

## **Doubts Linger On Asylum Policy Shift**

Key Hurdle Removed For Battered Women

**By Sandra Hernandez**

Daily Journal Staff Writer

Federal immigration officials quietly cleared the way for some battered women to become eligible for asylum in April.

But it's unclear who has benefited from the Obama administration's new policy because it was kept under wraps.

Top lawyers for the Department of Homeland Security unveiled the new policy in a brief filed in an asylum case known as L.R.

The policy became public this month after the New York Times published a redacted copy of the document.

Federal officials, however, did not notify attorneys or judges of the shift in policy, according to legal observers.

Asylum cases are considered confidential and it is unknown how many women will benefit from the changes. By some estimates, as many as 500 women who have sought asylum based on domestic violence claims are awaiting a decision on their cases.

Matthew Chandler, a spokesman for Homeland Security said government attorneys and asylum officers were advised of the new policy, but did not provide details of when or under what circumstances such advisement was made.

The Department of Justice declined to comment on the policy or whether it was informed of the change. The immigration courts are housed within the Justice Department and it is responsible for informing judges of legal changes.

But judges and lawyers said they were never told of the policy.

"If the judges had known about this policy I believe there would have been significantly more asylum grants," said Bruce Einhorn, a retired immigration judge in Los Angeles.

"Judges who recently had cases before them didn't grant because they felt they didn't have the legal grounds to grant asylum."

Sitting immigration judges are barred from speaking to reporters.

However, the union that represents the nation's 234 immigration judges was not told of the legal

shift so it could inform its members, said Dana Leigh Marks, a judge in San Francisco.

The new policy removes a key hurdle that prevented battered women from qualifying for asylum.

In the April brief filed with an immigration review board, Homeland Security lawyers said under some circumstances battered immigrant women could be considered part of a persecuted social group, and therefore be considered refugees. Until now, federal immigration officials had argued against granting asylum in such cases because victims of domestic violence did not constitute a social group under the law.

Battered women must meet other strict requirements before receiving asylum, including proving that their home government cannot or will not protect them from harm, and that they can't escape the violence by simply relocating within their home country.

Immigration groups said they were concerned such a significant change was not made public after the brief was filed.

Crystal Williams, of the American Immigration Lawyers Association, a trade group with some 10,000 members, said the group only learned of the new procedures in published reports.

"I can't help but think there is a coordination issue between DHS and DOJ," she said.

"This represents a tremendous shift in policy," said Karen Musalo, director of the Center for Gender and Refugee Studies at the University of California Hastings College of Law in San Francisco.

She learned of the brief while providing technical assistance to the attorney involved in the case and later obtained permission from L.R. to make it public after taking over the case.

Federal officials said the brief reflects similar policies introduced in 2004, adding that regulations are being drafted to deal with such cases.

"In the meantime, U.S. Citizenship and Immigration Services will continue to rule on domestic violence-based asylum claims, applying what the Department views as the best reading of the existing immigration laws," said Chandler.

Musalo said government attorneys have continued to fight asylum grants to battered women.

"We know of a number of cases in which the trial attorneys have continued to argue these cases don't meet the legal requirement for asylum," Musalo said.

"If it was true attorneys were informed I would have expected to see that reflected in how these cases were adjudicated. And we are not seeing that," she said.

The case is expected to help hundreds of battered women whose asylum claims have languished in immigration limbo while federal officials battle over how to deal with such cases.

Among the oldest cases is that of Rody Alvarado.

The Guatemalan native applied for asylum in 1996. The immigration judge granted her asylum after she recounted how she was beaten to within a breath of her life, how her husband repeatedly raped her, beating her before, during and after the sexual assault, and how he kicked

her in the spine after learning her menstrual period was late.

Alvarado's case has attracted support from Republicans and Democrats in Congress who have written officials asking she be allowed to remain in the U.S.

She was surprised to learn of the new policy. Speaking through her attorney, Alvarado said, "At least there is now hope that there will be a resolution in my case.

For so long I have been in limbo, and I have felt so nervous. Every day I would pray to God that my case would be resolved in a positive way. It has been a day-to-day struggle but I have tried not to lose hope. At least now I have hope of a solution. I feel very grateful," she said.

Federal policy has shifted several times over the past decade.

An immigration appeals board overturned Alvarado's case in 1999.

In 2000, the Clinton Administration proposed regulations to deal with such cases and subsequently overturned the immigration appeal's court in Alvarado's case.

But final rules were never published and Alvarado and others have waited.

<http://www.dailyjournal.com/>