interview by an asylum officer, unless release[24] is required to meet a medical emergency or legitimate law enforcement objectives. If an asylum officer determines that the alien has a credible fear of persecution or torture, detention is no longer mandatory. The INS district director, chief patrol agent, or officer in charge has the discretion to release such aliens for whom an asylum officer determined that a credible fear existed, provided there is a determination by an INS district officer the alien is likely to appear for the removal hearing and does not pose a risk to the community.

Objectives, Scope, and Methodology

The International Religious Freedom Act of 1998 (P.L. 105-292) requires us to study issues relating to aliens who are subject to expedited removal and those who have claimed a fear of persecution or torture. In addition, our

[23] Generally, aliens who are subject to expedited removal and do not express a fear of persecution or torture are to be detained until they are removed from the country.

[24] This is parole of aliens into the United States either on bond or on their own recognizance.

study is to address issues related to their detention. We are to issue our report to the Senate and House Committees on the Judiciary, the Senate Committee on Foreign Relations, and the House Committee on International Relations. We agreed with these committees to review

- INS' management controls over the expedited removal process, including those related to INS' decision on whether to permit aliens the option of withdrawing their application for admission;
- INS management controls over the credible fear determination process, including those relating to aliens' decisions to recant their claims of a fear of persecution or torture; and the results of the credible fear process; and
- factors related to aliens who (1) were subjected to the credible fear process and the effect of those factors on the results of the credible fear determination and (2) were subjected to the credible fear process and subsequently recanted their claim of a fear of persecution or torture and the effect of those factors on the aliens' decision to recant their claim.

Concerning the detention of aliens during the expedited removal process, we agreed to provide data on

- the number of aliens INS detained and the basis for INS' detention decisions, including the criteria INS used in making its detention decisions;
- the number of aliens who failed to appear before an immigration judge for their removal hearing after being released from detention; and
- the conditions of the facilities INS used to detain aliens.

To determine the management controls in place to help ensure that inspectors and asylum officers comply with proper expedited removal and credible fear procedures, we interviewed key officials at INS headquarters and at one land port of entry (San Ysidro, CA); three airports—Los Angeles International, Miami International, and New York's John Fitzgerald Kennedy (JFK) International; and the three asylum districts that conduct credible fear interviews for the San Ysidro land port and the Los Angeles, Miami, and New York airports.

We judgmentally selected these four ports to include a large number of entries by aliens, geographically diverse areas, and the two major types of ports of entry (land ports and airports). According to INS, these ports were expected to have large volumes of expedited removal orders and a large

number of credible fear referrals and, thus, should provide us with a reasonable representation of the expedited removal process. These locations handled about 44,400, or 50 percent, of the expedited removal cases in fiscal year 1999.

We also reviewed headquarters and local guidance on the processes and procedures for processing aliens through expedited removal and credible fear interviews as well as on withdrawals and cases in which aliens recanted their claims of credible fear.

At the four ports we visited, we examined INS' use of three internal controls that are designed to help ensure that inspectors handle expedited removal cases in accordance with prescribed guidelines. These controls are (1) documentation of specific expedited removal procedures, including supervisory review of cases; (2) training on expedited removal and credible fear policies and procedures; and (3) monitoring of the expedited removal and credible fear processes at the ports. Our analysis of these internal controls included the following steps:

- To examine the documentation of specific expedited removal procedures, including supervisory review of cases, we reviewed probability samples[25] of 585 files for aliens who entered the expedited removal process but were not referred for a credible fear interview between October 1, 1998, and September 30, 1999. These files included 365 aliens who were issued an expedited removal order as well as 220 aliens who were offered withdrawals at the ports of entry. We did not examine withdrawals at San Ysidro because the port did not create and retain case files in the majority of instances where withdrawals were allowed.

- To determine whether asylum officers followed certain credible fear determination processes, we reviewed all 45 files of negative credible fear determinations for aliens who entered the country between October 1, 1998, and September 30, 1999, for the 3 asylum offices we visited. We also reviewed 133 randomly selected files of the 232 aliens who recanted their claims of fear during this period at the same 3 offices.

- To review the training provided on expedited removal and credible fear policies and procedures to immigration officers, we interviewed INS training officials in headquarters as well as at each of the four district

[25] A probability sample is drawn using statistical, random selection methods that ensure that each member of the universe has a known probability of being selected. This approach allows us to make inferences about the entire universe.

offices and three asylum offices we visited and obtained appropriate guidance and training manuals. We also discussed training with inspectors and asylum officers at the offices visited and distributed a questionnaire to 401 inspectors and 108 asylum officers to elicit their views on the types and adequacy of training received on expedited removal and credible fear processes. We received responses from 182 inspectors and 64 asylum officers.

- To examine INS' monitoring and oversight of the expedited removal processes at the ports and asylum offices, including credible fear determinations, we interviewed INS officials at headquarters and the locations we visited and obtained audit reports and other data related to these activities.

  In addition, during our field visits we observed inspectors processing seven aliens through the expedited removal process and asylum officers conducting six credible fear interviews. We also interviewed immigration judges at each of the locations and observed judges' reviews of two negative credible fear determinations of aliens who attempted entry at the ports we visited. We selected courts that were near the ports of entry included in our review.

  To examine the characteristics of aliens subject to the expedited removal process, we analyzed two INS databases, which contained information on all aliens subject to expedited removal who applied for entry at the nation's airports and San Ysidro, CA during fiscal year 1999. The databases contained information on the nationality, gender, and age of the aliens, the charges against the aliens, and inspectors' decisions to either issue expedited removal orders, allow aliens to withdraw, or refer aliens to the asylum office for credible fear interviews. To examine the factors associated with aliens' decisions to recant their fear of persecution or torture and with credible fear determinations made by asylum officers, we analyzed an INS database containing information on all aliens referred by inspectors to asylum officers for credible fear interviews. The database contained information on the citizenship, age, and gender of the aliens; whether aliens attempted to enter the country alone or with dependents; and whether aliens recanted their fear, or received positive or negative credible fear determinations from asylum officers. This database had information on aliens applying for entry to the United States between April 1, 1997, and September 30, 1999. Appendix III contains additional discussion of this database and our assessment of its reliability.

To determine how INS exercised its authority to detain or release aliens who arrive at ports of entry and claim a fear of persecution or torture, we reviewed INS headquarters policy and guidance on detention priorities. We also reviewed applicable laws and regulations.

To determine how each district exercised its discretion to release or detain an alien after an asylum officer determines that the alien has a credible fear of persecution or torture, we conducted a mail survey of the Detention and Deportation Branches of all 33 domestic INS district offices. We surveyed the district offices because they were the best source of information regarding the detention and release of aliens. We received responses from all 33 district offices. The Anchorage, AK, and Honolulu, HI, District Offices reported that they routinely transferred all aliens claiming a fear of persecution or torture to other western region districts for the credible fear processing. As a result, the district offices that received these aliens included them in the number of cases they reported. Two districts could not estimate or provide an exact number of cases. Therefore, we have responses from 29 district offices on the number of aliens detained or released and from 29 district offices regarding their detention practices.

Specifically, we asked these district officials to describe what factors they considered in deciding whether to detain or release credible fear aliens. We also asked them to provide district data on the number of credible fear cases for fiscal year 1999; the number of aliens detained and released; and a list of the facilities they used to detain aliens, including those facilities used to detain aliens claiming a fear of persecution or torture.

To determine the number of aliens who did not appear before an immigration judge for their removal hearings after being released from detention, we obtained and analyzed a joint INS and EOIR database that contained information on the results of removal hearings for aliens, in cases when asylum officers determined those aliens to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999. Our analysis focused on those aliens who received a decision from an immigration judge (e.g., granted the alien's asylum request or ordered the alien removed in absentia). This database was created by merging selected data fields from EOIR's nationwide database on all removal hearings handled by immigration judges with selected data fields from INS' nationwide database on the results of credible fear interviews conducted by asylum officers. The two databases were merged using the applicant's INS-assigned alien number. The resulting database contained identifying information on the alien, including name, alien number, and nationality;

the date of the asylum officer's credible fear determination; whether the alien filed an application for asylum relief; dates and locations of any hearings before an immigration judge; whether the alien requested a change of venue for such hearings; whether the alien was detained or released as of the date of a specific hearing; and the results of the hearings, including whether the alien was present for the hearings; and whether the judge granted asylum or other relief from removal or issued a formal removal order. The database contained information on removal hearings for 7,947 aliens who had received positive credible fear determinations from asylum officers, including 5,320 (or 67 percent) who were released from INS custody as of the date of their hearing.

To review detention conditions, we visited six INS districts whose ports of entry processed 77 percent of the aliens claiming a credible fear of persecution or torture in fiscal year 1999. The six districts were Chicago, Los Angeles, Miami, New York, San Diego, and San Francisco. Within these districts we visited 12 detention facilities[26] that district officials said were generally used to detain aliens who claimed a fear of persecution or torture. According to our district survey, officials reported that they used 166 detention facilities, excluding hotels and shelters, to detain credible fear aliens. The 12 facilities we visited were used to detain about 70 percent of all credible fear aliens nationally in fiscal year 1999. The facilities we visited were two INS-owned and operated Service Processing Centers (SPC), three contractor-owned and operated facilities, and seven city and county jails. We discussed detention policies and procedures with facility officials and toured the living, medical, visitation, recreation, library, and kitchen areas in each facility.

To guide our observations of detention conditions at the 12 facilities we visited, we developed a data collection instrument. The specific conditions we chose to observe were developed from INS' draft detention standards, American Correctional Association (ACA) standards, guidelines and principles of the United Nations High Commission on Refugees (UNHCR) on detention standards for asylum seekers and other detainees, a survey mailed to INS detainees in support of a class action law suit[27] on detention conditions by the Center for Human Rights and Constitutional Law, immigrant detention reports by Human Rights Watch and Amnesty

[26] By district, the facilities were Chicago—DuPage County Jail, IL, and Racine County Jail, WI; Los Angeles—Mira Loma Detention Center, CA, and San Pedro SPC, CA; Miami—Krome SPC, FL; New York—Elizabeth Detention Center, NJ, Queens Private Detention Facility, NY, and York County Prison, PA; San Diego—San Diego Detention Center, CA; and San Francisco—Kern County Sheriff's Department Lerdo Facility, CA, Marin County Jail, CA, and Oakland City Jail, CA.

[27] The suit was dropped after a new case judge decertified the case.

International,[28] and discussions with representatives from UNHCR and other immigrant rights advocates. We focused on conditions about which we did not have to make value judgments, such as whether aliens were allowed access to telephones, visitation, and health care.

More details on our objectives, scope, and methodology are in appendix III of this report. References made to aliens in this report may be related to their cases.

We conducted our work at INS headquarters in Washington D.C., and the six INS districts and their associated port and detention facilities, as discussed above, from August 1999 to July 2000 in accordance with generally accepted government auditing standards.

Agency Comments

We provided a draft of this report to the Attorney General for review and comment. On August 10 and 14, 2000, we met with INS officials, including the GAO Audit Liaison in its Office of Internal Audit (OIA), and with EOIR officials, including its General Counsel, respectively, to obtain Justice's comments. Overall, the officials stated that the report was fair and accurate. They also provided technical comments, which have been incorporated in this report where appropriate.

[28] Human Rights Watch, September 1998, "Locked Away: Immigration Detainees in Jails in the United States." Amnesty International, September 1999, "United States of America: Lost in the Labyrinth: Detention of Asylum-Seekers."

INS Is Generally Following Its Procedures and Internal Controls For the Expedited Removal Process At Selected Ports

Our review of documentation in the case files of aliens who had been processed for expedited removal indicated that INS inspectors were complying with requirements of the expedited removal process in almost all cases at Los Angeles, JFK, and Miami airports and the San Ysidro port of entry. These requirements include the inspectors' taking aliens' sworn statements and asking aliens if they had a fear of returning to their home country, supervisory oversight, and having the aliens sign their sworn statements. We identified some cases where the supervisors did not sign removal orders, but documentation indicated that supervisors' concurrence was obtained by telephone, which is consistent with INS policy.

From the inception of expedited removal INS stated that it has provided training to inspectors and supervisors on the requirements of the expedited removal process and has now included it as part of basic training for all inspectors. Most of the inspectors we interviewed or surveyed expressed satisfaction with the training provided.

INS has established two internal oversight groups—the Expedited Removal Working Group[1] and OIA—to help ensure that immigration officers comply with expedited removal procedures. In fiscal year 1999, these groups found a small number of problems, and they were the same types of problems that we identified in our review. Specifically, they found sworn statements that were not done correctly and removal orders without proper supervisory signature. Additionally, the two groups found that the appropriate INS databases were not being updated in a timely manner.

INS also requires that inspectors follow specific procedures in cases where aliens are allowed to withdraw their applications for admittance rather than being processed for expedited removal. Our examination of these files at Los Angeles, Miami, and JFK airports showed that inspectors generally documented that they followed these procedures.

[1] The Expedited Removal Working Group was established in 1997 to identify and address questions, procedural and logistical problems, and quality assurance concerns related to the expedited removal process. It consists of representatives from INS' offices of Inspections, International Affairs, Asylum, Detention and Deportation, Field Operations, and General Counsel. The group provides policy guidance and training on expedited removal. The activities of the group are discussed later in this chapter.

INS Management Controls for Expedited Removal

At the four ports we visited, we examined INS' use of three management controls that help INS to ensure that inspectors are properly following its policies and procedures for carrying out the expedited removal process. Specifically, we found that

- documentation generally indicated that (1) inspectors asked aliens specific questions about their fear of being returned to their home country, (2) supervisors reviewed expedited removal orders, and (3) aliens signed their sworn statements;
- training was provided to inspectors and supervisors on expedited removal procedures, including how to process required paperwork and take sworn statements from aliens; and
- two internal groups were in place to monitor the expedited removal process.

File Review Indicated General Compliance With INS Procedures at Selected Ports

We reviewed randomly selected case files on 365 of 47,791 aliens who attempted entry at Los Angeles, JFK, and Miami airports and San Ysidro port of entry during fiscal year 1999, and who were charged under the expedited removal provisions but were not referred to an asylum officer for a credible fear interview.[2] Our review showed that the documentation in the case files at the four locations indicated general compliance with the procedures. We generally found that (1) inspectors documented in the sworn statement that they asked the aliens the three required questions designed to identify a fear of returning to their home country, (2) supervisors reviewed the expedited removal orders, and (3) aliens signed the sworn statements.

Inspectors at Selected Ports Generally Documented Asking Required Questions

As discussed previously, inspectors are required to ask aliens questions about a fear of being returned to their home country to identify those aliens who may have a credible fear of persecution or torture and, thus, may be eligible for asylum. Specifically, inspectors are to ask aliens (1) why they left their home country or country of last residence, (2) if they have a fear or concern about being returned or removed from the United States, and (3) if they thought that they would be harmed if they were returned. Regarding inspectors asking the three required questions, our case file review of the documentation showed that inspectors at all four

[2] INS did not offer these aliens the opportunity to withdraw their applications for admission. See appendix III, table III.4 for a listing of the sample and population sizes for the four ports.

locations almost always documented that they followed procedures.[3] As shown in table 2.1, the large majority of case files contained documentation that the inspectors asked the aliens why they left their home country or country of last residence.[4]

Table 2.1: Why Did You Leave Your Home Country or Country of Last Residence?

Port of entry	Percent of cases where inspectors recorded asking the required question
Los Angeles International Airport	96
JFK International Airport	99
Miami International Airport	99
San Ysidro Port of Entry	84

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

As shown in table 2.2, nearly all of the case files contained documentation that the inspectors asked the aliens if they had a fear or concern about being returned to their home country or of being removed from the United States.

Table 2.2: Do You Have a Fear or Concern About Being Returned to Your Home Country or Removed From the United States?

Port of entry	Percent of cases where inspectors recorded asking the required question
Los Angeles International Airport	96
JFK International Airport	99
Miami International Airport	99
San Ysidro Port of Entry	100

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

As shown in table 2.3, nearly all of the case files contained documentation that the inspectors asked the aliens if they would be harmed if they were returned to their home country.

[3] The absence (or presence) of documentation in the file does not necessarily mean that the inspector did not (or did) ask the required questions.

[4] Unless othewise noted, all confidence intervals are less than or equal to plus or minus 10 percentage points.

Table 2.3: Would You Be Harmed If You Were Returned To Your Home Country?

Port of entry	Percent of cases where inspectors recorded asking the required question
Los Angeles International Airport	93
JFK International Airport	99
Miami International Airport	98
San Ysidro Port of Entry	99

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

INS inspectors and supervisors at all four locations told us that the standard for a finding of credible fear was very low and that inspectors were directed to send cases forward when any mention of fear is made. During our file review, we identified six cases at JFK in which file documentation indicated that the aliens had expressed a fear. However, the aliens were not referred to an asylum officer and were instead placed in expedited removal. According to the documentation, the aliens' reasons for the fear in three cases were that they (1) owed money, (2) might be arrested for leaving their country, or (3) had a fear but would not be harmed if returned to their home country. In the remaining three cases, the aliens' reasons for being afraid were not clear from reading the sworn statements. An INS official at the JFK port of entry reiterated that the port of entry's policy requires all cases where fear is mentioned to be referred to an asylum officer. He indicated that additional training or clarification of the standard might be helpful. We identified a similar case in Los Angeles where the alien claimed a fear of persecution or torture but was placed in expedited removal. All seven of these cases had evidence of supervisory approval.

