

Battered Women: A NEW ASYLUM CASE

BY ANNA SHELTON

A battered immigrant from the Congo calls collect from a pay phone at the 300-bed detention center in Elizabeth, New Jersey. She has been waiting there since March 1998 to be granted asylum in the United States. She goes only by her initials, D.K. In hurried French, she describes the history of her relationship with her abusive husband in her home country. She says she endured threats and harassment from the beginning of their marriage twenty-five years ago. After twenty-one years together, she claims, her husband began to abuse her physically in front of her four children.

"He beat me," she says. "He kicked me. He dragged me on the ground. He threatened me with a gun." Once she had an operation on her eye after he beat her badly, she says. Her husband is a major in the military and has friends among the police. These connections, she says, "made it difficult for me to do anything."

Then, in January 1998, her husband beat her almost to death, she says. Her son saved her, dragging her out of the house and taking her to the home of her brother. She was unconscious for four days.

While she recovered, her brother and a friend began making plans to send her to the United States, where they understood she would be protected. Using her sister's passport, she left the Congo in March 1998.

"My brother told me that when I got to the United States, I just needed to explain my story and they would understand," she says. "So I explained it to somebody in the airport, and they saw my face, which was deformed after the beating and was sort of twisted. My cheek was sagging a little bit." Instead of gaining protection, D.K. was taken to Manchester, Massachusetts, where she was processed as an illegal immigrant because she had used her sister's passport.

Anna Shelton interned at The Progressive this summer. The interviews in this piece were translated by Mary Alice Sicard and Teresa Calderon.

"I would like for the United States to protect women like me," she says. "Neither my family nor my government can protect me in my country. There are women who die because of these things. I lived it—I saw it with my own eyes. There was one policeman whose wife wanted to leave him, and so he killed her. I just want to emphasize that if I go back to the Congo, I cannot divorce my husband because he'll never agree to it. He'll kill me. I'm absolutely positive that he'll kill me."

D.K. is not alone. Dozens of battered women from around the world have applied for asylum in the United States, but they are finding it much more difficult to obtain than they ever anticipated.

Under current U.S. law, you can gain asylum only if you have a "credible fear" of persecution because of your race, religion, nationality, political opinion, or membership in a social group. Advocates for battered women argue that some women fleeing domestic violence should be granted asylum as well. Canada began offering protection to battered women seeking asylum in 1993.

In 1994, U.S. Immigration Judge Paul Nejedlski granted protection to a Jordanian woman who was fleeing thirty years of domestic violence in her home country. It was the first time an immigration judge

granted asylum for someone fleeing spousal abuse. "The respondent has been harmed and threatened on account of two of the five grounds," Nejedlski ruled, "political opinion and membership in a particular social group." He determined that "these two grounds are not mutually exclusive. The respondent believes in Western values. The respondent's social group consists of those women who espouse Western values and who are unwilling to live their lives at the mercy of their husbands, their society, their government."

The next big step forward occurred in 1995, when the Immigration and Naturalization Service (INS) issued gender guidelines for asylum officers considering the cases of women who have been persecuted because of their sex. The guidelines state that "rape (including mass rape in, for example, Bosnia), sexual abuse and domestic violence, infanticide, and genital mutilation are forms of mistreatment primarily directed at girls and women, and they may serve as evidence of past persecution on account of one or more of the five grounds."

In 1997, Fauziya Kassindja of Togo was the first to file a successful claim, citing fear of genital mutilation. Adelaide Abankwah of Ghana was the second. Her similar claim was just granted on August 13.

Asylum guidelines have also been broadened in recent years to grant protection to gays and lesbians who fear persecution in their home countries. Dusty Araújo, asylum program coordinator at the International Gay and Lesbian Human Rights Commission in San Francisco, says that the commission knows of about 250 cases of asylum granted in the United States on the basis of sexual orientation since 1994. "Around the world, gays, lesbians, transgendered, and HIV-positive people are denied their rights on a daily basis," says Araújo. "In many countries, people are jailed just because someone



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thinks they are gay, and are tortured, blackmailed, and threatened with psychiatric treatment." People persecuted because of their sexual orientation should be regularly granted asylum in the United States, Araújo says.

