

Legal Times

LAW AND LOBBYING IN THE NATION'S CAPITAL

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Seeking Shelter



A WAY OUT: Aruna Vallabhaneni seeks asylum because of family violence in India.

BY JIM OUPHANT

The beatings were relentless, severe enough, she claims, to force her to have a hysterectomy, enough to cost her her sense of smell, enough to leave her homeland—and two children—behind.

Aruna Vallabhaneni's husband battered her, verbally abused her, and threatened her life. Eventually, she went to the police in her native city of Hyderabad, India, and had the husband arrested.

Then, she says, her own father, who had helped arrange the marriage, went to the police and got

the charges dropped. The husband returned home and beat Vallabhaneni savagely. And her father told her that he and her mother, mortified by her complaint to the police, would commit suicide if she did so again.

Vallabhaneni left India in 1997 on a temporary tourist visa to the United States. Once here, however, she refused to return and sought political asylum. She is part of a growing legion of women from the Third World who are seeking the United States' protection from abusive family members.

"Under that system, if what happened to her is
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Asylum law heads into controversial new territory as women stake their claims on the need to escape family violence.

Battered Women: New Terrain in Asylum Claims

DOMESTIC VIOLENCE, FROM PAGE 1

possible, is their government really providing protection, or not?" asks her Chicago-based immigration lawyer, Royal Berg.

It is something that challenges the preconceptions of what is considered asylum, a concept historically associated with persecution by an intolerant regime for unorthodox or subversive political views.

An immigration judge in Chicago, where Vallabhaneni now lives, denied her asylum claim. Last month, on appeal, Berg argued Vallabhaneni's case before the Board of Immigration Appeals.

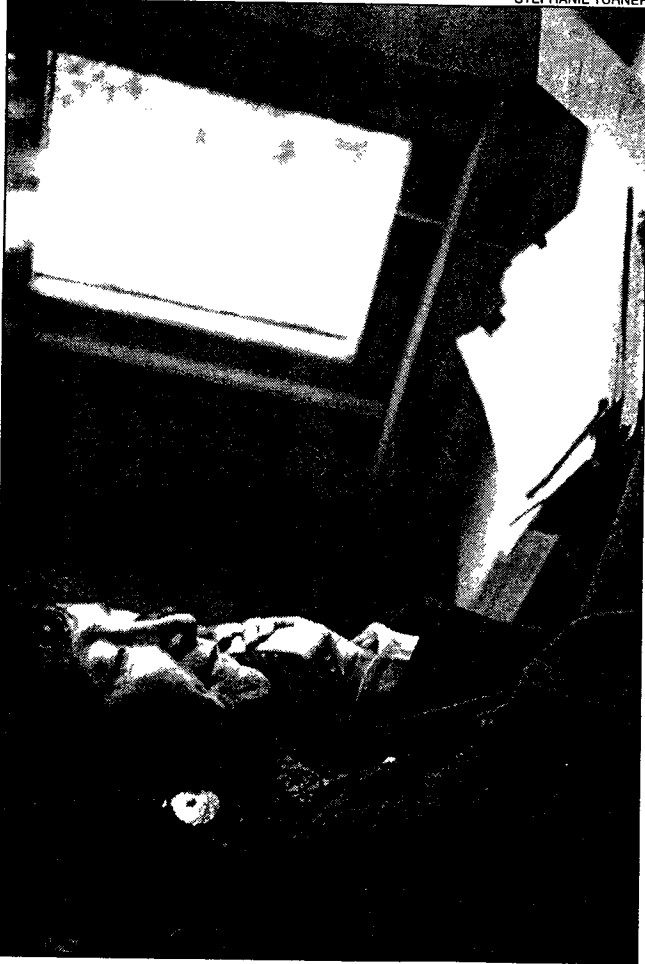
"There is no doubt she suffered," Berg says. "The question is, do we call that persecution?"

A growing number of tribunals have done just that, most notably the U.S. Court of Appeals for the 9th Circuit, which, earlier this year, wholeheartedly supported the idea of domestic violence-based asylum claims.

"This is an issue of human rights and of women's human rights," says Karen Musalo, a women's asylum advocate in San Francisco. "Refugee law is all about human rights that are not protected."

But nothing about the incendiary issue of immigration is straightforward. Witness the current flap over a Bush administration proposal to grant a form of amnesty to illegal Mexican nationals living in the United States. And, predictably, those who concern themselves with restricting the flow of immigrants into the country don't favor an expansive view of asylum standards.

"It has all the hallmarks of cultural hegemony and trying to run foreign nations through intimidation," says Dan Stein, executive director of the Federation for American Immigration Reform (FAIR). "There is a danger of making asylum something that



STEPHANIE TURNER

RULES OF SAFETY: Karen Musalo, director of the Center for Gender and Refugee Studies, is concerned that the new administration may roll back guidelines allowing asylum claims based on domestic violence.

can't be sustained as a concept."

Other opponents put it more squarely. "It's totally ridiculous," says Barbara Coe, who chairs the California Coalition for Immigration Reform, which championed the controversial anti-immigrant measure Proposition 187 that prevented illegal immigrants from receiving government-funded social services. "You get a punch in the mouth, and you're home free."

IN THE MIX

Whether it wants to be involved or not, the Bush administration has been dragged into the fray over asylum courtesy of former Attorney General Janet Reno.

Last December, shortly before leaving

Final action—in which the rules could become binding in their current form, radically altered, or done away with entirely—could come in September.

Still, the delay has some advocates nervous, especially given that the Bush administration has attempted to roll back Clinton-era rules in other areas, including environmental and energy regulation.

