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CREATING HOPE FOR CHILD VICTIMS OF DOMESTIC VIOLENCE IN POLITICAL ASYLUM LAW

Rosalba Aguirre-Cervantes, a native citizen of Mexico, fled her home in Mexico at the age of sixteen to escape the severe and constant physical abuse she endured at the hand of her father.¹ Since she was three years old, Rosalba's father beat her, "sometimes daily and sometimes weekly", using a "horse whip, tree branches, a hose and his fist."² Due to this continuous abuse, Rosalba suffered a dislocated elbow and lost consciousness a number of times.³ The abuse branded Rosalba physically and emotionally, leaving several scars on her forehead, hand, arm, and leg.⁴ Rosalba's father never let her seek medical attention for any of the injuries he inflicted.⁵ In addition, Rosalba's mother forbade her to contact the police, "telling her that her father had the right to do with her what he wanted."⁶ Consequently, Rosalba tried escaping the abuse by attempting to live with her grandfather on several occasions, but her father always "came after her and forced her to return with him."⁷

Rosalba was not the only target of her father's fury. Mr. Aguirre also physically abused Rosalba's mother and her nine siblings.⁸ The abuse endured by Rosalba's mother increased in frequency when she was pregnant, and when Rosalba would try to shield her mother from the abuse, she was beaten as well.⁹ In the last abusive episode before she fled Mexico, Rosalba knew, upon hearing her parents argue, that her father was going to beat her mother, who was recovering from a cesarean delivery.¹⁰ Rosalba tried to protect her mother and in return was brutally beaten by her father who "threatened to kill both her and her mother."¹¹ Unaware of any shelter, agency, or program that would protect

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1. Aguirre-Cervantes v. I.N.S., 242 F.3d 1169, 1172 (9th Cir. 2001).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.* at 1173.
 8. *Id.*
 9. *Id.*
 10. *Id.*
 11. *Id.*

her in her homeland, Rosalba sought political asylum in the United States.¹²

In the past, victims of domestic abuse, like Rosalba, tried gaining asylum through their membership in a "particular social group" within the meaning of refugee as defined by the Immigration and Nationality Act.¹³ The statute protects persons with a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."¹⁴ Asylum claims based solely on domestic violence-related persecution, however, have routinely been dismissed for lack of a valid ground to grant asylum.¹⁵

Initially, the Immigration Judge granted Rosalba asylum. However, the decision was vacated by the Board of Immigration Appeals (BIA). The BIA refused to grant Aguirre-Cervantes asylum on the basis of persecution on account of her membership in a "particular social group." Instead, the BIA chose to define the group in which Aguirre-Cervantes claimed membership as "Mexican children who are victims of domestic violence."¹⁶ Due to this characterization, the BIA held that Aguirre-Cervantes was not eligible for relief under the refugee statute and asylum laws.¹⁷

The U.S. Court of Appeals for the Ninth Circuit overturned the BIA decision in *Aguirre-Cervantes v. I.N.S.*¹⁸ The opinion held that "a family group may qualify as a particular social group within the meaning of 8 U.S.C. §1101(a)(42)(A) (1994 Supp. V)."¹⁹ In ruling that Rosalba had a well-founded fear of persecution at the hands of her abusive father, the opinion gave rise to the possibility that child victims of domestic abuse in their homelands may be eligible for political asylum in certain cases.²⁰ It has been predicted that this ruling "will open a path for other claims of persecution based on domestic violence in places where the government is unable or unwilling to control the persecutor."²¹

12. *Id.* The Attorney General of the United States has the authority to grant asylum to aliens. 8 U.S.C. §1158(b)(1)(2003).

13. 8 U.S.C. §1101(a)(42)(2003).

14. *Id.*

15. *E.g.*, In re R-A-, 22 I. & N. Dec. 906 (B.I.A. 1999).

16. Aguirre-Cervantes, 242 F.3d at 1173.

17. *Id.*

18. *Id.*

19. *Id.* at 1176.

20. *Supreme Court Considers INS Detention of "Lifers"*, 22 REFUGEE REPORTS No. 3, March 2001.

21. Carlos Holguin, *Ninth Circuit Recognizes Asylum Claim Based on Family Membership*, 78 No. 13 INTERPRETER RELEASES 589, 603 (April 2, 2001).

This comment focuses on *Aguirre-Cervantes* and other recent legal developments that support granting asylum in the United States to child victims of domestic abuse on that sole basis where they can establish that the government of their homeland is unable or unwilling to provide the necessary protection against such abuse.

Part I discusses the basic qualifications required for asylum and the absence of special procedural protections under the immigration laws to accommodate child asylum seekers. The discussion looks at the burden faced by child victims of domestic abuse who try to seek refuge in the United States but are instead often neglected or denied help by the United States immigration system.

Part II explores three recent legal developments that have gained ground for claims of domestic abuse as a basis for a grant of asylum. This section examines *In re R-A*²², in which a foreign victim of severe domestic abuse was denied asylum, and how this case brought about an awareness of the circumstances surrounding the persecution of women and children. Part II also focuses on the proposed regulation by the U.S. Citizenship and Immigration Services²³ ("USCIS") which was instigated by *In re R-A*, and that, if adopted, will qualify certain victims of domestic abuse for a grant of asylum. In addition, this section discusses *Aguirre-Cervantes v. I.N.S.* and its potential impact on victims of domestic abuse who seek political asylum in the U.S.

Part III proposes a legal standard the USCIS should follow in all cases involving foreign children and looks at the different

22. *In re R-A*, 22 I. & N. Dec. 906 (B.I.A. 1999).

23. On March 1, 2003, duties previously delegated by Congress to the U.S. Department of Justice and to the Immigration and Naturalization Service (INS) moved into the Department of Homeland Security (DHS) under U.S. Citizenship & Immigration Services (USCIS). The USCIS was created as a separate department by the Homeland Security Act of 2002. P.L. 107-295, §4, 116 Stat. 2142. By fully focusing on immigration and citizenship services, the USCIS allows the DHS to enhance the administration of benefits and immigration services for applicants. The "immediate priorities of the USCIS are to promote national security, continue to eliminate immigration adjudications backlogs, and implement solutions for improving immigration customer services." U.S. Citizenship and Immigration Services, available at <http://uscis.gov/graphics/aboutus/thisisimm/index.htm> (last visited Nov. 7, 2003). The Homeland Security Act of 2002 was created following the USA PATRIOT Act (signed into law Oct. 24, 2001) in response to the terrorist attacks on September 11, 2001 in order to increase the safety and protection of the American people. Act of 2001, Pub. L. No. 107-56 (2001). See also, Strengthening Homeland Security Since 9/11, available at http://www.whitehouse.gov/homeland/six_month_update.html (last visited Nov. 7, 2003).

options foreign children have apart from gaining asylum through the USCIS.

