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OBAMA ADMINISTRATION GRANTS ASYLUM TO MEXICAN DOMESTIC VIOLENCE VICTIM, OPENING THE DOOR TO OTHER CLAIMS BY WOMEN VICTIMIZED BY DOMESTIC VIOLENCE IN LATIN AMERICA AND ELSEWHERE.

In recent years, the rights of battered women and other victims of violence to seek status in the United States have been expanded by the federal government. There are three areas of legal protection afforded by immigration law for such domestic violence victims.

The Violence Against Women Act (VAWA), passed by the Clinton Administration, allows women who were victims of domestic violence at the hands of U.S. citizens to seek permanent residence here.

The U visa category allows a limited number of victims of violent crime to seek status here, even if the perpetrators of the crime are themselves out of status or their status is unknown, as long as the crime occurred here and the victim cooperated with the crime investigation.

Now, a decision by the Department of Homeland Security (“DHS”) in August increases the reach of asylum law to offer refuge for women who experienced domestic violence in their home country and fear returning there as a result.

In a case decided in San Francisco on August 4th, an immigration judge granted asylum to a woman who suffered years of abuse at the hand of a partner. Critical to the case was the decision of the DHS to support her claim for asylum, concluding that she had a well-founded fear of persecution and that the Mexican government could not protect her.

After 15 years of uncertainty, the Obama Administration decided that victims of domestic violence in their home country can be considered “a social group” that faces persecution in their home country and therefore entitles them to asylum under the Immigration and Naturalization Act.

This opens up the possibility that women who can prove they were victimized in countries such as Mexico, Central America and other parts of the world with higher rates of domestic violence may apply for asylum in order to obtain status here. Anyone granted asylum under this law also automatically obtains status for their spouse and minor children.

The domestic violence victim still needs to prove that she could not expect the government authorities in her home country to protect her from violence at the hands of her attacker, and that she could not safely relocate anywhere in the country to escape this risk of violence. Still, this decision does allow women who can prove their status as a victim of domestic violence in their home country an alternative to seek status here that VAWA and U Visa law does not provide.

Our office has recently had great success in obtaining asylum for women victims from countries with a high rate of domestic violence, although this principle of law was not formally recognized. With this recent decision, the federal government has officially recognized this category of person as eligible to apply for asylum.

Although persons need to get competent legal advice before applying, this may provide many women from Mexico and Central America a possible way to stay here.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY & ASSOCIATES has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine "Super Lawyers" edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.