

INS Expands Asylum Protection for Women; New Guidelines Recognize Rape, Domestic Violence May Be a Form of Persecution

The Washington Post

June 03, 1995, Saturday, Final Edition

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Section: A SECTION; Pg. A04

Length: 971 words

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Body

The Haitian soldiers who went to the woman's house that day wore stockings over their heads to disguise their faces. They mocked her political work in support of Jean-Bertrand Aristide, the president overthrown a few months earlier in a military coup.

They threatened to kill her. Then, while her mother was forced to watch, three soldiers raped and beat her. The woman, who was 27 and married, is unable to bear children as a result of the attacks.

She fled to the United States in July 1992, five months after the attacks, and sought political asylum. Her request was denied. A U.S. immigration judge ruled that she had failed to prove she was persecuted because of her political beliefs.

But last month, the Board of Immigration Appeals overturned the decision. The board, an administrative decision-making body, found that her rape was a form of political persecution in a ruling that all asylum officers and immigration judges are now required to apply in deciding similar cases.

Last week, in a related step, the Immigration and Naturalization Service issued new guidelines formally recognizing that rape, domestic abuse and other forms of violence against women can constitute grounds for asylum. Only Canada had previously adopted such specific measures on asylum cases related to gender.

The guidelines and the board decision reflect a growing recognition in the United States and abroad that violence against women -- solely because they are women -- can constitute serious human rights violations and should therefore be considered when granting asylum.

In the past, the fact that an asylum claim was based on a rape or some other gender-related factor would result in its dismissal as merely "personal" by U.S. immigration authorities even if it amounted to persecution on account of political opinion, according to Deborah Anker, a founding member of the Women Refugees Project at Harvard Law School and the Cambridge and Somerville Legal Services. The group was instrumental in helping the INS develop the guidelines.

Until quite recently, there were few federal court decisions that addressed the claims of women to asylum protection even tangentially, she said.

But in the last few years, there has been growing attention to human rights abuses based on gender, prompted in part by international atrocities such as the mass rape of women in Bosnia as part of "ethnic cleansing," the systematic use of rape in Haiti by police and soldiers during and after the 1991 coup against Aristide, and the domestic violence in Rwanda, immigration officials and advocates said.

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"These claims weren't made in the past, but they're beginning to be made now," said T. Alexander Aleinikoff, general counsel of the immigration service.

In an important decision last December, an immigration judge in Arlington granted political asylum for the first time to a 51-year-old Jordanian woman whose government had failed to protect her from over three decades of physical and mental abuse by her husband. The immigration service initially turned down her request for asylum, arguing that it was simply a case of domestic abuse that should be settled in another forum.

The husband was from a wealthy, well-connected Jordanian family. Among his good friends was the head of the secret police, who gave him a gun that the husband later used to shoot at his wife. After getting drunk, the husband often beat his wife, even when she was pregnant, and once used a tennis racket to hit her when he found her studying for a high school equivalency exam.

In his decision, Judge Paul A. Najelski wrote that the woman had been persecuted because she sought her own identity and espoused Western values in a country where wives, generally, are expected to subordinate themselves to their husbands. Also, she was among a group of women who were unwilling to live their lives in a "harem" at the "mercy of their husbands, their society and their government," he wrote.

This ruling marked the first recognition that spousal abuse can become a form of persecution under some conditions. The Jordanian woman had suffered at her husband's hands because of her beliefs, and she could not get real protection from the Jordanian authorities because of those same beliefs.

The INS guidelines took effect immediately. They do not lower the standard for asylum that must be met for women. Women will have to meet the same basic tests as men, and all asylum cases will continue to be decided on a case-by-case basis. Applicants seeking asylum in the United States must still demonstrate a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group.

Some groups that favor less immigration, such as the Federation for American Immigration Reform (FAIR), have argued that permitting gender-related asylum claims will produce a rush of claims by many thousands of women who will see an easy opportunity to obtain legal status in the United States.

"We cannot bring people here simply because they are suffering under general cultural forms of oppression," said Dan Stein, president of FAIR.

Although most of the world's refugees are women and children, supporters of the new guidelines argue that women are often the least able to leave refugee camps or their native countries to seek asylum abroad and are unlikely to produce the flood of asylum claims that opponents fear.

In the two years since Canada adopted specific guidelines, 195 gender-related claims for asylum were accepted, according to Canadian officials. That accounts for about 2 percent of all Canadian asylum claims filed since the guidelines went into effect.

In the United States, there were 147,000 asylum applications last year, almost triple the number in 1991.

Classification

Language: ENGLISH

Subject: IMMIGRATION (92%); DECISIONS & RULINGS (90%); WOMEN (90%); IMMIGRATION LAW (90%); POLITICAL ASYLUM (90%); COUPS (89%); ARMED FORCES (89%); HUMAN RIGHTS VIOLATIONS (89%); JUDGES (89%); DOMESTIC OFFENSES (89%); LITIGATION (89%); CRIMES AGAINST PERSONS (89%); HUMAN RIGHTS (88%); DOMESTIC VIOLENCE (87%); MARTIAL LAW (77%); CITIZENSHIP (76%); REFUGEES (76%); US FEDERAL GOVERNMENT (75%); APPEALS (74%); LAWYERS (74%); ETHNIC CONFLICTS (73%);

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WAR & CONFLICT (73%); MILITARY RULE (72%); LAW COURTS & TRIBUNALS (69%); CORPORATE COUNSEL (61%); LAW SCHOOLS (61%); FERTILITY & INFERTILITY (56%); EDITORIALS & OPINIONS (50%)

Company: immigration and naturalization service; board of immigration appeals; women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); board of immigration appeals; women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); BOARD OF IMMIGRATION APPEALS (82%); FEDERATION FOR AMERICAN IMMIGRATION REFORM (59%)

Organization: BOARD OF IMMIGRATION APPEALS (83%); BOARD OF IMMIGRATION APPEALS (83%); FEDERATION FOR AMERICAN IMMIGRATION REFORM (59%); immigration and naturalization service; board of immigration appeals; women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); board of immigration appeals; women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); women refugees project; federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); federation for american immigration reform IMMIGRATION & NATURALIZATION SERVICE (92%); BOARD OF IMMIGRATION APPEALS (82%); FEDERATION FOR AMERICAN IMMIGRATION REFORM (59%)

Industry: ARMED FORCES (89%); LAWYERS (74%); CORPORATE COUNSEL (61%); LAW SCHOOLS (61%)

Geographic: HAITI (92%); UNITED STATES (92%); RWANDA (79%)

Load-Date: June 3, 1995