Supervisory Approval Generally Provided at Selected Ports

All expedited removal orders require supervisory approval. By regulation, this approval authority is not to be delegated below the level of a second-line supervisor. On the basis of our case file review at the four ports, we estimate that second-line supervisors documented that they reviewed the expedited removal orders in an estimated 97 to 100 percent of the cases (see table 2.4).

Table 2.4: Is There Evidence That a Second-line Supervisor Signed off on the Removal Order in the File?

Port of entry	Percent of files that included evidence that a second-line supervisor signed off on the removal order in the file
Los Angeles International Airport	97
JFK International Airport[a]	100
Miami International Airport	99
San Ysidro Port of Entry	97

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

[a]A second-line supervisor concurred by telephone for most of the cases.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

Some of the files we reviewed contained expedited removal orders without supervisory signatures, but documentation indicated that supervisory concurrence was obtained by telephone. For example, in 80 of the 94 cases we reviewed at JFK, documentation indicated that supervisory review was obtained in this manner. According to an INS official at JFK, having an assistant port director at all the various terminals at all times was not feasible given staffing constraints. INS permits approval by telephone if an appropriate supervisor is not present at the port. However, according to an INS headquarters official, training provided to regions has included a recommendation that approving officials keep a log of telephonic concurrence to ensure the integrity of the process and that all cases have been properly approved. A JFK official said that they were not keeping a log at the time of our review.[5]

Aliens Usually Signed Sworn Statements at Selected Ports

Another internal control to help ensure that inspectors are properly following expedited removal policies and procedures is to have the alien sign their sworn statements. Files at the four ports indicated that aliens signed the sworn statements between 95 and 100 percent of the time for the case files we reviewed, as shown in table 2.5.

Table 2.5: Is the Record of Sworn Statement Signed by the Alien?

Port of entry	Percent of time documentation indicated that the alien signed the sworn statement
Los Angeles International Airport	95
JFK International Airport	97
Miami International Airport	97
San Ysidro Port of Entry	100

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

[5] We did not determine if the other ports kept a log or added follow-up information. We obtained information at JFK due to the large number of cases with telephonic concurrence.

Local officials at each of the three airports told us that they had implemented an additional management control to ensure inspector compliance with proper procedures. Specifically, these ports required that at least an assistant area port director sign off on a detailed checklist prior to closing a case file. As shown in table 2.6, we found that most of the files contained this signature, as required at these locations.

Table 2.6: Is There Evidence that an INS Port Director or Assistant Area Port Director Signed off on the Supervisory Checklist?

Port of entry	Percent of cases with evidence of port director or assistant area port director signature
Los Angeles International Airport	93
JFK International Airport	100
Miami International Airport	99

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

It should be noted that we could not determine when this supervisory review took place. For example, an official at one port told us that after cases were completed in secondary inspection, the case files were sent to the Intelligence Unit. She said that, among other things, the Intelligence Unit checks for missing signatures and returns the files for appropriate signatures when needed. According to the port official, cases may remain open for a very short time or as long as 2 months, depending on the existing workload and what needs to be done to the file. We could not determine from the case file when the officials reviewed the cases.

INS Makes Training Available on Expedited Removal Policies and Procedures

According to INS, all immigration officers who conduct expedited removal proceedings are to receive training on how to implement the statutory provisions and regulations. Further, INS requires that its inspectors are to successfully complete a 12-week basic training program and a 1-year field training and probationary period before being allowed to conduct expedited removal proceedings. During this period, all officers are to receive training in the provisions of the 1996 Act, including the expedited removal statute, regulations, and implementing procedures. INS also provided training for designated “expedited removal experts” from each district. These individuals were, in turn, to provide training at their respective offices and act as focal points for distribution and implementation of policy guidance and memorandums.

The expedited removal training is designed to provide instructions on aliens who would be subject to expedited removal, what information should be obtained in a sworn statement, and when to refer an alien to an asylum officer for a credible fear interview. Training also covers guidance

on when to offer withdrawals in lieu of expedited removal. Some of the ports that we visited provided additional training to inspectors in special units that processed expedited removal cases. Additionally, INS' Expedited Removal Working Group provides policy guidance and training on expedited removal as well as addresses port-specific problems during its site visits. An INS headquarters official told us that they would continue to conduct additional support training at field offices and ports of entry, as necessary.

Inspectors and supervisors we surveyed acknowledged receiving the training on expedited removal and said that they were generally satisfied with it. The response rate to our survey was 182 of 401 inspectors (or 45 percent) at the four ports. Of those responding, 149 inspectors indicated that they were satisfied or generally satisfied with the training they received. Twenty-eight of the 182 respondents thought that course content and frequency could be enhanced. Some inspectors raised questions regarding what actually constitutes credible fear and whether all aliens who express the slightest indication of fear should be referred to an asylum officer. Although some inspectors thought more clarification would be helpful, INS requires inspectors to refer any alien claiming a fear of returning to his/her home country to an asylum officer.

INS Has Taken Steps to Monitor the Expedited Removal Process

INS' Expedited Removal Working Group and the Office of Internal Audit (OIA) monitor various aspects of the expedited removal process. The two groups conduct site visits and provide their findings to ports and districts for corrective actions. The purpose of this on-site monitoring is to ensure compliance with regulatory and statutory requirements. In fiscal year 1999 the groups found a small number of problems, such as the use of improper forms and the lack of supervisory oversight.

Expedited Removal Working Group

The Expedited Removal Working Group conducts 1- to 2-day site visits to offices to provide training and conduct file reviews to help identify and address questions and concerns. The working group focuses its training on those inspectors and supervisors who have the responsibility for conducting expedited removal. A working group official stated that some ports have created dedicated expedited removal teams, and at those ports it focuses its review efforts on those teams.

The group made 38 site visits in the past 3 years, 10 of which were made in fiscal year 1999. The group's agenda includes topics such as an office's overall compliance with procedures as well as specifics on file documentation, such as unsigned or outdated forms being used. According to a working group official, the group does not produce reports on the

results of their visits. Rather, the group brings issues that arise to the attention of local management and discusses them in the training conducted at the time of its visit. The official recalled only one problem identified during the site visits in fiscal year 1999. That problem involved one airport that seemed to have a large number of errors in its expedited removal paperwork. The official added that the team provided some training to the inspectors during the site visit. It then arranged through INS' regional office to have two expedited removal experts from another port conduct more detailed training, observe case processing, and work with the inspectors to answer questions and show them exactly what needed to be done. According to the official, as the field became more familiar with the expedited removal process, the group identified fewer errors or issues and decreased its oversight activities. The official stated that the working group has already visited most of the major ports in the country. However, monitoring of the process is now left primarily to the districts and regions. As of June 15, 2000, the group did not have any additional port visits scheduled.

In addition to the site visits, the working group has periodically requested and reviewed a sample of files from selected ports. After reviewing the files, it is to inform the ports of any major problems and uses information from these reviews in the training sessions for the various locations. The working group requested 802 files in fiscal year 1998, 168 files in fiscal year 1999, and 40 files as of April 2000 for fiscal year 2000.[6]

As with on-site monitoring, the group has reduced its file review efforts over time. According to a group official, the reduced effort is due to overall familiarity with the expedited removal process at the ports, few errors being identified, limited resources, oversight being done by OIA, and visits having been made to the large ports of entry.

To determine the kinds of problems the group identified, we reviewed documentation on 36 of the cases it reviewed in fiscal year 1999.[7] In more than half of these cases, the reviewing official noted that the sworn statements were either incomplete or that the wrong form was used. Other problems that were identified included someone other than the second-line supervisor signing the order of removal and the case not being updated in the necessary database.

[6] A working group official stated that although the group receives most of the files its requests, it does not receive all of them. This official could not provide a count of the number of cases received and reviewed.

[7] A working group official provided 36 cases from those the group reviewed in fiscal year 1999.

OIA Reviews

OIA has incorporated into its field audit program criteria for reviewing compliance with the expedited removal procedures through its Program for Excellence and Comprehensive Tracking (INSpect).[8] At the 11 districts at which various aspects of the inspection function were reviewed, including expedited removal in fiscal year 1999, INSpect cited 8 districts for expedited removal-related concerns.[9] The most common problem was untimely updates to automated systems with expedited removal information, followed by incomplete documentation and review of removal orders. Some of the sworn statements did not contain all required information and some removal orders did not indicate second-level supervisory approval. At three of the districts, OIA recommended that the District Director provide refresher training in expedited removal processing, particularly in taking sworn statements. While the reviews contained a small number of cases with these errors or omissions, OIA considered them as continuing problems in the Inspections area.

INS Allows Some Aliens to Withdraw Their Applications for Admission

As discussed in chapter 1, INS may permit an alien to withdraw his or her application for admission. Withdrawals do not carry the 5-year prohibition for reentry into the United States, as does an expedited removal order.

INS guidance generally requires that inspectors ask aliens the three required questions about their fear of being returned to their home country and obtain supervisory concurrence for withdrawals before permitting the alien who is subject to expedited removal to withdraw his or her application for admission. INS headquarters allows the local offices to determine the level of supervisory oversight. According to an INS official, headquarters has not found it necessary to dictate the level of supervision for withdrawals, since INS has been allowing this procedure for decades and inspectors have been routinely processing these types of cases as part of normal operations. In cases where an alien would have been subject to expedited removal if not permitted to withdraw an application, the guidance directs inspectors to take sworn statements from the alien asking the same fear questions as under expedited removal. As shown in table 2.7, our review of 220 randomly selected files of 1,611 withdrawal cases in fiscal year 1999 at Los Angeles, JFK, and Miami airports in which INS

[8] The primary focus of INSpect is to assess office effectiveness; determine compliance with applicable laws, regulations, and procedures; measure performance against established standards; and provide a means to share local successes and solutions applicable to servicewide problems.

[9] The inspection function was not reviewed in one district and final reports had not been issued for two districts.

allowed applicants to withdraw their applications for admission showed a range of compliance.[10]

Table 2.7: Documentation Existed Showing That Credible Fear Questions Asked

Port of entry	Percent of cases in which all credible fear questions were asked	Percent of cases in which no credible fear questions were asked	Percent of cases in which some credible fear questions were asked
Los Angeles International Airport	74	21	5
JFK International Airport	95	5	0
Miami International Airport	95	2	3

Note: The confidence intervals are less than or equal to plus or minus 10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

Our file review indicated documentation of first-line supervisory inspector review in estimated 93 to 100 percent of the cases, as shown in table 2.8.

Table 2.8: Documentation Existed Showing That INS Supervisor Signed off on the File

Port of entry	Percent of cases having supervisor's signature
Los Angeles International Airport	93
JFK International Airport	100
Miami International Airport	98

Note: The confidence intervals are less than or equal to plus or minus10 percentage points.

Source: GAO review of INS case files of aliens who attempted entry during fiscal year 1999.

Procedures at Los Angeles, JFK, and Miami airports required second-line supervisory review of withdrawals. The estimated percentages of compliance of the three airports with their local requirement for assistant area port director or port director review, were 66 percent,[11] 94 percent, and 61 percent,[12] respectively. As was the case with the expedited removal files, we could not determine from the files when the supervisor signed the forms.

[10] We did not examine withdrawals at San Ysidro because the port did not create and retain case files in the vast majority of instances where withdrawals were allowed. The port only creates these files and issues alien numbers to the aliens subject to expedited removal who withdraw when, for example, the alien is charged with being involved in criminal activities or claims eligibility for a specific immigration benefit, such as marriage to a U.S. citizen. According to data from the San Ysidro port of entry, 11,782 withdrawals were issued in fiscal year 1999, but alien numbers were issued in 237 of these cases.

[11] Sampling error is plus or minus 11 percent.

[12] Sampling error is plus or minus 13 percent.

INS Is Generally Following Its Procedures Regarding the Credible Fear Process at Selected Asylum Offices

Under the expedited removal process, as of November 20, 1999, INS inspectors had referred 11,087 aliens to an asylum officer for a credible fear interview. These aliens attempted to enter the United States between April 1, 1997, and September 30, 1999, and expressed a fear of being returned to their home country. Of the referred aliens, 9,870 had completed their interview, as of November 20, 1999, and 96 percent were determined to have a credible fear of persecution or torture. Our analysis showed that the likelihood of an asylum officer determining an alien did not have credible fear of persecution or torture depended heavily on the region of the alien's citizenship and depended less heavily on other factors, such as the asylum office that reviewed the alien's case, the alien's gender, and the year in which the alien attempted to enter the United States.

Our review of internal controls at INS' Los Angeles, Miami, and New York Asylum Offices revealed that asylum officers generally complied with requirements, including documenting that mandatory paragraphs were read to the aliens during the interview process and that documentation in the aliens' files indicated that supervisors' review took place. We also found that the asylum officers we surveyed were satisfied with the required training INS provided. Finally, our review showed that the headquarters quality assurance team responsible for reviewing all negative (as well as some positive) determinations was performing these reviews and providing feedback to the asylum offices on their results.

Of the 10,755 aliens who were referred to an asylum officer and whose cases were closed,[1] about 8 percent of the aliens decided to recant their claims of a fear of persecution or torture. We analyzed various factors to determine their effect on aliens' likelihood of recanting their claims of fear of persecution or torture. As with credible fear determinations, the factor with the most pronounced effect on the likelihood that aliens would recant their claims was the region of the alien's citizenship.

We reviewed a random sample of 133 out of 232 cases in which aliens withdrew their requests for a credible fear interview and recanted their claims of a fear of persecution or torture. INS requires asylum officers to document that aliens were withdrawing their claims voluntarily but, at the time of our review, did not require them to obtain a reason for the withdrawals. In July 2000, INS changed its policy to require that asylum

[1] Closed cases include those in which aliens withdrew their claim of a fear of persecution or torture or received an asylum officer's credible fear determination and do not include those cases in which aliens' cases were terminated for other reasons, such as the aliens' eligibility to apply for relief from removal for reasons outside the credible fear process.

officers document the aliens' reasons for not pursuing their claim of a fear of persecution or torture and supervisors' review.

Information Related to Aliens Referred to Asylum Officers

Between April 1, 1997, and September 30, 1999, INS data showed that inspectors referred 11,087 aliens to asylum offices for credible fear interviews.[2] In about 96 percent of 9,870 cases where a determination had been made, the asylum officer found that the alien had a credible fear of persecution or torture (positive determination). Among the asylum offices, the percentages of positive credible fear determinations for 7 of the 8 asylum offices were greater than 90 percent. The remaining office's positive determination was 78 percent. The nationwide percentage has increased from 82 to 98 percent over the past 3 years. Our analysis of various factors (e.g., an alien's region of citizenship, the alien's age and gender, whether the alien was traveling alone or not, and the asylum office that reviewed the case) showed that the alien's region of citizenship had the largest effect on the likelihood of an alien's receiving a positive or negative credible fear determination.

Aliens requested that immigration judges review 376 negative credible fear determinations. The judges affirmed the asylum officers' determinations 85 percent of the time.

Results for Aliens Who Were Referred to Asylum Officers

According to INS data, inspectors referred 11,087 aliens who attempted to enter the United States between April 1, 1997, and September 30, 1999, to asylum officers for a credible fear interview. As of November 20, 1999, of these 11,087 aliens, 9,870 aliens had completed their interviews and had received either a positive or negative credible fear determination from an asylum officer. An additional 885 aliens had recanted their claims of a fear of persecution or torture, and their cases had been closed. These aliens were to be removed from the country. The remaining 332 aliens either had not been interviewed or were awaiting an asylum officer's decision.

As shown in table 3.1, a little over 50 percent of all aliens referred to asylum officers were citizens of China (27 percent), Sri Lanka (14 percent), or Haiti (13 percent).[3]

[2] This figure is from INS' Asylum Pre-Screening Database, current as of November 20, 1999, which was the data source for analyses, which follow for the time period April 1, 1997, to September 30, 1999. As of June 24, 2000, INS had revised this total to 11,104. The small difference in the totals is the result of updates and corrections to the data in APSS between November 1999 and June 2000.

[3] These aliens attempted to enter the country between April 1, 1997, and September 30, 1999.

Table 3.1: Most Common Citizenship of Aliens Referred to Asylum Officers Between April 1, 1997, and September 30, 1999

Country of citizenship	Number of aliens	Percentage of total aliens
China	2,946	27
Sri Lanka	1,521	14
Haiti	1,456	13
Albania	379	3
Somalia	371	3
Yugoslavia	291	3
Mexico	242	2
El Salvador	222	2
Pakistan	214	2
Guatemala	213	2
Other[a]	3,232	29
Total	11,087	100

[a]"Other" is comprised of 119 countries, 25 of which had only 1 case. This category also includes 40 cases where the alien's citizenship was coded as "unknown" (n=34) or "stateless" (n=6).

Source: GAO analysis of data from INS' Asylum Pre-Screening System.

Nationwide, asylum officers determined that 96 percent of the 9,870 aliens with completed interviews had a credible fear of persecution or torture. The percentage grew from 82 percent in fiscal year 1997 to 96 percent in fiscal year 1998 and 98 percent in fiscal year 1999. As shown in table 3.2, the percentages of positive credible fear determinations for 7 of the 8 asylum offices were greater than 90 percent.

Table 3.2: Percentage of Credible Fear Determinations by Asylum Offices for Aliens Who Attempted to Enter the United States Between April 1, 1997, and September 30, 1999

Asylum office	Percentage of positive credible fear determinations
Arlington, VA	92
Chicago, IL	98
Houston, TX	78
Los Angeles, CA	96
Miami, FL	96
New York, NY	97
Newark, NJ	96
San Francisco, CA	97

Source: GAO analysis of data from INS' Asylum Pre-Screening System.

