



Kathleen Lohmar Exel

Kathleen Lohmar Exel is the Visiting Assistant Clinical Law Professor for the Immigration Law Practice Group at the University of St. Thomas Legal Services Clinic. She also supervises students as they prepare affirmative/defensive asylum cases and participate in representing detained immigrants.

Changes Needed in Asylum Law Affecting the Human Rights of Women

By Kathleen Lohmar Exel

Just who fits the definition of an asylum seeker and what are their rights? A person may seek asylum if s/he fits the definition of 'refugee' in The Immigration and Nationality Act (INA). To be eligible for asylum, a person must have been "... persecute[d] or have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."¹ When an individual in the United States proactively presents herself to the government through filing an application for asylum, the application is said to be affirmative. A defensive application is one filed by an individual as a form of relief to being deported while in removal proceedings in front of an immigration judge.

The Department of Homeland Security (DHS) has major responsibility for implementing immigration law, including issues related to asylum seekers. DHS was formed after September 11, 2001 by combining into one agency 22 separate agencies housed in 70 different buildings at 40 different locations. The most common subdivisions of DHS that an immigrant will encounter while in the United States are Citizenship and Immigration Services (CIS), Immigration Customs and Enforcement (ICE), Detention and Removal (DRO), and Customs and Border Patrol (CPB). CIS handles the affirmative asylum applications, work permits, and family reunification for asylees.

The new administration's statements and action on immigration are promising but limited

Due to the state of the U.S. economy, there is speculation that the Obama Administration will not have time to work with Congress on comprehensive immigration reform. But,

President Obama has said, "I am very committed to making [comprehensive immigration reform] happen. We are going to be convening [congressional] leadership on this issue so that we can start getting that legislation drawn up over the next several months."² Conceivably, there could be comprehensive reform in the next year, or at least in the next three years. In the meantime, there are some signs that the Obama Administration has already begun to make some changes to policies affecting the human rights of women.

In January, the State Department contributed \$125 million to the United Nations High Commissioner for Refugees 2009 Fund for the benefit of refugees and other displaced people around the world.³ When President Obama signed the Children's Health Insurance Program Reauthorization Act in February, legal immigrant children and pregnant women became eligible for medical insurance, provided that the state in which they reside wants to extend it to them.⁴ And although at least one workplace raid has taken place, Janet Napolitano—the new DHS Secretary—ordered a review of the raid, and President Obama has signaled that he wants to shift policy to focus more on employers who hire undocumented workers rather than work-site enforcement.

Actions Needed to Ensure Human Rights to Women Asylum Seekers and Asylees

The above developments have the potential to positively impact the lives of women immigrants, but none of them currently help women asylum seekers in the U.S. The following two issues affecting women asylum seekers—detention of families seeking asylum, and processing times for

reunification petitions – are ones that Congress, President Obama and DHS should address quickly. I am of the mind that if one among us is suffering – eventually we will all suffer.

Improve detention policies for families seeking asylum and other non-criminal detainees

No immigration detention facilities are located in MN, ND, or SD. As a result, most detained immigrants awaiting immigration hearings at the immigration court in Bloomington (the court with jurisdiction over the tri-state area) are kept at the Ramsey, Sherburne or Carver County Jails. While there, they are mixed in with the regular criminal prison population. One can argue that this practice is good for the local economy – the cost of housing a detained immigrant averages \$95.00 a day,⁵ and it is believed that the Federal Government pays \$1.7 billion dollars annually to over 400 facilities around the country to hold detainees.⁶ But, housing non-violent offenders (almost half of all immigration detainees have no criminal record and most who do have a record have already served their time)⁷ who pose no risk to the general public seems like a basic violation of human dignity. Not to mention that the money could be spent on other important programs or not spent at all.

In Minnesota, most asylum seekers are not detained. In other parts of the country, however, asylum seekers—especially women with children—are not so lucky. Many families are being housed at the T. Don Hutto Residential Center in Texas, a former medium-security prison operated by Corrections Corp of America, the largest private prison operator in the country.⁸ Major improvements have been made to the conditions of families living at this facility through a landmark ACLU settlement in 2007, but children are still being housed at the facility.⁹ One look at a baby's crib located next to jail bunk beds and five feet from an open toilet makes me think that we as a country should be doing a much better job of taking care of the most vulnerable asylum seekers on our soil. I am not a proponent for splitting the families up, but there are other less restrictive means of monitoring people¹⁰ and those means should be used in the place of housing families at family detention facilities. To learn more about the T. Don Hutto situation visit <http://theleastofthese-film.com>, which describes the documentary called 'The Least of These' premiering at the 2009 South by Southwest music and film festival.

