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William J. Kovatch, Jr.,  
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William J. Kovatch, Jr. is an experienced litigator, with eight years experience litigating cases for the Federal Government. He has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization.

William J. Kovatch, Jr. is a member of the American Immigration Lawyers Association.

This newsletter is meant for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.

## IMMIGRATION LAW NEWSLETTER

### Asylum and Women's Issues

The United States is a society based on equality, and as such women enjoy a great number of freedoms. These can be freedoms not found in other areas of the world. Some cultures dictate what a woman can wear. Some dictate whom a woman can marry. When women subjected to these conditions come to the United States, some of them revel in the freedoms they have here. Some wish not to return to their home country and face the inequality there. In some instances, a claim for asylum may be the woman's only hope to avoid returning to her home country.

A person may be granted asylum in the United States if that person has a reasonable fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion. In addition, the person must show that the persecution is at the hands of the government, or that the government is unable or unwilling to protect the person from persecution.

When dealing with women's issues, the difficulty in making an asylum claim is often in framing the case in terms of one of the enumerated grounds. That is, when a woman faces persecution for failing to comply with discriminatory norms, does that amount to persecution based on race, religion, nationality, membership in a particular social group or political opinion?

In most of the cases involving asylum and women's issues, the petitioner seeks to show that the persecution is based on the petitioner's membership in a particular social group. The courts have found that in order for there to be a particular social group, the group members must share common, immutable characteristics. The characteristics must be either ones that the members cannot change, or that are so fundamental to the members' identity that they should not be required to change them.



In the case of Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993), for example, an Iranian woman made an asylum claim based on her refusal to wear the traditional chador, or face veil. The petitioner framed her claim as one involving her membership in the social group of Iranian women who refuse to conform to the country's gender-specific normal. The Third Circuit rejected her claim.

Petitioners have found greater success when the issue involves the right to marry. The U.S. Court of Appeals for the Ninth Circuit, for example, has held that persecution because of a marriage between faiths, races or nationalities does qualify for asylum. Faruk v. Ashcroft, 378 F.3d 940 (9<sup>th</sup> Cir. 2004); Baballah v. Ashcroft, 367 F.3d 1067 (9<sup>th</sup> Cir. 2004). In Faruk, the couple suffered attacks from family members and multiple threats of violence. The husband had been abducted and beaten. The wife had been physically attacked twice, and verbally assaulted. The court found this to be sufficient to establish past persecution. Moreover, because the police refused to help, the petitioners had shown that the government was unwilling to act.

In Al-Ghorbani v. Holder, 585 F.3f 980 (6<sup>th</sup> Cir. 2009), the U.S. Court of Appeals for the Sixth Circuit held that young, Westernized people who oppose Yemeni cultural and religious customs of prohibiting mixed class marriages and requiring parental consent, constituted a particular social group for the purposes of an asylum claim. The case involved a young couple from different social classes who had married in secret, and then threatened by the wife's family.

However, in Dia v. Mukasey, 292 Fed. Appx. 468 (6<sup>th</sup> Cir. 2008), the same court held that the speculation that a woman may face an honor killing for her marriage was not sufficient to show persecution. An honor killing is one where the family of a woman kills her because she dishonored the family by refusing an arranged marriage, or acting in an unchaste manner.

In Gao v. Gonzales, 440 F.3d 62 (3d Cir. 2006), the petitioner had been sold into marriage by her family. She tried to break off the engagement, but the fiance threatened to have the woman arrested by his uncle, who was a powerful local official. The woman hid, but her fiance found her, and again threatened her. Then, she fled again, and made it to the United States. The U.S. Court of Appeals for the Third Circuit held that women who were sold into marriage, regardless of whether the marriage happens, in an area where forced marriages are valid and enforceable, constitute a particular social class.

A year later, however, the Board of Immigration Appeals addressed Gao in the case of In re A-T, 2 I & N. Dec. 296 (BIA 2007). There, the Board rejected a claim of a particular social group defined as women who opposed arranged marriages. The BIA stated that it doubted whether such a group would have the social visibility that would make them readily identifiable.

Women who face repressive laws and cultures in their home countries may be able to seek protection from U.S. asylum law. But, to do so, a woman must face the challenge of demonstrating both that she will face persecution in her home country and that the persecution is based on one of the enumerated reasons. Insufficient evidence on either issue can doom an asylum claim. Asylum seekers must strive to present specific, credible evidence of the types of inhumane treatment they face upon their return country. They must also be able to show that the motives of the persecutors fit within the reasons as defined by the law. Finally, the petitioner often faces the challenge of showing either direct government involvement in the persecution, or that the government is unable or unwilling to protect the petitioner from the persecution. This last requirement can be particularly difficult where the conduct in question occurs on the part of family members who disapprove of the woman's behavior. ■