

## **MEMBERS' DECISIONS**

### **EXPLANATORY NOTE**

The Immigration and Refugee Board of Canada (IRB) is Canada's largest independent administrative tribunal. It is composed of four divisions: the Refugee Protection Division; Refugee Appeal Division; Immigration Division; and Immigration Appeal Division. "The IRB's mission, on behalf of Canadians, is to resolve immigration and refugee cases efficiently, fairly and in accordance with the law."

The Refugee Protection Division hears refugee protection claims; the Refugee Appeal Division hears appeals from Refugee Protection Division decisions on refugee protection claims; the Immigration Division holds admissibility hearings and detention reviews; and the Immigration Appeal Division hears appeals regarding sponsorship applications, removal orders, residency obligations and Minister's appeals of admissibility decisions. IRB decisions are subject to review by the Federal Court of Canada. IRB members are independent decision makers.

This explanatory note focuses on refugee claims and refugee appeals.

Refugee Protection Division decisions are subject to appeal by the Refugee Appeal Division. The Refugee Appeal Division may reverse a Refugee Protection Division decision on the basis of information that was not available at the time of the Refugee Protection Division decision irrespective of whether the new information was provided by the appellant or as a result of more recent information being available because the country condition information has been updated. Therefore, a decision that has been overturned by the Refugee Appeal Division is not necessarily an indicator of the quality of the decision-making at the Refugee Protection Division.

The IRB recognizes that consistency and predictability are important components of quality decision making. To this end, it has put in place several processes to promote consistency while respecting the adjudicative independence of its members. For example:

- The IRB Chairperson issues guidelines and jurisprudential guides to assist members;
- The IRB has a highly trained Research Directorate that compiles country condition information for each country, which is disclosed in all refugee claims to ensure a consistent base of evidence for all claims and appeals;
- The IRB has developed a Quality Assurance Framework (QAF) for the Refugee Protection Division and Refugee Appeal Division, to formalize the activities, processes, strategies, and structures that contribute to quality decision-making;
- The Refugee Appeal Division publishes Reasons of Interest—noteworthy decisions from its members that address new, complex or novel issues, as well as model excellence in reason writing for Refugee Protection Division and Refugee Appeal Division members;
- Members participate in adjudicative consistency sessions, for example to discuss country conditions; and
- Members receive robust new member training and continual professional development, including regular jurisprudential updates.

The outcomes of decisions vary from one member to another because members render decisions based on the particular circumstances and evidence presented in each case. There are many factors that can impact a decision. Each division has its own variables that affect the trends of outcomes among members, among regions, or over different periods of time.

Therefore, the concept of an “expected acceptance (recognition) rate” is not an accurate or appropriate indicator of adjudicative quality or tribunal performance. The limitation of the statistics is that they necessarily do not take into consideration the unique, and individual fact situations that are at the core of case-by-case adjudication.

### **Factors that can impact a decision**

#### *Variance due to pandemic and business resumption*

Since March 2020, when its in-person operations were largely suspended, the Board has worked diligently to continue to deliver on its mandate, guided by the dual objectives of protecting health and safety while also ensuring meaningful access to justice.

As a result of the pandemic, the IRB’s profile of decided refugee claims and appeals in FY 2020-21 differed from that of previous years. For example, the Refugee Protection Division emphasized processing claims that could be decided without a hearing in order to minimize the need for claimants to come into IRB offices, while it piloted virtual hearings beginning in summer 2020 and then moved to a fully “virtual by default” approach in January 2021.

#### *Factors influencing individual claims*

The assessment of refugee claims requires an evaluation of the particular circumstances of each claim.

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

Some of the factors that can impact a decision include: the claimant’s country of origin; the region or city where the claimant lived; the claimant’s age, ethnicity/nationality, gender, sexual orientation, gender identity, gender expression or sex characteristics considerations; or whether the claimant spent time in a third country before coming to Canada without claiming refugee status in that country. A member must assess these elements and many others, which vary from claim to claim.

Moreover, each claimant has the right to present their own case as they see fit, so the evidence presented may vary from claim to claim, even among similar claim types. Therefore, the outcome of a claim is influenced by the evidence presented (or not presented) by the claimant.

Finally, the claimant’s credibility can be a determining factor. Cases that appear to be very similar or identical at first glance may end up being quite different if one claimant is found to be credible and the other is not.

### *Variances within one country*

With respect to claims from a specific country, these can also vary since different claim types may exist within the same country. For example, in a given country, a particular group may be mistreated while other groups may not experience mistreatment.

### *Regional Variances*

With respect to regional variances, it is not unusual that clusters of claim types from one country or from specific countries migrate to different IRB offices, such that the profile of claims is not the same. For example, claimants from francophone countries often make their claim in Montreal.

### *Member Variance*

Cases are not assigned randomly to members. Members of the Refugee Protection Division are often grouped into specialized geographical teams so that they can develop expertise in specific country conditions. They may be assigned to a different team at any time depending on the organization's operational needs. Therefore, a member with a large caseload for countries that are democratic with respect for the rule of law may have a lower overall acceptance (recognition) rate than a member with a large caseload from countries where the rule of law is not respected.

Some Refugee Protection Division members may be assigned a large number of file-review cases. File-review cases are those that are identified, based on specific criteria, as appearing to be well-founded such that they may be decided without a hearing. The final determination always rests with the member deciding the claim, but they tend to be overwhelmingly positive. Other members may be assigned more complex claims that tend to have lower acceptance (recognition) rates. At times, Coordinating Members make discretionary decisions about case assignment, for example by not providing cases with more complicated legal issues to newer members.

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

### **Summary**

Great caution should be exercised in drawing conclusions or inferences from statistics of acceptance (recognition) rates of members. The number of claims that an individual member accepts or rejects is related to many factors that can impact a decision.

IRB members receive comprehensive and continual training, are monitored regularly, and must meet rigorous performance standards. High acceptance (recognition) rates or high rejection rates are not synonymous with competence or incompetence.

Members in all four divisions must make their decisions in accordance with the law, and base them on the particular circumstances and evidence presented in each case.