

Introduction

Worldwide, women and girls face persecution on account of their gender. They are subjected to domestic violence, rape, female genital mutilation, forced marriage, human trafficking, honor killings, femicide, and other persecution precisely because they are female. With the support of the Barbara McDowell and Gerald S. Hartman Foundation, Heartland Alliance’s National Immigrant Justice Center (NIJC) successfully litigated in the federal courts and before the Board of Immigration Appeals (BIA) to advance protections for women. Through its impact litigation, NIJC established that immigrant women who have been persecuted on account of their gender should be eligible for asylum. Specifically, these women belong to a “particular social group” (PSG), which constitutes one of the grounds for protection under current asylum law.¹

Litigation

NIJC argued that PSGs can be broad and should include gender, based on the language of the BIA’s seminal published decision on PSG: *Matter of Acosta*.² Seeking to advance the foundational tenets of *Acosta*, NIJC litigated the following cases:

- ***Henriquez-Rivas v. Holder***³ In *Henriquez-Rivas*, NIJC argued as *amicus* at the U.S. Court of Appeals for the Ninth Circuit that a PSG need not have clear boundaries or be numerically limited in order to be valid for asylum purposes. The Ninth Circuit held that a young Salvadoran woman, who had testified against the gang members who killed her father, met the BIA test for establishing PSG membership. The Court agreed with NIJC that a group need not be homogenous in lifestyle or origin to constitute a PSG. NIJC advocated for a legal analysis that views all the asylum elements distinctly as opposed to one that attempts to limit PSG membership for fear of opening the proverbial floodgates. The Court signaled a move toward an asylum analysis more in line with the position NIJC advocates. Since the issuance of this decision, *Henriquez-Rivas* has been cited in other Ninth Circuit cases to support the point that witness-based PSGs are valid, to confirm that on-sight visibility is not necessary for a PSG to be valid and to remand cases where BIA decisions were unreasoned.
- ***Cece v. Holder***⁴ In a highly unusual move by the Court of Appeals for the Seventh Circuit, NIJC was granted leave to participate in oral arguments as *amicus* before an *en banc* court in this case, which remains pending. NIJC argued that gender may form the basis of a PSG and that the Court need not be concerned with the breadth of the group since the other elements of the refugee definition will serve to narrow the number of people who ultimately win asylum. The Court was receptive to NIJC’s argument that all the elements of the asylum definition work together to ensure that those who win asylum are legitimate refugees. NIJC’s briefing from *Cece* has been used by advocates nationwide to further similar arguments. The decision in this case

¹ Asylum protection in the United States exists to protect people who are fleeing their countries of origin because they are persecuted due to a characteristic they cannot change, or should not have to change.

² *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985) *Matter of Acosta* established that a particular social group is a group of individuals who share a characteristic that is either immutable or so central to the identity of group members that they should not be required to change it.

³ *Henriquez-Rivas v. Holder*, No. 09-71571, 2013 WL 518048 (9th Cir., Feb. 13, 2013)

⁴ *Cece v. Holder*, (7th Cir., February 6, 2012)

will not only establish a precedent in the Seventh Circuit but will serve as an influential model for other Courts considering gender-based asylum claims nationwide.

- ***Gjura v. Holder***⁵ NIJC and the Center for Gender and Refugee Studies (CGRS) filed an *amicus* brief in support of rehearing this case after the Court issued a precedential decision containing troubling language about the viability of gender-based PSGs. NIJC and CGRS argued that human trafficking can be a form of gender-based persecution for which individuals should be able to seek asylum. In response to NIJC and CGRS's arguments, the U.S. Court of Appeals for the Second Circuit withdrew its *Gjura* decision from publication, effectively defanging a decision that had been extremely detrimental to asylum-seekers when it had precedential value. NIJC subsequently filed notice of the *Gjura* modification with the Seventh Circuit to bolster its argument in *Cece*.
- ***Matter of Valdiviezo-Galdamez***⁶ Like *Cece*, this case remains pending and upon release will greatly impact the asylum landscape in the United States. NIJC was instrumental in developing the strategy of this case. NIJC advised principal counsel, appeared as *amicus*, and actively participated in preparation for oral argument before the BIA in this case, where the Court of Appeals for the Third Circuit reversed and remanded to the BIA with instructions to revisit its analysis of social group claims. A positive decision will provide protection for many social group claimants, and will positively resolve one part of NIJC's campaign to protect victims of gender violence.
- ***Namsrai v. Holder***⁷ In this ongoing case, NIJC is arguing before the Court of Appeals for the Seventh Circuit that asylum-seekers should not be locked into the precise language of the PSG they initially put forth in the asylum application. Given the complexities of the law, the fact that many applicants are *pro se* and the injustice of denying asylum due to a semantic nuance, NIJC argues that courts should instead analyze whether an applicant has offered evidence sufficient to establish she is a bona fide refugee. Acceptance of this argument will mean asylum applicants – including those seeking asylum based on gender – would be evaluated based on the evidence in the case rather than on technicalities of language. This case will likely be argued in fall 2013.

Moving Forward

The Senate has passed positive immigration reform and the House of Representatives is now debating changes to the law. NIJC remains hopeful that improvements for asylum-seekers will be secured legislatively, but recognizes the obstacles that may prevent true reform. NIJC and advocates have formally requested that the administration issue regulations that address legal interpretations of PSG and while such regulations would be a positive step, NIJC knows that further advocacy will be necessary to protect all asylum-seekers who fear gender-based violence. To that end, NIJC continues to accept gender-based asylum claims for advocacy. Many of NIJC's cases are granted but do not yield published decisions that impact all asylum-seekers. NIJC thus remains ready to litigate cases that do not prevail before the agency and accepts for litigation referrals from other practitioners whose cases have been denied in immigration court. By serving as primary counsel and *amicus* on gender-based asylum cases, NIJC seeks to further improve the law and expand protections for all individuals who face gender violence.

⁵ *Gjura v. Holder*, (2nd Circuit, September 25, 2012)

⁶ *Valdiviezo-Galdamez v. Holder*, 663 F.3d 582 (3rd Cir. 2011) (prior Third Circuit decision)

⁷ *Namsrai v. Holder*, (7th Cir., March 1, 2013)