"I don't think anyone really knows what the future of those regs will be," says Musalo, director of the Center for Gender and Refugee Studies at the University of California's Hastings College of Law. "I know this was considered to be somewhat of a contentious issue."

A Democratic staff member on the Senate Judiciary Committee, which oversees immigration issues, adds that he is "fearful of a rollback."

Organizations such as FAIR have campaigned hard against allowing such asylum claims.

"The asylum concept is to protect individuals from state action," Stein says. "There's no state action. This is about the absence of adequate social services. At some point you begin to lose any meaning of a legal threshold."

NO PROTECTION

Janet Reno became involved after the Board of Immigration Appeals in 1999 refused to grant asylum to a Guatemalan woman, Rodi Alvarado Pena, who fled to the United States to escape her abusive husband. After issuing the proposed new domestic violence guidelines, Reno threw the board's decision out and ordered the case reconsidered in light of the new rules.

The guidelines require that the woman not only establish the abusive behavior to

office, Reno had the Justice Department issue proposed new asylum guidelines that specifically allowed claims involving domestic violence.

Those regulations are still pending, part of thousands of government guidelines passed in the waning days of the Clinton presidency and suspended so the Bush administration could give them further scrutiny.

Federal protocol for such rules provides that each proposal be given a short period for public comments. That comment period expired in January. The Immigration and Naturalization Service, which would implement the new regulations, says more than 60 comments were received. The Justice Department declined to comment on the proposed regulation.



FAMILY LAW: Reena Glazer's client said she was persecuted by a social group in Mexico: her family.

now a lawyer at D.C.'s Baach & Robinson.

In doing so, Reno bucked the actions of the INS, which had pressed to deport Alvarado and had challenged an immigration judge's initial ruling that Alvarado could stay. Even now, with Alvarado's case awaiting its final disposition, the INS hasn't dropped its opposition to the immigration judge's grant of asylum despite Reno's act.

That could suggest some hostility to the proposed regulations on the part of the agency, Musalo says. "They could withdraw their appeal," she says. "It does give the feeling that their position is more complicated than it appears."

Reno's position was bolstered in March when the 9th Circuit suggested, for the first time, that domestic violence claims could form the basis of a grant of asylum.

A three-judge panel—Judges Harry Pregerson, William Canby Jr., and David Thompson—ruled that Rosalba Aguirre-Cervantes, a 19-year-old immigrant from Mexico, held a legitimate fear of persecution by her abusive father, and granted her asylum over the objections of the INS and the Justice Department. The INS had initially contested an immigration judge's initial grant of asylum to Aguirre-Cervantes.

To be eligible for asylum under federal law, refugees must show they cannot return to their native country because of a fear of persecution arising from one of five categories: their race, religion, nationality, political opinion, or membership in a "particular social group." In siding with the immigration judge, the 9th Circuit held that Aguirre-Cervantes was indeed a member of a social group—her immediate family. The threat of persecution, the court found, came from her father, with the implicit sanction of the Mexican government.

The appeals court condemned the Mexican government's "inability or unwillingness to control the abusive behavior of domestic violence perpetrators like Mr. Aguirre and, indeed, its tacit approval of a certain measure of abuse." It noted that Mexico City, a city of 23 million, had only one battered-women's shelter.

Since then, despite the proposed regulations, the INS has asked for a new hearing in front of the entire 9th Circuit.

Reena Glazer, an associate at D.C.'s Shea & Gardner who argued the case on appeal pro bono, wonders why the agency is still fighting. "I think when the immigration judge granted her asylum, that would have been the place to end it," she says.

FOOD FOR FRAUD?

Opponents to allowing asylum claims based on domestic violence like to warn that a "flood" of Third World women would take advantage of the relaxed guidelines and seek entry into the United States.

"The only significant proof required is a good shiner or a loose front tooth," says Coe.

Most asylum cases are marked by a paucity of verifiable evidence. The credibility of the refugee is usually the determinative factor. That can get even dicier when attempting to prove a pattern of physical abuse.

"Trying to make evidentiary calls based on a tort without evidentiary standards and independent corroborating evidence just opens it up," FAIR's Stein says.

Indeed, in Vallabhaneni's case, there were no witnesses and no medical records to establish the abuse. Just her sworn testimony—which was found credible by an immigration judge—and some supplementary documentation of the cultural obstacles to asserting domestic violence claims in India.

Not that winning an asylum case is ever easy. Vallabhaneni lost hers, because her judge ruled the Indian government had done its job in arresting her husband even though the charges were ultimately dropped.

Nor was the cause of asylum advocates aided when, last December, the INS determined a Ghanaian woman had faked her identity and her claim of threatened genital mutilation to gain asylum.

But Irena Lieberman, the director of legal services for the Tahirih Justice Center, which provides advocates for immigrant and refugee women in the D.C. area, says concerns about an onrush of new claims is unrealistic.

"For a woman to leave her country is a very traumatic event. These women are at the bottom of society," she says. "They are the most disenfranchised."

Lieberman says she's handled about 50 such claims in her three years with the center. Statistics provided by the INS also support her contention.

In fiscal year 1999, the agency says, only 1,085 of about 55,000 claims for asylum were from women seeking asylum based on their membership in a social group.

The agency doesn't know how many pending claims for asylum could be affected by the new regulations, should they be adopted. But without them, the law will remain a crazy quilt. "There are a lot of people who have been waiting here for a long time, some who are separated from their families," Musalo says.

One of those is Vallabhaneni, who hopes one day to be reunited with her two children in America.

"She can't stand to be away from them," Berg, her lawyer, says. "But she can't go back to India." ■