Reunite mothers (and fathers) with their babies more quickly

Many of my clients find themselves forced to flee persecution without their children or spouse. Many of them wait years to be reunited with families and many may never see their loved ones again.

After an asylum application is adjudicated favorably, an asylee must then file a form I-730 Relative Petition to have their spouses and unmarried children (under age twenty-one at the time of filing the asylum application) follow them to the United States. Spouses and children already in the U.S. are usually granted derivative asylum when the principal applicant is granted asylum. One of my clients, who arrived in 2005 from a war-torn African country, was granted asylum relatively quickly in 2007, and filed I-730's for her children shortly thereafter. It was not until November 2008 that she received word that the petitions were approved.

She is now waiting for the U.S. Embassy in her home country to

interview her children and establish that they are her biological children. Then there will be medical exams, background checks and fingerprints to be taken care of. Back when we started the I-730 process we were told by a few contacts from resettlement agencies that it would take a minimum of one and a half years from filing to arrival. Now that it has been close to two years and there is no sign of the overseas process ending (nor is there any easy way to figure out where in the queue the petitions are at the Embassy), I cannot help but think of Martin Luther King, Jr.'s words in *Letter from a Birmingham Jail*, "Justice too long delayed is justice denied."¹¹ Children need their mothers, mothers need their children. When this client speaks of her children, it is often through tears, and she is always wistful when wondering when she will see her babies again. Her babies are in their teens now and she has missed out on four years of their lives.

Two CIS service centers process I-730's. According to the December 31, 2008 processing time schedules, one was processing I-730's within six months of receiving the petitions and the other was processing petitions filed on or before April 21, 2008.¹² Waiting six to ten months for an application to be processed does not sound too unreasonable, but when you couple that with the wait time for many asylum cases and the lack of transparency on wait times for the overseas process, it can literally be a lifetime of missed childhood moments that cannot be recovered. The new administration should push for faster response times to process the paperwork, both here and abroad, and make reuniting mothers and children a priority.

In conclusion, many more avenues exist for improvement within the asylum system.¹³ To borrow a theme from President Obama's nomination acceptance speech at the 2008 Democratic Convention,¹⁴ I think we as a collective country *are better than* housing non-violent/non-criminal offenders with the general county jail populations, *better than* keeping families in former prisons, and *better than* keeping families apart for years. Regardless of how people feel about immigrants – when I think of each individual as my mother, my sister, my daughter or my grandmother I know that we need to do a *better job* protecting and advocating for the women immigrants who have sought shelter among us.

¹ INA 101(a)(42).
² NPR Blog - Tell Me More, "Tweety Bird" [Eddie "Piolin" Sotelo] Interviews Obama [on February 12, 2009], Luis Clemens (February 20, 2009) accessed at http://www.npr.org/blogs/tellmemore/2009/02/tweety_bird_interviews_obama.html.

³ Department of State, *Media Note from the Office of the Spokesman* (January 27, 2009) accessed at www.state.gov/r/pa/prs/ps/2009/01/115466.htm.

⁴ NY Times, *Senate Approves Children's Health Bill*, Robert Pear (January 29, 2009).
⁵ *Id.*
⁶ *Id.*

⁷ *Id.*
⁸ "The Least of These" plot summary found at: <http://www.imdb.com/title/tt1326807/plotsummary>.

⁹ <http://www.detentionwatchnetwork.org/tndonhutto>.
¹⁰ N.B. Less restrictive programs include ISAP (Intensive Supervision Appearance Program) or Electronic Monitoring Devices. Both have their drawbacks, but are better and cheaper than family detention centers or family separation.

¹¹ Letter from a Birmingham Jail, Martin Luther King, Jr. (April 16, 1963) accessed at http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

¹² CIS Service Center processing time schedules found at <https://egov.uscis.gov/cris/processTimesDisplay.do?type=serviceCenter>.

¹³ The Advocates for Human Rights here in MN is a great organization to get involved with on asylum cases and issues of human rights for women; also, Human Rights First has produced a report called "How to Repair the U.S. Asylum System: Blueprint for the Next Administration" – access it at <http://www.humanrightsfirst.org/pdf/081204-ASY-asylum-blueprint.pdf>.

¹⁴ http://www.barackobama.com/2008/08/28/marks_of_senator_barack_obam_108.php.