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Ruling Allows Asylum for Foreign Victims of Abuse

■ **Court: Panel blocks deportation of woman who said she would be beaten if she returned home to Mexico.**

By PATRICK J. McDONNELL
TIMES STAFF WRITER

A federal appeals court significantly broadened the interpretation of grounds for political asylum Wednesday when it ruled against deporting a Mexican woman who said she would be abused by her father if she were forced to return.

The U.S. 9th Circuit Court of Appeals in San Francisco ruled that Rosalba Aguirre-Cervantes, 19, should be allowed to remain in the United States because of her past mistreatment, her "well-founded fear" of future abuse, and the fact that Mexico "is unable or unwilling to interfere with that persecution."

Aguirre-Cervantes said she had been beaten regularly since infancy by a father who wielded a horsewhip, tree branches, a hose and his fists, and refused to allow her to seek medical treatment.

Lawyers said the ruling was a milestone in the long-running effort to expand the right to political asylum for victims of domestic violence in nations where the crime is tolerated or even ignored.

"It's a very significant decision," said Karen Musalo, director of gender and refugee studies at Hastings School of Law in San Francisco.

The decision sets a legal precedent in the nine Western states covered by the circuit. It also may be cited by asylum-seekers in other regions of the country.

The Immigration and Naturalization

Service, which sought to deport Aguirre-Cervantes, had no immediate comment on the decision, said Sharon Gavin, an agency spokeswoman in Los Angeles. The agency in December proposed rules to make it easier for victims of domestic abuse to gain asylum. But it is unclear how the Bush administration will proceed with the proposal.

Aguirre-Cervantes, who initially was taken into custody by the INS in Los Angeles but now lives and works in Kansas, was jubilant. "This is the happiest day for me," she said. "It's a great victory—not just for me, but for others."

She spent seven months in INS custody after arriving at Los Angeles International Airport in January 1999 without proper papers. She is studying for her high school degree in Garden City, Kan., where her two brothers live, and works at a McDonald's.

The appeals court ruling turned on the question of whether Aguirre-Cervantes, as a victim of domestic abuse in a family, could be considered a member of a persecuted "social group," a crucial designation in asylum law.

Under U.S. statutes, asylum applicants must show that they cannot return to their homelands because of persecution, or fear of persecution, arising from at least one of five categories: race, religion, nationality, political opinion or membership in a particular social group. Domestic abuse claims generally arise under the last category. The court record said Aguirre-Cervantes suffered a dislocated elbow and lost consciousness as a result of the beatings.

The three judge appeals panel ruled that Aguirre-Cervantes was a member of a protected social group, overturning a decision by the Board of Immigration Appeals, a Justice Department panel that reviews immigration cases. An ad-

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ministrative judge had previously granted her asylum, but the INS appealed to the board.

"This will open the path for other claims of persecution based on domestic violence in places where the government is unable or unwilling to control the persecutor," said Daniel Levy, an attorney at Public Counsel in Los Angeles, which represented Aguirre-Cervantes.

The issue of political asylum for victims of domestic abuse has been among the most hotly debated aspects of asylum law. Critics have assailed what they term an expansion of the definition of asylum beyond the realm of government repression.

In recent years, asylum seekers have filed claims alleging persecution based on gender prejudice, sexual orientation and clan membership. They were cheered when former Atty. Gen. Janet Reno, in one of her last acts in office, voided an immigration board ruling that had denied political asylum to a Northern California woman who

fled Guatemala to escape an abusive husband.

Lawyers who represent such cases say they do not expect more than several hundred applications from victims of domestic abuse annually nationwide once more liberalized INS guidelines are in effect.

The details of Aguirre-Cervantes's victimization were spelled out in vivid detail in the 13-page opinion.

"From the time she was about 3 years old, her father beat her frequently and severely, sometimes daily and sometimes weekly," the ruling stated, citing Aguirre-Cervantes' testimony.

Her father barred her from seeking medical treatment, the judges wrote. And her mother would not allow her to go to the police, the ruling added, "telling her that her father had the right to do with her what he wanted."

On several occasions, she fled to her grandfather's home, "but each time her father came after her and forced her to return with him."