ASYLUM REQUIREMENTS AND THE OBSTACLES POSED TO CHILDREN

Asylum Requirements

An estimated 8,500 children arrive at U.S. shores each year in search of asylum.²⁴ Due to the lack of protection offered to children in other countries, many child victims flee persecution at home seeking a better life in the United States.²⁵ Those who are victims of domestic abuse usually arrive in the U.S. unaccompanied and without guidance.²⁶ More than 4,700 unaccompanied children are detained annually by U.S. Immigration and Customs Enforcement (ICE)²⁷ at more than ninety facilities, the bulk of which are secure juvenile detention centers.²⁸

When detained, the children are situated in immigration removal proceedings in front of administrative law judges from the Executive Office for Immigration Review.²⁹ "These proceedings are administrative and adversarial³⁰, pitting detained children with limited education and English language skills against trained USCIS attorneys."³¹ Because they have no right to gov-

24. Jacqueline Bhabha & Wendy A. Young, *Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, 75 No. 21 INTERPRETER RELEASES 757, 758 (June 1, 1998)[hereinafter Bhabha & Young, *Through a Child's Eyes*].

25. Michael Futterman, Comment, *Seeking a Standard: Reconciling Child Abuse and Condoned Child Rearing Practices Among Different Cultures*, 34 U. MIAMI INTER-AM. L. REV. 491, 494 (2003)(addressing the lack of protection offered to physically abused children in Mexico and the high incidents of such abuse).

26. David B. Thronson, *Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law*, 63 OHIO ST. L.J. 979, 999-1000 (2002).

27. ICE enforces federal immigration laws, customs laws, and, since November 2003, air security laws. ICE is the largest investigative agency of the Department of Homeland Security. Further information regarding ICE is available at <http://www.bice.immigration.gov/graphics/about/index.htm> (last visited November 26, 2003).

28. Christopher Nugent & Steven Schulman, *Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children*, 78 No. 39 INTERPRETER RELEASES, 1569, 1569-1570 (October 8, 2001).

29. *Id.*

30. Merits hearings in asylum cases are formal, adversarial, evidentiary hearings on the record, yet, they are not governed by the Administrative Procedure Act ("APA"), and have a tendency to be more informal than those governed by APA standards. Additionally, the Federal Rules of Evidence are instructive only and formal presentation of evidence is usually not required. IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK, 281-282 (American Immigration Law Foundation, 7th ed.(2000)

31. Proposed Rules, Asylum and Withholding Definitions, 65 Fed. Reg. 76588

ernment appointed counsel or guardians ad litem, most children go unrepresented in removal proceedings.³² In proceedings where a child is lucky enough to find representation, usually through a pro bono attorney, the child is "four times as likely to be granted asylum by an Immigration Judge."³³

To qualify for asylum, a child, like an adult, must establish that he or she is a person "who is unable or unwilling to return to, and unable or unwilling to avail himself or herself of the protection of," his or her nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."³⁴ The child must prove, therefore, that he or she has been persecuted in the past or has a well-founded fear of being persecuted in the future and that the persecution is on account of one of these five enumerated grounds.³⁵ The child must also show that the experienced or feared persecution is attributable to the government or an agent that the government is incapable or unwilling to control.³⁶

Obstacles Faced By Children Seeking Asylum

Unfortunately, neither the Immigration Court nor the USCIS has instituted a particular set of rules for dealing with children who seek asylum in removal proceedings.³⁷ In claiming relief from removal, children are subjected to the same standards of proof as adults.³⁸ In immigration law, a child is defined only in relation to its parents, "such as birth in wedlock, creation of a stepchild relationship, 'legitimation,' or adoption."³⁹ According to immigration law, a "child" does not exist outside of this relationship.⁴⁰ Asylum

(Dep't of Justice Dec. 7, 2000) [hereinafter *Asylum and Withholding Definitions*](to be codified at 3 C.F.R. pt. 208).

32. *Id.*

33. *Id.*

34. 8 U.S.C. §1101(a)(42)(2003).

35. 8 U.S.C. §§1158 (a)(2)(2003)

36. *See, e.g.,* *Matter of Villalta*, 20 I. & N. Dec. 142 (B.I.A. 1990); *see also* Nugent & Schulman, *supra* note 28, at 1583.

37. Michael F. Rahill, *What Child Is This? How Immigration Courts Respond to Unaccompanied Minors*, INSTITUTE FOR COURT MANAGEMENT, PHASE III PROJECT (May 2000).

38. Nugent & Schulman, *supra* note 28, at 1569.

39. Thronson, *supra* note 26, at 991.

40. *Id.* *But see,* *Polovchak v. Meese*, 774 F.2d 731, 736-737 (7th Cir. 1985) (stating that a twelve-year-old child was "near the lower end of an age range in which a minor may be mature enough to assert" an asylum claim against his parent's wishes); *Gonzalez v. Reno*, 212 F.3d 1338, 1352 (11th Cir. Fla. 2000) (stating that because a

claims disregard a child's status even when the child seeking asylum is unaccompanied.⁴¹

According to the U.S. "Guidelines for Children's Asylum Claims,"⁴² Canada's "Child Refugee Claimants: Procedural and Evidentiary Issues,"⁴³ and the United Nations Higher Commissioner for Refugees (UNHCR)⁴⁴, a child is defined as a person under the age of eighteen.⁴⁵ Accordingly, for purposes of this article, a "child" will refer to a person under the age of eighteen, however, "it is arguable that individuals between 18 and 21 also deserve special consideration for purposes of asylum adjudication, as they may lack the maturity to understand the proceedings in which they have been placed."⁴⁶

The fact that U.S. law makes no special provision for child asylum-seekers presents critical procedural problems.⁴⁷ In some cases, the very fact that the applicant is a child is an essential basis of the child's asylum claim.⁴⁸ Specifically, this problem occurs in cases where the asserted persecution only pertains to children, such as those involving child abuse by family members.⁴⁹ Thus, "the current adult-centered approach to asylum claims fails adequately to address these situations, just as the male-centered approach to asylum until recently neglected the specific gender-related claims of women asylum applicants."⁵⁰

six-year-old child cannot apply personally for asylum, "under INS policy, a substantial conflict of interest between the parent and the child may require or allow another adult to speak for the child on immigration matters").

