

August 12, 2010

Asylum Granted to Mexican Woman in Case Setting Standard on Domestic Abuse

By JULIA PRESTON

The Obama administration has granted asylum to a Mexican woman who was sexually abused and severely battered by her common-law husband. The decision, in a closely watched case, clarifies the exacting standard that domestic abuse victims must meet to win asylum.

Department of Homeland Security officials found that the woman had proved that she could not expect the Mexican authorities to protect her from the violence and murder threats of her attacker, and that she could not safely relocate anywhere in the country to escape him.

During decades of abuse, the man repeatedly raped her at the point of guns and machetes, and once tried to burn her alive, according to court documents in the case in San Francisco.

Based on a favorable recommendation from Department of Homeland Security officials, an immigration judge on Aug. 4 approved asylum for the woman, who is known only as L.R., because asylum cases are confidential. Her lawyers announced the decision on Thursday.

The outcome of the case of L.R., 43, brings new clarity to asylum law after almost 15 years of arcane and tangled litigation, when claims from domestic abuse victims were regularly dismissed by immigration judges.

“The Department of Homeland Security has recognized that asylum should be available to women who have suffered domestic violence and whose governments won’t protect them,” said Simona Agnolucci, a lawyer with the Howard Rice law firm in San Francisco who represented L.R. “Now the day finally came when the department said these are the criteria required to show a case for asylum.”

In the case of L.R., who first filed for asylum in 2005, Homeland Security Department officials had tipped their hand in papers they submitted in immigration court in April 2009. They confirmed that L.R. could be eligible for asylum as a domestic violence victim, but laid out narrowly defined requirements she would have to meet. Since then, her lawyers presented new evidence designed to meet those standards.

In a declaration in March, Alicia Elena Pérez Duarte y Noroña, a former special prosecutor in Mexico City for crimes against women, said L.R. could not turn for help to the police in Mexico because of “the enormous social and cultural tolerance of this abuse, resulting in the virtual complicity of authorities who should prevent and punish these violent acts.”

L.R. testified that she had asked Mexican courts for protection for herself and her two children. One judge had offered to help her if she would have sex with him, she said.

In a novel argument, a Mexican lawyer specializing in information access, Jimena Avalos Capin, declared that L.R. could not find safety by moving to any new location in Mexico because her common-law husband could easily track her down using the Internet. For L.R. to be able to work in her profession as a schoolteacher, Ms. Capin said, she would have to post her current address in a public registry.

L.R.’s lawyers said the case was not likely to lead to any new surge of refugees in the United States because the hurdles remain high for battered women.

“It shows what kind of evidence would be enough to make a case, but it doesn’t mean every case is successful,” said Karen Musalo, director of the [Center for Gender and Refugee Studies](#) at the [University of California Hastings College of the Law](#) in San Francisco, who also represented L.R.

Homeland Security Department officials said they would proceed cautiously with asylum claims based on sexual abuse. “The department continues to view domestic violence as a possible basis for asylum in the United States,” said Matthew Chandler, an agency spokesman. But he said each case “requires scrutiny of the specific threat the applicant faces.”

The government and the courts never questioned the account L.R. gave of her treatment by a man who she said had first forced her to have sex with him when she was a teenager and he was her school athletics coach. Once when he discovered she was pregnant, she said, he set fire to the bed where she was sleeping.

Asylum was also granted to L.R.’s two sons, now 22 and 20 years old. After years of “extreme anxiety” over the case, Ms. Musalo said, L.R., who is living in California, is “ecstatic, grateful and relieved” that she will be able to remain in this country.

<http://www.nytimes.com/2010/08/13/us/politics/13asylum.html>