



CENTER FOR GENDER & REFUGEE STUDIES

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW

New Ruling by Attorney General Mukasey May Endanger Rights of Women Asylum Seekers

In a move that could change the course of protection of women asylum seekers across the country, Attorney General Michael Mukasey certified the case of Guatemalan asylum seeker, *Matter of R-A-*, to himself, overruling the decisions of two prior Attorneys General, Janet Reno and John Ashcroft.

The case involves the claim for asylum of Rodi Alvarado, who fled Guatemala after suffering more than a decade of brutal domestic violence in a situation where neither the police nor the courts responded to her pleas for protection.

According to Professor Karen Musalo, Ms. Alvarado's attorney and director of the Center for Gender & Refugee Studies at U.C. Hastings, the case has been on hold since 2001. "Though we are glad to see some movement in the case, I am worried that that the current Attorney General is less sympathetic than his predecessors to the protection of women asylum seekers who flee brutal forms of persecution in countries where their governments will not protect them."

Musalo explained that domestic violence is recognized as a legitimate basis for refugee protection by the United Nations High Commissioner for Refugees, as well as by countries around the world – including Canada, the United Kingdom, Australia and New Zealand; however its acceptance in the U.S. has been controversial.

Matter of R-A- has a convoluted legal history. In 1996 Ms. Alvarado was granted asylum by an immigration judge in San Francisco. In 1999 the Board of Immigration Appeals (BIA), the highest immigration tribunal in the country, reversed her grant of asylum and ordered her back to Guatemala. This decision mobilized thousands of women's rights advocates, who successfully persuaded then Attorney General Reno to intervene. In response, A.G. Reno vacated the BIA's decision in January 2001, and ordered the BIA to reconsider the case once regulations the Justice Department had proposed in 2000 were finalized.

In 2004 Attorney General John Ashcroft took jurisdiction over the case, and ordered lawyers for Ms. Alvarado and the Department of Homeland Security (DHS) to brief the case. Though the DHS itself recommended that Ms. Alvarado be granted asylum, without explanation, Attorney General Ashcroft did not rule on the case but sent it back to the BIA with the same order that his predecessor Janet Reno had – that the BIA reconsider the case once the regulations proposed in 2000 were issued as final. To this date, the proposed regulations have not been issued in final form.

In a surprise move on September 25, Attorney General Mukasey certified *Matter of R-A-* to himself, and issued a decision ordering the BIA to reconsider it, removing the requirement that the BIA await the issuance of proposed regulations. This means that the BIA can immediately begin to consider this decision, as well as many others that had been on hold waiting a BIA decision in *Matter of R-A-*.

Professor Musalo expressed concern about the Attorney General's decision to eliminate the requirement that *Matter of R-A-* be decided under the authority of the proposed – but not yet finalized – regulations. “The proposed regulations were generally seen as a positive legal development, which recognized claims such as Ms. Alvarado's,” Musalo explained.

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