Despite these landmark extensions of asylum, protection in the United States for women fleeing domestic violence is hard to come by. In late June, the Board of Immigration Appeals, which is part of the Department of Justice, denied asylum to a Guatemalan woman who said she was seeking protection from an abusive husband in her home country.

Rodi Alvarado Peña, now thirty-three years old, told authorities she was kicked, pistol-whipped, and raped by her husband until she hemorrhaged, *The Washington Post* reported. Like D.K., Alvarado said that she was beaten by her husband so badly that she lost consciousness. Alvarado told the *Post* that when she sought protection from police, they told her "they couldn't insert themselves in the matter of

a couple." After years of abuse, Alvarado fled to the United States to seek help.

Originally, Alvarado was told that she could stay. In 1996, Immigration Judge Mimi Yam granted her asylum claim. But the INS appealed the decision, and the Board of Immigration Appeals overturned Yam 10 to 5. The majority stated that her claim "does not lie in our asylum laws as they are currently formulated." That decision sets a bad precedent for pending domestic-violence-related asylum cases, including D.K.'s. Alvarado is appealing the decision.

Congressman Luis Gutierrez, Democrat of Illinois, is leading a campaign to draw attention to Alvarado's case. The Congressional Hispanic Caucus, with Gutierrez as chairman of its task force on immigration, presented a letter to Attorney General Janet Reno in July asking her to step in and reverse the Alvarado ruling.

"We are deeply troubled by this decision and find it to be inconsistent with a growing body of precedent in the U.S.," the

letter says, calling the decision "a wrong and unacceptable step backwards."

Neil Nolen, staff attorney with Ayuda, a nonprofit advocacy organization for refugees and victims of domestic violence, was also outraged by the denial. "This decision seems to be in direct conflict with INS's own instructions," he says. "As national advocates, we're demanding that both the INS and the Clinton Administration be consistent in their defense of women's rights."

But INS spokesman Daniel Kane contends that the Board acted appropriately. "Although gender-related claims can raise hard questions, the INS remains committed to their fair adjudication and to seeing the law surrounding them develop in a fair way," he says. "Gender guidelines are one manifestation of this commitment."

Advocates for battered immigrants are trying to seek relief not just for the women who come to the United States, but for those undocumented and abused women who are already living here. The Violence Against Women Act, passed in 1994, makes it possible for battered immigrants living within the United States to petition for residency status by themselves. Usually, U.S. citizens and permanent residents must file for a visa in order for their spouses to gain status in America. But abusive husbands who are working legally in the United States sometimes refuse to file for their spouses in order to maintain control over them. The option that allows these battered wives to gain status is called the self-petition. Since the processing system was established in September 1996, says Violence Against Women Act program officer Karen FitzGerald, the INS has received 8,080 self-petitions and has approved 4,323.

"Jennifer" came to the United States from Mexico when she was ten years old, she says, crossing the border illegally to join her mother. When she was fifteen, she "got kind of in love" with a twenty-one-year-old man who was renting a room in her mother's house. He had a green card. The two were married when she was sixteen years old. The abuse started, she says, with what she thought were playful pinches and little punches on her arm. But one evening, she says, he slapped her on the face because she could not get their baby daughter to stop crying. Another day, when he was drunk, he beat her savagely, she says. "He got on top of me, and he got a perfume bottle and smashed it on my head. He wouldn't stop. I said, 'What are you doing? You don't even know who I am! I'm your wife. Don't do this. Love me better.' And then he got a brass knob that was on the bedpost and he smashed it, first on my face and second on my head." Jennifer ran outside as he threatened to beat her with a belt, and someone in the neighborhood called the police, she says.

When she finally did manage to leave him, he found her, kidnapped her and their three children, and took them to Mexico. Once across the border, he put them in an isolated house with dirt floors. He kept them there for eight months without letting them out, she says. But one morning, she managed to flee with her children.