Factors Associated with Aliens' Receiving a Negative Credible Fear Determination

We examined the effects of a number of factors on the likelihood of an alien's receiving a negative (or positive) credible fear determination from an asylum officer.[4] These factors included

- the alien's region of citizenship;[5]
- which asylum office reviewed the alien's case;
- the alien's age and gender;
- what fiscal year (1997,[6] 1998, or 1999) the alien attempted to enter the United States; and
- whether the alien was traveling alone or was the lead member of a family group.

The most important factor affecting an alien's likelihood of receiving a negative (or positive) credible fear determination was the alien's region of citizenship. While less important than region, other factors that affected the likelihood were the asylum office where the alien's case was decided, the alien's gender, and the year in which the alien attempted to enter the United States.

- Aliens from Mexico, the Caribbean, Central America, South America, the Middle East, and the former Soviet Bloc countries had a significantly higher likelihood of receiving negative findings than did aliens from Asia. Aliens from Mexico and Central America, for example, were over 20 times more likely to receive a negative determination; aliens from the Caribbean and South America were 4 and 10 times, respectively, more likely; and aliens from the Middle East and the former Soviet Bloc were 2 to 3 times more likely to receive a negative determination than were aliens from Asia.

[4] We were limited to data contained in INS' Asylum Pre-Screening System. We used multivariate logistic regression to estimate the effects of the factors. The procedure provides likelihoods (or odds ratios), which provide a simple description of the differences across categories for the factors we compared. See appendix III for a fuller discussion of our analyses and the likelihoods derived from them. Our multivariate results for the likelihood of a negative credible fear determination are on the basis of 8,849 cases with no missing data. Appendix III also contains a discussion of our assessment of the reliability of the APSS database.

[5] Because of the limited number of cases by country of citizenship, we grouped countries by regions of the world. The regions were: Asia (of which China, Sri Lanka, Pakistan and India each had over 100 cases), Africa (of which Somalia, Nigeria, Niger and Ghana each had over 100 cases), the Caribbean (of which Haiti and Cuba each had over 100 cases), Central America (of which El Salvador and Guatemala each had over 100 cases), the Middle East (of which Iran, Lebanon, Algeria and Iraq were the countries with the largest numbers of cases, with 93, 79, 74 and 62 cases, respectively), South America (of which Colombia had over 100 cases), and the former Soviet Bloc (of which Albania and Yugoslavia each had over 100 cases). However, we included Mexico separately because it was the only North American country included in the analysis and traditionally has been responsible for the largest group of illegal aliens in the United States.

[6] Data for fiscal year 1997 represent the period from April 1, 1997 to Sept. 30, 1997.

Aliens from Africa did not differ significantly compared to aliens from Asia.

- Aliens who had their cases heard in some asylum offices were more likely to receive a negative credible fear determination than aliens whose cases were heard in other asylum offices. For example, cases heard in the Newark, Arlington, and Houston Asylum Offices were 2 to 3 times more likely to result in negative determinations than cases heard in Miami. Cases heard in the Chicago, Los Angeles, New York, or San Francisco Asylum Offices were not significantly different from those heard in Miami.

- Aliens' gender was the only other personal characteristic that was significantly related to credible fear determinations. Women were about 75 percent as likely as men to receive a negative determination.

- Regarding the fiscal year in which the case was heard, the alien was about 13 percent as likely to receive a negative credible fear determination in fiscal year 1998 as in 1997, and 8 percent as likely in fiscal year 1999 as in 1997.

Judges' Review of Credible Fear Cases

According to EOIR officials, between April 1, 1997, and September 30, 1999, 376 aliens requested that an immigration judge review their negative credible fear determinations.[7] The judges affirmed the asylum officers' negative credible fear determinations in 86 percent of these 376 cases, vacated (invalidated) the decisions in 14 percent, and made other decisions[8] in 2 percent.[9] The percentage affirmed varied between 80 percent in fiscal year 1997, 91 percent in fiscal year 1998, and 86 percent in fiscal year 1999.

Results of Removal Hearings

If an asylum officer determines that an alien has a credible fear of persecution or torture or an immigration judge vacates an asylum officer's negative credible fear determination, the alien goes to an immigration judge for a removal hearing, where the alien requests relief from removal (e.g., the alien requests asylum). Our analysis of EOIR data showed that in

[7] According to INS data from the Asylum Pre-Screening System, 68 percent of those aliens who attempted to enter the United States between April 1, 1997, and September 30, 1999, and received a negative credible fear determination from an asylum officer requested that an immigration judge review this determination and 32 percent of the aliens did not.

[8] These other decisions included, for example, case closures because the alien was married to a U.S. citizen and could claim benefits under a process different from the credible fear process or because the alien asked for a change of venue.

[9] The numbers do not add to 100 percent, due to rounding.

64 percent of the 7,947 cases, immigration judges had reached a decision about whether the alien should be removed or granted some form of relief.[10] Of the 5,102 decisions by judges, 30 percent (1,534) of the aliens were granted relief from removal, and 61 percent (3,111) were ordered removed from the United States. The remaining 9 percent represented cases in which action was pending.

Immigration Judges' Views on the Credible Fear Process

We interviewed immigration judges in Los Angeles, Miami, and New York. Some judges questioned the need for the asylum officer's credible fear review, given the great likelihood that such cases were ultimately referred to them (i.e., due both to the high percentage of aliens found to have credible fear and 68 percent of aliens who requested reviews of negative findings). A judge in Miami stated that INS asylum officers were more strict when the expedited removal process was first implemented, which was fair in his view, but that asylum officers were no longer trying to find that the alien had a significant possibility of establishing eligibility for asylum. Some judges told us that although the credible fear process was the result of a well-intentioned statute, within the current parameters the process did not seem effective because so many asylum officers were determining that aliens had a credible fear of persecution or torture.

INS' Management Controls Over the Credible Fear Determination

We reviewed INS' management controls over the credible fear process—file documentation, training, and reviews of asylum officer decisions. Our analysis of case files in three asylum offices showed that the required documentation was generally present in the aliens' files. For example, all three offices documented that the mandatory paragraph on torture was read. About 92 percent of the responding asylum officers at the three asylum offices we visited were satisfied or generally satisfied with their training. Evidence existed, in most cases, that an INS quality assurance team had reviewed all negative credible fear determinations at the three asylum offices that we visited.

[10] Aliens have the right to appeal immigration judges' decisions in removal cases to the Board of Immigration Appeals. Thus the decisions captured in this database may be subsequently appealed and the outcomes after appeal may be different from those we have reported here. Further information on our analysis is presented in appendix III.

File Review Indicated That Asylum Officers Were Documenting Key Requirements At Three Offices

INS guidance requires that asylum officers complete several key documentation requirements.[11] Asylum officers are required to complete a detailed worksheet[12] from which asylum officers must read several mandatory paragraphs and to document that they have read them to the alien. INS also requires supervisory review of every credible fear determination prior to notifying the applicant of the decision. This review must be documented in the files.

We reviewed files of all 45 negative credible fear determinations made at the Los Angeles, Miami, and New York Asylum Offices during fiscal year 1999.[13] In the Los Angeles, Miami, and New York Asylum Offices we reviewed 24, 13, and 8 cases, respectively. We found evidence of supervisory review in 44 of 45 cases. In these 44 cases, the asylum officer concluded that the alien's fears were not related to 1 of the 5 bases for obtaining asylum—-persecution or torture because of race, religion, nationality, political opinion, or membership in a particular social group. An example of one of the cases in which an asylum officer concluded that the alien's fear was not related to one of the five bases for obtaining asylum was one in which the alien's fear was that she would be subjected to a life of poverty, but not harmed, if she was returned to her home country. In that case, the reason checked by the asylum officer was that there was no significant possibility that the harm feared in the future was well founded.

Generally, the 45 case files we reviewed included documentation indicating that the asylum officer read the mandatory information regarding (1) the purpose of the interview, (2) review by an immigration judge, and (3) torture to the aliens, as shown in tables 3.3 to 3.5.

Table 3.3: Number of Cases Where Asylum Officer Checked That He/She Read Paragraph Explaining the Purpose of the Interview

Asylum office	Number of cases in which the asylum offficer checked that the paragraph explaining the purpose of inteview was read
Los Angeles	23
Miami	13
New York	8

Source: GAO review of INS case files.

[11] The absence (or presence) of documentation in the file does not necessarily mean that the asylum officers did not (or did) read the mandatory paragraphs.

[12] Form-I-870, "Record of Determination/Credible Fear Worksheet."

[13] We focused our review on negative credible fear determinations because our concern was to identify those management controls to prevent aliens with a claim of a fear of persecution or torture from being improperly removed from the country.

Table 3.4: Number of Cases Where Asylum Officer Checked That He/She Read Paragraph on the Process of Referral/Review by an Immigration Judge

Asylum office	Number of cases in which the asylum officer checked the paragraph explaining the referral/review process was read
Los Angeles	21
Miami	13
New York	8

Source: GAO review of INS case files.

Table 3.5: Number of Cases Where Asylum Officer Checked That He/She Read Paragraph on Torture

Asylum office	Number of cases in which the asylum officer checked the paragraph on torture was read
Los Angeles	22
Miami	13
New York	8

Source: GAO review of INS case files.

INS Makes Training Available to Asylum Officers on Making Credible Fear Determinations

INS makes training available to asylum officers on the credible fear process. Additionally, officials at the three asylum offices we visited said that they held training sessions on asylum-related issues. At the three offices, asylum officers said that they had received training and were generally satisfied with the training provided.

According to INS guidance, beginning June 1, 1998, asylum officers were required to have completed the Asylum Officer Training Course and normally were to have 1 year of interviewing experience to conduct credible fear interviews. Asylum officer training on credible fear covers areas such as standards of proof to establish credible fear, the role of country condition information, the credibility standard, and the credible fear interview process. Moreover, the three offices we visited also provided training on how changing country conditions and membership in various social groups affected applicants' decisions to flee their countries. Officials told us that procedures, policies, and information from headquarters' quality assurance, including responses to specific cases, and other issues were discussed at meetings and that written information was disseminated.

Asylum officers we surveyed were generally satisfied with the training they received on expedited removal. The response rate to our survey was 59 percent (64 of 108 distributed). Asylum officers indicated that they were satisfied or generally satisfied with the training they received on credible fear. Some asylum officers provided additional comments. For example, several asylum officers said that they would like additional training on the credible fear standard. Some asylum officers expressed concern with the

implementation of the standard and a requirement, they believe, to find that everyone had a credible fear.

INS headquarters officials reiterated that the credible fear standard was designed to be a safety net to include all possible cases. They further stated that INS has refined the credibility analysis in the credible fear[14] process over time. INS' original test for assessing credibility required that an asylum seeker had to establish a "significant possibility that his or her statements are true." According to INS, after review of completed credible fear cases, a revised test for credibility was developed. The new test required that to meet the credible fear standard, an applicant must establish that there is a "significant possibility that the assertions underlying his or her claim could be found credible in a full asylum or withholding of removal hearing." INS officials indicated that this revised test more closely reflected the intent of the statute.

Quality Assurance Team Reviews Asylum Officer Decisions

INS' Asylum Office has established a quality assurance team at headquarters to review credible fear case files. The team is to (1) review and approve all asylum officers' negative credible fear determinations and (2) review a selected number of positive credible fear determinations. Additionally, INS headquarters is to review all cases where a positive or negative credible fear determination was made involving (1) determinations of credible fear on the basis of torture, (2) high profile cases, (3) gender-based claims, and (4) domestic violence cases unrelated to gender. During these reviews, quality assurance officials analyze case decisions and provide feedback to applicable asylum officers on such things as thoroughness, clarity, exploration of legal issues, application of country conditions data, and sensitivity in eliciting pertinent information.

At the 3 asylum offices, we found evidence that headquarters had reviewed 41 of 45 negative credible fear case files. In the Los Angeles and Miami Asylum Offices, evidence of headquarters review existed in 21 of 24 and 12 of 13 cases, respectively. In the New York Asylum Office, evidence of headquarters review existed for all 8 cases. However, officials at headquarters and asylum offices told us that these reviews were mandatory and that the absence of copies of the documentation most

[14] A credible fear of persecution is defined in the Immigration and Nationality Act as " ... a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208."

likely was due to our review of the case working files (which are not the official files) but that documentation would be in the alien's files.[15]

During the course of reviewing the files we read a number of quality assurance team critiques of asylum officers' positive and negative credible fear determinations. In these reviews, quality assurance officials provided extensive feedback on the quality of the decisions, including such things as the need for more information, suggested follow-up questions to be asked of the alien, additional ways to analyze issues relating to an alien's membership in a specific social group, and alternative wording for summarizing key points. The analysis pointed out instances of not following procedural guidance and, in some cases, questioned apparent time lags in processing a case. The quality assurance team also noted what it considered to be exemplary interviews.

INS Initiated Steps to Improve Controls Over Aliens Who Withdrew Their Request for a Credible Fear Interview

According to INS data, about 8 percent of all aliens who inspectors referred for a credible fear interview with an asylum officer later recanted their claims of a fear of persecution or torture. Our analysis of these withdrawals showed that the likelihood of aliens' recanting their claims of persecution or torture was affected principally by the alien's region of citizenship.

INS' policy did not require asylum officers to document the reasons aliens recanted their claim of a fear of persecution or torture. Our review showed that asylum offices were not consistent in how they documented aliens' recantations of their claims of a fear of persecution or torture. While INS did not require supervisory review, we generally found evidence of such reviews in the case files. However, INS has changed its policy to now require asylum officers to document aliens' reasons for withdrawing their claims of a fear of persecution or torture and supervisors' review.

Data on Aliens Who Recanted Their Claims of Fear of Persecution or Torture

Between April 1, 1997, and September 30, 1999, about 8 percent of 10,755 aliens who inspectors referred for a credible fear interview subsequently recanted their claims of a fear of persecution or torture and had their cases closed. This percentage did not vary substantially over time. Aliens who recanted their claims of a fear of persecution or torture comprised 9 percent of closed cases in fiscal year 1997, 11 percent in fiscal year 1998, and 7 percent in fiscal year 1999. As shown in table 3.6, alien recantation rates varied from 3 to 15 percent among the eight asylum offices.

[15] Since the aliens' files were not readily available, we did not review them.

Table 3.6: Percentage of Recanted Claims by Asylum Office for Aliens Who Attempted to Enter the United States Between April 1, 1997, and September 30, 1999

	Percentage of claims	
Asylum office	Recanted fear	Did not recant fear
Arlington, VA	11	89
Chicago, IL	3	97
Houston, TX	10	90
Los Angeles, CA	7	93
Miami, FL	6	94
New York, NY	15	85
Newark, NJ	14	86
San Francisco, CA	4	96

Source: GAO analysis of INS' Asylum Pre-Screening System.

Factors Associated With Aliens' Recanting Their Claims of a Fear of Persecution or Torture

We examined the likelihood of aliens' recanting their claims of fear of persecution or torture, using the same set of factors used in our analysis of the likelihood of a negative credible fear determination.[16] As before, the factor that had the most pronounced effect on the likelihood of aliens' recanting their claims of a fear of persecution or torture was the alien's region of citizenship. The asylum office assigned to hear the claim and the alien's gender and age had less of an impact. The year in which the alien attempted to enter the country and the alien's status, as lead applicant for other family members, did not have a significant impact on the likelihood of recanting.

Our analysis showed that aliens from Mexico and from Central and South America were more likely than aliens from Asia to recant their claims.

- Aliens from Mexico, for example were 24 times as likely as those from Asia to recant their claims.
- Aliens from South America and Central America were about 12 and 6 times as likely, respectively, to recant their claims as those from Asia.
- Aliens from the Middle East and the former Soviet Bloc nations were not significantly different from aliens from Asia in terms of their likelihoods of recanting their claims.

The likelihood of an alien recanting a claim of a fear of persecution or torture also varied by the asylum office assigned to hear the alien's case. Aliens who were assigned to the Houston Asylum Office were about half as likely to recant their claims as aliens assigned to the Miami Asylum Office.

[16] These factors are the alien's region of citizenship, age, and gender; whether the alien was traveling alone or was the lead member of a family group; which asylum office was assigned to review the alien's case; and what fiscal year (1997, 1998, or 1999) the alien attempted to enter the United States. Our results for the likelihood of aliens' recanting their claims of a fear of persecution or torture are on the basis of 9,674 cases.

Aliens assigned to the Arlington, Newark, and New York Asylum Offices, by contrast, were between 2 and 5 times as likely to recant their claims as aliens assigned to the Miami Asylum Office. Aliens assigned to the Chicago, Los Angeles, and San Francisco Asylum Offices did not have significantly different recantation rates from aliens assigned to the Miami Asylum Office.

Some other factors also had an impact on aliens' decisions to recant their claims of a fear of persecution or torture. However, these effects were less important than those for the alien's region of citizenship and the asylum office assigned to hear the alien's claim of a fear of persecution or torture. For example,

- men were about twice as likely as women to recant their claims of a fear of persecution or torture, and
- aliens 30 or over were about two to three times as likely as aliens under 20 to recant their claims of a fear of persecution or torture.

