



Refugee Women At Risk

Unfair U.S. Laws Hurt Asylum Seekers



Lawyers Committee for Human Rights

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The 1996 Law and its Impact on Women

I. Expedited Removal

When expedited removal went into effect in April 1997, the U.S. fundamentally changed the way it treats many asylum seekers. Prior to that time, only an immigration judge could order the formal deportation of a person who arrived in the United States without valid travel documents. This was an important safeguard, since many genuine refugees are unable to obtain travel documents from their governments – the very governments that have targeted them for persecution. Before expedited removal, asylum seekers were assured the fundamentals of due process – the right to a hearing before an immigration judge and the right to have a deportation decision reviewed on appeal.

Under expedited removal, INS inspectors at U.S. airports and borders are authorized to issue removal orders that can be finalized upon cursory review by a supervisor solely because a person does not have valid travel documents. The expedited removal order can be executed immediately, and the inspector's determination cannot even be appealed to an immigration judge much less to a federal court judge. While asylum seekers are not supposed to be deported at this stage (they are supposed to be referred for further examination to determine if they have a "credible fear of persecution"), asylum seekers find the process utterly bewildering, and mistakes have been made. Mistakes are in fact inevitable given the summary nature of expedited removal and its lack of procedural safeguards.

Expedited removal can have life or death consequences. An on-the-spot decision of a single INS agent can mean safety and freedom, or forced return to face persecution.⁴

How many people does the INS deport under expedited removal?

In fiscal year 1999, the INS deported 89,035 people under expedited removal, and 99.3% of those deportees were returned without a referral for further examination to determine whether a "credible fear of persecution" existed or whether U.S. citizenship or another lawful basis existed for

admission into the United States. In fiscal year 2000, approximately 85,338 people were deported under expedited removal; and in fiscal year 2001 approximately 69,772 people were deported under expedited removal.

How Expedited Removal Affects Women

The INS has not published statistics reporting how many women have been deported under expedited removal. But *The Expedited Removal Study*, a University of California, Hastings College of Law report released in May of 2000, examined data provided by the U.S. government, and concluded that women were more frequently deported under expedited removal (rather than under regular immigration removal proceedings) than men. The Study offered several possible explanations for this difference, including that expedited removal may be applied in a manner that disfavors women.⁵

Refugee women are particularly vulnerable to the risks posed by expedited removal for a number of reasons:

- **Some women may be afraid to tell an INS Agent why they have fled.** Women are often targeted for persecution because they are women, and they may flee forms of persecution in their home countries that are related to their gender, such as female genital mutilation, rape, forced marriage, “honor killings,” forced sterilization, and domestic abuse. The personal or social shame experienced by these women can be acute. Disclosing these experiences publicly in an adversarial environment to male strangers may be highly traumatic, particularly for women who, for cultural or religious reasons, would be ostracized if the nature of their harm became known.⁶
- **Others, suffering from Post-Traumatic Stress Disorder, may be unable to talk about what has happened to them.** For women who are survivors of torture, rape and gender-related traumas, talking about their experiences is often extremely difficult. Experts who work with survivors of torture

"Jane Doe"

A rape survivor

Deported under expedited removal⁵

Jane Doe fled Albania after being gang-raped by masked, armed men. She arrived at the Boston airport in May 1997 with invalid travel documents, and was put into expedited removal. Traumatized by her recent experiences and unassisted by counsel, Jane was too ashamed and afraid to explain to a male Albanian interpreter – provided by the INS – what had happened to her. Without even being

allowed to apply for asylum, Jane was deported under expedited removal. She was put on a flight back to Albania where she went into hiding. After *The New York Times* found out about and reported on her story, Jane was finally allowed to return to the United States to apply for asylum – and asylum has since been granted.

and trauma say that those who suffer from Post-Traumatic Stress Disorder (PTSD) have difficulty relating information about their mistreatment to U.S. government authorities particularly if they have not had time to recover from their trauma.⁷

