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RIGHTS-US: Abused Woman Waits 12 Years for Asylum

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NEW YORK, Oct 14 (IPS) - In what some government critics are citing as an egregious example of public foot-dragging and bureaucratic inefficiency in immigration rule-making, the woman at the centre of one of the United States' longest-running asylum disputes may now be in further jeopardy.

The case involves the asylum claim of Rodi Alvarado, who fled Guatemala in 1996 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.

Professor Karen Musalo, Alvarado's long-time attorney and director of the Centre for Gender and Refugee Studies at the University of California, Hastings, told IPS that a recent action by U.S. Attorney General Michael Mukasey could actually make Alvarado's plight even more tenuous.

"It could change the course of protection of women asylum seekers across the country," she said.

The twists and turns in Alvarado's plea for asylum since she fled to the U.S. place it in the pantheon of the more Byzantine and difficult-to-explain immigration cases.

Under U.S. law, asylum applicants have to show they can't go home because they face persecution because of religion, race, nationality, political opinion or membership in a particular social group. Neither gender nor domestic violence are currently considered grounds for asylum.

In 1996, 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 mobilised thousands of women's rights advocates, who successfully persuaded then Attorney General Janet Reno to intervene. Reno proposed a regulation that would have allowed battered women to be considered members of a social group, and thus potentially eligible to be granted asylum.

Reno vacated the BIA's decision in January 2001, and ordered the BIA to reconsider the case once regulations the Justice Department (DOJ) had proposed in 2000 were finalised.

More than three years passed and no regulations were finalised. In 2004, then Attorney General John Ashcroft took jurisdiction over the case, and ordered lawyers for Alvarado and the Department of Homeland Security (DHS) to brief the case.

Though the DHS itself recommended that Alvarado be granted asylum, 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.

With the 2000 election of President George W. Bush, the Sep. 11, 2001 terrorist attacks, and the current and continuing anti-immigration sentiment in the U.S., drafting of new rules languished. Opponents said they would lead to a surge in claims, an assertion disputed by advocates.

Musalo told IPS: "Both the DHS and the DOJ have to reach consensus on the regulations and issue them jointly, since both agencies have jurisdiction over asylum. It is a little kept secret that the delay is due in no small part to the DOJ, which does not agree with the DHS. The DOJ has expressed the position that such claims cannot be recognised. The DHS expressed an opposing position in the brief it filed in February 2004" in the Alvarado case.

The proposed new regulations were generally seen as a positive legal development, which recognised claims such as Alvarado's, Musalo told IPS. But as of today, they have not been issued in final form. Spokespersons for both the DHS and the DOJ declined to comment to IPS on their apparent failure to reach consensus.

The case took yet another arguably more discouraging turn last month. In a surprise move on Sep. 25, Attorney General Mukasey issued a decision ordering the BIA to reconsider the case. In so doing, he removed the requirement that the BIA await the issuance of proposed regulations.

This means that the BIA can immediately begin to consider the Alvarado decision -- as well as many others also on hold awaiting a BIA decision in the Alvarado case.

Musalo told IPS that Mukasey's removal of the requirement that Reno initially put in, and that Ashcroft also included in his order -- that the BIA should wait to decide the case until the new regulations were finalised -- could have serious negative implications for Alvarado. She said that "without the requirement of those regulations, the BIA can just apply its own precedent -- which has been increasingly restrictive. Mukasey said the BIA doesn't have to wait for the new regulations to decide the case -- which is very troubling to us."

"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," she told IPS.

Domestic violence is recognised 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, Britain, Australia and New Zealand. However, its acceptance in the U.S. has been controversial.

The DHS says it will not press for Alvarado's deportation regardless of how much longer it may take the agency to finalise the new regulations. Meanwhile, she remains in legal limbo. Though she can remain in the U.S., that is only a partial victory since she cannot be reunited with her children, who remain in Guatemala. For a number of years, she has been working as a housekeeper at a convent in San Francisco.

Alvarado's case created a firestorm of bipartisan criticism of U.S. government immigration policies. Advocates for women and immigration rights had hoped Alvarado's situation would already have led to a change in U.S. policy to recognise asylum cases filed by victims of domestic violence.

The issue of immigration judges has been further complicated by the recent revelations of partisan political influence in the DOJ during the tenure of former Attorney General Alberto Gonzales. One of Gonzales's key aides, Monica Goodling, testified to Congress that she recommended the appointment of immigration judges based on their conservative political credentials.

(END/2008)