INS Clarified Requirements for Documentation Needed for Aliens Who Recant Their Fear of Persecution or Torture

INS guidance requires that asylum officers document an alien's wish to withdraw a claim of a fear of persecution or torture (recanting their claim) by having the alien (1) make this request in writing or (2) sign a statement indicating that the decision was voluntary. The guidance does not, however, require that asylum officers document the reason for the withdrawal. Yet, INS has the responsibility under the 1996 Act to identify aliens who claim to have a fear of persecution or torture if they are returned to their home country and not to return aliens who are found to have such a fear. By requiring asylum officers to document the reason aliens recanted their claims and requiring supervisory review, INS would be in a better position to determine whether it could be returning some aliens to a country where they could be persecuted.

Our analysis of the three asylum offices showed general compliance with INS guidance. However, we found that the Los Angeles, Miami, and New York offices varied in the amount of documentation that they obtained from aliens recanting their claims of a fear of persecution or torture. At the 3 asylum offices, we reviewed 133 randomly selected cases from a population of 232 cases in which aliens withdrew their requests for a credible fear interview and recanted their claims of a fear of persecution or torture.[17] Two locations, New York and Miami, had aliens sign a standardized letter stating that the alien did not want to go through the credible fear process and would be allowed to go home as soon as travel

[17] See appendix III for a listing of the sample size and population of each of the three asylum offices.

arrangements could be made. The letter also noted that the alien had been advised that he or she would be barred from reentry into the United States. The letter also stated that the alien was making the decision freely and voluntarily and had not been coerced by an immigration officer or any other person. In Miami, 15 of the 45 files we reviewed also contained a memorandum prepared by the asylum officers that summarized the aliens' reasons for recanting their claim of fear. In 37 of the 40 Los Angeles case files we reviewed, we found documentation, such as (1) statements written or signed by the aliens that described why they were recanting their claims or (2) evidence of asylum officers asking specific questions about the aliens' original claims of a fear of persecution or torture and recording the aliens' responses. For three Los Angeles cases, we did not find this documentation.

INS did not require that asylum officers document aliens' reasons for recanting their claims. Due to the various ways in which the offices document withdrawals, we could not determine the reasons why aliens recanted their claims of a fear of persecution or torture for 94 of the 133 cases. For those cases in the 2 asylum offices where a reason for recantation was documented (39 cases), the cases cited most often by aliens, respectively, were that the alien

- had no fear or had been misunderstood (22),
- did not want to stay in detention (12), or
- wished to be reunited with his or her family in their home country (5).

INS can process aliens who recant their claims under the expedited removal process. In some cases, asylum officers, in consultation with inspectors, may instead grant a withdrawal. We estimated that 220 of 232 aliens in our case file review were processed under expedited removal with supervisory approval.

Our case file review in the New York Asylum Office showed that some aliens expressed a desire to return to their home country after the asylum officer had completed the interview; a credible fear determination had been made; and, in some of these cases, referrals to a judge had been issued.[18] These aliens were allowed to withdraw their claims of a fear of persecution or torture, and all were then processed as expedited removals. According to an INS official, an alien can recant his or her claim at any

[18] In cases where the alien meets the credible fear of persecution or torture standard, the asylum officer is to refer the case to an immigration judge for further consideration and issue the alien a Notice to Appear, INS Form I-862.

time during the process, as long as the alien is under its jurisdiction. While supervisors are to review expedited removal orders, they did not have to review aliens' decisions to recant their claims.

Of the three asylum offices we visited, the New York Asylum Office used only a standardized letter that did not ask aliens their reason for recanting their claims of a fear of persecution or torture. In one file we reviewed, an alien sent a note from detention stating, " I want to have my credible fear cancelled for I want to be deported . . . I can't stay in here [detention] because I am an ulcer patient." The alien later signed the standardized form and was processed for expedited removal.

Without a standardized process for documenting the reasons for the aliens' decision to recant their claim of a fear of persecution or torture, INS is not in the best position to reduce the possibility of returning aliens to countries where they might be persecuted. A standardized process that includes (1) directing asylum officers to document the reasons why aliens are recanting their claims of a fear of persecution or torture and (2) require supervisors to review this documentation would

- strengthen INS' control over the process by helping ensure that aliens who had progressed far into the process (e.g., waiting for their hearing before an immigration judge) were recanting their claim of a fear of persecution or torture because they no longer had such a fear, rather than for some other reason (e.g., health problems associated with being in detention) and

- help provide consistent application of withdrawal procedures among INS asylum offices and thereby document the reasons the aliens were recanting their fear of being returned.

We discussed this issue with an INS official responsible for asylum processing. INS informed us that a more detailed record of an alien's reason for recanting his or her claim of a fear of persecution or torture and review by a supervisory asylum officer should be implemented. It said that a more extensive record might provide a clearer chronology in cases similar to those that we sampled. Subsequently, on July 26, 2000, INS required that when an alien decides to stop pursuing protection from removal, an asylum officer will question the alien about his or her reason and explain the process for removal and the ability of that alien to pursue protection at any time prior to removal. Further, the asylum officer is to complete a form[19] that includes the alien's reason for not asking for

[19] Request for Dissolution of Credible Fear Process.

protection from removal and the signature of the supervisory asylum officer.

Conclusions

Our analysis of the file documentation of the credible fear determination and the quality assurance team's reviews of asylum officers' decisions indicate general compliance with INS' procedures. For example, our review of all 45 negative credible fear determinations at 3 asylum offices showed that generally supervisory review existed and documentation indicated that mandatory information was read to the alien.

In some cases, aliens recanted their claims after an asylum officer had determined that they had a credible fear of persecution or torture and, they were waiting to go before an immigration judge to make their claim for asylum. Our review of case files showed that they did not always contain documentation of the reasons why aliens were recanting their claims of a fear of persecution or torture. While supervisors are to review the expedited removal orders, they do not have to review aliens' decisions to recant their claims.

INS has a responsibility not to return aliens who have a fear of persecution or torture. At the time of our review, INS did not require documentation regarding the reasons that aliens recanted their fear of persecution or torture. Therefore, it had no assurance that such aliens would not be returned to places where they could be harmed. We pointed out that its internal controls over such cases could be improved by requiring (1) additional documentation on aliens' reasons for recanting their claims of a fear of persecution or torture to show that asylum officers are properly handling such cases and (2) supervisory review of the related documentation. This could provide a clearer chronology of cases in which aliens recanted their claim of a fear of persecution or torture. Determining and documenting the reasons aliens stated for recanting their claim of a fear of persecution or torture could help INS reduce the possibility of returning aliens to countries where they could be subjected to persecution or torture. INS agreed and now requires that asylum officers complete a form that contains an alien's reason for pursuing protection from removal and the signature of a supervisory asylum officer.

INS Released Many Aliens and Many of Them Did Not Appear for Their Hearing

INS has the discretion to release from detention aliens for whom an asylum officer determined that a credible fear existed. Its policy favors releasing such aliens provided it determines the aliens are likely to appear for the removal hearing and do not pose a risk to the community. In response to our survey, 29 of 33 INS district offices reported that in fiscal year 1999, an estimated 78 percent of such aliens were released to await their hearing before an immigration judge, although some differences existed in district office detention practices. INS is issuing guidance that would promote more consistent decisions about releasing aliens among district offices.

INS released 5,320 aliens who were determined to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999. As of February 22, 2000, of the 5,320 aliens, 2,351 aliens also had received a decision from an immigration judge. Of the 2,351 aliens, 1,000 aliens (42 percent) did not appear for their removal hearings before an immigration judge and were subsequently ordered removed in absentia. EOIR officials pointed out that over time more cases will be closed in which aliens will have appeared for their removal hearings and consequently this will result in a reduction of the failure to appear rate.

INS Policy Favors Release of Credible Fear Aliens Provided They Meet Certain Conditions

Once an asylum officer determines that aliens have a credible fear of persecution or torture, INS' October 1998 Detention Use Policy favors release of such aliens after the district director or certain other INS officials determine that the aliens will likely appear for their removal hearing and will not pose a danger to the community. INS district offices reported to us that in fiscal year 1999, 3,432 (or 78 percent) such aliens were released. In responding to our survey, nearly all district offices told us that they considered the alien's criminal history and/or community ties as important factors in making the decision to release or detain the alien. Officials said that INS plans to clarify that headquarters and regional managers have authority to make detention decisions.

INS Detention Policy

In October 1998, INS revised its national detention policy and priority system.[1] The revised policy identified four categories of aliens for the purpose of making detention decisions:

[1] The change was in response to the expiration of the Transition Period Custody Rules. The expiration of these rules discontinued INS' discretionary authority in certain custody determinations; that is, they had to detain more criminal aliens. As a result, more bed space was required for mandatory detention cases.

- Category 1 includes aliens who are for the most part required to be detained (e.g., aliens chargeable as terrorists or aliens convicted of aggravated felonies);
- Category 2 includes aliens who are removable because of national concerns or having engaged in alien smuggling;
- Category 3 includes aliens whom INS apprehended at a work site and had committed fraud in obtaining employment; and
- Category 4 includes aliens in cases when asylum officers determined that they had a credible fear of persecution or torture and as a result were referred to immigration judges for full removal proceedings.

Under INS' detention policy, the categories are sequentially prioritized (i.e., aliens in category 2 generally should be detained before aliens in category 3). INS requires aliens who express a fear of persecution or torture to an INS inspector at a port of entry to be detained (i.e., category 1) unless release is required to meet a medical emergency or legitimate law enforcement objectives, such as serving as a witness. If an asylum officer determines that the alien has a credible fear of persecution or torture, the alien is to be placed in removal proceedings before an immigration judge where he or she may present a claim for asylum. At this point, the alien is placed in category 4 and can be released at the discretion of the district director or certain other INS officials.

Under this priority system, these INS officials have discretion in their implementation of the detention policy. INS requires the reasons for the detention decision to be clearly documented in writing and placed in the alien's file if a custody determination is not in keeping with its policy.[2] INS policy favors release of aliens in cases when an asylum officer determined those aliens to have a credible fear of persecution or torture, provided that the aliens do not pose a risk of flight or danger to the community.

[2] Officials at 16 of the 33 district offices said that they documented their reasons. Twelve district offices reported they did not record the decision, three district offices did not respond to this question, and two district offices transferred aliens who claim a fear of persecution or torture to other district offices.

Most Aliens Found to Have a Credible Fear of Persecution or Torture Are Released

In response to our survey of the 33 INS district offices, 29[3] reported that in fiscal year 1999[4] they released 3,432 of the 4,391 (78 percent) aliens, in cases when asylum officers determined those aliens to have a credible fear of persecution or torture, as shown in table 4.1.

Table 4.1: District Practices for Detaining or Releasing Aliens Who Have a Credible Fear in Fiscal Year 1999

		Aliens processed		Aliens released		Aliens detained	
	Number of offices	Number	Percent	Number	Percent	Number	Percent
District offices that released aliens	12	3,069	100	2,998	98	71	2
District offices that detained aliens	4	614	100	239	39	375	61
District offices that did not specify any general practice	13	708	100	195	28	513	72
Total	**29**	**4,391**	**100**	**3,432**	**78**	**959**	**22**

Source: Analysis of GAO survey of INS district offices.

The district offices initially decided to detain the other 22 percent of the aliens; however, the district offices may have subsequently released the aliens after they met certain conditions, such as posting a bond.

We queried INS district offices regarding their general detention practices for aliens in cases when an asylum officer has determined the aliens to have a credible fear of persecution or torture. We found that 12 of 29 district offices said that they generally released such aliens before their removal hearing before an immigration judge.

- Of the 12 district offices that said they generally released aliens, 10 reported that they released in accordance with INS' detention policy (i.e.,

[3] The 29 district offices provided estimated and actual numbers of aliens who were released or detained—16 district offices gave estimated numbers, 9 gave exact numbers, 2 gave a combination of exact and estimated numbers, and 2 did not indicate whether the numbers were exact or estimated. Two district offices did not provide numbers and for two other district offices the question was not applicable because they transferred aliens who claim to have a fear of persecution or torture to other district offices.

[4] INS headquarters reported 6,515 aliens in cases when an asylum officer determined those aliens to have a credible fear of persecution or torture for fiscal year 1999. This figure differs from the number of aliens reported by the district offices in our survey because headquarters uses an asylum officers database which they consider to be the most accurate of the various INS databases. Most district offices reported that the data used to respond to our survey did not come from one of the standard INS databases. As a result, the number of aliens could not be reconciled. However, in comparing the headquarters reported figures with the district reported figures we noted three district offices (Los Angeles, Chicago, and Miami) accounted for 1,759 of the 2,124 discrepancy. These three district offices released virtually all credible fear aliens under their jurisdictions.

the district offices determined that the alien was not a threat to the community or a flight risk). One district reported that it considered all aliens in cases when an asylum officer determined the alien to have a credible fear of persecution or torture to be flight risks and normally required a $5,000 bond. The other district reported that it released such aliens because of the lack of detention space. These 12 district offices reported that it released 98 percent of the aliens that they processed. In addition, these offices processed 68 percent of 4,391 such aliens, as shown in table 4.1.

- Four other district offices reported that they generally detained aliens in cases when an asylum officer determined the alien to have a credible fear of persecution or torture on the basis of their interpretation of the headquarters directive. However, such decisions also depended on the availability of detention space or requests by the aliens' lawyers to INS to release the alien. These 4 district offices reported that they detained 61 percent of the aliens that they processed, as shown in table 4.1.

- Thirteen district offices did not identify any general practice to detain or release aliens in cases when an asylum officer determined the alien to have a credible fear of persecution or torture. Of these 13 district offices, 10 district offices did not specifically comment on their detention practices. Three offices responded that they evaluated such aliens on a case-by-case basis, looking at the strength and credibility of the aliens' claims of fear of persecution or torture in deciding to release or detain them. These 13 district offices reported that they detained 72 percent of the aliens that they processed, as shown in table 4.1.

Criminal History and Community Ties Are the Main Factors District Offices Said They Consider in the Release or Detain Decision

Guidance for making a release decision is found in regulations.[5] In part, the regulations state that the district director may require reasonable assurances that the alien will appear at all hearings. They also state that the aliens do not have to meet all the factors listed in the regulations to be released. The factors to ensure appearance include the alien posting a bond, having community ties, or having to meet such conditions as periodic reporting to INS of their whereabouts. The guidance concludes by stating that the district director should apply reasonable discretion in making detention decisions.

In responding to our survey, district offices identified several factors that they considered in making release or detention decisions regarding aliens in cases when an asylum officer determined those aliens to have a credible

[5] 8 C.F.R. 212.5.

fear of persecution or torture. They are required to determine if the aliens are likely to appear for their removal hearings before an immigration judge and are not a danger to the community. However, one district office reported only considering the aliens' family ties or sponsorship, whereas officials at another district office said that they considered eight different factors in making the decision to release or detain. Table 4.2 categorizes the factors that 28 of the 29 responding district offices reported that they considered.

Table 4.2: Factors Reported in Decisions to Release or Detain Aliens

Factors reported	Number of district offices that reported this factor
Community ties: evidence of family or friends in the United States or sponsorship of religious or charitable groups	24
Criminal history check against law enforcement databases	24
Overall behavior and demeanor	10
Ability to establish the identity of the alien	9
Health and medical considerations	9
Means and manner of entry into the United States	6
The need to assist in law enforcement efforts	5
Means of support so as not to become a public charge	4
Detention does not serve the public interest	4
Strength of credible fear claim	2
Any legal bars to asylum	2
Other miscellaneous factors	7

Note: District offices could have reported more than one factor.

Source: Analysis of GAO survey of INS districts.

While indicating compliance with INS' detention guidance, 28 district offices in our survey reported other factors they considered when making release or detention decisions. One district office reported that since asylum officers were determining that aliens had a credible fear of persecution or torture 99 percent of the time, it did not consider the asylum officers' findings to be a viable prescreening process or useful in making detention decisions. A port director made a similar comment. Another district responded that they deferred to the determination made by the asylum officer (i.e., the district office released the alien if the asylum officer determined that the alien had a credible fear of persecution or torture).

Pending INS Actions Affecting Detention Policy

INS plans to revise its regulations this year to affirm the authority of headquarters and regional managers to make detention and release decisions. According to INS, these new regulatory changes will clarify that headquarters and regional managers, and not only district directors, have

the authority to make these decisions. Through these regulations, INS aims to provide the basis for stronger oversight of detention and release decisions nationwide. As part of this effort, INS plans to standardize certain components of the decisionmaking process.

INS plans to issue instructions that would require that noncriminal aliens, in those cases when an asylum officer determined the alien to have a credible fear of persecution or torture, be given a uniform letter specifying the reasons for granting or denying release. According to INS, this letter is an effort to standardize the release decisions among district offices.

Indications Suggest Many Aliens May Be Using the Credible Fear Process to Illegally Remain in the United States

Our analysis showed that 1,000 of the 2,351 aliens who were found to have a credible fear of persecution or torture from April 1, 1997, through September 30, 1999, were released from INS custody and received a decision on their case from an immigration judge but did not appear for their removal hearings.[6] Over half of these aliens who did not appear had requested and received a change of removal hearing location. During the same period, 3,140 of 7,947 aliens determined to have a credible fear of persecution or torture had not applied for asylum. Of those aliens, 1,338 of them did not file their asylum applications within 1 year of entering the country, as required. INS has studies in process regarding factors related to alien appearance rates at removal hearings.

