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FEDERAL COURT DECISION OPENS THE DOOR TO ASYLUM CLAIMS FOR GUATEMALANS, OTHER CENTRAL AMERICANS AND POSSIBLY MEXICANS IN THE UNITED STATES WITHOUT STATUS.

In July, there was a very important decision by the Court of Appeals, which is governing law for California immigration courts. The Ninth Circuit Court of Appeals ruled that certain Guatemalan women might qualify for asylum based upon the high rate of murder of women there.

This decision may open the door wider for such asylum claims for Central American women and Mexican women too. Arguably young men fearing violence by gangs or cartels can use the same logic to support claims. Although immigration courts have rejected this argument in the past, this case – if it is not reversed on appeal -- may change the way the courts interpret the law and allow for widespread applications for asylum in deportation proceedings.

The case involved a Guatemalan woman, Lesly Yajayra Perdomo, who sought asylum in deportation proceedings by arguing only that she fears violence due to the high number of Guatemalan women who are killed in that country. According to Amnesty International, between 2001 and 2006, more than 1,900 Guatemalan women and girls were killed, many victims of domestic violence or sexual violence.

Ms. Perdomo requested asylum "because she feared persecution as a member of a particular social group consisting of women between the ages of fourteen and forty," according to the court record. Perdomo argued that women as a social group were facing a well-founded fear of persecution in Guatemala simply because of the higher risk of death simply because they are women.

An immigration judge denied her claim, and the Board of Immigration Appeals upheld the decision. But a panel of the Ninth Circuit Court of Appeals overruled them, saying that the courts should have considered her argument.

The Appeals Court said in its decision that Guatemalan women can be considered a protected "particular social group" eligible for asylum based solely on the high rate of

homicide of women in that country. The judges found that the rejection of her claim by the lower courts was "inconsistent with its own precedent and this court's case law." It did not grant Ms. Perdomo asylum, but rather sent the case back to the lower courts to reconsider whether she was eligible for asylum based upon her particular circumstances.

Still, for the first time, this ruling opens the way for Guatemalan women and arguably women from other countries with higher rates of homicide to seek asylum strictly on their status as "women". Arguably the same argument can be made for men from Central America and Mexico who face similar high rates of homicide in their countries. It is a fact that similar rates of higher violent death rates apply to men in these countries.

If taken to this logical conclusion, the decision could allow for many Mexicans and Central Americans to seek asylum in deportation proceedings, arguing that their deportation would expose them to a higher risk of violence or death at the hands of gangs and cartels.

This decision, which is binding precedent in California, will likely be appealed by the government.

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.