

March 14, 2018

ASYLUM UNDER THREAT: THE AG'S REVIEW OF MATTER OF A-B-

On March 7, 2018, Attorney General (AG) Sessions announced that he will reconsider whether survivors of domestic violence are eligible for asylum protection in the United States. Due to significant irregularity in the way the announcement was made, there remains uncertainty about the focus of the AG's inquiry or the breadth of the impact it could have. At the very least, the AG's decision could be devastating to women who leave everything behind and risk further trauma and even death in order to flee from persecution and seek protection in the United States.

BACKGROUND ON ASYLUM

The definition of who should qualify as a refugee in the United States is derived from the International Refugee Convention. Anyone granted asylum must meet the narrow, stringent definition of a refugee and satisfy many other criteria. In simplest terms, a refugee is defined as someone who has suffered persecution or fears persecution on account of his or her religion, national origin, political opinion, race, or membership in a particular social group, and whose persecutor is someone the home government cannot or will not control.

A series of cases over years of litigation and advocacy helped to establish that individuals fleeing severe domestic violence may be granted asylum if the violence rises to the level of persecution, the abuser is someone the home government cannot or will not control, and the woman can be viewed by her society as fitting into a particular social group. "Social group" is a term of art that has been defined and narrowed by a series of legal decisions, most recently a 2014 Board of Immigration Appeals (BIA) decision in *Matter of A-R-C-G-*, and as such includes only a fraction of the victims of domestic abuse and other violence committed by non-state actors who may apply for asylum.

THE AG'S CERTIFICATION TO HIMSELF

On March 7, 2018, the AG took up for reconsideration a case called *Matter of A-B-*. Because the immigration courts and BIA are part of the Executive Office for Immigration Review (EOIR), which is a part of the Department of Justice, the AG has the power to "certify" a case to himself, or pluck a case off the desk of the BIA and choose to reconsider the decision.

Matter of A-B- is the petition for asylum of a woman from El Salvador whose initials are A.B., and who experienced extensive physical and emotional abuse at the hands of her domestic partner. The case was tried before an immigration judge in North Carolina. The judge denied the case, and the applicant appealed to the BIA, the sole appellate court for all immigration

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cases across the country. In December 2016, the BIA ruled that Ms. A.B. should receive asylum. The BIA found that a) the applicant was credible; b) she suffered abuse that rises to the level of persecution; c) she is a member of a social group that is “substantially similar” to one found in *Matter of A-R-C-G*; d) the government of El Salvador was unable or unwilling to effectively protect Ms. A.B.; and e) all other factors were satisfied.

In his March 7 announcement, the AG invited advocates to submit legal briefs by April 6 to address this question: “Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable ‘particular social group’ for purposes of an application for asylum or withholding of removal.” The question is framed very broadly and uses terms that are not referenced in asylum law. Furthermore, the AG did not release the underlying BIA decision, and his office continues to refuse to do so. Advocates independently obtained information through the attorney for Ms. A.B. The cloak-and-dagger manner of this announcement, coupled with the odd framing of the question, is highly irregular and leaves advocates guessing at the possible scope of the impending decision.

FAQs

1) Has another attorney general addressed this issue previously?

A: Yes. Not long after the Sept. 11 attacks, then-Attorney General Ashcroft certified a pending BIA case, *Matter of R-A*, to himself. The Department of Homeland Security itself submitted a legal brief in 2004 explaining that the victim in *Matter of R-A* should be granted asylum for much the same reasons as are found in *Matter of A-R-C-G* and *Matter of A-B*. Asylum was eventually granted to the applicant in *Matter of R-A*.

2) Why is the AG doing this?

A: The attorney general could be trying to turn back the clock on the protections we offer survivors of severe domestic violence. The impact could be much broader, however, and result in asylum denials for those claiming protection against other forms of gender-based violence, such as sex trafficking, female genital mutilation/cutting (FGM/C), and forced marriage, and possibly also those fleeing persecution based on sexual orientation.

This decision could effectively shut the door on the most vulnerable and traumatized victims of persecution seeking protection. It would make it impossible for incoming survivors of violence to gain access to immigration judges, and would reduce the number of individuals granted asylum by an asylum officer or immigrant judge.

3) What is “private criminal activity?”

A: Although this is not a term used in asylum law, we presume that the AG is focusing on non-state actors who commit criminal acts – like members of paramilitary groups, gangs, spouses, or even family who perpetrate FGM/C and forced marriage. We know from years of asylum law development, as well as the reality of violence on the ground, that domestic violence is not a purely “private crime.” When it rises to the level of persecution, and victims cannot get the help they need to stay safe, it is a systemic issue.