A Houston Chronicle article on the effects of a recent Board of Immigration Appeals decision on immigrants with mental competency issues highlights the role of the UH Immigration Clinic. Professor Geoffrey Hoffman is quoted and Professor Beck and UH law student Andrea Penedo are credited for their work on the appeal.

UH clinic's appeal in S. Texas case leads to panel's decision
By SUSAN CARROLL
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Immigration judges will now have to follow specific guidelines designed to protect the rights of mentally ill immigrants in removal proceedings based on a decision issued this week by the Board of Immigration Appeals.

The binding decision by the BIA, which reviews rulings by the nation's immigration judges, stems from an appeal presented by the University of Houston Immigration Clinic on behalf of a Jamaican immigrant detained in South Texas.

The decision will have an immediate impact on hundreds if not thousands of cases nationwide involving immigrants with possible mental health issues, said Geoffrey Hoffman, director of the UH immigration law clinic.

Hoffman said the decision is a significant step toward safeguarding the rights of mentally ill immigrants, who previously "were often just deported without any safeguards in place whatsoever."

The case decided Wednesday by the BIA involves a Jamaican man who was admitted to the U.S. as a lawful permanent resident in 1971, when he was 10 years old. Immigration officials identified him as eligible for removal to Jamaica in 2008 based on drug-related convictions.
When he appeared in immigration court in September 2009, the Jamaican man — identified only as "M-A-M" in court records — had trouble answering basic questions, such as his name and date of birth. He told the judge he had been diagnosed with schizophrenia and needed medication, according to the BIA decision.

His questionable mental health came up in a series of court hearings before he was formally ordered removed by a Texas immigration judge in June 2010. **UH professor Janet Beck and second-year law student Andrea Penedo** took up the appeal, making a case to the BIA.

In response, the BIA remanded the case to the immigration judge and — for the first time — outlined specific guidelines that all judges must follow in determining the mental competency of an immigrant in removal proceedings.

**Mental competency**

In cases involving immigrants with possible mental competency issues, judges must determine whether they are able to understand the court proceedings, have the capability to consult with an attorney (if they have one), and have the opportunity to present and cross-examine witnesses.

When immigrants are found to be incompetent, immigration judges will have to take extra steps to safeguard their rights in court. While judges will still have wide latitude on which safeguards to adopt, the BIA in its decision specifically mentions more than a half-dozen appropriate steps - including having a guardian, family member or close friend assist with court proceedings and aiding with the questioning of witnesses.

Government attorneys now are required to turn over mental health records to the court, and judges must explain their decisions on the record about an immigrant's mental competency.

**Mandatory procedure**

The BIA noted that many of the requirements outlined in its decision this week previously were suggested in a guidebook used by the nation's immigration judges. Many others were already mentioned in federal laws that broadly describing immigrants' rights to due process, legal experts said.
But until this week, there were no mandatory procedures in place in the immigration court system to specifically safeguard the rights of immigrants with severe mental disabilities, Hoffman said.

Some immigrant advocates said the BIA's decision, while welcome, falls far short of truly protecting mentally ill immigrants' rights in what is often a complex and adversarial court system. Sarah Mehta, a fellow with the American Civil Liberties Union and Human Rights Watch who specializes in mental health and immigration issues, said the law already required immigration judges to recognize the issue of incompetence and ensure that immigrants get a fair hearing in court.

"Fundamentally, this decision doesn't do very much," Mehta said. "We still have a long way to go to ensuring that people with severe mental disabilities have anything resembling a fair chance in immigration court."

Immigration officials do not track the number of immigrants in detention or in removal proceedings with suspected mental health issues, said Gillian Brigham, a spokeswoman for U.S. Immigration and Customs Enforcement.

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