

In the Matter of Rodi Alvarado Pena: Domestic Abuse and Immigration

By David Loeb

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In June 1999, the U.S. Board of Immigration Appeals issued a major decision regarding claims of domestic abuse as grounds for granting asylum. In a sharply divided 10–5 vote the Board reversed an immigration judge's grant of asylum to Rodi Alvarado Pena, a Guatemalan woman who had been brutalized for more than ten years by her husband.

The Board's ruling has generated considerable controversy, including a heated written dissent from the Board minority, and has raised serious concerns regarding the nature and scope of protection for victims of gender-based persecution. Amnesty International (AI) has taken an active role in the case, and lengthy reports on the matter have appeared in the *Washington Post* and on National Public Radio.

The facts of the case are not in dispute. At the age of 16, Ms. Alvarado married Francisco Osorio, a former Guatemalan army soldier. Almost immediately, Osorio began to threaten and assault her. Over the following decade, he raped her repeatedly, beating her both before and after the rapes. He 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. Throughout the course of their marriage, Osorio worked as a private security guard and was in possession of weapons, which he used to threaten and assault her. 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.

Even though many of the assaults took place in public, Ms. Alvarado was never offered official protection or assistance. The police failed to respond to her calls for help; after she filed a complaint, her husband ignored three citations without consequence. Although one complaint was finally referred to court, the judge told her that he "would not interfere in domestic disputes." When Ms. Alvarado tried to obtain a divorce, the court would not permit it without her husband's consent.

Before making the painful decision to leave her homeland, Ms. Alvarado tried to escape her husband by relocating within Guatemala. Her efforts were unsuccessful, as Osorio tracked her down and beat her unconscious in front of their two children as punishment.

The Appeals Board sympathized with Ms. Alvarado's plight, deplored her husband's conduct, agreed that she had been persecuted, and acknowledged that her husband has threatened "to hunt her down and kill her." Nonetheless, the Board ruled that she did not qualify for protection under the U.S. Refugee Act and must be deported to Guatemala.

The Board's decision hinges on its contention that Ms. Alvarado's case does not meet the third of the three condi-

tions for granting asylum. While she had been persecuted and had a well founded fear of further persecution, the Board ruled that this persecution was not the result of being a member of a particular race, religion, nationality, or social group, or having a particular political opinion.

In so ruling, the Board rejected the decision of Immigration Judge Mimi Schooley Yam, who had ruled that Alvarado was a member of the social group defined as "Guatemalan women who have been involved intimately with Guatemalan male companions who believe that women are to live under male domination." Judge Yam also noted that this social group had no reasonable prospect of obtaining protection from the Guatemalan government.

In this regard, the Judge relied on expert testimony describing the situation of women and domestic violence in Guatemala, including statistics from the U.S. State Department which showed that complaints of spousal abuse in Guatemala had increased over the past decade from 30 to 120 a month. It was also noted that the Guatemalan civil code recognizes the husband as the couple's legal representative, and gives him the right to forbid his wife to engage in certain activities outside the home. In addition, Dr. Doris Belsing testified that a legacy of militarism combined with a patriarchal culture has produced a climate of violence against women, one where state institutions do not intervene to protect women.

In its majority decision, the Appeals Board rejected the immigration judge's characterization of abused women as a defined social group, and said that, in any case, Ms. Alvarado was beaten not because she was a member of a particular group, but because she was Osorio's wife.

The minority's impassioned dissent to the ruling focuses on the majority's failure to comprehend the role of gender in this case, saying the Board had made a false and "outdated" distinction "between the supposedly more private forms of persecution, typically suffered by women, and the more public forms of persecution, typically suffered by men." In so doing, it had ignored the growing body of law and precedent, both domestically and internationally, recognizing denial of women's rights as a violation of human rights and the persecution of women who "transgress social mores" as a violation of international law.

AI, along with human rights and immigration attorneys in the U.S., has appealed to Attorney General Janet Reno to review the Board's decision herself (a process called "certifying") and to reverse the Appeals Board's rejection of Ms. Alvarado's asylum claim, which it characterizes as a serious step backwards in the evolution of immigration laws regarding persecution based on gender. □

To express your opinion on this issue, or to support a review of the Board's decision, contact Attorney General Janet Reno at (202) 514-2001, Fax: (202) 514-4371.