



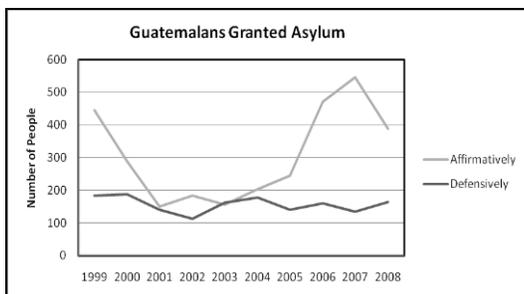
Guatemala Human Rights Commission / USA

Fact Sheet: Asylum

What is "Asylum"?

Asylum is the protection that a government grants to refugees and people seeking sanctuary who demonstrate a well-founded fear of persecution. Between 1991 and 1999, the highest number of applicants for US asylum came from Guatemala (37,986). To qualify for asylum, the applicant must meet the legal definition of a refugee according to the Immigration and Nationality Act (INA)¹:

- Past persecution and a valid fear of future persecution
- Government of home country is unable or unwilling to provide protection from persecution
- Internal relocation would not eliminate threat of persecution
- Persecution is based on *race, religion, nationality, political opinion, or membership in a particular social group*



(Source: "Yearbook of Immigration Statistics: Refugees and Asylees." Department of Homeland Security.)

Types of Asylum:

Affirmative: Individuals who are physically present in the U.S., regardless of their current immigration status, may apply for affirmative asylum:

1. The asylum seeker must submit an application to a Department of Homeland Security (DHS) Asylum Office within one year of arrival in the U.S. There are 8 offices around the country.
2. An asylum officer interviews the applicant and determines eligibility.
3. If denied asylum, the applicant is referred to an immigration judge for a final decision. He/she has the right to appeal; if denied again, he/she is placed in removal proceedings and deported.

Defensive: Applicants already in removal proceedings may request asylum in order to remain in the U.S. (in defense of deportation).

1. Applicants request asylum before an immigration judge. As of June 2009, there were 233 immigration judges in the U.S.²
2. If the applicant is denied asylum, the immigration judge determines whether the applicant is eligible for any other forms of relief from removal.
3. If not eligible, the judge will order the individual removed from the U.S.
4. Under a 1996 law (IRIRA) a person subjected to extrajudicial removal (caught on the border crossing) is required to be held in detention until a judge rules on the asylum claim.

In 2009, 155 Guatemalans were granted asylum in the U.S., out of 3,250 claims filed, making Guatemala the third highest source of claims (following China and El Salvador respectively).

Problems Faced by Asylum Seekers:

- Far from their countries of origin, asylum seekers often face difficulties proving their identity or reason for fleeing. In many cases, judges must grant or deny asylum based solely on oral testimony.
- A lack of knowledge of the legal system and a lack of available interpreters can cause delays in asylum cases.
- A backlog of cases in immigration courts can drag cases out for years. As of April 2009, the backlog included 201,212 cases.³
- An option for legal representation is not provided by the government (as it is in criminal courts). Thus, asylum seekers must obtain resources to hire lawyers or find pro-bono representation. **In 2009, GHRC supported 36 cases with affidavits and expert testimony. GHRC especially supports cases of violence against women, victims of gang violence, and political persecution.**



*In 2008, 378,582 immigrants were detained in the U.S., a 22% increase from 2007. Approximately 10% of those detained were Guatemalan.*⁴

GHRC Recommendations:

- Asylum seekers and their families should not be detained in jail-like facilities. GHRC recommends releasing asylum seekers from detention on parole or through an immigration court custody hearing, or to a supervised release program.
- The Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE), should take the necessary steps to improve the provision of healthcare at all facilities where asylum seekers are held. Asylum seekers should be provided adequate safeguards in detention, such as procedures to ensure review by a court.

U.S. Asylum Statistics for Guatemalan Nationals

Year	# of Applications	# Granted Asylum	% Granted Asylum
1997	7,936	172	2.0%
1998	9,267	203	2.2%
1999	7,097	184	2.1%
2003	2,413	162	7.2%
2004	3,464	177	5.6%
2005	3,448	140	5.0%
2006	5,060	160	5.0%
2007	8,078	134	3.0%
2008	5,058	163	3.7%
2009	3,458	155	4.5%

(Source: US Department of Justice Executive Office for Immigration Review, Office of Planning and Analysis Immigration Courts)

Case Study: Rodi Alvarado Peña, Seeking Asylum in the United States



In an interview with the New York Times, Alvarado said, in Spanish, "I thank God it came out well, but it wasn't easy to wait this long for immigration to make a decision." Alvarado left two children with her parents in Guatemala when she fled, and has missed seeing them grow up. "It has been tremendously painful for me to know that they do not see me as their mother."

Background:

Rodi Alvarado Peña fled her home in Guatemala after enduring 10 years of abuse from her husband. She came to the United States in 1995, hoping to receive asylum.

In May 1995, the US Immigration and Naturalization Service (INS) issued guidelines recognizing gender-related violence as a legitimate basis for asylum.

1996: Rodi Alvarado Peña was granted asylum with the help of volunteer attorney representation in California.

1999: The Board of Immigration Appeals (BIA) reversed the asylum decision and ordered that Alvarado be deported to Guatemala, despite recognizing the extent of abuse that she suffered and the lack of protection she received from the Guatemalan government.

2001: Then-Attorney General Janet Reno threw out the BIA's ruling, but did not grant Alvarado asylum. Instead, Reno ordered that a new decision be made. Despite several reviews of the case in 2004 and 2008, a new decision was never reached under the Bush administration.

2009: In October, under the Obama administration's Attorney General Eric Holder, the Department of Homeland Security (DHS) filed a document stating that Alvarado is "eligible for asylum and merits a grant of asylum."

Alvarado's case still requires an immigration judge to order a granting of asylum, but the DHS's filing in support of asylum makes it extremely likely that asylum will be granted.

However, Alvarado is not the only one. A report by the United Nations found that 36% of women in Guatemala who live with a male partner suffer domestic abuse, and an estimated 90% of domestic abuse cases are never reported (2005).

Alvarado's case sets a precedent that violence against women be viewed as a basis for asylum, as stipulated by the Department of Homeland Security. According to a spokesperson for the department, the specific terms for asylum based on violence against women are currently being clarified in legislation.

Sources:

- Washington College of Law at American University
<http://www.wcl.american.edu/hrbrief/07/2legislafocus.cfm>
- The New York Times
<http://www.nytimes.com/2009/10/30/us/30asylum.html?scp=1&sq=Rodi%20Alvarado%20Pe%C3%B1a&st=cse>

¹ Immigration and Nationality Act (INA) § 101 (a)(42)(A) 8USC § 1101 (a)(42)(A)
http://www.azlawhelp.org/articles_info.cfm?sc=50&mc=10&articleid=145

² "Immigration Courts Make Do," Center for Investigative Reporting, June 30, 2009.

³ Ibid.

⁴ Department of Homeland Security, Immigration Enforcement Actions: 2008

Founded in 1982, the Guatemala Human Rights Commission/USA (GHRC) is a nonprofit, nonpartisan, humanitarian organization that monitors, documents, and reports on the human rights situation in Guatemala, advocates for survivors of human rights abuses in Guatemala, and works toward positive, systemic change.