

Amnesty International USA's REFUGEE ACTION

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NSA 6/99

Refugee Concern (Fear of refoulement):

May 25, 1999

United States of America: Ms. Rodi Adali Alvarado Peña, A73-753-922

Amnesty International (AI) is concerned over a decision by the Immigration & Naturalization Service (INS) to appeal a grant of asylum by an Immigration Judge to Ms. Rodi Adali Alvarado Peña, a national of Guatemala. AI believes that this decision indicates indifference to or ignorance of the Considerations for Asylum Officers Adjudicating Asylum Claims from Women ("Gender Guidelines"), which were published by the INS in 1995 to inform the decisions of Asylum Officers. The Gender Guidelines recognize that women often experience types of persecution that are particular to gender, including rape and domestic assault, and that such abuses can be the basis for asylum claims. AI believes that all persons connected with asylum adjudication in the United States Department of Justice should be guided in their decisions by the Gender Guidelines.

SUMMARY OF THE CASE

Ms. Alvarado applied for political asylum when she was placed in deportation proceedings in 1995 for entering the U.S. without inspection. She claimed that she had fled Guatemala, leaving behind her two children, after suffering a particularly brutal beating at the hands of her husband. Ms. Alvarado asserted that for nearly ten years, ever since she married a Guatemalan Army soldier when she was 16, she was subjected to intense abuse. Her husband raped her repeatedly, attempted to abort their second child by kicking her in the spine, dislocated her jaw, tried to cut her hands off with a machete, kicked her in the vagina and used her head to break windows. He terrified her by bragging about his power to kill innocent civilians, including infants, with impunity, and he made clear his expectation of her total obedience to his will.

Even though many of his assaults took place in public, Ms. Alvarado was apparently never offered official protection or assistance.¹ The police failed to respond to her calls for help; after she made out a complaint, her husband ignored three citations without consequence. Although one complaint was referred to court, her husband was never summoned to appear by the judge. When Ms. Alvarado tried to obtain a divorce, the court would not permit it without her husband's consent.

Following a hearing, Ms. Alvarado was granted asylum by the Immigration Judge, who found that the abuse that she suffered constituted persecution, and that the government of Guatemala was unwilling to protect her. Aside from meeting this burden of proof, an asylum-seeker must also show that the persecution she has fled is threatened "on account of" one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. The judge ruled that Ms. Alvarado belonged to the social group of Guatemalan women who are intimately involved with a male companion who believes that women are to live under male domination. Deciding that she also faced persecution due to her resistance to her husband's abuse, the judge granted asylum on political opinion grounds as well.

Though AI has taken no position on the validity of her story, the facts of Ms. Alvarado's case are not in dispute. The INS does not challenge them, nor did the agency appeal the judge's finding that she faced persecution in

¹ In asylum claims seemingly private acts of violence "can be considered persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to provide effective protection." UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para. 68.

Guatemala. Instead, the INS District Counsel is arguing on appeal that Ms. Alvarado does not fit into any of the categories for asylum. The Gender Guidelines state, however, 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, and recognize that a claim to asylum may be premised on a well-founded fear of domestic violence. The Gender Guidelines quote favorably from the declaration by the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) that "women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group'." The Gender Guidelines further instruct that a particular social group could be defined on a "shared characteristic" such as sex.

Asylum claims in the U.S. may be brought before the Asylum Office, or — as here — they may be made as a defense to removal before an Immigration Judge. While the INS directed the Gender Guidelines towards Asylum Officers, they presumably represent INS policy. Although Immigration Court proceedings are adversarial in nature, local counsel can agree not to contest an application for asylum. In addition, local counsel need not appeal a grant of asylum that he or she believes is properly decided. In Ms. Alvarado's case, however, the counsel chose to appeal. The case has now been pending at the Board of Immigration Appeals for over two years.

AMNESTY INTERNATIONAL'S CONCERNS

AI has raised the issue of district counsel compliance with/consideration of the Gender Guidelines in the past.² Our concern has been that while Asylum Officers might be adhering to the Gender Guidelines, District Counsels in the same agency in the same city might be ignorant of or feel free to disregard them. AI wrote various INS offices seeking information as to how District Counsels fit the Gender Guidelines into their assessments of asylum claims given contrary legal decisions, but received no response to our concerns. AI then raised the issue several times with the General Counsel's Office in Washington, DC, but has heard no reply.

The appeal of Ms. Alvarado's case renews AI's concern about this issue. The Gender Guidelines reflect international standards, including the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1994 United Nations General Assembly Declaration on the Elimination of Violence Against Women, and UNHCR Executive Committee Conclusions 39 & 73. In the past decade, Canada and Australia as well as the U.S. have issued guidelines for the fair treatment of women's asylum cases.

The INS apparently understood the need for U.S. policy and practice to reflect the above standards.³ AI therefore wonders at actions that appear to reflect internal inconsistency at the INS. This inconsistency represents one of AI's longstanding concerns about the agency's treatment of asylum-seekers in a number of contexts. The INS opposition to asylum for the women whose cases are described here, despite their egregious circumstances, raises a question as to the agency's intent or ability to comply with its own Gender Guidelines.

² In the case of another Guatemalan woman who was gang-raped in a politically-motivated situation, a District Counsel attempted to challenge an asylum claim by relying on a U.S. Court of Appeals decision called Campos Guardado v. INS. (The woman received asylum as a result of the hearing.) In Campos-Guardado, however, a controversial and discredited 1987 decision, the appeals court denied asylum to a woman from El Salvador who was forced to watch while her politically-involved male family members were tortured and murdered by armed attackers. She and other women in the family were then raped while one assailant chanted political slogans. The Gender Guidelines highlight Campos-Guardado's "extreme assessment of the evidence," noting that a court "might reasonably have concluded that ... the attackers were politically motivated [and] that they believed the [asylum applicant] to have contrary political views and that they punished her because of [her beliefs]."

³ Unfortunately, the INS chose to implement unenforceable "considerations" rather than legally-binding regulations. AI believes that the Gender Guidelines should be codified in the same manner as other standards for deciding asylum claims.

SUGGESTED ACTION

Write to the officials below, asking them to explain their actions in appealing Ms. Alvarado's case in light of the Gender Guidelines.

- 4 Ask what instructions, if any, INS headquarters conveys to District Counsels on women's asylum cases that allege gender-related abuses.
- 4 Express concern about the apparent inconsistencies between instructions that apply to Asylum Officers and the apparent independence of District Counsels with respect to gender-related cases.
- 4 Suggest that all INS actors involved in evaluating and adjudicating asylum claims be required to address those claims in light of the Gender Guidelines.
- 4 Urge that the principles set forth in the Considerations for Asylum Officers Adjudicating Asylum Claims from Women be incorporated into Department of Justice regulations, which would govern how gender-related asylum claims are handled by Asylum Officers, INS Counsel and Immigration Judges.

Letters to:

Mr. Ronald Le Fevre
District Counsel
INS S.F. District Office
630 Sansome Street
San Francisco, CA 94111

Mr. Owen B. Cooper
Acting General Counsel, INS
425 I Street, NW, Suite 6100
Washington, DC 20536

Copies to:

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

STOP ACTION: Please check with the San Francisco Refugee office (phone: 415 291 9233) if sending letters after July 15, 1999