

**Case Summary: *Matter of A-R-C-G*, 26 I&N Dec. 388 (B.I.A. 2014).<sup>1</sup>**

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The Board of Immigration Appeals (BIA) on August 26, 2014 issued a precedent setting ruling that establishes the circumstances under which victims who suffer domestic violence in their home country will be eligible to receive gender based asylum in the United States. The BIA ruled that “married women in Guatemala who are unable to leave their relationship” are a “cognizable particular social group that forms the basis of a claim for asylum or withholding.”

In this particular case, a battered spouse petitioned for asylum and withholding of removal in the United States after her husband repeatedly abused her in Guatemala. The victim married the perpetrator of the domestic violence when she was 17. After the victim had her first child her perpetrator husband beat the victim weekly. The perpetrator broke the victim’s nose, burned her with paint thinner and raped her. When the victim called the police, the police refused to assist the victim because “they would not interfere in a marital relationship.” Additionally, the perpetrator tracked the victim down when she fled the marital home to live with her father in another city in Guatemala. The victim fled Guatemala to the U.S. after this repeated inescapable abuse. The victim believed that she would be harmed by the perpetrator if she returned to Guatemala.

The immigration judge in the case found that the facts described above occurred, but decided that the victim did not demonstrate past persecution or a well-founded fear of future persecution as a part of a particular social group. The judge denied the victim asylum having found that the perpetrator’s abuse constituted “criminal acts, not persecution.” The victim appealed the immigration judge’s decision to the Board of Immigration Appeals. On appeal the Board of Immigration Appeals held that the victim had suffered harm rising to the level of persecution as a member of a particular social group made up of “married women in Guatemala who are unable to leave their relationship.” The Department of Homeland Security (DHS) conceded that this victim of domestic violence established “past harm rising to the level of persecution.”

The BIA issued a decision that sets precedent, is binding, and applicable in all immigration cases throughout the United States holding that domestic violence victims who are members of this particular social group share two immutable characteristics: gender and marital status. Marital status is immutable when someone is unable to leave the relationship, which can be shown by a range of possible factors, including religious, cultural and legal rules and norms. In this particular case, the BIA found it “significant” that the police refused to help the victim because of her marital status.

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<sup>1</sup> Please also refer to *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault*, Chapter 12: Sexual Assault & Gender-Based Asylum, available at [http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/asylum/training-materials/ASYLUM\\_12-Gender-Based-Asylum-MANUAL-ES.pdf/view](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/asylum/training-materials/ASYLUM_12-Gender-Based-Asylum-MANUAL-ES.pdf/view). This chapter offers guidance for advocates for pursuing a gender-based asylum claim using this case as precedent.

In evaluating the social distinctness of this group, the BIA turned to reports on Guatemala which highlighted machismo, family violence, spousal rape, and other significant issues faced by married women in Guatemala. The BIA set forth a legal framework for determining whether a domestic violence victim can win asylum in the United States. In future domestic violence gender-based asylum cases, many factors could be relevant in determining distinctness of the victim's social group. Factors may include but are not limited to: the country conditions in the victim's home country where the domestic violence occurred, data and other evidence regarding law enforcement practices in the victim's home country, the victim's past experiences, and other pertinent information.

In this instance, once the BIA set out the framework that would govern asylum claims in domestic violence cases under U.S. immigration laws, DHS stipulated that the mistreatment experienced by the victim in this case rose to the level of past persecution that justifies the granting of asylum to this Guatemalan battered spouse. The findings of abuse in this case were sufficient to support either past persecution or fear of future persecution.

Following the ruling by the BIA, the case was remanded to an immigration judge for further adjudication providing the victim the opportunity to prove that the police in Guatemala were unwilling or unable to control her perpetrator husband's behavior including whether the perpetrator operated with police impunity. If the victim can show this, then the burden of proof shifts to DHS to show that there has been a fundamental change in the manner in which the Guatemalan police respond to domestic violence cases. If DHS can prove this or can prove that the victim could relocate to another community within Guatemala and live in safety protected from the perpetrator/husband's abuse, then she would not be eligible for asylum. If the husband did operate with police impunity and internal relocation is not possible, then the victim is eligible for asylum.

This case is noteworthy because it confirms domestic violence as grounds for asylum and describes under what circumstances domestic violence victims qualify to be granted asylum in the United States. This ruling ends over 15 years of uncertainty as to whether women who fled to the United States to escape unchecked domestic violence in their home countries were able to be granted gender-based asylum in the U.S.