

Forensic Mental Health Professionals in the Immigration Process

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KEYWORDS

- Forensic psychiatry • Refugees • Asylum-seekers • Immigration
- Cross-cultural psychiatry • Stress disorders • Posttraumatic stress disorder • Iraq

KEY POINTS

- Although the need for mental health expertise in immigration cases is clear and the number of diversity of refugees and asylum-seekers is increasing, the development of skills has lagged behind.
- At the crux of the asylum-seeker's or refugee's case is the need to show that the individual has been persecuted or has a well-founded fear that persecution will be inflicted on the basis of race, religion, nationality, political opinion, or membership in a particular social group if forced to return to the home country.
- Asylum and refugee cases often require analyses beyond a standard evaluation and case formulation. A person's response to trauma and stress can be described only through the detailed, integrated account of a human life from a psychiatric perspective.
- Cultural factors influence how asylum applicants and refugees define and respond to trauma, present symptoms of mental illness, respond to mental health treatment, and participate in the legal process.
- In asylum and refugee cases psychiatrists provide critical consultation to attorneys, asylum officers and the courts, and to other clinicians clarifying the effect of trauma on asylum-seekers' function in general and their ability to participate in the legal process.
- Community resource and referral networks, legal, clinical, and culture consultation and supervision are essential to sustain psychiatric services for the forensic assessment and clinical treatment of asylum-seekers and refugees.

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INTRODUCTION

The role for mental health professionals and in particular forensic psychiatrists in immigration cases has been growing in scope and complexity. According to the United Nations High Commissioner for Refugees (UNHCR), 2011 was a record year for forced displacement across borders¹: there are currently 15 million refugees in the world and it is predicted that this number will only increase² as individuals are compelled to flee their home countries because of armed conflicts, famine, climate changes, and other complex humanitarian emergencies. The United States has had a long history of admitting individuals of special humanitarian concern, and for the past 6 years has been the largest resettler of refugees in the world.³ As a result of this influx, the role of psychiatry, mental health, and medical services has expanded in the immigration and resettlement process.

Beyond providing services for displaced persons who come out of traumatic circumstances, there is a growing demand for mental health and forensic psychiatric input into the legal process itself. Legal questions, cross-cultural encounters, and stress reactions to past trauma and the resettlement process present unusual challenges and unique opportunities for mental health evaluators. For refugees and asylum-seekers, acceptance hinges on the testimony of the applicant. However, frequently, the very circumstances that led applicants to flee their home countries may cause mental health issues that may impair their ability to present their legal case credibly or to work with their legal counsel. Psychiatric professionals are in a position to assist attorneys, clients, and adjudicators in a variety of ways.

This article adds to the existing literature^{4,5} on the role of mental health professionals in assisting attorneys in the asylum and refugee determination process in the United States. Briefly described are the legal context for asylum and refugee processing, challenges in conducting evaluations, diagnostic considerations, and specific competencies needed for mental health evaluators. The authors draw on the lessons learned from the Law and Psychiatry Division at Yale University, where a 12-year partnership between the Division and Yale Law School has evolved into a program of expertise in preparing forensic psychiatric evaluations in asylum proceedings with a new expansion into refugee law. Although the need for mental health expertise in these immigration cases is clear and the number and diversity of refugees and asylum-seekers is increasing, the development of skills has lagged behind. Various cases are used throughout the article to illustrate key points. These cases purposely do not include any identifying information of any specific client, yet they are representative of the range and scope of issues that arise in this context.

BACKGROUND

US Legal Framework

Mental health professionals and forensic psychiatrists who are involved in immigration cases will find it helpful to have an appreciation of the relevant law and standards. Although the acceptance of refugees and asylum seekers is sometimes portrayed as a purely discretionary impulse, immigration in this circumstance is a complex, multiparty and multistep process bounded by international and domestic legal regimes. Of the millions of refugees of concern to UNHCR around the world, only about 1% is submitted by the agency for resettlement, depending on the country of origin. However, resettlement is not a right and there is no obligation on "destination" countries to accept refugees. Moreover, even if a case is submitted to a potential resettlement state by UNHCR, whether an individual refugee is ultimately resettled depends on the admission criteria of the recipient country.

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