41. Bhabha & Young, *Through a Child's Eyes*, *supra* note 24, at 761.

42. U.S. Department of Justice: Immigration and Naturalization Service, *Guidelines for Children's Asylum Claims 2* (1999) [hereinafter *Guidelines*].

43. IMMIGRATION AND REFUGEE BOARD: GUIDELINES ISSUED BY CHAIRPERSON PURSUANT TO SECTION 65(3) OF THE IMMIGRATION ACT: CHILD REFUGEE CLAIMANTS: PROCEDURAL AND EVIDENTIARY ISSUES 2 (1996).

44. UNHCR GUIDELINES ON POLICIES AND PROCEDURES IN DEALING WITH UNACCOMPANIED CHILDREN SEEKING ASYLUM (1997).

45. Jacqueline Bhabha & Wendy Young, *Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines*, 11 INT'L J. REFUGEE L. 84, 91 (1999) [hereinafter Bhabha & Young, *Not Adults in Miniature*].

46. *Id.*

47. Bhabha & Young, *Through a Child's Eyes*, *supra* note 24, at 761.

48. *Id.*

49. *Id.*

50. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 103. Several recently decided cases acknowledged gender-related claims in Immigration law. In *Matter of Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996), the BIA granted asylum to a Togolese woman based on her fear of female genital mutilation; in *Pitcherskaia v. I.N.S.*, 118 F.3d 641 (9th Cir. 1997), the Ninth Circuit reversed the BIA's position that psychiatric treatment forced upon a lesbian in the former Soviet Union did not constitute persecution because the treatment was aimed to cure her of her

Persecution

In order to receive a grant of asylum, a child, like an adult, must first prove that the treatment received in the past, or feared in the future, constitutes persecution or a well-founded fear of persecution.⁵¹ There are, however, specific circumstances that amount to child persecution,⁵² such as infanticide⁵³, child abuse⁵⁴, incest⁵⁵, female genital mutilation⁵⁶, and child sale.⁵⁷ These circumstances are likely to create special problems for children in search of asylum.⁵⁸ The circumstances of each case, therefore, may determine what constitutes persecution in regards to children.⁵⁹ "This relativistic perspective is of central importance when considering children's asylum claims; in each case, the child must be considered first as an individual, and second, as a member of a group – children – that is uniquely dependent."⁶⁰

Certain actions that qualify as persecution when directed at children may simply be regarded as harassment or interference when in relation to adults.⁶¹ For example, persecution can arise due to a child's increased sensitivity.⁶² Because of their age, immaturity, and vulnerability, children have a higher likelihood of being traumatized by hostile situations.⁶³ They are also more susceptible to accept unlikely threats as true and to be petrified by unusual or strange circumstances.⁶⁴ For instance, forceful police interrogation, handcuffing, slapping, or rough handling may traumatize a child to such an extent that it would be considered perse-

homosexuality; and in *Matter of S-A-*, 22 I. & N. Dec. 1328(B.I.A. 2000), the BIA granted asylum to a Moroccan woman who suffered domestic abuse at the hands of her father, a strict Muslim (asylum was granted on the basis of religious persecution).

51. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 103.

52. *Id.* at 104.

53. *Condemned to Die – For Being a Girl*, DAILY MAIL, London, 20 Dec. 1993, *cited in* ROBERT MUNRO, DEATH BY DEFAULT: A POLICY OF FATAL NEGLIGENCE IN CHINA'S STATE ORPHANAGES, HUMAN RIGHTS WATCH/ASIA (1996).

54. *In re Martinez*, A# 76-312-250, (B.I.A. 1999).

55. *In the Matter of T.C.V. (Re)*, Convention Refugee Determination Decision (C.R.D.D.) No. 5, Nos. U95-00646 U95-00647; U95-00648, decided Jan 15, 1997 (finding by Canadian tribunal that a 12-year-old "young child victim of incest" had established grounds for asylum).

56. *Matter of Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996)

57. Patralckha Chatterjee, *Children for Sale*, CHI. TRIB., 27 Apr. 1997, at 13, 1.

58. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 104.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

cution, yet the same conduct may not amount to persecution in the case of an adult.⁶⁵ Persecution may also result from actions directed at others which affect a child's sensibilities.⁶⁶ For example, a child may suffer persecution on account of harm inflicted to that child's close relatives.⁶⁷ This was certainly true in *Kahssai v. I.N.S.*, where a sixteen-year-old Ethiopian girl was found to have suffered "severe emotional and developmental injury" due to seeing her father and brother killed and experiencing the disappearance of her mother at a young age.⁶⁸

A child's increased dependence may also give rise to persecution in cases where adults would not be deemed persecuted.⁶⁹ This is due in part because children have distinct needs for support and protection.⁷⁰ For example, children who are unwillingly separated from their parents or other family members may suffer persecution while the same is normally not true for an adult.⁷¹ This is often the case when children are abandoned, abused, or neglected by their parents or families.⁷² In the case of *In re Martinez*, the BIA decided that an abandoned and abused Honduran child, who faced becoming a street child if returned to Honduras, had a well-founded fear of persecution.⁷³ The court cited U.S. State Department reports stating that street children in Honduras are often tortured and killed by Honduran police officers.⁷⁴

Children also differ from adults in cases where they must establish a well-founded fear of persecution, which requires demonstrating "that their fear is both subjectively genuine and objectively reasonable."⁷⁵ An asylum applicant must establish that the fear is well-founded from the standpoint of a "reasonable person" in the same situation as the applicant.⁷⁶ Incidents which may not create reasonable fear in an adult may nonetheless do so for a child.⁷⁷ For example, a street child may reasonably fear that she

65. *Id.*

66. *Id.* at 105.

67. *Kahssai v. I.N.S.*, 16 F.3d 323 (9th Cir. 1994).

68. *Id.* at 329.

69. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 105.

70. *Id.*

71. *Id.*

72. *Id.*

73. *In re Martinez*, A# 76-312-250, 20 Jan. 1999 (B.I.A. 1999), *cited in* Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 105.

74. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 107 n.111.

