

Amnesty International USA's REFUGEE ACTION

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NSA 5/00

Refugee Concern (Fear of Refoulement)

May 15, 2000

UNITED STATES OF AMERICA:

D- K-, from Democratic Republic of Congo
A, from Guatemala
T. K., from Pakistan
G. A., El Salvador

On May 25, 1999 Amnesty International USA (AIUSA) issued an action regarding the asylum case of Ms. Rodi Alvarado, a national of Guatemala (NSA 6/99). Ms. Alvarado. An immigration judge granted Ms. Alvarado asylum in 1996. The Immigration and Naturalization Service (INS) appealed. The INS won its appeal in a decision by the Board of Immigration Appeals (BIA) issued on June 11, 1999 when a sharply divided BIA reversed the grant of asylum to Ms. Alvarado.

The BIA's ruling, Matter of R- A-, represents a landmark decision on the subject of domestic violence and asylum, and it is already having a noticeable negative impact on many gender-based asylum cases across the United States. Below are examples of some of the cases that have come to AIUSA's attention.

SUMMARY OF THE CASES (Note that the facts presented here represent the testimony of the asylum seekers. Amnesty International is concerned about the legal issues involved in these cases, and cannot attest to the validity to the stories told.)

D. K., Democratic Republic of the Congo

Ms. K married an officer in former President Mobutu's military and had four children with him. K's husband was abusive throughout their marriage and exerted complete control over her. After a 1995 incident in which Ms. K's husband shot a colleague but escaped prosecution because of his powerful connections, he became emboldened in his abuse. He began violently abusing Ms. K on a regular basis. He would threaten her with a gun, kick her and beat her, hard enough that she lost consciousness and often in front of the children. He repeatedly raped her, causing infections and other sexually transmitted diseases.

Ms. K claims it was futile to go to the police for help, not only because of her husband's connections to Mobutu's family but because the police do not involve themselves with such matters. She claims that Congolese woman cannot obtain a divorce without her husband's consent. In January 1998, after a particularly severe beating, she went into hiding and then fled to the United States.

An immigration judge characterized the abuses Ms. K suffered as "atrocities," and quoted a U.S. State Department report that "[d]omestic violence, including rape and beatings, is widespread but rarely reported^{1/4}" and that there "are no provisions under the law for spousal battery[,]". Nevertheless, the judge denied her application for asylum. The BIA acknowledged that her husband had "committed brutal and deplorable acts of domestic violence against her" and said "we extend our sympathy to her." But the BIA ruled that Ms. K's case was controlled by its decision in Matter of R-A-.

A, from Guatemala

When Ms. A was 17 years old she went on a date with Mr. F, known to her from his visits to her family home. She agreed to go to a restaurant with F, but after they were done eating, F forced her onto a bus, and took her to his residence several hours away. Ms. A begged him to let her go home, but he refused. F struck her and then raped her.

For six months, Ms. A was held captive by F at his home, and repeatedly raped and beaten. She was gagged and bound in his bedroom, and forced to urinate and defecate on herself. She managed to escape one night when F was drunk and forgot to restrain her. Ms. A went to a doctor and was hospitalized for eight days. She did not go to the police because she claims they would not have helped her. According to the U.S. State Department, rape victims are reluctant to report their attackers, and few rape cases are prosecuted; Amnesty International has expressed concern about the weak state of Guatemala's police and judiciary;.

A month later, Ms. A found out that she was pregnant. After F came looking for her at her parents' home, she fled Guatemala. Her asylum case is currently pending before an immigration judge. The attorney for the INS is arguing that she is barred from being granted asylum based on Matter of R- A-.

Ms. T. K., from Pakistan

Ms. T was married to an influential attorney, and her father-in-law, with whom they lived, held a powerful position with the police. Throughout their marriage, her husband routinely and severely beat her, to the point she had to be hospitalized. His parents encouraged him to beat her. Her father-in-law himself made sexual advances towards her and when she refused his advances, he broke her jaw. Ms. T's husband blamed her for his father's attention.

Ms. T and her husband divorced and she obtained custody of the children; her husband was allowed regular visits. Her ex-husband and father-in-law sought revenge for the divorce, and tricked her into coming to their house, where two policemen attacked her in front of her son, repeatedly raping her - with her ex-husband and father-in-law's encouragement.

