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IMMIGRATION LAW

Asylum Extended to Victims of Severe Domestic Violence

■ The 9th Circuit says a family can be deemed a 'social group' entitled to legal protection.

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Daily Journal Staff Writer

In the first such ruling by a federal circuit, an appeals court held Wednesday that victims of severe domestic violence may seek asylum based on the family abuse because the family constitutes a protected "social group" under U.S. asylum law.

The 9th U.S. Circuit Court of Appeals, ruling in the case of a Mexican teenager, became the first at its level to recognize that the immediate family, whose members all live together and were subjected to severe abuse by a family member, have a claim for asylum as a "protected particular social group."

As a second factor, the court said, asylum seekers fleeing domestic violence must also show that their persecutor was someone the government was unable or unwilling to control.

The court pointed to the Board of Immigration Appeals' own finding that the evidence "appears to establish that [in Mexico] the most pervasive violations of women's rights involve domestic and sexual violence which is believed to be widespread and vastly underreported."

"In addition to the sources cited by the BIA,

there was additional documentary evidence that domestic violence is widely condoned in Mexico and that law enforcement authorities are unwilling to intervene in such matters," wrote Judge David Thompson. He was joined by judges Harry Pregerson and William Canby.

The court noted that in Mexico City, with a population of 23 million, there was only one, eight-bed shelter for battered women at the time the case began, and that an estimated 13,000 children live on the streets of Mexico City, many the victims of family violence.

"I think at first blush this [ruling] may seem like a leap, but practically speaking, Canada and the United Kingdom have recognized, well before us, that people who are victims of domestic abuse are entitled to asylum," said Reena Glazer, of Washington, D.C.'s Shea & Gardner, pro bono counsel for the teenager in the case, Rosalba Aguirre-Cervantes.

The Justice Department and the Immigration and Naturalization Service each declined to comment on the case, *Aguirre-Cervantes v. INS*, 2001 DJDAR 2889. "We need to review it," said Charles Miller, the Justice Department's spokesman in Washington, D.C.

Professor Niels Frenzen of the USC Law School, who worked on this case as part of Public Counsel's immigrants rights project, said: "In this case, for the first time a Court of Appeals has specifically said the victims of domestic violence can use that as a basis for

seeking asylum in the U.S."

Public Counsel is the largest public interest pro bono law group in the U.S. and a part of the Los Angeles County Bar Association.

Frenzen said the government typically says this is going to open the flood gates to asylum claims. However, he strongly disputed the notion saying, "You don't get asylum just because you establish you are a victim of domestic violence. First, you must show the nature of the violence rises to a level that constitutes persecution. A level of severity has to exist."

The court also stated, "Congress did not open the asylum gate so wide as to afford protection to any member of any family; but neither did it close the gate to a claim such as that presented by [Aguirre-Cervantes]."

The decision overturns a BIA ruling. It holds that Aguirre-Cervantes is entitled to asylum as a matter of law, and refers her case to the U.S. attorney general to determine whether to grant asylum, which is discretionary.

Aguirre-Cervantes fled Mexico in 1998 at age 16 to escape beatings by her father, who used a horse whip, tree branches, a hose and his fists, according to the court. She was abused from the age of three, along with her mother and six of her nine siblings living at home.

She joined two brothers who also fled to the U.S. to escape the almost-daily abuse. Her attempts to live with her grandfather in Mexico only resulted in more beatings by her father

and forced return to the family.

Efforts to protect her mother from abuse, particularly during her mother's pregnancies, resulted in abuse as well, according to the court. Police did not help and her mother asked that police not be contacted.

The appeals court has indicated in rulings dating back as far as 1986, but without any specific holding, that it considered immediate family members the prototype of a "particular social group."

Thompson noted that the 1st and 7th Circuits have agreed with that basic analysis.

Qualifying a family as a social group will be done through a case-by-case review, and the refugee must show he or she was the victim of persecution because they were a member of the family.

"The petitioner suffered past persecution that threatened her life or freedom," the court wrote. "This gives rise to a presumption that her life or freedom would be threatened if she were to return to Mexico."

Karen Musalo, law professor at Hastings College of the Law and director of the Center for Gender and Refugee Studies who worked on the case, called the ruling "a very significant decision."

"This case makes it clear, under well-established principles of asylum law, that women or children qualify for protection."

She said the court's analysis of domestic violence is extremely important in creating a precedent to protect victims of domestic abuse.