75. *Id.*

76. *Id.*

77. *Id.* at 114-115.

would not be able to escape gang violence or police persecution if returned to her home.⁷⁸ However, because U.S. immigration law does not acknowledge children as a specific group with particular needs, children are forced to confront an unnecessary obstacle that may possibly prevent them from acquiring asylum. For child victims of domestic abuse, this barrier increases the chances of being sent back to potentially life-threatening circumstances at home.

Particular Social Group

In the past, children who were victims of domestic violence tried seeking asylum as members of a "particular social group." The USCIS has mandated that such victims suffer persecution "on account of" family membership in order to classify as a "particular social group."⁷⁹ The BIA has defined a particular social group as follows:

a group of persons all of whom share a common immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared experience . . . [the shared characteristics] must be one that the member of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.⁸⁰

Until now, women and children alleging domestic violence as their sole ground for asylum have been rejected because they were not considered members of a particular social group. As critics of this viewpoint note, the BIA has failed "to understand domestic violence as a social phenomenon, occurring in context of social acceptability, personal, social, and political power imbalances, and with little or no recourse through the legal system."⁸¹

The BIA's position against granting asylum on the basis of

78. *Id.* at 115.

79. *Id.* at 111.

80. *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).

81. Pamela Goldberg & Bernadette Passade Cisse, *Gender Issues in Asylum Law After Matter of R-A*, IMMIGRATION BRIEFINGS, Feb. 2000, at 3. *See also*, Linda Kelley, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U.L. REV. 665, 693 (1998) (advocating aggressive public intervention for battered women stating that "the 'massive denial' of prevalence of domestic violence persists, often welcomed by society and the legal system."); *see also* Joan S. Meier, *Notes from the Underground, Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1318 (1993) (quoting Evan Stark who states a battered woman is created through a

domestic violence is illustrated in its June 1999 opinion in *In re R-A*.⁸² In that case, a 10-5 split *en banc* decision, the BIA refused asylum to Rodi Alvarado Peña, a Guatemalan woman whose husband constantly abused her.⁸³ Alvarado testified that her husband “always mistreated me from the moment we were married . . . [and as] time went on, he hit for no reason at all.”⁸⁴ Her husband’s brutal conduct consisted of beating and kicking her, dislocating her jaw bone, raping her, whipping her with an electrical cord, threatening to slash her face and cut off her arms and legs with a machete, and infecting her with a sexually transmitted disease.⁸⁵ Alvarado tried contacting the Guatemalan government, but when her husband appeared in court, the judge said he would not get in the way of domestic disputes.⁸⁶ Alvarado also tried running away from her husband within Guatemala, but he always found her.⁸⁷

Nonetheless, the BIA overturned an immigration judge’s grant of asylum because Alvarado had failed to establish persecution on account of her membership in a particular social group.⁸⁸ Although holding that Alvarado had “been terribly abused and has a genuine and reasonable fear of returning to Guatemala,”⁸⁹ the Board maintained that it doubted the husband was induced by a desire to beat his wife for actual or implicated membership in a “particular social group,”⁹⁰ stating, “we perceive that the husband’s focus was on the respondent because she was his wife, not because she was a member of some broader collection of women, however defined, whom he believed warranted infliction of harm.”⁹¹ Furthermore, the BIA held that it had “not . . . been shown that the government of Guatemala encourages its male citizens to abuse its female citizens.”⁹²

“mix of social and psychological factors that make it seemingly impossible for the victim to escape or to effectively protect herself from abuse”).

82. *In re R-A*, 22 I. & N. Dec. 906 (B.I.A. 1999).

83. *Id.* at 908.

84. *Id.*

85. *Id.* at 908-909.

86. *Id.* at 909.

87. *Id.* at 908.

88. *Id.* at 914. Alvarado had also tried and failed to establish persecution on account of her political opinion.

89. *Id.* at 928.

90. *Id.* at 920.

91. *Id.* at 921.

92. *Id.* at 922.

DOMESTIC ABUSE GAINS GROUND AS A BASIS FOR
ASYLUM GRANT

Since *In re R-A-*, recent developments have raised the likelihood that victims of domestic abuse may gain asylum in the United States.

Proposed Rule on Asylum and Withholding⁹³ Definitions in Domestic Violence and Other Related Abuse Claims

On December 7, 2000, the former INS (now USCIS), in response to *In re R-A-*, issued a proposed regulation to “aid in the assessment of [asylum or withholding] claims made by applicants who have suffered or fear domestic violence’ or other gender-related harm.”⁹⁴ The rule sets out pertinent “principles to provide additional guidance on the definitions of ‘persecution’ and ‘membership in a particular social group,’ as well as guidance on what it means for persecution to be ‘on account of’ a protected characteristic.”⁹⁵

The proposed rule explicitly takes up certain aspects of the *In re R-A-* decision that might be read to be inconsistent with principles of asylum law, and that could, in the future, create unwanted barriers to claims based on domestic violence. Specifically, the “rule ‘clarifies’ the Board’s particular-social-group analysis in *In re R-A-* and ‘modifies’ the Board’s categorization of domestic violence as a private family matter.”⁹⁶

A noteworthy change proposed in the rule is the revision of the “on account of” requirement.⁹⁷ Victims of domestic violence, as well as all other applicants for asylum, must show that they face

93. Withholding of Removal is another type of asylum protection. Withholding of Removal under INA §241(b)(3) prohibits the return of someone to the frontiers or territory of a country where his/her “life or freedom would be threatened.” Unlike the discretionary authority given under the refugee provision for asylum, INA §241(b)(3) grants an absolute prohibition against removal of a person found to meet the required standards. Under INA §241(b)(3) an alien must show that his/her “life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion.” INA §241(b)(3). See also IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK 252 (2000).

94. *Proposed Rule Addresses Asylum for Victims of Gender-Based Persecution*, 22 REFUGEE REPORTS No. 1, Jan. 2001 [hereinafter *Proposed Rule Addresses Asylum*](discussing Asylum and Withholding Definitions, *supra* note 31).

95. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, *Questions and Answers, The R-A- Rule*, at <http://uscis.gov/graphics/publicaffairs/questsans/rarule.htm> (last visited April 20, 2004).

96. *Proposed Rule Addresses Asylum*, *supra* note 94, at 2.