A Significant Number of Released Aliens Are Not Appearing for Their Removal Hearings

In those cases when an asylum officer determines that an alien has a credible fear of persecution or torture[7] and the alien is released from INS custody, the alien is required to appear at removal hearings before an immigration judge. At the removal hearings, aliens are to present their claims for asylum, and the immigration judge is to rule on the merits of the claim. Those aliens whose claims are denied are to be removed from the country and returned to their home country.[8] In using a joint INS and EOIR database, we found that 7,947 aliens were found to have a credible fear of persecution or torture between April 1, 1997,[9] and September 30, 1999. As

[6] Three nationalities—Sri Lankans, Chinese, and Haitians—represented 72 percent of the 1,000 aliens who were released and ordered removed in absentia—442 Sri Lankans were ordered removed in absentia out of 500 released Sri Lankans for whom an immigration judge made a decision, 164 Chinese were ordered removed in absentia out of 488 released Chinese for whom an immigration judge made a decision, and 115 Haitians were ordered removed in absentia out of 374 released Haitians for whom an immigration judge made a decision.

[7] In addition, if an immigration judge vacates an asylum officer's negative credible fear determination, these aliens are required to appear at a removal hearing.

[8] Aliens can appeal the decision of the immigration judge to EOIR's Board of Immigration Appeals.

[9] The inception date of the expedited removal program.

of February 22, 2000, of the 7,947 aliens, 5,320 aliens were released from INS custody. Of these 5,320 aliens, 2,351 aliens received an immigration judge's decision. Of the 2,351 aliens, 1,000 aliens (or 42 percent) did not appear for their removal hearing before an immigration judge.[10] In all 1,000 cases in which the alien did not appear for their removal hearing, immigration judges ordered them removed from this country in absentia.[11]

In commenting on a draft of the report, EOIR officials confirmed that they essentially agreed with our analysis and methodology which revealed that, as of February 22, 2000, 42 percent of the aliens who had been released and had a final decision by the court had not appeared for their removal hearing before an immigration judge and had received a ruling in absentia. However, the officials explained that the majority of the in absentia orders were entered at the master calendar hearing stage,[12] where the alien fails to appear for his or her hearing. In addition, EOIR officials noted that cases that are set for a merits hearing (i.e., for aliens who appear and wish to pursue their claim) tend to be scheduled on average of 1 year from the initial master calendar hearing date. Consequently, as more of the 5,320 cases[13] are completed over time, a greater percentage of aliens will appear for their hearing, which will result in a lower in absentia rate. Therefore, cases closed from April 1, 1997, through fiscal year 1999 were aliens who did not appear for their initial removal hearing and were ordered removed from the United States at that time. Conversely, those cases which remained open involved aliens who had appeared for their initial removal hearing and were scheduled for subsequent merits hearings to determine if they should be granted relief from removal (e.g., granted asylum). Regarding the case sample analyzed by us, EOIR determined that the failure to appear rate was 34 percent, as of August 10, 2000. EOIR estimated that eventually the failure to appear rate would be as low as 25 percent when all the cases are completed.

[10] In three cases, the immigration judges granted the aliens some form of relief from removal in absentia. We did not include these cases in the 2,351 decisions because we did not know the basis for the immigration judges' decisions.

[11] In ordering an alien removed in absentia, the immigration judge is to be assured by clear, unequivocal, and convincing evidence that the alien received proper notification of the hearing.

[12] The Judge explains the alien's rights, ascertains whether they received notice of the hearing from the INS, and inquires whether they understand the nature of the charges and whether they want to admit or deny the charges. They also handle other preliminary matters, such as the availability of free legal services, and give the alien a list of such service providers.

[13] The 5,320 cases are on the basis of our analysis.

According to a 1996 report by the Department of Justice's Office of the Inspector General, aliens who INS did not detain were not likely to be removed from the country.[14] The report stated that, on the basis of its analysis of fiscal year 1994 data, only 11 percent of aliens who were not detained were actually removed at the end of the removal proceedings,[15] versus well over 90 percent of those aliens who were detained throughout the process.

Many Aliens Who Changed Removal Hearing Location Were Not Appearing for Their Hearings

In those cases when an asylum officer determined an alien to have a credible fear of persecution or torture and the alien was subsequently released, the alien can ask an immigration judge for a change in removal hearing location. According to an EOIR official, immigration judges' decisions to grant aliens' requests for a change in the hearing location are done on a case-by-case basis. Further, according to the Chief Immigration Judge, before a change of location may be granted, an address where the alien will reside must be provided to the immigration judge.[16] The guidance does not require any verification of the address provided. Our analysis of the INS and EOIR data from April 1, 1997, through fiscal year 1999 showed that 3,695 of the 5,320 aliens who were released received a change of location for their removal hearing. Of those 3,695 aliens, 1,467 aliens had a decision made by an immigration judge. Of the 1,467 aliens, 557 aliens (or 38 percent) were ordered removed in absentia because they failed to appear for their removal hearings.[17] The Los Angeles, Miami, and New York immigration courts were the most common changes of location requested. Aliens who changed locations and failed to appear were ordered removed in absentia in the Los Angeles, Miami, and New York immigration courts, in 60 percent (62 of 103) of the cases, 50 percent (333 of 662) of the cases, and 22 percent (91 of 406) of the cases, respectively. During a discussion with immigration judges in New York, they said that the records of some aliens who received a change of hearing location to New York from Los Angeles contained incorrect information, such as nonexistent addresses as their residences.[18]

[14] Department of Justice, Office of Inspector General Inspection Report, Immigration and Naturalization Service Deportation of Aliens After Final Orders Have Been Issued (I-96-03, Mar. 1996).

[15] Previously, removal hearings were called deportation hearings.

[16] 8 C.F.R. 3.14, 3.20 and Operating Policy and Procedures Memorandum 97-10, Change of Venue.

[17] The 557 aliens ordered removed in absentia represented 56 percent of the 1,000 released aliens who were ordered removed in absentia.

[18] While EOIR did not comment on this analysis, these percentages might be reduced as cases are closed over time.

Many Aliens Are Not Filing Asylum Applications

To determine whether or not aliens who claimed to have a fear of persecution or torture pursued their claim of asylum, we reviewed the rate by which claimants failed to file applications for asylum. Generally, these aliens have 1 year from their arrival to file an application showing their intent to request asylum.

Our analysis of the joint INS and EOIR database showed that since the inception of the expedited removal program on April 1, 1997, through fiscal year 1999, 7,947 aliens were determined to have a credible fear of persecution or torture. Of these 7,947 aliens, 3,140 aliens had not filed for asylum, as of February 22, 2000. Of the 3,140 aliens who had not filed, 1,338 (or 43 percent) aliens missed the 1-year required filing deadline and as a result, generally may not be able to file for asylum.[19] In addition, 1,239 of the 3,140 aliens who did not file an asylum application were subsequently ordered removed by an immigration judge.[20]

Studies Suggested Some Illegal Aliens Claimed a Fear of Persecution or Torture to Remain in the Country

Recent INS National and Regional Intelligence Assessments reported that smuggling people from the People's Republic of China is an ongoing and growing phenomenon, using every known method of illegal entry into the United States. According to the assessments, the vast majority of the illegal entrants who were caught appeared to have been coached and instructed to claim fear of persecution. Almost all were found by asylum officers to meet the standard for credible fear of persecution and were released pending a removal hearing. However, only a few of these aliens actually showed up for their scheduled removal hearings, according to the assessments.

In addition, a March, 2000 Canadian Parliamentary Report[21] on major immigration issues stated that Chinese migrants who arrived by boat in Canada last year had paid enormous sums to traffickers for their voyage. The report also stated that the final destination for many was not Canada but the United States, and most often New York City.

INS Actions

In September 1996, INS commissioned the Vera Institute of Justice to implement a 3-year demonstration Appearance Assistance Program (AAP) to (1) increase appearance rates in immigration courts and compliance

[19] Other forms of relief from removal from the United States may be available, including asylum as a result of provisions other than those provided for by expedited removal.

[20] Of the 1,239 aliens who had not filed an asylum application and were ordered removed by an immigration judge, 733 also missed the 1-year required filing deadline.

[21] Refugee Protection and Border Security: Striking a Balance, report of the Canadian House of Commons Standing Committee on Citizenship and Immigration, March 2000.

with the law among aliens in removal proceedings and (2) address a combination of problems, such as the lack of detention facilities having an impact on released aliens who were not appearing in court and rarely complying with removal orders. In addition, the Institute was to make recommendations on the more efficient use of detention facilities.

To qualify for AAP, aliens had to meet criteria on the basis of their community ties, record of compliance in previous proceedings, and threat to public safety. The Institute interviewed and investigated 360 asylum seekers who were subject to expedited removal to determine if they met criteria to participate in the supervision program. The Institute recommended 85 asylum seekers who were subject to expedited removal between August 1998 and October 1999 to participate in AAP. INS approved 79 of these asylum seekers. The Institute was to supervise the participants throughout the duration of their immigration proceedings or until the program ended. As of March 31, 2000, of the 79 aliens, 46 aliens had their asylum claims decided by an immigration judge in regular removal proceedings. The Institute reported the following outcomes: 18 were granted relief; 17 were ordered removed; 6 were ordered removed in absentia; 4 were allowed to remain in the United States on grounds other than asylum; and 1 was granted voluntary departure. On the basis of their findings, the Institute concluded that with supervision, a high degree of compliance with immigration procedures and requirements can be obtained at a lower cost, without detention. The Institute recommended that INS consider the implementation of a broader, permanent supervision program.

It is not clear if the results of the AAP demonstration could be widely implemented with the same outcomes. According to a New York INS district official, AAP's selection process favored aliens claiming a credible fear of persecution or torture who had more easily established and verifiable identities, more community ties, and a greater likelihood of appearing. Further, the official added that aliens who participated in AAP did so voluntarily and therefore, this may have an impact on the analysis of the study results.

In January 1999, the INS Commissioner asked for an internal study to determine (1) the rate at which aliens who claimed to have a fear of persecution or torture were not appearing for their removal hearings and (2) the reason all INS district offices were not following headquarters policy that favored the release of aliens found to have a credible fear of persecution or torture. Regarding the rate of nonappearance for removal hearings, INS was analyzing data from the same source we used in this

report. At the time of our review, INS was not routinely analyzing such data regarding aliens who were released and whether they appeared for their subsequent removal hearing.

Conclusion

On the basis of our analysis of our district office survey, an estimated 78 percent of the aliens, in cases when asylum officers determined those aliens to have a credible fear of persecution or torture, were released in fiscal year 1999. Our analysis of the joint INS and EOIR database showed that, as of February 22, 2000, 5,320 of these aliens were released from INS custody, and of these, 2,351 received an immigration judge's decision. Of the 2,351, 1,000 (or 42 percent) aliens did not appear for their removal hearing before an immigration judge. In all 1,000 cases in which the alien did not appear for their removal hearing, immigration judges ordered them removed from this country in absentia. As more cases involving the 5,320 released aliens who subsequently appear for their hearing are decided, the failure to appear rate would be as low as 25 percent, according to EOIR. INS has ongoing efforts looking at nonappearance rates. However, INS' recent policy that favors releasing aliens from detention contributed to some of the 1,000 aliens not appearing for their removal hearings. These data suggest that many aliens may be using the credible fear process to illegally remain in the United States.

Another issue that needs to be addressed involves the policies and procedures surrounding aliens' requests for a change of hearing locations. Our analysis revealed that 557 aliens who requested and received a change of location of their removal hearing did not appear for their hearings. According to the Chief Immigration Judge, in granting a change of hearing location the address where the alien will reside must be provided to the immigration judge, but no requirement exists to verify the alien's new address.

Recommendations

We recommend that the Attorney General direct

- INS to analyze the characteristics of those aliens who appear and those who do not appear for their removal hearing and to use the results to reevaluate its policy for when to release aliens in cases when an asylum officer has determined the aliens to have a credible fear of persecution or torture.

- INS and EOIR to work together to establish a system to (1) have the aliens' new address verified by using readily available information sources and (2) provide the results to the immigration judges for their use in making

change of location decisions.

Agency Comments

In commenting on a draft of this report, Department of Justice officials suggested that the second recommendation—related to verifying the addresses of aliens who request a change of hearing location—be modified to provide flexibility for the implementation of our recommendation. In response, we changed the recommendation to have INS and EOIR work together to establish a system to verify aliens' addresses.

Detention Conditions Varied for Aliens Subject to Expedited Removal

INS uses a variety of facilities for detaining aliens. INS has direct control over its own and contract facilities but less control over local city and county jails. We observed that the conditions and available services provided aliens varied at the 12 facilities we visited. Generally, aliens who were housed in five INS-controlled facilities had access to more services than aliens housed in the seven city and county jails. In addition, INS-controlled facilities provided services in a more standardized manner than city and county jails.

Facility Conditions

INS primarily uses SPC, contract, city, and county facilities to detain aliens who are subject to expedited removal and those who claim a fear of persecution or torture. INS requires SPCs and contract facilities to meet ACA[1] standards, but cannot require city and county facilities to meet these same standards. In fiscal year 1999, our analysis of INS district offices' responses showed that about 70 percent of the 959 detained aliens in cases when an asylum officer had determined the aliens had a credible fear of persecution or torture were detained in INS-controlled facilities (i.e., SPCs and contractor facilities). At the time of our review, INS was developing detention standards for all the facilities that INS used to detain aliens, including aliens in cases when an asylum officer had determined the aliens had a credible fear of persecution or torture.

Majority of Detained Aliens Were Housed in INS-controlled Facilities

In fiscal year 1999, district directors decided to detain 959 aliens after asylum officers determined that the aliens had a credible fear of persecution or torture. Of the aliens detained, about 70 percent were housed in INS-controlled facilities.

INS has recognized a need for all aliens in INS' custody to be subject to uniform detention standards. At the time of our review, INS was developing and issuing standards for various services as they were drafted. INS had already issued 17 standards and was expected to issue a total of 39 standards. Upon issuance, all standards are to apply immediately to INS-controlled facilities, both those that were operated by INS and those that were operated under direct contract. INS planned to phase in the standards' applicability to all other facilities in which INS detainees are housed, including county and city jails. INS planned to implement the standards in INS-controlled facilities by imposing specific procedural requirements. Other facilities were to be permitted to implement the standards under their own guidelines. For example, while INS-controlled

[1] The ACA is a nationally recognized association that is committed to continually reviewing and updating standards to ensure that they reflect the current professional requirements in the field of corrections. Their standards are used as the professional benchmark for judging the quality of a detention operation.

facilities would be required to have 18-inch partitions between telephones to ensure privacy, local facilities would have the option of adopting this procedure or using a private room or other means to meet the telephone privacy standard.

ACA Accreditation

INS requires all of its SPCs and contract facilities to be accredited by the ACA. At the time of our review, 12 of 18 SPCs and contract facilities had obtained ACA accreditation. Table 5.1 shows which INS-controlled facilities were ACA accredited and the status of those not accredited.

Table 5.1: ACA Accreditation of INS-Controlled Facilities

Facility	Date ACA accredited	Status of facilities seeking ACA accreditation
SPCs		
Aquadilla, PR	N/A	Accreditation audit to begin in August 2000
Buffalo, NY	August 1999	N/A
El Centro, CA	January 1997	N/A
El Paso, TX	January 2000	N/A
Florence, AZ	January 1999	N/A
Krome, FL	N/A	Accreditation expected by November 2000
Port Isabel, TX	N/A	Accreditation expected by April 2001
San Pedro, CA	April 1998	N/A
Varick Street, NY	N/A	Accreditation expected by December 2000
Contract facilities		
Aurora, CO	August 1998	N/A
Jamaica, NY	January 1999	N/A
Houston, TX	January 1999	N/A
Laredo, TX	N/A	Accreditation not required under current contract
Elizabeth, NJ	January 1999	N/A
San Diego, CA	N/A	Accreditation expected by December 2001
Seattle, WA	August 1996	N/A
Joint federal facilities		
Oakdale, LA	January 1997	N/A
Eloy, AZ	August 1997	N/A

Note: N/A means not applicable.

Source: ACA and facility officials.

According to an INS official, INS headquarters had agreements with over 700 local jails for use of their facilities in fiscal year 1999. Each INS district office had the authority to enter into an agreement or use existing U.S. Marshal agreements with local jails for detention space. ACA has accredited about 70 local jails throughout the United States, some of which INS may have been using.

Conditions in INS-Controlled Facilities Were Generally Different From Local Jails

We visited 12 facilities that were used to detain nationwide about 70 percent of the aliens in cases when an asylum officer had determined the aliens had a credible fear of persecution or torture in fiscal year 1999. These facilities consisted of two SPCs, three contract facilities, and seven local jails. We found that conditions and available services provided for the aliens varied. However, on the basis of discussions with officials at the 12 facilities, INS-controlled facilities generally provided the following services in a uniform manner and to a greater extent than did the local jails:

- segregation of detainees,
- telephones,
- diet,
- law library,
- visitation,
- health care, and
- recreation.

Segregation of Detainees

Regarding the separation of aliens, in cases when an asylum officer had determined the aliens had a credible fear of persecution or torture, we observed that male aliens were mixed with criminals in 5 of 12 facilities (1 contract facility and 4 local jails). Female aliens were mixed with criminals in 6 of 12 facilities (1 SPC, 1 contract facility and 4 local jails). The comingling of criminals with aliens in the INS-controlled facilities is not consistent with INS standards nor is it in accordance with ACA standards or UNHCR principles/guidance. However, the comingling of females at these facilities was practiced because INS believed that females were not as violent as males and thus, there was no need to separate them.

