

A Sex Trafficking Victory That Shows Just How Broken the System Is

by Molly Redden | August 29, 2013

In mid-2001, Johana Cece, a woman in her early twenties, fled her hometown of Korçë, a small city near Albania's Greek border. A local gang member, "Reqi," who was notorious for kidnapping women Cece's age to work as prostitutes, had begun stalking her around town, offering her rides and asking her out on dates that Cece refused. Things came to a head one day when Reqi followed her into a crowded cosmetics store and pinned her against the wall. One account of their encounter said that "Reqi made it clear to Cece that he could not be stopped and that he would find her and do whatever he wanted to her." Friends convinced a terrified Cece to complain to the police, who dismissed her claims as baseless out of hand. She never returned to Korçë.

By 2002, by way of a falsely obtained Italian passport, Cece had arrived in the U.S. and claimed asylum—a move that would kick off an 11-year legal battle that was only resolved this month. At issue, though, was not Cece's credibility, nor whether her fears of forced prostitution were founded. The central question of her decade-long fight was whether or not she belongs to one of the groups singled out for protection in the U.S. asylum statute: foreigners who have been persecuted on account of their race, religion, nationality, political opinions, or membership in a particular social group. It's that last category that Cece had to argue her way into—her particular social group being young Albanian women targeted for sex trafficking—and over the course of her legal fight, various judicial bodies ruled six separate times on whether or not that constitutes a valid category.

Finally, on August 9, she won a critical victory before the Seventh Circuit, which issued [a sweeping defense](#) of asylum for targets of sex-trafficking. The ruling sets a precedent that will protect thousands of other asylum-seekers, and Cece is expected to earn refugee status when her case goes back to the Board of Immigration Appeals. But Cece's legal travails illustrate a persistent obstacle facing female refugees who have escaped domestic abuse, sex trafficking, or forced marriage in their home countries and made it to the U.S.: Because no presidential administration has ever clearly spelled out how the "particular social group" category applies to women, a woman's fate usually relies on the whims of the judge hearing her case.

"The lack of guidance has led to some terribly arbitrary decision-making," said Karen Musalo, the director of the University of California—Hastings Center for Gender and Refugee Studies. To Musalo and the rest of the refugee advocate community, if the asylum statute were always applied correctly, women would have no trouble convincing judges that they are targeted based on their gender, and that that is grounds for an asylum claim. In fact, clarifying the statute by issuing a new, joint rule from the Department of Justice and Homeland Security is one of the Obama administration's unmet priorities. It has appeared on his administration's regulatory plan since fall 2009, but to no avail.

"Right now, gender-based asylum claims are still basically judicially created claims," said Simona Agnolucci, an intellectual property and commercial attorney who represents women seeking refugee status pro bono. Essentially, each time a woman claims asylum for gender-related reasons, her attorney (if she has one) is building an asylum category from scratch or cobbling it together from other court cases. The result is a wildly inconsistent legal landscape where a female refugee's chances of asylum are largely based on luck. There is even variation among which gender-based "particular social groups" fare best before immigration judges, where the vast majority of these cases play out. "Female genital cutting—that, I think you'd be hard pressed to find a court that doesn't think that's a basis for asylum," said Agnolucci. "But in the case of forced marriage, there's only one circuit court that has recognized that as a form of persecution. Domestic violence is still in flux. Sex-trafficking is still in flux."

In 2012, Blaine Bookey, an attorney on staff with the Center for Gender and Refugee Studies, tried to establish exactly how bad things were, [analyzing 206 cases](#) from 1994 to 2012 in which women claimed asylum from domestic violence. Time and again, she found that judges ruled arbitrarily in cases with nearly identical facts. She described two claimants, for example, one from Kenya and one from El Salvador, who both testified credibly that their partners were abusing them, at levels that rose to persecution, in countries where law enforcement proved apathetic to their plight. And yet only the Salvadoran, "Ms. N," who had once attempted suicide to escape her boyfriend's frequent beatings, was granted asylum. Bookey found judges who complained about a lack of case law guiding their decisions and an astonishing variance in detail among decision. One immigration judge simply ruled that domestic violence victims didn't fit the categories in the asylum statute, without explanation. "To me, it tells me that what we pride ourselves on in the U.S.—

the objective, even application of the law, which should characterize any sound legal system—is a myth for these women, who are subject to completely disparate treatment,” Bookey said.