97. Asylum and Withholding Definitions, *supra* note 31, at 76592.

persecution “on account of” one of the five enumerated grounds for asylum.⁹⁸ In the past, domestic violence cases, like *In re R-A*-, have been rejected for failure to establish this requirement.⁹⁹ In *In re R-A*-, for example, Alvarado failed to prove that she had been persecuted “on account of” her membership in a particular social group, which was argued to be “Guatemalan women who have been involved intimately with Guatemalan male companions who believe that women are to live under male domination.”¹⁰⁰

The USCIS reconsidered this position, mostly because the agency did not want to shut out the option of fulfilling the “on account of” requirement when a persecutor does not try to harm others who share a protected characteristic.¹⁰¹ Even though such evidence is permitted, the proposed rule says it is not mandatory for an applicant to prove persecution on account of membership in a particular social group.¹⁰² The rule extends this to all protected characteristics, stating: “[e]vidence that a persecutor seeks to act against other individuals who share the applicant’s protected characteristic is relevant and may be considered, but shall not be required.”¹⁰³ This is substantial progress for victims of domestic violence because the rule acknowledges that domestic violence abusers do not have to batter other women for their victims to obtain asylum.¹⁰⁴

In addition, with the new rule, the USCIS hopes to clear up what it characterizes as the “most complex and difficult to understand” of the five grounds – membership in a particular social group.¹⁰⁵ In doing so, the proposed rule asserts that gender can establish the basis of a particular social group and grants that domestic violence “may, under certain circumstances, qualify the victim for a grant of asylum.”¹⁰⁶

In *In re R-A*-, the BIA held that the abuse alleged by the applicant was not on account of membership in a “particular social group” since there was no indication that the applicant’s husband would abuse any other members of the group.¹⁰⁷ The new rule re-

98. 8 U.S.C. §1101(a)(42)(A)(2003).

99. *In re R-A*-, 22 I. & N. Dec. 906, 920 (B.I.A. 1999).

100. *Id.*

101. Asylum and Withholding Definitions, *supra* note 31, at 76592.

102. *Id.* at 76592-76593.

103. *Id.* at 76593.

104. *Proposed Rule Addresses Asylum*, *supra* note 94, at 4-5.

105. Asylum and Withholding Definitions, *supra* note 31, at 76593.

106. *Proposed Rule Addresses Asylum*, *supra* note 94, at 1.

107. *In re R-A*-, 22 I. & N. Dec. 906, 920 (B.I.A. 1999).

evaluates this view by asserting that, although evidence that the persecutor seeks to act against other individuals who share the applicant's protected characteristic is important and may be considered, this is not a mandatory factor in acquiring asylum.¹⁰⁸

In a significant change to asylum cases involving domestic violence, the USCIS also modified the BIA's classification of domestic violence as a private, family matter in holding that the ability of the foreign government of the applicant's country to protect the victim is significant in determining whether the applicant is entitled to receive asylum in the U.S.¹⁰⁹ The proposed rule states that adjudicators should consider whether the government "takes reasonable steps to control the infliction of harm or suffering" and whether the applicant has "reasonable access" to the existing state protection.¹¹⁰ Additionally, the proposed rule states that "all factors relevant to the availability of and access to state protection should be examined in determining whether the government . . . is unwilling or unable to protect the applicant from a non-state persecutor."¹¹¹ Some of these factors include: government complicity, attempts to obtain protection, perfunctory official action, a pattern of government unresponsiveness, general country conditions, the government's denial of services, government policies relating to the harm or suffering, and "any steps, if any, the government has taken to prevent infliction of such harm or suffering."¹¹²

Finally, the proposed rule acknowledges that patterns of violence are not private matters, but instead should be dealt with when they are backed by a legal system or social norms that excuse or perpetuate domestic violence.¹¹³ The USCIS helped reach this conclusion by consulting with the Violence Against Women Office (VAWO) of the Department of Justice which stated that domestic violence has similar characteristics across all racial, ethnic, and socioeconomic groups.¹¹⁴ The characteristics are as follows:

First, in relationships involving domestic violence, past behavior is a strong predictor of future behavior by the adult. Victims report patterns of abuse – rather than sin-

108. Asylum and Withholding Definitions, *supra* note 31, at 76594.

109. *Id.* at 76590.

110. *Id.* at 76591.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

gle, isolated incidents – that tend to include the repeated use of physical, sexual, and emotional abuse, threats, intimidation, isolation and economic coercion. Second, both here and abroad, domestic violence centers on power and control of the victim. Consequently, when victims attempt to flee the abusive relationship, or otherwise assert their independence, abusers often pursue them and escalate the violence to regain or reassert control. The risk of lethality to the victim is typically greatest when the victim attempts to escape the abuse and, in contrast to other persecution cases where the persecutor's desire to harm the victim may wane if the victim leaves, the victim's attempt to leave typically increases the abuser's motivation to locate and harm her. Third, because of the abuser's intimate or familial relationship with the victim, the abuser is likely to possess important information about where the victim could go or to whom the victim would turn for assistance.¹¹⁵

These characteristics tend to support the idea that victims of domestic violence are a group with particular characteristics. Moreover, the proposed rule aids victims of violence establish their burden of proof in that a showing of past persecution supports the assumption of well-founded fear of future persecution, provided the asylum applicants have proven past persecution by an individual non-state actor in situations involving domestic violence.¹¹⁶

The proposed rule amends many aspects of asylum law that created great obstacles for victims of domestic violence in the past. If adopted, the proposed rule will help many victims of domestic violence gain asylum.¹¹⁷ The fact that the proposed rule was developed with an awareness of the circumstances surrounding victims of domestic violence is alone a positive step toward the advancement of child and women victims of domestic abuse.

In fact, the awareness instigated by the proposed rule began to make a difference only one month after the proposal was issued when, in one of her last acts in office, former Attorney General Janet Reno vacated the BIA's decision in *In re R-A*.¹¹⁸ In light of the proposed rule, Reno remanded the case back to the BIA ordering that reconsideration of the decision wait until after the pro-

115. *Id.* at 76595 (internal citations omitted).

116. *Id.*

117. The proposed rule was still pending at the time of this writing.

118. Carlos Holguin, *Ninth Circuit Recognizes Asylum Claim Based on Family Membership*, *supra* note 21, at 603.

posed asylum rules are published in their final form.¹¹⁹ Now, under a new administration, the power is in the hands of Attorney General John Ashcroft to take action towards finalizing the proposed rule.¹²⁰

A. *Aguirre-Cervantes v. INS*

The Ninth Circuit Court of Appeals also broke new ground in *Aguirre-Cervantes v. INS* when it granted asylum to Rosalba Aguirre-Cervantes, a nineteen-year-old Mexican woman who had been repeatedly abused by her father.¹²¹ In this case, the Ninth Circuit's analysis addressed several issues which will prove significant to child victims of domestic violence seeking asylum.