Telephones

Regarding the use of telephones, to make outgoing calls, officials at the facilities told us that all the facilities provided aliens with telephone access. However, rules on telephone usage varied. For example, four facilities (one SPC, two contract facilities, and one local jail) permitted 24-hour access, while the other eight facilities placed limitations on hours when aliens could use the telephones. All 12 facilities had the telephones located in living areas where the aliens slept. In addition, all 12 facilities permitted the aliens to make collect calls. Officials at two of the facilities said that time limits on the length of calls were enforced, whereas, the other 10 facilities permitted unlimited or did not enforce time limits on calls.

Meals

Regarding the meals provided to the aliens, 11 of the 12 facilities made accommodations for the specific dietary needs of the detained aliens, such

as for religious or health diets. Generally, the weekly menus were varied on 4- or 5-week cycles and were reviewed by a dietitian.

Law Libraries

Regarding law libraries, 11 of 12 facilities permitted detainees access to legal materials. The remaining facility, a local jail, did not have a law library. Of the 11 facilities with legal materials, 2 local jails did not have current immigration-related law materials.[2] In addition, two contract facilities did not have laws, regulations, guidance or related materials pertaining to expedited removal. Generally aliens had access to law materials on a daily basis when they requested access. The INS-controlled facilities allowed free photocopying of legal materials and provided typewriters and/or computers. Generally, local jails allowed free photocopying and provided typewriters; however, two of these facilities did not provide any of these services.

Visitation

Regarding visitation, INS-controlled facilities generally had uniform practices, whereas local jails had a wide range of practices. For example, family visitation at INS-controlled facilities generally provided for noncontact visits[3] for 1 hour, 2 to 4 days a week. Local jail visitation policies generally called for noncontact visits for a half an hour to 10 hours with extended hours if no one was waiting, 1 to 7 days a week.

Regarding attorney visits, attorneys could generally visit 7 days a week in all facilities, but their ability to have contact visits varied. For example, three INS-controlled facilities and two local jails allowed contact visits with aliens and their attorneys, and two INS-controlled facilities and five local jails did not allow contact visits between the aliens and their attorneys. Visiting hours for attorneys at all facilities ranged from 8.5 hours to 24 hours a day.

Health Care

Regarding health care, all 12 facilities we visited had established procedures and required that at least one nurse be available on site at all times. The range of health care services varied from physician-staffed on-site accredited facilities[4] to access to an on-call physician. For example, four of the five INS-controlled facilities had on-site, accredited health care facilities staffed by at least one physician and supporting staff 5 days a

[2] We considered current immigration-related law materials to be dated April 1997 or later so as to include materials pertaining to expedited removal.

[3] Basically, noncontact visit means there is a physical barrier between the alien and the visitor.

[4] For example, accreditation by the National Commission on Correctional Health Care, the Joint Commission on Accreditation of Healthcare Organizations, or the California Department of Corrections.

week. Three of the seven local jails had on-site accredited health care facilities staffed by at least one physician and supporting staff 1 to 3 days a week. Two local jails had on-call physician services only. All facilities had contracts for off-site services not provided on-site. Generally, all facilities screened aliens at intake for infectious and mental disease, and aliens had access to their medical records after being released from the facility.

Recreation

Regarding recreation, INS-controlled facilities generally had uniform practices in that each facility provided team games and exercise equipment in outdoor recreation for at least 1 hour a day, 7 days a week. Local jails' outdoor recreation practices varied. For example, three jails provided outdoor recreation from 1 to 14 hours a day, 3 to 7 days a week. Four jails had team games in either their outdoor or indoor recreation programs. Only 1 of the 7 jails had exercise equipment. Two jails offered no recreation.

Regarding day room activities, all 12 facilities we visited had televisions and generally provided board games and cards. INS-controlled facilities generally allowed personal radios with headphones, but local jails did not allow these items.

Regarding educational, vocational, and work programs, none of the facilities we visited provided vocational opportunities, and 6 of 12 facilities provided some educational services. INS-controlled facilities generally provided paid voluntary work programs, whereas three of the seven local jails provided unpaid voluntary work programs.

Airport Detention

Detention conditions varied among the six ports of entry we visited. The conditions ranged from aliens being handcuffed to wooden benches to separate gender lounges with various amenities. These facilities usually detained aliens for less than 24 hours. INS is a tenant at air terminals that serve as ports of entry, and has little detention space. According to INS officials, newer terminals are being designed to accommodate INS' detention needs.

Conclusions

Our review showed that aliens who were detained in INS controlled-facilities had access to more services than aliens housed in city and county jails. INS has recognized the need for all aliens in its custody to be subjected to uniform detention standards and was in the process of developing and issuing such standards. Establishing such standards should help INS ensure that detained aliens are treated consistently at all facilities in which INS detains aliens.

Additional Information on Aliens Subject to Expedited Removal

The following tables represent data on aliens who attempted to enter the United States between October 1, 1998, and September 30, 1999, and were processed under the expedited removal provision. These data include information on aliens who

- were ordered removed from the country,
- were allowed to withdraw their applications for admission, or
- were referred for a credible fear interview.

These data do not include information on those aliens subject to expedited removal who swear under oath to be U.S. citizens, lawful permanent residents, or have refugee or asylee status, and are referred to an immigration judge for a review of this claim.

These data are presented separately for the nation's airports and for the largest land port of entry at San Ysidro, California. Data for airports come from INS' Record of Intercepted Passenger System. Data for San Ysidro come from INS' Port of Entry Tracking System.

These data do not include aliens under 18 years of age to make this analysis consistent with analyses presented elsewhere in this report and because under INS policy, unaccompanied minors are generally not subject to expedited removal. However, in some instances, minors may be subject to certain expedited removal processes. For example, under INS guidance, inspectors are encouraged to allow unaccompanied minors to withdraw their applications for entry. Further, minors who are accompanied by adults may, in some cases, be ordered removed, or be referred to an asylum officer for a credible fear interview, if the adults they are accompanying are to be removed or referred. Excluding minors from the tables below, generally does not substantially affect the reported percentages. However, in some cases, the reported number of cases would have changed had we included them. For example, in table I.1, with minors included, the number of persons referred from New York's JFK airport for a credible fear interview rises from 545 to 653. Including minors in table I.11, for aliens subject to expedited removal at the San Ysidro port of entry, would have affected the reported percentages, because inspectors in that location allow a large number of minors to withdraw their applications for entry.

Table I.1: Dispositions of Aliens Subject to Expedited Removal Provision Between October 1, 1998, and September 30, 1999, at the Nation's Airports

	Ordered removed		Allowed to withdraw		Referred for credible fear Interview	
Airport	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
New York (JFK)	2,116	70	381	13	545	18
Miami	825	30	509	18	1,423	52
Los Angeles	963	43	458	20	830	37
Houston[a]	744	38	1,123	58	83	4
Newark	525	33	733	47	310	20
Chicago	746	47	344	22	488	31
Atlanta	454	44	521	50	62	6
San Francisco	185	24	461	59	131	17
Dallas	426	56	318	42	14	2
All others	459	23	1,062	54	457	23
Gender						
Male	4,892	44	3,510	31	2,815	25
Female	2,551	39	2,400	37	1,528	24
Age						
18-19	367	38	259	27	329	34
20-29	3,340	42	2,389	30	2,309	29
30-39	2,364	44	1,804	33	1,257	23
40-49	1,024	44	965	41	346	15
50 and older	348	37	493	52	102	11
Region of citizenship[b]						
Africa	258	29	130	14	510	57
Asia	844	21	1,115	28	2,012	51
Caribbean	1,054	49	179	8	921	43
Central America	665	44	739	49	97	6
Mexico	2,028	56	1,536	43	34	1
Middle East	169	32	195	37	165	31
South America	1,909	58	1,136	35	238	7
Former Soviet Bloc	340	32	445	42	287	27
Other	176	26	435	63	79	11

[a]Data for February 1999 missing for Houston airport.

[b]We grouped 172 countries of citizenship by regions of the world, because of the small number of cases in some countries. The regions we used include the following countries, among others: Asia (includes China, India, Pakistan, the Philippines, and Sri Lanka), Africa (includes Ghana, Niger, Nigeria, and Somalia), the Caribbean (includes Cuba, the Dominican Republic, Haiti, and Jamaica), Central America (includes El Salvador, Guatemala, and Honduras), the Middle East (includes Algeria, Iran, Iraq, Israel, and Lebanon), South America (includes Brazil, Colombia, Ecuador, Peru, and Venezuela), and the former Soviet Bloc (includes Albania, the Czech Republic, the Ukraine, Russia, and Yugoslavia), and Other (includes Australia, Canada, France, Great Britain, and New Zealand). We included Mexico separately because it was the only North American country included in the analysis and traditionally has been responsible for the largest group of illegal aliens in the United States.

Source: GAO analysis of INS data.

Table I.2: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at John F. Kennedy Airport

Country of citizenship	Number	Percent
Brazil	389	13
Dominican Republic	286	9
Jamaica	257	8
Ecuador	157	5
China	121	4
Pakistan	113	4
Sri Lanka	102	3
Peru	92	3
Israel	82	3
Ghana	81	3

Source: GAO analysis of INS data.

Table I.3: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Miami International Airport

Country of citizenship	Number	Percent
Haiti	706	26
Colombia	354	13
China	200	7
Brazil	160	6
Dominican Republic	117	4
Jamaica	115	4
Peru	97	4
Sri Lanka	91	3
Ecuador	88	3
Venezuela	77	3

Source: GAO analysis of INS data.

Table I.4: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Los Angeles International Airport

Country of citizenship	Number	Percent
China	642	29
Mexico	522	23
Sri Lanka	150	7
Philippines	86	4
Peru	84	4
Pakistan	49	2
Guatemala	45	2
El Salvador	43	2
South Korea	37	2
Australia	31	1

Source: GAO analysis of INS data.

Table I.5: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Houston International Airport

Country of citizenship	Number[a]	Percent
Mexico	751	39
El Salvador	245	13
Ecuador	194	10
Guatemala	184	9
Honduras	117	6
Colombia	112	6
Peru	70	4
Costa Rica	69	4
Belize	35	2
Nicaragua	34	2

[a]Data for February 1999 missing for Houston airport.

Source: GAO analysis of INS data.

Table I.6: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Newark International Airport

Country of citizenship	Number	Percent
Brazil	219	14
Ecuador	112	7
Mexico	105	7
Colombia	97	6
Peru	70	5
Jamaica	69	4
Costa Rica	60	4
Czech Republic	49	3
Dominican Republic	48	3
Sri Lanka	45	3

Source: GAO analysis of INS data.

Table I.7: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Chicago International Airport

Country of citizenship	Number	Percent
Mexico	645	41
China	278	18
Sri Lanka	136	9
Poland	106	7
Albania	38	2
India	36	2
Czech Republic	24	2
Pakistan	24	2
Canada	20	1
Jamaica	18	1

Source: GAO analysis of INS data.

Table I.8: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Atlanta International Airport

Country of citizenship	Number	Percent
Mexico	489	47
Peru	69	7
El Salvador	57	6
Guatemala	49	5
Brazil	38	4
Czech Republic	32	3
Jamaica	22	2
Costa Rica	21	2
Nigeria	18	2
Panama	18	2

Source: GAO analysis of INS data.

Table I.9: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at San Francisco International Airport

Country of citizenship	Number	Percent
Mexico	255	33
China	126	16
Philippines	68	9
Indonesia	50	6
Taiwan	28	4
India	26	3
Sri Lanka	24	3
Thailand	16	2
Peru	14	2
South Korea	14	2

Source: GAO analysis of INS data.

Table I.10: Top 10 Countries of Citizenship for Aliens Subject to Expedited Removal at Dallas International Airport

Country of citizenship	Number	Percent
Mexico	513	68
Peru	33	4
El Salvador	32	4
Costa Rica	24	3
Guatemala	23	3
Venezuela	16	2
Brazil	15	2
Colombia	12	2
South Korea	12	2
Honduras	9	1

Source: GAO analysis of INS data.

Table I.11: Dispositions of Aliens Subject to Expedited Removal Provision Between October 1, 1998, and September 30, 1999, at San Ysidro, CA Port-of-Entry

	Ordered removed		Allowed to withdraw		Referred for credible fear interview	
Gender	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**
Male	24,362	89	2,853	10	182	1
Female	19,378	86	2,994	13	107	0
Age						
18-19	4,591	88	644	12	13	0
20-29	25,061	89	2,918	10	138	0
30-39	9,612	88	1,219	11	99	1
40-49	3,135	87	447	12	31	1
50 and older	1,342	68	619	31	8	0
Country of citizenship						
Mexico	43,364	88	5,768	12	31	0
Guatemala	96	74	9	7	25	19
Ukraine	23	36	22	34	19	30
El Salvador	39	63	5	8	18	29
Honduras	38	63	1	2	21	35
Cuba	3	8	3	8	33	85
Russia	5	17	5	17	20	67
Bulgaria	1	5	3	14	18	82
China	5	29	0	0	12	71
Dominican Republic	16	94	1	6	0	0
All others	151	55	30	11	92	34

Source: GAO analysis of INS data.

Description of the Violations That Subject Aliens to Expedited Removal

The violations under the Immigration and Nationality Act (INA) that would subject aliens to an expedited removal order are the following: (1) obtained a visa, other documentation, or admission into the United States or any benefit under the INA through fraud or misrepresentation (INA §212(a)(6)(C)(i)); (2) obtained a benefit under federal or state law by falsely claiming to be a U.S. citizen (INA §212(a)(6)(C)(ii)); or (3) were not in possession of valid entry documents (INA §212(a)(7) subparagraphs (A)(i)(I), (A)(i)(II), (B)(i)(I), or (B)(i)(II)).

According to INS training material, in order for an alien to be found inadmissible under the first section of the INA, the misrepresentation must be willful (i.e., the alien had knowledge that the information was false and he or she deliberately used the false information to gain a visa, entry, or other benefit). In addition, the misrepresentation must be material (i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility). Further, the misrepresentation must have been made to a government official and the purpose of the misrepresentation was to gain a benefit under the INA for the alien (such as admittance to the United States). In general, the inspector is not to apply this section when the alien makes a timely retraction of the misrepresentation, in most cases at the first opportunity.

The second section of the INA relates to false claims of U.S. citizenship. To be charged with this violation, the alien must have claimed to be a U.S. citizen to obtain a benefit under federal or state law.

The third section of the INA relates to specific sections of the law. These sections of the law state that aliens are inadmissible if their situation is any of the following at the time they apply for admittance:

- Any immigrant who is not in possession of a valid, unexpired visa; reentry permit; border crossing identification card; or other valid entry document and a valid unexpired passport, other suitable travel document, or document of identity and nationality if required. Two examples provided in the Immigration and Naturalization Service training materials of situations that would fall under this basis of inadmissibility are that an immigrant in possession of an immigrant visa bearing an immigrant classification for which the alien is not eligible (hence, the alien has improper documents) and an immigrant in possession of an expired immigrant visa.

Under the INA, all aliens requesting entry are considered to be immigrants unless they are able to establish that they are entitled to a nonimmigrant

status. If an alien applies for entry as a nonimmigrant, the alien has the burden of establishing that he or she is entitled to the nonimmigrant status. If the alien fails to establish that he or she is entitled to the nonimmigrant status, the inspector may refuse to allow entry because the alien does not have a valid entry document.

- Any immigrant whose visa had been issued without compliance with provisions of the INA. This provision applies when the alien has an immigrant visa bearing an immigrant classification symbol, however the alien is not entitled to that immigrant classification and the alien is not entitled to a preference class.

- Any nonimmigrant not in possession of a valid passport or a valid nonimmigrant visa or border crossing identification card. An alien who requests entry and has a valid nonimmigrant visa may be ordered removed if the inspector finds that the visa is an improper visa (e.g., the alien has a valid tourist visa but is intending to become a student).

Scope, Methodology, and Additional Results of Analysis

This appendix contains additional information regarding

- supporting documentation and additional information regarding our multivariate analysis of Immigration and Naturalization Service (INS) asylum data on the outcomes for aliens in the credible fear process, including aliens who recanted their claim of a fear of persecution or torture;
- analysis of data from removal hearings for aliens found to have a credible fear of persecution or torture;
- methodology for our reviews of case files at ports of entry and asylum offices, and associated sampling and nonsampling errors; and
- nonsampling errors affecting observational data collected during our site visits.

Multivariate Analysis of INS Asylum Data

The Asylum Pre-Screening System (APSS) is a mainframe INS database that the Asylum Office created to track data on aliens subject to expedited removal who were referred to an asylum officer for a credible fear interview. Data for each case are to be keyed in at the individual asylum offices. Data are to be reviewed for accuracy monthly by INS headquarters officials.

Asylum Office officials provided us with a copy of this database, which was current as of November 20, 1999. We spoke to INS Asylum Office staff about the data-entry processes used at the field level and the edit checks incorporated into the system to reduce data entry error. We also spoke to staff in the INS Statistics Office about analyses they had conducted to examine the reliability of the data. We conducted various logic checks of our own. We also used the database for our file review of the credible fear determination process at the three locations.

In an effort to assess the reliability of the variables included in our multivariate model, we compared data from our review of files in the Los Angeles, Miami, and New York Asylum Offices to data recorded in the APSS system. We found that the information recorded during our file reviews and the APSS data were generally consistent.