Ms. T filed a complaint, but the judge's first order of investigation was never carried out and a second investigation was improperly conducted. She believes her ex-husband's powerful connections had an influence on this. T's case received attention from national and international media, as well as Amnesty International and women's rights organizations in Pakistan. Even Pakistan's Prime Minister sent a letter to the judiciary asking why criminal charges were not filed in her case. Yet Ms. T's ex-husband and father-in-law continued to harass and threaten to kill her and her family, and she eventually fled her country with her children. Her ex-husband instigated kidnaping proceedings against her because she took the children, who had been living with her, when she fled.

In February 2000, an asylum officer denied Ms. T's application for asylum, stating that she had not established that her claim was linked to any of the five asylum grounds - the same reasoning employed in Matter of R- A-.

G. A., El Salvador

As a child, Ms. G was mistreated by her mother for many years. When she was fifteen, her parents traded her to a neighbor as a wife, in exchange for his assistance in paying off the mortgage on their farm. Her husband routinely raped and beat her, resulting in injuries which required hospitalization. Ms. G went to the police two times for protection, but was told they could do nothing because the problem was personal. Once, when she left her husband, he filed papers to gain custody of their child. Ms. G met with an official at the district attorney's office and discussed the violence and her fear that their child would be abused, but she was told that her husband would be the better provider because of his job. Ms. G remained with her husband, but tried to commit suicide.

At age twenty, after her husband tried to kill her with a machete, she again ran away with her two children, including her newborn, and lived in a shed in a marketplace. After a few days, her parents and husband found her, and her mother held her down while her husband beat her with a stick. He took the children, whom she has not seen since. Ms. G fled to an aunt's house, and left the country a few weeks later. An immigration judge told Ms. G's attorney that her case was controlled by Matter of R- A-, and that he intends to order Ms. G deported based on that decision.

AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International is concerned by growing evidence, exemplified by the cases described above, that Matter of R- A- is having serious negative impact on asylum cases involving gender. AI believes that Matter of R- A- is one of many examples where U.S. officials have sought to narrow the definition of a refugee under US law, rather than to use that definition, which is based on international standards, as a method to grant asylum to persons who merit protection.

As stated in NSA 6/99, AI believes that the Immigration Judge's grant of asylum to Ms. Alvarado was the appropriate decision in her case. AI believes that the INS decision to appeal in Ms. Alvarado's case indicates indifference or opposition to its own principles: The Considerations for Asylum Officers Adjudicating Claims from Women ("Gender Guidelines"), which were published by the INS in 1995 to guide the decisions of Asylum Officers. The Gender Guidelines recognize that a claim for asylum may be based on domestic violence, and state that an asylum applicant who can demonstrate a well-founded fear of persecution on account of her beliefs about the role and status of women in society may be eligible for refugee status on account of political opinion.

The cases detailed above clearly illustrate that the BIA's decision in Matter of R- A- conflicts with stated INS policy and is leading Immigration Judges and the Board to deny women's asylum claims alleging gender-based persecution. Furthermore, the decision is encouraging INS attorneys to appeal decisions in which Immigration Judges grant asylum.

Matter of R- A- threatens to undermine the considerable progress that has been made towards the recognition of gender-based violence as a human rights violation, progress evidenced by the 1993 adoption of the Declaration on the Elimination of Violence Against Women by the United Nations General Assembly, the INS's own Gender Guidelines, and decisions in Canada and the United Kingdom granting asylum to women who fled domestic violence and whose governments offered them no protection.

SUGGESTED ACTION

Please send letters to the following officials, addressing the following points and concerns:

- (1) Using the examples summarized above, express concern about the impact Matter of R- A- is having on women asylum-seekers and the decision's inconsistency with developing international standards, including the INS's own Gender Guidelines.
- (2) Ask that the Attorney General review and reverse the Matter of R- A- decision.
- (3) Stress the importance of the Matter of R- A- case for the protection of women throughout the world against gender-based violence - as illustrated by the cases described above - given the leadership role the United States has played in asylum/refugee affairs internationally. In this regard, if you write separate letters to President or Mrs. Clinton, express concern that the INS is choosing to appeal and otherwise oppose grants of asylum in such cases.

LETTERS TO:

Attorney General Janet Reno
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

INS Commissioner Doris Meissner
425 I Street, NW
Washington, DC 20536

COPIES TO:

William J. Clinton, President
Hillary R. Clinton, First Lady
The White House
Washington, DC 20500

Please contact Amnesty International USA's refugee office with any questions regarding this action:
Amnesty International USA, 500 Sansome St #615, San Francisco CA 94111, phone 415 291 0601