In *Aguirre-Cervantes*, a federal circuit court for the first time ruled that victims of domestic violence may seek asylum based on their abuse at home because the family forms a protected "social group" under U.S. asylum law.¹²² The Ninth Circuit Court of Appeals recognized that immediate family, whose members all live together and are subjected to severe abuse by a family member, may have a claim for asylum as a "protected particular social group."¹²³

The court refused to put off its decision, as urged by the USCIS, until the proposed rule had been finalized by the Department of Justice.¹²⁴ Stating that "family membership is clearly an immutable characteristic, fundamental to one's identity,"¹²⁵ the court noted that it considered the six factors in the proposed rule (the first three established in *Sanchez-Trujillo v. I.N.S.*)¹²⁶ in order to determine the existence of a particular social group "and con-

119. *Id.*

120. "Battered Immigrant Women Still in Jeopardy" at <http://endabuse.org/newsflash/index.php3?Search=Article&NewsFlashID=311>.

121. *Aguirre-Cervantes v. I.N.S.*, 242 F.3d 1169, 1176 (9th Cir. 2001).

122. *Id.*

123. *Id.* at 1176.

124. *Id.* at 1177.

125. *Id.*

126. In *Sanchez-Trujillo v. I.N.S.*, 801 F.2d 1571, 1576 (9th Cir. 1986), the court defined "particular social group" as "a collection of people closely affiliated with each other, who are actuated by some common impulse or interest. Of central concern is the existence of a voluntary associational relationship among the purported members, which imparts some common characteristic that is fundamental to their identity as a member of a discrete social group. Perhaps a prototypical example of 'a particular social group' would consist of the immediate members of a certain family, the family being a focus of fundamental affiliation concerns and common interest for most people."

cluded that the petitioner's family satisfies them."¹²⁷ The court did, however, state that not every family may constitute a "particular social group" and that such status will be determined on a case-by-case basis.¹²⁸

The court also addressed the ability of the foreign government to protect the victim in foreign domestic violence cases. Because Rosalba Aguirre-Cervantes suffered at the hands of a non-governmental entity, she was required to show that the persecutor, her father, "was someone the government was unable or unwilling to control."¹²⁹ Although there was no clear finding that the Mexican government was unable to control Mr. Aguirre, the court referred to the BIA's own finding that evidence "appears to establish that [in Mexico] the most pervasive violations of women's rights involve domestic and sexual violence which is believed to be widespread and vastly underreported."¹³⁰

In addition to the findings referred to by the BIA, further documentary evidence established that domestic violence is generally overlooked in Mexico¹³¹ and that law enforcement authorities are reluctant to get involved with such issues.¹³² In Mexico City, for example, with a population of 23 million, only one battered women's shelter exists, containing a mere eight beds. Moreover, of the 13,000 children who live on the streets of Mexico City, a number of them are victims of domestic violence.¹³³ Additionally, of the thirty-one states in Mexico, only five have battered women's

127. *Aguirre-Cervantes*, 242 F.3d at 1177.

128. *Id.* at 1176. The *Aguirre-Cervantes* court distinguished a prior decision, *Estrada-Posadas v. I.N.S.*, 924 F.2d 916, 919 (9th Cir. 1991), which noted that "asylum protection from persecution because of membership in a particular social group did not include protection from persecution simply by reason of membership in a family." In *Estrada-Posada*, a Guatemalan woman seeking asylum offered evidence that her cousin had been kidnapped, her uncle had been killed, and relatives on her mother's side of the family had been forced to flee their homes. *Id.* The *Aguirre-Cervantes* court found, however, that "there was no evidence that the petitioner had been persecuted at all, or that she lived with her persecuted family members or was otherwise readily identifiable as a member of their family unit." *Aguirre-Cervantes*, 242 F.3d at 1176.

129. *Aguirre-Cervantes*, 242 F.3d at 1178.

130. *Id.*

131. Many Mexican states condone "and sometimes even encourage physical punishment by parents or guardians through legislation." Futterman, *supra* note 25, at 502. Many judges in Mexico help facilitate such abuse by accepting as necessary physical abuse to discipline children. *Id.* at 503. Moreover, Mexican law does not set any obligation to report incidences of child abuse. *Id.* (citing Martha Frias-Armenta & Bruce D. Sales, *Symposium: Law & Psychology-Discretion in the Enforcement of Child Protection Laws in Mexico*, 34 CAL. W. L. REV. 203, 204 (1997)).

132. *Aguirre-Cervantes*, 242 F.3d at 1178.

133. *Id.*

shelters.¹³⁴ Considering all the evidence, the court concluded that the “the Mexican government is unable or unwilling to control Mr. Aguirre’s abusive behavior directed toward his immediate family.”¹³⁵

The Aguirre-Cervantes decision is extremely significant because it establishes, under ascertainable principles of asylum law, that women and children may qualify for protection. The *Aguirre-Cervantes* opinion recognizes that domestic violence is not a purely private family matter, but also turns on the government’s inability to protect such victims. This view, along with the criteria the court used to evaluate a “particular social group,” is similar to the issues raised by the proposed immigration rule. Thus, if the proposed rule is not adopted by the USCIS, the precedent set by *Aguirre-Cervantes*, unless overruled, will still provide a significant basis for victims of domestic abuse to claim asylum as applicants filing claims in that circuit.¹³⁶

Aguirre-Cervantes may provide significant relief to a number of victims of domestic abuse. Children who have fled from persecution in their homes and live on the streets no longer need resort to begging, child labor, or prostitution because they now have an alternative in the possibility of gaining asylum in the U.S. This provides a departure for past experience where many domestically abused children became “street children” in countries such as Mexico.¹³⁷ These children, whose ages range from six to eighteen, are at high risk of murder, continual abuse, and inhumane treatment.¹³⁸ About 90% of these children are also “addicted to inhalants such as shoe glue and paint thinner, which cause kidney failure, irreversible brain damage and, in some cases, death.”¹³⁹ The ability to gain asylum on the basis of domestic abuse will pro-

134. *Id.*

135. *Id.* at 1179.

