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Family Abuse Can Support Asylum Bid

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The Ninth Circuit U.S. Court of Appeals on Wednesday ruled that victims of family domestic violence are eligible for asylum in the United States.

It was the first time any U.S. court has so held, and Wednesday's decision was measured by attorneys involved in the case against jurisprudence in the United Kingdom, Canada and other countries which allow the victims to find safety within their borders.

"It is a landmark decision," said Karen Musalo, a resident scholar at Hastings College of the Law and director of the Center for Gender and Refugee Studies. "It's a landmark decision in an area where there have been a number of significant developments [in recent years]."

The ruling is built upon prior holdings that families persecuted for a variety of reasons do constitute a particularized social group, a trait that must be shown before asylum is granted. The Ninth Circuit's leap was to say that a persecutor may come from within the family, and that victims with no haven in their own country may come here.

"The fact that what happens to women or children looks different from what happens to men doesn't mean they're not eligible for asylum," Musalo said.

Aguirre-Cervantes v. INS, 01 C.D.O.S. 2270, concerns the case of a 16-year-old girl who fled Mexico to live with her brothers to escape the savage beatings dealt her and the rest of her family by the hand of her father.

Now 19, Rosalba Aguirre-Cervantes' testimony was found credible by an immigration judge. An uncle living in the U.S. corroborated her testimony.

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From there, the court examined newspaper articles, State Department reports and human rights examinations showing that domestic violence within Mexico is treated as a private matter to be left within the home.

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cies where she could go to," said Aguirre-Cervantes' lawyer, Reena Glazer, an associate at Washington, D.C.'s Shea & Gardner, who took the case pro bono.

The court set up what is essentially a three-part test: whether the refugee comes from a legally qualifying family group, whether the abuser restricts his wrath to his family, and whether a haven could have been found within the country of origin.

"If you can just get help, you're not going to win your case," Glazer said.

Judge David Thompson, who wrote the opinion, noted that in 1997, "Mexico City,

with a population of 23 million, had only one battered women's shelter, with only eight beds, and battered wives' shelters existed in only five Mexican states.

"This evidence demonstrates the 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."

Thompson was joined by Judges Harry Pregerson and William Canby Jr.

The consequences of the ruling could be profound, but Glazer said other countries with similar laws on the books have not seen a flood of asylum cases.

Last year, UNICEF released a study focusing on the international problem of domestic violence against women and children.

It found that just 44 countries have adopted laws specifically addressing domestic violence. And although the numbers varied greatly from country to country, the study found that 20 to 50 percent of women suffered some form of domestic abuse.

Government attorneys, who said they were reviewing the decision before deciding whether to appeal, had asked the court to wait until new immigration regulations were released before handing down its decision.

The court declined.

The new regulations were being drawn up in the wake of former Attorney General Janet Reno's decision — made in her last days in office — to vacate a controversial decision concerning Roti Alvarado, a battered woman who was denied asylum by the Board of Immigration Appeals.

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