In that vein, Cece’s victory is really only binding for refugees who land in Wisconsin, Illinois, and Indiana, states that are in the Seventh Circuit. Refugees who have run away from sex traffickers for the Sixth Circuit—Kentucky, Michigan, Ohio, and Tennessee—are out of luck. They are subject to [a 2005 ruling](#) that found the exact opposite of the Seventh Circuit: that “young (or those who appear to be young), attractive Albanian women who are forced into prostitution ... does not constitute a social group.”

One thing that commonly works against women in cases like these is the view that foreign women who are treated terribly are very unlucky, but they are not persecuted for their membership in a discrete group the same way as say, [Coptic Christians in Egypt](#). Various adjudicators who found against Cece, articulated objections related to this view, like the argument that “women who are targeted by sex traffickers” is too broad a category. “One big myth you see propagated is that allowing a group premised on gender to be entitled to asylum would open the floodgates. The logic is, ‘There are a lot of mistreated women out there,’” Agnolucci said. “But it’s extremely difficult to prove an asylum claim. Proving that you’re a member of a protected group is just the first step.” A number of broad groups, she added, are already entitled to asylum, like gays and lesbians in Cuba, or any Filipino of Chinese ancestry living in the Philippines. “The fact that the category is broad doesn’t mean it’s not a proper category.”

Frank Easterbrook, one of two judges dissenting in *Cece*, fired off another common objection to gender-based asylum claims: “Crime may be rampant in Albania, but it is common in the United States too. People are forced into prostitution in Chicago. Must Canada grant asylum to young women who fear prostitution in the United States, or who dread the risk of violence in or near public-housing projects?” This argument in particular irks Musalo, because almost every instance of persecution could be defined downward as merely a crime—but judges seem to apply this logic to women more than any other group. “It’s almost irrelevant to say, ‘It’s a crime.’ Yes, OK, that’s fine, but that doesn’t answer the question, ‘Are they persecuted?’” Musalo said. “The claims of women have fought a long and hard uphill battle to be recognized. Saying ‘this is crime’ is one more way to define what they face as personal disputes. Her abuser is not going to say, ‘I’m beating you because you’re a member of the particular social group defined as women in domestic relationships.’ It’s up to us to make the connection that something like domestic violence is one more way to perpetuate gender inequality across an entire country.”

Those facile arguments and inconsistencies would dry up, she said, if the Obama administration would merely clarify the asylum statute. Their doing so is especially important now that attempts to resolve such issues in Congress have hit a wall. Lisa Frydman, the center’s managing attorney, was working with Senator Patrick Leahy to amend the comprehensive immigration reform bill with language with language that would have partially clarified how to apply the asylum statute, until the amendments were effectively cut off as part of the Corker-Hoeven border security deal. “With [the House] in a holding pattern about how to move forward on immigration, now is not the time to try our luck there,” Frydman said.

“What we’re all hoping for,” said Musalo, “is the issuance of new regulations from the DOJ and DHS.” This wouldn’t even require writing new regulations, she said. As attorney general, Janet Reno had a fit of activity on this issue in the final months of 2000, which resulted in the Department of Justice writing a rule to spell out how immigration judges should apply “particular social groups” to groups of women. “Reno was at the table, saying, ‘This is a priority, we need to work this out. And it got worked out,’” said Frydman. Today’s DOJ would have to issue a new rule jointly with the DHS, and there are some unresolved differences of opinion on the regulations that officials would have to iron out. But to advocates, these differences are not unresolvable—the Obama administration just hasn’t made a good faith attempt to move a new rule forward. (DHS and DOJ did not reply to requests for comment.)

Meanwhile, there are thousands of asylum cases pending before immigration judges that would benefit from some clarity—at least 300 domestic violence cases before the Board of Immigration Appeals alone, said Frydman. “It’s just a matter of wanting to get it done. Thirteen years is just inexcusable at this point,” she said. “We don’t want to wait for another administration, and to go again through the process of making this a priority. We already know there are people who truly care about this issue in this administration. The question that really remains how *much* they’re going to commit.”

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