136. *Aguirre-Cervantes* is also noteworthy in that it finally places the United States at a similar level with countries such as Canada and the United Kingdom which, years before the U.S., acknowledged domestic violence victims as eligible for asylum through its adoption of the United Nations Convention of the Rights of the Child (CRC). G.A. Res. 44/25, annex 44 U.N. GAOR Supp. (No. 49) at 167 U.N. Doc. A/44/49 (1989). The CRC was adopted by the United Nations in November 1989 establishing the standards for the rights of all children, including refugee children. *Id.* Unfortunately, the United States is one of the only two countries that have not ratified the CRC. S. Res. 133, 104th Cong., 1st Sess. (1995).

137. MEXICAN CHILD LINK TRUST, *Street Children—What Are Street Children?*, at <http://www.mexico-child-link.org/street-children-definition-statistics.htm> (last visited April 21, 2004).

138. *Id.*

139. *Id.*

vide a humane option for these children and may save the lives of many.

Because of *Aguirre-Cervantes*, children also have an option apart from fleeing to a nearby relative's home—where they are easily found by immediate family and where domestic violence may be common.¹⁴⁰ Child victims can flee directly to the U.S. instead where their safety will not be in jeopardy and their lives will be protected.¹⁴¹ Additionally, women who are victims of domestic violence in countries such as Mexico, where there is little to no relief for battered women, have an opportunity to seek relief from domestic violence not only for themselves but for their children as well, thus, having the chance to keep the rest of their immediate family together.

Hopefully, *Aguirre-Cervantes* will bring about awareness of domestic violence in countries where domestic violence is not acknowledged by the government. Laws protecting victims of domestic violence are necessary and, in some cases, may save the lives of women and children. These laws need to be acknowledged and enforced to help the many victims of domestic violence. Domestic violence cannot be viewed as a private family matter any longer.

140. The Violence Against Women Act (VAWA) establishes another option to abused children. VAWA provides victims of domestic violence a means to self-petition for lawful permanent residence status in the U.S. A child qualifies if he/she was abused in the U.S. by a parent (including step-parent) who is a U.S. citizen or a lawful permanent resident of the U.S., the child has resided with the citizen or permanent resident parent, the child has good moral character, and the child currently resides in the U.S. INA §201(b)(2)(B), 8 U.S.C. 1151 (b)(2)(B); see also NATIONAL LAWYERS GUILD, at www.nlg.org (last visited Nov. 11, 2003). Children in Rosalba's case would therefore not qualify since the domestic abuse occurred in a foreign country by a parent who is not a citizen or lawful permanent resident of the U.S.

141. Mexican states, such as Sonora, Mexico, provide little to no help to children who are domestically abused. In Sonora (a northwestern state), Article 590 of the Sonora Civil Code states that parents have the "faculty of correcting children, and that if needed, legal authority will assist the parent by providing admonitions and correctives to children in order to render sufficient support to parental authority." CÓDIGO CIVIL SONORA [C.C.SONORA] art. 590 (Mex.). Pursuant to this Article and Article 248, parents in Sonora are allowed to injure their children for corrective purposes as long as the healing process does not run on for more than 15 days. See generally, CÓDIGO PENAL SONORA [C.P.SONORA] art. 248 (Mex.). Sonora is one of Mexico's thirty-one states; each state has its own constitution and its own legislative, judicial, and executive branches. CITE NAME, at www.loc.gov/dcgi-bin (last visited November 25, 2003). Unable to verify source—appears to be citing to the library of congress. "Frequently Asked Questions About Mexico's Electoral Regime and the Federal Elections of the Year 2003" at <http://www.ife.org.mx/wwwcai/25preguntasENGLISH.htm>.

CHILDREN SEEKING ASYLUM NEED EXTRA HELP

Apart from the relief extended to victims of domestic violence through *Aguirre-Cervantes*, children who suffer domestic violence and arrive in the United States seeking asylum need extra help in order to get a fair chance at gaining asylum.

On a daily basis, the lives of these abused children are dictated by decisions rendered by immigration authorities and judges.¹⁴² Nonetheless, life-altering decisions in immigration matters are usually adduced without consideration of the children who are directly concerned.¹⁴³ The limited conception of a "child" in immigration law and the lack of procedural laws tailored to children seeking asylum have a negative impact on the "critical frameworks of immigration," which currently "reinforce discredited approaches to children's rights."¹⁴⁴

Although the advancement of children's rights has a long way to go in immigration, a certain development has geared towards improving children's rights. The importance of this development cannot be emphasized enough, for its implementation may save many child asylum seekers from being sent back to their native country, which for children of domestic abuse may mean the difference between life or death.

The U.S. Guidelines for Children's Asylum Claims

In order to give foreign children a fair chance at asylum, the USCIS must implement a legal standard in accordance with the U.S. *Guidelines* in all cases concerning child asylum seekers. The *Guidelines* stress "the importance of creating a 'child-friendly' asylum interview environment that allows a child to discuss freely the elements and details of his or her claim."¹⁴⁵ This language acknowledges that children may not communicate or portray their cases in ways similar to adults and recommends "child-sensitive procedures" meant to assist asylum officers in interacting more effectively with the child during the asylum interview.¹⁴⁶ The following are a few suggestions stated in the *Guidelines* that should be implemented into every asylum procedure involving children.

142. Thronson, *supra* note 26, at 980.

143. *Id.*

144. *Id.* at 1014.

145. *Guidelines*, *supra* note 42, at 5.

146. *Id.*

A Trusted Adult

In child asylum cases, the best results are achieved when both an attorney and a non-attorney representative are available to assist the child in her application for asylum and in any government proceedings involving the asylum claim.¹⁴⁷ However, immigration court proceedings do not statutorily¹⁴⁸ mandate the appointment of a guardian ad litem or any other type of personal representative to accompany a child in these cases.¹⁴⁹

Appointment of an adult representative provides involvement and input of an adult, other than the child's attorney, in the immigration proceedings.¹⁵⁰ The *Guidelines* state, "[i]t is generally in the best interest of the child to allow a trusted adult to attend an asylum interview with the child asylum applicant. A trusted adult is a person who may bridge the gap between the child's culture and the U.S. asylum system."¹⁵¹

The company of a trusted adult may aid a child psychologically, especially during frightening and intimidating procedures such as testifying.¹⁵² The main purpose is to help the child during the interview process by serving as a confidant and source of reassurance and encouragement.¹⁵³ The *Guidelines* suggest that "the Asylum Officer may allow the adult to help the child explain his or her claim, but . . . at the same time ensure that the child is able to speak for him/herself and is given an opportunity to present the claim in his or her own words."¹⁵⁴ The *Guidelines* also state that a parent or other relative would be the preferable person to do such a job, however, in cases of domestic abuse, this is not likely since most child victims of domestic abuse arrive in the U.S. unaccompanied.¹⁵⁵

The benefits derived from the involvement of a personal representative are exemplified in one past case concerning an Indian

147. Rahill, *supra* note 37, at 6.

148. The INA states that any alien shall have the "privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings and he shall choose." Thus, a child, nor any other alien, is allowed to have an attorney but the government does not have a duty to grant one. 8 U.S.C. §1230(b)(4)(A).