Jennifer took a taxi to Tijuana, where she stayed in a homeless shelter and worked as a cashier for six months. This spring, she returned illegally to the United States with her children. Her self-petition is pending.

But because of defects in the Violence Against Women Act, some abused immigrant women find it difficult to self-petition.

Currently, the law requires women to return to their home countries for final processing. This may sound like an innocuous requirement, but it can lead to a disastrous outcome for women who lived illegally in the United States with their partners. Once these women leave the United States, they could be barred from reentering because they were at one time unlawfully present. The irony is that in order to be eligible to petition in the first place, they must have been undocumented.

This fall, Congress has the opportunity to pass the Violence Against Women Act II, which would correct the defect and make the petitioning process more flexible for women seeking protection.

Those who oppose broader immigration fear the floodgates will open by extending asylum to abused women and by expanding the self-petitioning process. They also contend that we are losing sight of the original reasons for an established set of international asylum laws.

"Asylum law was written to prevent genocide and ethnic cleansing of large groups of people based on race, ethnicity, or national origin," says David Ray, associate director of the anti-immigration group Federation for American Immigration Reform. "Asylum law was certainly never written to address domestic inequalities or problems such as abuse in marriages. If you make family problems one of the reasons to qualify for asylum, you would completely undermine the program. If you encourage addressing domestic problems by mass exodus, you're going to be creating more problems on top of it."

But Shirley Tang, D.K.'s pro bono attorney at the New Jersey-based law firm Friedman Siegelbaum, disagrees.

"We're not asking that every battered woman apply for asylum in the United States," she says. "We're not asking that at all. What we're asking for is that very small sliver of the world population where the woman is beaten by her husband; where there are no mechanisms within the country that provide for women's groups,

shelters, or safe houses; where the law of the country itself prohibits the woman from free access to go on with her life and start over. That's when the United States should be the safe haven that it represents itself to be."

"Isabel" is a teacher from Guatemala who is currently seeking asylum in the United States on the basis of domestic abuse. She married her boyfriend when she was just sixteen and very much in love. One night in 1982, when she was seven months pregnant with their first child, her husband got drunk and threw her on the bed, breaking her arm, she says. He proceeded to rape her.

Isabel wanted to get a divorce, but that can take a long time in Guatemala, and her husband would not agree to it. She says he called and threatened to kill her and their three children: "He said, 'You know who this is. If you go to court, when you come back to your house, you'll find your children dead. You'll have to pick up the pieces, and you'll have to put the pieces in different boxes because they won't be recognizable or identifiable.'"

The death threats continued. In October 1996, her husband told her mother that Isabel would be killed the following March. She left her children with her mother and fled to the United States that fall.

"In my country," Isabel says, "when you seek help, when you are a married woman and you are abused, it doesn't matter what kind of education you have. When one looks for help, the police say, 'This is a domestic problem. Go home and solve it.' Even if they see the man killing his wife, they tell you, 'Go home and solve your problem there.'"

Domestic violence is widespread in Guatemala, Isabel says, and the effects are devastating. "In my country, many women choose the quick way out, the shortcut—they are committing suicide. They can no longer put up with it, and this is their only way out."

Isabel was lucky and escaped. But it has been three years since she last saw her children, who are now ten, fifteen, and seventeen years old. They are living with their grandmother, yet they see their father sometimes, and they say that he has been treating them badly, hitting them and insulting them. Her husband sends messages to Isabel through her children, saying he knows where she is and could hurt her.

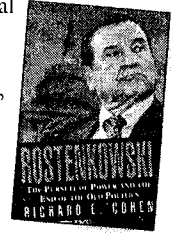
When her kids ask when they will be able to see her again, she doesn't know how to answer. She has not heard whether she will be granted asylum, and she is worried, especially in light of the Alvarado decision.

"Sometimes I think I will be able to accomplish it, bringing my children here," she says. "But now, with this decision, I feel that at any moment, this will all end with a letter that says that I have to return to my country." ■

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Rostenkowski

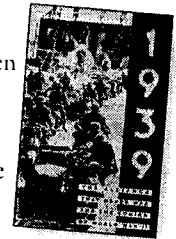
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