Under INS policy, unaccompanied minors generally are not subject to expedited removal. Therefore, we did not include them in our analyses. However, as part of our assessment of the reliability of the APSS data, we identified 339 minors who were listed as the sole or lead applicant on their credible fear interviews and were thus subject to expedited removal. As a result, we discussed this issue with an INS official to determine why these minors were included in the database. The official identified some reasons

for the inclusion of these minors. For example, some aliens had an incorrect entry for their date of birth and were recorded as minors even though they were not minors. Other aliens were recorded as minors, but for example, dental forensics later determined that they were 18 years of age or older. We conducted a sensitivity analysis to assess the effects of excluding minors who were listed as the sole or lead applicant from our multivariate analysis. Our analysis showed that excluding this group did not have a significant impact on our findings and therefore, we excluded them from the multivariate analysis.

On the basis of our review, sensitivity analysis, and discussions with INS officials, we believe the data in the fields we used are sufficiently reliable to support our conclusions.

We analyzed data on credible fear cases for aliens who were 18 years or older and who attempted to enter the United States as the sole or lead applicant between April 1, 1997, and September 30, 1999, in two steps. First, we investigated which characteristics affected the likelihood that aliens recanted their claims of fear of persecution or torture. Then we investigated, for cases where aliens did not recant, which characteristics affected the likelihood that the asylum officer's finding in the case was negative. The characteristics were the fiscal year in which the alien attempted to enter the country (1997,[1] 1998, 1999), the gender and age (18 to 19, 20 to 29, 30 to 39, 40 to 49, 50 and older) of the alien, whether the alien attempted to enter the United States alone or with dependents, the region (Asia, Africa, the Caribbean, Central America, Mexico, the Middle East, South America, and the former Soviet Bloc) of the alien's country of citizenship, and the asylum office at which the case was processed (Miami, Arlington, Chicago, Houston, Los Angeles, Newark, New York, and San Francisco).[2] Because of the large number of countries of citizenship and the small number of cases in many of them, we grouped countries by regions of the world. The regions were: Asia (in which China, Sri Lanka, Pakistan and India each had over 100 cases), Africa (in which Somalia, Nigeria, Niger and Ghana each had over 100 cases), the Caribbean (in which Haiti and Cuba each had over 100 cases), Central America (in which

[1] Data for fiscal year 1997 represent the period from April 1, 1997 to Sept. 30, 1997.

[2] We undertook additional analyses in which we restricted our attention to the 16 countries that contributed more than 100 cases and which jointly accounted for nearly 80 percent of all cases in the 3 years for which we had data. These analyses showed considerable variability in the likelihood of aliens recanting and in negative credible fear determinations across countries within the various regions, but our estimates of the effects of the asylum office and year in which the cases were heard remained essentially the same.

El Salvador and Guatemala each had over 100 cases), the Middle East (in which Iran, Lebanon, Algeria, and Iraq were the countries with the largest number of cases, with 93, 79, 74, and 62 cases, respectively); South America (in which Colombia had over 100 cases); and the former Soviet Bloc (in which Albania and Yugoslavia each had over 100 cases). However, we included Mexico separately because it was the only North American country included in the analysis and traditionally has been responsible for the largest group of illegal aliens in the United States.

In our analyses we estimated the size and statistical significance of the effect that each of these characteristics had on the likelihood that aliens recanted, and for those cases where aliens did not recant, on the likelihood that the credible fear finding was negative. We first used bivariate methods to determine the effect of each characteristic ignoring every other. We then used multivariate techniques (logistic regression models) to estimate the net effect of each of these six characteristics or the effects they had on these two outcomes (i.e., likelihood of aliens' deciding to recant or not their claim of a fear of persecution or torture and likelihood of receiving a negative or positive credible fear determination) when the associations between characteristics were controlled and their effects were estimated simultaneously. Odds and odds ratios were used to estimate the size of the effects of the different characteristics, and chi-square statistics and Wald statistics were used to determine whether they were statistically significant (i.e., large enough that it is very unlikely that they occurred due to random fluctuations or chance).

Factors Associated With Aliens' Recanting Claims of Fear of Persecution or Torture

Table III.1 shows the effects of the various characteristics on the likelihood that aliens recanted their claims.

Table III.1: Number of Aliens Who Did or Did Not Recant Their Claims of Fear of Persecution or Torture, by Selected Characteristics, and Odds and Odds Ratios Derived From Them

Fiscal year	Did not recant	Recanted	Total	Odds on recanting	Bivariate ratios	Multivariate ratios
1997	927	103	1,030	0.111		
1998	2,690	334	3,024	0.124	1.12[a]	1.21
1999	5,232	388	5,620	0.074	0.67[a]	0.95
Gender						
Male	5,959	678	6,637	0.114		
Female	2,890	147	3,037	0.051	0.45[a]	0.45[a]
Age						
18-19	648	36	684	0.056		
20-29	4,709	363	5,072	0.077	1.39	1.14
30-39	2,614	297	2,911	0.114	2.04[a]	1.58[a]
40-49	703	92	795	0.131	2.36[a]	1.75[a]
50 and older	175	37	212	0.211	3.81[a]	2.67[a]
Alone or with dependents						
Alone	8,752	819	9,571	0.094		
With dependents	97	6	103	0.062	0.66	0.57
Region of citizenship						
Asia	4,134	215	4,349	0.052		
Africa	1,225	164	1,389	0.134	2.57[a]	1.48[a]
Caribbean	1,579	76	1,655	0.048	0.93	1.42[a]
Central America	443	87	530	0.196	3.78[a]	6.41[a]
Mexico	128	88	216	0.688	13.22[a]	24.37[a]
Middle East	357	31	388	0.087	1.67[a]	1.31
South America	283	119	402	0.420	8.08[a]	11.79[a]
Former Soviet Bloc Nations	700	45	745	0.064	1.24	0.83
Asylum Office						
Miami	2,313	136	2,449	0.059		
Arlington	140	18	158	0.129	2.19[a]	2.83[a]
Chicago	788	22	810	0.028	0.48[a]	1.01
Houston	474	48	522	0.101	1.72[a]	0.60[a]
Los Angeles	2,332	179	2,511	0.077	1.30[a]	1.13
Newark	1,029	162	1,191	0.157	2.68[a]	3.85[a]
New York	1,228	236	1,464	0.192	3.27[a]	4.85[a]
San Francisco	545	24	569	0.044	0.75	1.22

[a]These ratios are statistically significant at the 95 percent confidence interval.

Source: GAO analysis of INS data.

The odds on recanted claims, which are displayed in the fourth column of numbers in table III.1, show how many cases were recanted for every case that was not recanted, within each of the six categories. In 1997, for example, 103 cases were recanted while 927 cases were not recanted, and the odds on cases being recanted were 0.111 (103/927). This implies that 0.111 cases were recanted for every one that was not recanted or, multiplying by 100, that about 11 cases were recanted for every 100 that were not recanted. In 1998 the odds on cases being recanted were slightly higher, and equal to 0.124 (about 12 were recanted for every 100 that were not recanted), while in 1999 they were lower, and equal to 0.074 (less than 8 cases were recanted for every 100 that were not recanted). The odds ratios at the top of the next to last column of the table (which are 0.124/0.111 = 1.12 and 0.074/0.111 = 0.67) provide estimates of the change in the odds on cases being recanted over the 3 years; they were higher in 1998 than in 1997 by a factor of 1.12, but lower in 1999 than in 1997, by a factor of 0.67. These odds ratios and the others in the same column indicate the effects of this factor and the other factors when each factor is assessed separately. Regarding the other factors, we found the following:

- Women were half as likely (i.e., 45 percent as likely) as men to recant their fear of persecution or torture.
- Older aliens were more likely than younger ones to recant their fear of persecution or torture (i.e., aliens 30 to 39 and 40 to 49 were slightly more than twice as likely to recant as aliens under 20, and aliens 50 and over were nearly 4 times as likely to recant as aliens under 20).
- Aliens with dependents were only two-thirds as likely as aliens without dependents to recant (or, alternatively, aliens without dependents were 1/0.66 = 1.5 times as likely as those with dependents to recant).
- Aliens who came from Asia, the Caribbean, the Middle East, and former Soviet Bloc countries were the least likely to recant. Relative to aliens from Asia, aliens from Africa and Central America were roughly 3 or 4 times as likely to recant, while aliens from South America and Mexico were about 8 and 13 times as likely to recant as aliens from Asia, respectively.
- Finally, it appeared that there was considerable variability in the likelihood of aliens recanting across the various asylum offices. Cases in Chicago had lower odds on recanting than cases in Miami, and cases in Arlington, Houston, Newark and New York had higher odds than cases in Miami of recanting, by factors ranging from roughly 2 to roughly 3.

These odds ratios, as noted above, are estimates of the effects of each factor when all other factors are ignored. However, some of these factors are associated with one another and, as a result, our estimates of some of

these effects are quite different when we control for, or take account of, those associations. The odds ratios in the final column of the table are derived from statistical models which estimate the effects of each factor net of every other, using logistic regression techniques. While the effects of gender, age, and dependency status are quite similar when they are estimated simultaneously, the effects of region of citizenship and asylum office and the change over time are somewhat different. In particular:

- The odds on aliens recanting in 1999 were not lower than in 1997, when characteristics of the aliens involved in the cases, including their citizenship, were controlled. Supplemental analyses (not shown) of these data reveal that the lower overall odds on aliens recanting in the most recent year for which we had data, before these characteristics were controlled, is partly a function of more of the cases in 1999 than in prior years coming from regions that had lower recanting rates.
- Aliens with citizenship from Caribbean countries had higher odds on recanting than aliens from Asian countries, when differences between those groups on other characteristics are controlled or accounted for. Aliens from Mexico and Central and South America persisted in having the highest odds on recanting their fear of persecution or torture. Citizens from the Middle East and the former Soviet Bloc were not significantly different from those from Asian countries.
- Differences in the likelihood of aliens recanting across the asylum offices at which the cases were processed change somewhat when we take account of differences in the characteristics of cases coming into different offices, in particular the region from which they came. After these differences in characteristics are accounted for in our multivariate model, aliens processed in Chicago do not have significantly lower odds of recanting than cases processed in Miami, though aliens processed in Houston do. That is, once we take account of the fact that many of the aliens whose cases were processed in Houston came from regions (i.e., Mexico and Central and South America) in which the odds on recanting were quite high, the likelihood of aliens recanting in Houston was 60 percent as high as in Miami.

Factors Associated With Negative Credible Fear Determinations by Asylum Officers

Table III.2 shows the effects of these same characteristics on the likelihood aliens who did not recant their claims received a negative credible fear finding from an asylum officer. Negative findings were significantly less likely for women than men after other characteristics were controlled. Also, before other factors were controlled, it appeared that older aliens were significantly more likely to receive negative findings than younger aliens. For example, aliens age 50 and over were roughly between two and three times as likely to receive negative findings as aliens under age 20. After we controlled for the association of age with these

other factors and the effects of these other factors on the credible fear outcome, however, there were no significant differences across age categories.

Table III.2: Number of Aliens Who Received Positive and Negative Credible Fear Determinations From Asylum Officers, by Selected Characteristics, and Odds and Odds Ratios Derived From Them

Fiscal year	Positive determination	Negative determination	Total	Odds on negative determination	Bivariate ratios	Multivariate ratios
1997	744	183	927	0.246		
1998	2,574	116	2,690	0.045	0.18[a]	0.13[a]
1999	5,126	106	5,232	0.021	0.08[a]	0.08[a]
Gender						
Male	5,673	286	5,959	0.050		
Female	2,771	119	2,890	0.043	0.85	0.75[a]
Age						
18-19	621	27	648	0.043		
20-29	4,515	194	4,709	0.043	0.99	0.73
30-39	2,495	119	2,614	0.048	1.10	0.72
40-49	656	47	703	0.072	1.65[a]	0.88
50 and older	157	18	175	0.115	2.64[a]	1.25
Alone or with dependents						
Alone	8,349	403	8,752	0.048		
With dependents	95	2	97	0.021	0.44	0.47
Region of citizenship						
Asia	4,081	53	4,134	0.013		
Africa	1,187	38	1,225	0.032	2.47[a]	1.55
Caribbean	1,510	69	1,579	0.046	3.52[a]	4.31[a]
Central America	328	115	443	0.351	27.00[a]	25.25[a]
Mexico	77	51	128	0.662	51.00[a]	32.46[a]
Middle East	343	14	357	0.041	3.14[a]	2.14[a]
South America	253	30	283	0.119	9.13[a]	9.76[a]
Former Soviet Bloc Nations	665	35	700	0.053	4.05[a]	2.69[a]
Asylum Office						
Miami	2,233	80	2,313	0.036		
Arlington	129	11	140	0.085	2.38[a]	2.48[a]
Chicago	777	11	788	0.014	0.40[a]	0.96
Houston	371	103	474	0.278	7.75[a]	2.70[a]
Los Angeles	2,227	105	2,332	0.047	1.32	1.13
Newark	984	45	1,029	0.046	1.28	1.60[a]
New York	1,191	37	1,228	0.031	0.87	1.12
San Francisco	532	13	545	0.024	0.68	1.03

[a]These ratios are statistically significant at the 95 percent confidence level.

Source: GAO analysis of INS data.

Regarding other characteristics and focusing on our estimates of the effects of each characteristic net of every other (as shown in the last column of table III.2) our results were as follows:

- In 1998 and 1999 the odds on a negative credible fear finding were much lower than in 1997. Considering differences in the characteristics of the cases heard in each year, we find that the odds on negative findings were only 13 percent and 8 percent as high in 1998 and 1999, respectively, as in 1997.
- Females were about 75 percent as likely as males to receive negative credible fear findings.
- Older aliens were not significantly different from younger ones, and aliens with dependents were not significantly different from aliens without dependents in terms of their likelihood of receiving negative credible fear findings, after other factors were controlled.
- Net of other characteristics, region had a very pronounced effect on negative findings among the cases that were not recanted. Aliens from the Middle East and the former Soviet Bloc were somewhat more likely than aliens from Asia to receive negative findings, aliens from Caribbean or South American countries were about 4 and 10 times as likely, respectively, and aliens from Central American countries and Mexico were over 25 times as likely as Asians to receive negative findings. Aliens from Africa were not significantly different than those from Asia.
- Once characteristics of cases were controlled, cases processed in Miami, Chicago, Los Angeles, New York, and San Francisco were quite similar in terms of their likelihood of producing negative findings. Cases that were not recanted and were processed in Arlington and Newark were about twice as likely to produce negative findings as those processed in Miami, and cases in Houston were about three times as likely.

Additional Analyses of Specific Countries of Citizenship

As previously discussed, our grouping of countries into regions to simplify our presentation of results does not alter very substantially our estimates of the effects of asylum office nor of the change over time on whether aliens recanted or whether aliens received negative credible fear determinations, though it does mask significant variability in those outcomes across different countries within the various regions. For that reason, we show in table III.3 the breakdown of cases where aliens did or did not recant and that produced negative or positive findings of a credible fear of persecution or torture, by the countries with the larger number of credible fear cases within each region.

Table III.3: Numbers of Cases Recanted and Not Recanted Resulting in Positive and Negative Credible Fear Determinations and Odds Derived From Them for Countries With the Larger Number of Credible Fear Cases Within Regions

Region/Country	Not recanted	Recanted	Total	Odds on recanting	Positive determination	Negative determination	Total	Odds on negative determination
Asia								
China	2,422	53	2,475	0.022	2391	31	2,422	0.013
Sri Lanka	1,346	6	1,352	0.004	1344	2	1,346	0.001
Pakistan	120	74	194	0.617	111	9	120	0.081
India	83	20	103	0.241	77	6	83	0.078
Other	163	62	225	0.380	158	5	163	0.032
Africa								
Somalia	338	4	342	0.012	336	2	338	0.006
Nigeria	130	27	157	0.208	123	7	130	0.057
Niger	132	15	147	0.114	129	3	132	0.023
Ghana	90	53	143	0.589	78	12	90	0.154
Sierra Leone	86	13	99	0.151	85	1	86	0.012
Other	449	52	501	0.116	436	13	449	0.030
Caribbean								
Haiti	1,359	28	1,387	0.021	1302	57	1,359	0.044
Cuba	179	1	180	0.006	177	2	179	0.011
Other	41	47	88	1.146	31	10	41	0.323
Central America								
El Salvador	159	36	195	0.226	118	41	159	0.347
Guatemala	163	29	192	0.178	118	45	163	0.381
Other	121	22	143	0.182	92	29	121	0.315
Middle East								
Iran	87	6	93	0.069	85	2	87	0.024
Lebanon	74	5	79	0.068	74	0	74	0.000
Algeria	71	3	74	0.042	70	1	71	0.014
Iraq	61	1	62	0.016	61	0	61	0.000
Other	64	16	80	0.250	53	11	64	0.208
South America								
Colombia	101	37	138	0.366	94	7	101	0.074
Peru	53	21	74	0.396	48	5	53	0.104
Ecuador	35	25	60	0.714	28	7	35	0.250
Guyana	50	8	58	0.160	48	2	50	0.042
Other	44	28	72	0.636	35	9	44	0.257

Region/Country	Not recanted	Recanted	Total	Odds on recanting	Positive determination	Negative determination	Total	Odds on negative determination
Former Soviet Bloc Nations								
Albania	298	10	308	0.034	280	18	298	0.064
Yugoslavia	199	2	201	0.010	198	1	199	0.005
Other	203	33	236	0.163	187	16	203	0.086

Source: GAO analysis of INS data.