149. Rahill, *supra* note 37, at 14.

150. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 116.

151. *Guidelines*, *supra* note 42, at 5-6.

152. *Id.* at 6.

153. *Id.*

154. *Id.*

155. *Id.*

girl trafficked to the United States.¹⁵⁶ In this case, the guardian played a vital role in winning the child's trust and obtaining essential information needed by the court to make a decision.¹⁵⁷ Through their relationship, the guardian was able to elicit from the girl details of the abuse she suffered and her subsequent sale to traffickers.¹⁵⁸ This information was vital to the girl's case and played a crucial role in the judge's decision to grant asylum.¹⁵⁹

Because asylum procedures can be intimidating and emotionally draining for most children, the USCIS should require the assignment of a personal representative, as well as attorney, in all cases involving children. The benefits of a trusted adult are clear and undisputed. This is especially true in cases where children have been domestically abused since they may find it difficult to communicate to others the traumatic circumstances they have undergone.

Asylum Officers

The *Guidelines* suggest that all Asylum Officers be trained on issues regarding child refugees.¹⁶⁰ This way Asylum Officers are in a better position to fully attend to the needs and best interests of a child seeking asylum.¹⁶¹ The *Guidelines* state that, "[t]o the extent that personnel resources permit, Asylum Officers should attempt to assign Asylum Officers with the relevant background or experience to interview children's cases."¹⁶²

The training of Asylum Officers is essential to fully meet the needs of child asylum seekers. However, because this is merely optional, only a small portion of children are fortunate enough to encounter Asylum Officers trained to fulfill their needs as children.¹⁶³ Immigration courts are not divided by area of expertise.¹⁶⁴ Asylum courts or juvenile immigration courts do not exist.¹⁶⁵ Those who decide the outcome of child asylum cases also deal with all other claims for relief involving adult immigrants who are subjects of removal proceedings.¹⁶⁶ "[S]ubject to the same harsh laws

156. Bhabha & Young, *Not Adults in Miniature*, *supra* note 45, at 116.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Guidelines*, *supra* note 42, at 6.

161. *Id.*

162. *Id.*

163. Thronson, *supra* note 26, at 1002.

164. *Id.* at 1003.

165. *Id.*

166. *Id.*

and procedures as adults, unaccompanied children still struggle to overcome the dominant bias of immigration law that children are objects and not actors.¹⁶⁷ Unless the suggestions provided by the USCIS become binding, most children will continue to suffer inequality under the law.

Child-Sensitive Questioning

In addition to having experience with child asylum seekers, the *Guidelines* propose that Asylum Officers ask "questions during the interview [with the child] . . . tailored to the child's age, stage of language development, background, and level of sophistication."¹⁶⁸ By doing so, the Asylum Officer would be more capable of effectively communicating with the child asylum seeker.¹⁶⁹

One of the objectives of asking child-sensitive questions is for Asylum Officers to "evaluate the child's words from a child's point of view."¹⁷⁰ Children do not communicate their ideas and experiences the same way as adults.¹⁷¹ They may also be confused or frightened by their present situation and/or past encounters.¹⁷² This is why it is imperative that Asylum Officers "bridge the gap through an understanding of age-related or culturally related reasons for a child's choice of words."¹⁷³ Suitable questioning and listening techniques will produce case evaluations that are more comprehensive and precise.¹⁷⁴ Having an Asylum Officer trained in such techniques would be extremely beneficial to all children.

CONCLUSION

This article began with the story of a girl whose case represents an extremely hopeful breakthrough for women and children who have been domestically abused and, thus, look for refuge in the United States by seeking asylum. In the past, the United States' immigration laws have made it very difficult for these women and children to gain asylum based on the persecution they suffer at home. Those who suffer domestic violence had previously not been recognized as individuals persecuted on account of their "particular membership in a social group." Moreover, chil-

167. *Id.*

168. *Guidelines*, *supra* note 42, at 10.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

dren have suffered additional procedural difficulties in putting forth their claims for asylum due to the fact that immigration laws are not tailored to their specific needs and best interests. These adult-centered laws only impede the possibility of a child gaining asylum for they do not take into consideration factors such as a child's age, background, or psychological development.

The regulations proposed by the BCIS, Attorney General Reno's order to vacate the BIA's *In re R-A-* decision, and *Aguirre-Cervantes* all represent a movement toward the awareness and acceptance of domestic violence as a ground for asylum. The proposed rule, if adopted, will aid many victims of domestic abuse in seeking asylum for it was drafted in response to the injustice created by the *In re R-A-* decision. Additionally, *Aguirre-Cervantes*, which incorporated some of the factors of the proposed rule, serves as a significant step toward enabling victims of domestic abuse to seek relief under U.S. asylum law. Ruling that family membership constituted membership in a "particular social group" opened the doors to many victims of domestic abuse which have in the past suffered great persecution without the hope of ever seeking relief through acquiring asylum. These victims, many of whom have been driven to live on the streets in the past, now have an alternative to the suffering they have undergone on account of their membership in their family.

Apart from applauding the developments made regarding foreign victims of domestic abuse, this article recommends that the USCIS adopt the *Guidelines* as law for the protection of all children seeking asylum. Merely suggesting that Asylum Officials adjust their ways in dealing with children is not enough for only a small percentage have adhered to such suggestions. In order to truly aid the plight of children seeking asylum, it is imperative that child-centered laws be enacted for all immigrant officials to follow. The USCIS cannot continue to disregard the needs of children. Pretending that children are miniature adults without special need for protection is unreasonable and detrimental to the lives and well-being of children everywhere.

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