- **Intimidation magnifies women's difficulties.** Asylum seekers have reported misconduct from INS inspectors including insults, taunting, and abusive language – conduct that can create a hostile or intimidating atmosphere, magnifying the difficulty a woman faces in discussing traumatic experiences. As detailed below, “Ms. Koromah,” a rape survivor from Sierra Leone, was so intimidated that she was unable to talk about her rape after INS inspectors at the airport accused her of lying and threatened her with deportation. In May 1999, the Women’s Commission for Refugee Women and Children reported that it had interviewed dozens of women who had been subjected to the expedited removal process and that these women “universally recount fear, intimidation, and confusion suffered throughout the process.”⁸
- **Shackling and strip-searches re-traumatize survivors of abuse.** Many asylum seekers have reported that officials at the airport have subjected them to strip-searches and invasive body cavity searches – procedures that can be particularly traumatizing for rape survivors. INS policy and written guidelines make clear that handcuffing and shackling are not mandatory,⁹ and specifically note that restraints should normally not be used on women. But in practice, these guidelines are not observed. Female asylum seekers are routinely handcuffed, shackled or otherwise restrained. The use of restraints on women who are trauma survivors is especially problematic, as the use of restraints can in effect recreate a prior traumatic experience.¹⁰

"Ms. Koromah"

A rape survivor from Sierra Leone

Intimidated and detained by the INS⁶

Ms. Koromah fled from Sierra Leone on a borrowed passport after she was abducted and raped by rebel forces who killed her parents. When she arrived at JFK International Airport in the fall of 1999, Ms. Koromah was not provided with an interpreter. INS inspectors accused her of lying and

threatened her with deportation. Terrified, she was unable to talk about her rape and her fears in a language she did not speak. Ms. Koromah was detained for two months, and was released only after Temporary Protected Status became available to Sierra Leoneans in November 1999.

"The case of Aracelis Gonzalez also reveals the serious flaws in expedited removal. A woman who has escaped to the United States after her partner bought a gun, held it to her head, and threatened to kill her cannot even receive an asylum hearing.... This could not have been the intention of even the supporters of expedited removal."

— Senator Patrick Leahy, in a letter to the INS Commissioner

- **Women do not know that their persecution can qualify them for asylum.** Women who are victims of gender-related abuses may not realize that they may qualify for what is popularly referred to as political asylum, and as a result, they may not realize that they can exercise the right to apply for asylum during expedited removal. This confusion is only compounded by the Board of Immigration Appeal's 1999 decision denying asylum to a victim of severe domestic violence. Although that decision was subsequently vacated, the Bush administration has not indicated whether regulations will be issued governing these claims.
- **Failure to recognize gender-based claims.** INS inspectors and adjudicators who are entrusted with expedited removal determinations may fail to recognize gender-based

asylum claims. When the 1996 immigration law passed, some refugee advocates feared that asylum seekers with non-traditional claims - particularly women with gender-based asylum claims - might be turned away under expedited removal. (This fear was in part based on the fact that, even prior to expedited removal, Fauziya Kassindja's FGM-based asylum claim had initially been rejected by an immigration judge.¹¹) Unfortunately, this fear has proved justified. Although the Department of Justice subsequently issued a regulation instructing those who make expedited removal determinations to consider whether the claims are novel or unique,¹² given the expedited nature of these proceedings, it is likely that similar mistakes will continue to occur.

"Aracelis Gonzalez"

A victim of domestic violence

Ordered removed⁴

Aracelis, a victim of severe domestic violence, was ordered deported under expedited removal on August 14, 2000, even though the INS found her credible. She suffered from severe domestic violence in the Dominican Republic, including repeated beatings and rape, and fled in fear for her life. The INS's decision to deport her was apparently based on the fact that the INS officers who inter-

viewed her believed that she would not be able to articulate a claim for asylum based on gender-related persecution. Her deportation was averted after the Lawyers Committee and several U.S. Senators complained to the INS about its decision to deport her under expedited removal. After several months in detention, she was released and has since been granted asylum.