Analysis of Data From Removal Hearings for Aliens Found to Have a Credible Fear of Persecution or Torture

We analyzed a database (which we shall refer to as the removal database) that contained information on the results of removal hearings for aliens who were found by an asylum officer to have a credible fear of persecution or torture between April 1, 1997, and September 30, 1999.

Characteristics of the Removal Database

INS and Executive Office for Immigration Review (EOIR) staff created the removal database by merging selected data fields from INS' APSS with data from the EOIR Automated Nationwide System for Immigration Review (ANSIR), using the applicant's INS-assigned number (A-number). The APSS database contains information on all cases referred to asylum officers for credible fear interviews. The ANSIR database tracks cases handled by immigration judges and appeals handled by the Board of Immigration Appeals, which is a unit in EOIR. Each EOIR field location is to enter and validate case data in its local database daily. The nationwide database also is updated with these data daily. The ANSIR system includes several built-in data edit checks to prevent the entry of inappropriate or missing values.

The removal database contained selected fields from the APSS database for all aliens for whom asylum officers had made a credible fear decision (either positive or negative), and for all aliens whose cases were still pending, as of October 20, 1999. The APSS fields included (1) A-number, (2) alien's last name, first name and middle name, and (3) the date of the asylum officer's credible fear decision. The removal database contained several data fields from the ANSIR database, which was current as of February 22, 2000. The ANSIR fields included A-number; alien's nationality; whether the alien filed an application for asylum; dates and locations of any hearings before an immigration judge; whether the alien requested a change of location for such hearings; whether the alien was detained or released as of the alien's specific hearing date; and the results of the hearings, including whether the alien was present for the hearings, and

whether the immigration judge granted asylum or other relief from removal or issued a formal removal order.

The removal database contained data on 10,253 separate A-numbers. Because the ANSIR system tracks the results of proceedings, or hearings, before immigration judges, some individual A-numbers had information from multiple hearings. Therefore, there were 17,256 separate records in the removal database, each containing information on the results of a single hearing that ended in what EOIR calls a "completion."[3] For example, one alien may have requested and received a change of location on the first hearing and received a removal order from the immigration judge on the next hearing. This alien would then have two records in the ANSIR system (and in the removal database), each containing identifying information on the alien and information pertaining to each separate hearing. In another example, an alien may have received a removal order on the first hearing and might have left the country without appealing the decision. There would be only one record in the removal database for this individual. Thus there were more records in the removal database than the number of A-numbers in the APSS database.

Sample selection procedures

After aggregating the removal database by A-number, there were 10,253 unique A-numbers in the removal database that had at least some identifying information from the APSS database, such as the A-number, name, and (in most cases) the date of the asylum officer's credible fear determination. However, for 1,000 cases there was no matched information from the EOIR ANSIR system. Therefore, these cases from INS could not be matched with the EOIR data. As a result, we omitted them from our analyses.

Of the 9,253 cases remaining in the removal database for which there was information from both APSS and ANSIR, we excluded some A-numbers (individual cases) and some hearings (individual records), which were not relevant to our analysis. These cases included the following:

- Records of hearings that predated the expedited removal process. Though all aliens in the APSS database had been referred to an asylum officer

[3] Completions include (1) decisions by an immigration judge to grant relief from removal (including grants of asylum), issue a removal order, issue a voluntary departure order, or terminate the case, with the option that INS can reopen the removal process by filing other charges against the alien and (2) cases that are administratively closed (when an alien fails to appear for the hearing, but the judge believes that the alien was not properly informed of the date and place of the hearing and does not want to issue a removal order or other formal decision), cases that are transferred from one hearing location to another, and cases where the alien requests a change of location from one location to another.

during the period in which expedited removal had been in effect (beginning April 1, 1997), during the process of merging the databases all information in ANSIR on a specific A-number would have been captured in the removal database. In some cases, hearings before an immigration judge that predated expedited removal would have been captured.

- Records of hearings that were not removal hearings for aliens who were subject to expedited removal and had received positive credible fear determinations by an asylum officer. The ANSIR database contained some records of claimed status reviews,[4] asylum-only hearings,[5] and judges' reviews of negative credible fear determinations by asylum officers. In addition, the ANSIR database contained fields that record the charges that INS had filed against the alien. All individuals who receive a positive credible fear determination and are referred to removal hearings before an immigration judge should have been charged with one of the following charges under the INA that subject them to expedited removal: 212(a)(6)(C)(i), 212(a)(6)(C)(ii), 212(a)(7)(A)(i)(I), 212(a)(7)(A)(i)(II), 212(a)(7)(B)(i)(I), and 212(a)(7)(B)(i)(II). We excluded individual cases that did not have the appropriate charge in any of the six fields on any of their data records.
- We included only those cases where the asylum officer decision occurred between April 1, 1997, and September 30, 1999. If an asylum officer decision date was missing, we included an individual if the date of the Notice to Appear (recorded by immigration court personnel in the ANSIR database) occurred during this time period.

The resulting database contained data on 7,947 individual A-numbers. Some of these aliens had multiple records of hearings while other aliens had only a single record.

Appearance Rates for Aliens Released From Custody

For our analyses of the appearance rate of aliens who were released from custody, we examined only those aliens who were never detained by INS after the asylum officer's credible fear decision or those who were released at some point during the hearing process before an immigration judge made a final decision. Of the 7,947 cases in the removal database, 5,320 (or 67 percent) were never detained or had been released at some point. The remainder (2,627) was detained throughout the removal hearing process.

[4]These are hearings in which an arriving alien claims that he or she is a United States citizen, refugee, asylee, or permanent resident and is referred to an immigration judge for verification of identity.

[5] These are asylum hearings for alien crewmen and stowaways, who are not eligible for removal hearings under the expedited removal process.

To determine how many of the released aliens appeared for the removal hearing, we examined only those cases where an immigration judge had reached a decision on the alien's case. These were cases where the judge had decided the alien was entitled to asylum or some other form of relief and could remain in the country or were to be removed from the country with a removal order or a voluntary departure order. Of the 5,320 released aliens, immigration judges had reached decisions in 2,354 (or 44 percent) of the cases. Immigration judges made in absentia rulings in 1,003 of the 2,354 decisions. In 3 of the 1,003 in absentia rulings, the alien was granted some form of relief from removal. These 3 rulings have been eliminated from the 2,354 cases, since we do not know the basis for the immigration judges' granting relief in absentia.

Of the 2,351 decisions on released aliens' cases, 1,000 aliens (or 42 percent) were ordered removed in absentia (i.e., the judge believed that there was sufficient evidence to determine that the alien was at fault for not appearing for the hearing and ordered the alien removed from the country).[6]

In commenting on a draft of the report, EOIR officials confirmed that they essentially agreed with our analysis and methodology which revealed that, as of February 22, 2000, 42 percent of the aliens who had been released and had a final decision by the court had not appeared for their removal hearing before an immigration judge and had received a ruling in absentia. However, the officials explained that the majority of the in absentia orders were entered at the master calendar hearing stage, where the alien fails to appear for his or her hearing. In addition, EOIR officials noted that cases that are set for a merits hearing (i.e., for aliens who appear and wish to pursue their claim) tend to be scheduled on average of 1 year from the initial master calendar hearing date. Consequently, as more of the 5,320 cases are completed over time, a greater percentage of aliens will appear for their hearing, which will result in a lower in absentia rate. Therefore, cases closed from April 1, 1997, through fiscal year 1999 were aliens who did not appear for their initial removal hearing and were ordered removed from the United States at that time. Conversely, those cases that remained open involved aliens who had appeared for their initial removal hearing and were scheduled for subsequent merits hearings to determine if they

[6] A judge could also make a decision to "terminate" a case. EOIR officials stated that in these instances, the judge did not believe that INS' charges against the alien could be supported. However, INS continues to have the opportunity to bring these or other charges, against the alien. We treated this category of cases as a pending decision, and did not include these cases in the computation of percentages of released aliens who had received a decision from a judge. If such cases are included, the percentage of aliens who do not appear for their hearings and are ordered removed in absentia drops from 42 to 38 percent.

should be granted relief from removal (e.g., granted asylum). Regarding the case sample analyzed by us, EOIR determined that the failure to appear rate was 34 percent, as of August 10, 2000. EOIR estimated that eventually the failure to appear rate would be as low as 25 percent when all the cases will be completed.

Requests for Change of Location

We also examined how many aliens requested a change of location for their removal hearings. The ANSIR database recorded whether the result of a hearing in front of an immigration judge was the granting of a change of location to the alien. Of the 5,320 aliens who were not detained during the hearing process or were released from INS custody at some point during the process, 3,695 (69 percent) requested a change of location. Of those 3,695 aliens, 1,467 aliens had a decision by an immigration judge. Of the 1,467 aliens, 557 aliens (or 38 per cent) were ordered removed in absentia because they failed to appear for their removal hearings.

Number of Aliens Who Filed Applications for Asylum

To determine whether aliens who claimed to have a fear of persecution or torture pursued their claim of asylum, we reviewed the rate at which claimants filed applications for asylum. Generally, these aliens have 1 year from their arrival to file an application showing their intent to request asylum.

The removal database did not contain a record of the date of the alien's arrival in the country, so we used as a proxy the date when the Notice to Appear in front of the immigration judge was signed by the asylum officer. This date was recorded in the ANSIR database, and data for this field were not missing for any of the aliens. The ANSIR database also contained a record of the date when the alien filed the asylum application. If more than one date was recorded, we used the earliest date. We then computed, for each alien, the length of time between the date the Notice to Appear was signed and the date the first asylum application was filed. We examined how many aliens missed the 1-year filing deadline, for those cases where a specific date of filing was recorded. For a number of aliens, however, no date was recorded in the asylum application field. In these cases, we computed the number of aliens who had not filed an asylum application as of February 22, 2000 (the date for which the ANSIR database was current) and had been in the United States for more than 1 year (as measured by the date of the Notice to Appear). Because of our decision to use the Notice to Appear date, the computed time period was likely an underestimate of the actual time from entry into the country to filing of the asylum application and thus was a conservative test of how many aliens filed the asylum application within the 1 year deadline.

Since the inception of the expedited removal program on April 1, 1997, through fiscal year 1999, of 7,947 aliens, 3,140 aliens had not filed for asylum in cases when asylum officers had determined that the aliens had a credible fear of persecution or torture. Of those who had not filed, 1,338 (or 42 percent) of 3,140 aliens missed the 1-year required filing deadline; and as a result, they generally may not be able to file for asylum.[7]

File Review Methodology and Sampling Errors

We examined INS' management controls over the expedited removal process, including whether inspectors and asylum officers documented that they asked required questions of aliens, and whether INS documented that supervisory review had occurred. The first file review, which we conducted at the four ports we visited, was of INS files on aliens who were subject to the expedited removal process but were not referred for a credible fear interview. The second file review, which was conducted at the three asylum offices we visited, was of files on aliens who recanted their claims of fear of persecution or torture or those who were determined not to have a credible fear of persecution or torture.

We developed a data collection instrument for use in extracting information from the files. All the information was obtained from working case files on aliens provided to us at the ports of entry or the asylum offices. We relied exclusively on the information in the files, and we were unable to determine the accuracy of the information in the files. Therefore, our results cannot distinguish between a failure to ask a question in an interview and a failure to document that a question was asked.

We reviewed only those files that were for aliens who attempted to enter the United States in fiscal year 1999. For the file review of aliens who were subject to expedited removal, we randomly selected case files (probability samples) at each of the four locations we visited from INS databases covering aliens found inadmissible at the ports of entry. At each location, we randomly selected case files from two populations of aliens subject to expedited removal:

- aliens who were ordered removed from the country and
- aliens who were allowed to withdraw their applications for admission.

At Los Angeles International Airport, we used a port-specific database to select our cases, because at the time of our selection, INS' national database was missing several months of data and had not yet been updated. At Miami International Airport and New York's John F. Kennedy

[7] Other forms of relief from removal from the United States may be available, including asylum as a result of provisions other than those provided for by expedited removal.

Airports (JFK) we used INS' national database on aliens found inadmissible at the country's airports. At the San Ysidro, CA port we used a port-specific database on aliens found inadmissible at the port. At San Ysidro, we did not review files of aliens who were allowed to withdraw their applications for admissions, because the port did not create files for, and assign A-numbers to, the vast majority of these aliens. The samples selected at these locations were large enough to allow us to make estimates with a reasonable degree of accuracy to all individuals entering each location during the 1999 fiscal year who were subject to expedited removal and were not referred for a credible fear interview.

Tables III.4 and III.5, respectively, provide a description of the populations and sampling frames for the file reviews of (1) 365 randomly selected case files for aliens who were subject to expedited removal and were ordered removed and (2) 220 randomly selected case files for aliens who were subject to expedited removal and were allowed to withdraw their applications for admission, at each of the locations we visited where case files were kept.

Table III.4: File Review Populations and Samples for the Four Ports of Entry of Aliens Who Were Subject to Expedited Removal and Were Ordered Removed From the United States, Fiscal Year 1999

	JFK	Los Angeles	Miami	San Ysidro	Total
Population	2,248	1,256	796	43,491	47,791
Sample	94	90	85	96	365

Source: INS data and GAO sample.

Table III.5: File Review Populations and Samples for the Three Ports of Entry of Aliens Who Were Subject to Expedited Removal and Were Allowed to Withdraw Their Applications for Entry, Fiscal Year 1999

	JFK	Los Angeles	Miami	Total
Population	380	724	507	1,611
Sample	78	81	61	220

Note: We did not examine withdrawals at San Ysidro because the port did not create and retain case files in the vast majority of instances where withdrawals were allowed. The port only creates these files and issues A-numbers to the aliens subject to expedited removal who withdraw when, for example, the alien is charged with being involved in criminal activities or claims eligibility for a specific immigration benefit, such as marriage to a U.S. citizen. According to data from the San Ysidro port of entry, 11,782 withdrawals were issued in fiscal year 1999, but alien numbers were issued in only 237 of these cases.

Source: INS data and GAO sample.

For the file review of aliens who recanted their fear of persecution or torture or whom INS found not to have a credible fear of persecution or torture, we selected case files at the three locations we visited, using INS' APSS database. For aliens who recanted their fear of persecution or torture, we randomly selected case files at the three locations. Table III.6 provides a description of the populations and sampling frames for the file

review of 133 randomly selected case files for aliens who recanted their fear of persecution or torture.

Table III.6: File Review Populations and Samples for the Three Asylum Offices of Aliens Who Recanted Their Fear of Persecution or Torture, Fiscal Year 1999

	Los Angeles	Miami	New York	Total
Population	58	79	95	232
Sample	40	45	48	133

Source: INS data and GAO sample.

For aliens whom INS determined not to have a credible fear of persecution or torture, we reviewed all the case files, because of the small number of negative determinations during this period. The number of case files reviewed was 24 in Los Angeles, 13 in Miami, and 8 in New York. Our results cannot be projected to other locations or to other time frames.

Where we used random sampling at the four ports of entry and the three asylum offices, the results obtained for these file reviews are subject to some uncertainty or sampling error. The sampling error can be expressed in terms of confidence levels and ranges. The confidence level indicates the degree of confidence that can be placed in the estimates derived from the sample. The range is a pair of values derived from the sample data, an upper and lower limit, between which the actual population values might be found. Our samples were designed so that the sampling error would not be greater than 10 percentage points at the 95-percent confidence level. Thus, if all cases in our population for a particular port of entry or asylum office had been examined, the chances are 95 out of 100 that the results obtained would be included in the range formed by adding or subtracting 10 percentage points from the sample estimates. In this report, all sampling errors fall within this range, unless otherwise noted.

In addition to the reported sampling errors, the practical difficulties of conducting any file review may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how two reviewers interpret a question, or in the ways in which two INS inspectors or asylum officers provided file documentation, can introduce unwanted variability into the results. We included steps in both the data collection and data analysis stages to minimize such nonsampling errors. We developed and pretested our data collection instrument in consultation with INS officials, and we conducted training with all of our staff who would be conducting the reviews. During the review process, we reviewed a small subset of our completed forms to ensure consistency in the way

they were being filled out. We verified all data entry of the data collection instruments as well as all the programming used in the analyses.

Nonsampling Error Affecting Observational Data Collected During Site Visits

In addition to the possible nonsampling errors that could affect our file review results, our ability to generalize from our observations of the process at the ports, asylum offices, immigration courts, and detention facilities was limited by:

- the randomness of the time and location for the arrival of aliens who would have been subject to the expedited removal process at secondary inspection,
- scheduling changes, including delays and postponement of a credible fear interview with an asylum officer and negative credible fear review before an immigration judge, and
- the detention facilities selected for our observations and the unknown degree to which they may or may not represent conditions at other facilities or at these facilities at other points in time.

In addition, planning such observations had to be done in conjunction with our field visits. Due to the limited number of interviews, credible fear reviews, and facilities we were able to observe, our observation data are not generalizable to all aliens subject to the expedited removal process or to all detention facilities. Furthermore, we do not know if our presence affected the behavior of the individuals whom we observed.

We did our review from August 1999 to July 2000 in accordance with generally accepted government auditing standards.

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Acknowledgments

In addition to the names above, Bonnie D. Hall, Daniel R. Garcia, Tom Jessor, Carla D. Brown, Samuel L. Hinojosa, Brian J. Lipman, Ann H. Finley, Wendy Ahmed, Catherine M. Hurley, Michelle A. Sager. Barry J. Seltser, Douglas M. Sloane, Michael H. Little, Lessie M. Burke, Tracy J. Harris, Donna M. Leiss, Laura G. Shumway, and Larry D. Harrell made key contributions to this report.

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