

Problems With Record Lead to New Hearing in Asylum Case

By Sandra Hernandez
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A federal court of appeals has ordered a new hearing for a Nigerian asylum seeker, citing problems with a lower court's transcripts that made it impossible for the judges to issue a decision.

"Whether due to poor translation or poor transcription, we are unable to meaningfully review the transcript of the evidentiary hearing," a three-judge panel ruled last week.

The case involves Dan Bala Dabo, 35, who fled Nigeria and sought asylum in the U.S. in 2003.

Dabo said his conversion from Islam to Christianity resulted in persecution and could lead to future problems in his hometown, which follows Sharia, or Islamic law.

Dabo said his father is a high pro-

file Muslim leader and his conversion triggered anger. Dabo was arrested three times and tortured by Islamic fundamentalists who took control of the local government.

A Los Angeles immigration judge didn't find him credible and denied Dabo's request for asylum.

During the hearing, the immigration judge required Dabo to testify in Hausa, one of three languages he speaks.

Dabo repeatedly asked the judge to allow him to testify in English, the language in which he is the most fluent, his lawyer said.

"My client speaks English quite well but with an accent," said Edward Pilot, a Los Angeles attorney who represents Dabo. "The government lawyer said he couldn't understand him. The court agreed and [Dabo] was forced to testify in Hausa."

The result "was unclear testimony as to his residence and symptoms suffered," the 9th circuit found.

Pilot said during the hearing a court appointed interpreter cautioned the immigration judge that he and Dabo were having difficulty communicating but the judge insisted the testimony continue in Hausa.

The problem became critical, Pilot says, when his client was asked to testify about past incidents of torture.

"Mr. Dabo was asked whether he lost consciousness as a consequence of his being tortured," Pilot said. "Mr. Dabo didn't know the word for consciousness in Hausa and wanted to use it in English. The court would not allow him to speak English."

Pilot said the problem was made

worse by the poor technology inside the immigration courts.

Unlike other criminal or civil courts, immigration judges do not have court reporters. Instead, judges speak into a microphone. Until recently, most court proceedings were recorded on manually-operated cassette recorders.

"You have the issue of what the tape can and can't pick up," Pilot said. "So you have an issue of what the transcriber can accurately and appropriately transcribe...."

The Department of Justice had planned to replace courtroom tape recorders with digital audio recorders last year but budget concerns led to delays.

In 2006, Attorney General Alberto Gonzales vowed to revamp the immigration courts after federal circuit courts issued stinging decisions rebuking immigration judges for rude behavior and poor rulings. Gonzales unveiled a 22-point plan that called for additional resources, including improved audio digital equipment.

The Justice Department has said it anticipated agency wide implementation of new digital audio recordings by the end of 2010.

Dabo, who is married to a U.S. citizen, lives in Los Angeles.

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