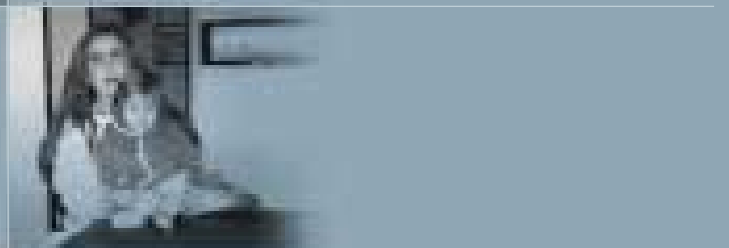




Refugee Women At Risk

Unfair U.S. Laws Hurt Asylum Seekers



AMERICAN COMMITTEE
FOR HUMAN RIGHTS

Lawyers Committee for Human Rights

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III. The Asylum Filing Deadline

The 1996 immigration law imposes a filing deadline on asylum applications. An asylum seeker in the U.S. must file an asylum application within one year of her arrival or she will be barred from obtaining asylum

“I had never heard of the word ‘asylum’ before ”

– “Sameera Kuttab,” a young Jordanian woman who feared “honor killing” and only learned about asylum several years after her arrival in the U.S.

unless she qualifies for one of two exceptions. An exception is met only in the case of either “changed circumstances that materially affect eligibility” for asylum or “extraordinary circumstances relating to the delay in filing” the application. Since the filing deadline has been in effect, more than 13,000 asylum seekers have had their claims rejected by the INS based on the filing deadline.

"Sameera Kuttab"

A Jordanian woman who fears honor killing

Denied asylum due to filing deadline¹²

Sameera came to the U.S. in August 1996 to visit her family. She subsequently learned that she was pregnant and became very afraid that the men in her family would kill her for dishonoring the family by becoming pregnant while not married. Sameera could not return to Jordan because she feared she would be killed, but she was also afraid that she would be in danger from family members in the U.S. She left her family secretly and lived in hiding until her child was born. She felt isolated because the people hiding her did not speak Arabic, and she could not associate with the close-knit Arab community for fear that her family would then learn her whereabouts. For the next few years, she lived

in a series of shelters and relied on the charity of several new friends who housed her as she struggled to care for her young child. She repeatedly sought legal assistance, but did not have the money to pay for a lawyer. She called more than 20 different phone numbers seeking assistance, but was not given any help. She only learned that she might have an asylum claim after she contacted a pro bono organization that helped her find a volunteer attorney. But the INS asylum office rejected her asylum claim based on the one-year filing deadline. Eventually, with the help of her pro bono lawyer, Sameera made her case to an immigration judge and was granted asylum.

An analysis of asylum statistics conducted by two academic experts revealed that the percentage of asylum seekers who are found by the INS to not satisfy the exceptions to the filing deadline actually increased – from 37% in fiscal 1998, to 39% in fiscal 1999, to 42% in fiscal 2000, to 52% in fiscal 2001 – indicating that “as rejections of late filers became a bureaucratic routine rather than a new and therefore closely observed procedure, asylum officers may have become more deadened to the injustice of their rejection decisions.”²¹

The filing deadline has become a barrier to asylum for many genuine refugees. Refugee women – who may be suffering from the effects of abuse, may be caring for young children, or may not even know that they may be able to seek asylum based on gender-related harms – face some particular challenges as a result of the filing deadline.

- **Difficulty seeking legal representation.** Many genuine refugees arrive in this country unable to speak English, unfamiliar with our legal system, and unable to afford food and housing, let alone legal counsel. Finding legal representation can be difficult to impossible. A May 2000 report issued by Georgetown University revealed that fewer than one in four asylum applicants is represented at the initial asylum office stage.²² The difficulty of obtaining legal representation and navigating a legal system in another language is compounded for women who come from cultures where they may have been deprived of educational opportunities or prohibited from interacting with governmental or legal authorities.
- **Responsibility for children and basic needs.** The difficulties women face in meeting the filing deadline are exacerbated for those who are alone or who bear primary responsibility for young children. Basic needs, such as food, shelter, medical treatment, and stable

"Oumou Amine"

A woman from Mali threatened with genital mutilation

Denied asylum due to filing deadline¹⁴

Oumou came to the U.S. in 1990 to visit her older sister, but then learned that if she returned home to Mali, she would be forced into an arranged marriage and would have to undergo female genital mutilation. In fear, Oumou remained in the U.S. She did not apply for asylum. Asylum based on fear of FGM was not officially recognized by the Board of Immigration Appeals until 1996. In February 1998, Oumou's parents informed her that

they had arranged another marriage. While initially unaware that political asylum had become an option for her, Oumou finally consulted an attorney and applied for asylum in August 1999. The Immigration Judge found that Oumou faced a clear probability of persecution in Mali, and withheld her removal, but denied Ms. Amine's asylum claim based on the filing deadline.

care for children will often take priority over locating resources needed to approach the legal system.

- **Particular difficulty for traumatized women.** Many asylum seekers arrive in this country still suffering from the effects of the torture or persecution they have faced. Women who are torture or rape survivors are often traumatized, and as a result may find it difficult to apply for asylum – a process which will require them to revisit in detail the mistreatment they have suffered. Medical experts have confirmed this problem – noting the case of a rape survivor, who still suffered from the effects of her torture several years later, and was only able to discuss her abuse in order to apply for asylum after she had been in therapeutic care.²³ Despite the fact that those who are suffering from the effects of torture should qualify for an exception to the filing deadline, survivors of torture and trauma have been denied asylum as a result of the filing deadline.
- **Women may not know they are eligible for asylum.** As stated earlier, women with gender-based asylum claims – including claims relating to “honor killings,” domestic violence, female genital mutilation and other harms – may be unaware of their potential eligibility for asylum. As a result women with deserving asylum claims – like “*Oumou Amine*” who sought asylum based on her fear of FGM (see previous page) – have been denied asylum based on the filing deadline.

"Suhaila Karim"

An Afghan woman who feared honor killing

Denied asylum due to filing deadline¹⁵

Suhaila and her family fled Afghanistan for Pakistan in late 1996 after her brother-in-law was murdered and her father was arrested and tortured. Suhaila came to the U.S. in January 1998 after her family arranged for her to marry a U.S. citizen of Afghan origin. However, when she arrived in the U.S., the man refused to marry her. Suhaila subsequently developed a romantic relationship with another man in the U.S. and they had two children together out of wedlock. The first child was born in the fall of 1998 and the second in the spring of 2000. Suhaila was terrified to return to Afghanistan or Pakistan, as having

children out of wedlock is a serious violation of Islamic rules according to both the Taliban and her family. She feared that she would face death by an honor killing. Suhaila was not aware that she could apply for asylum until she consulted with an attorney. She then filed for asylum in December 2000. While the Immigration Judge withheld her removal after finding that she faced a clear probability of persecution in both Afghanistan and Pakistan, the judge denied her asylum claim based on the one-year filing deadline.

IV. Conclusion and Recommendations

The United States has had a proud tradition of protecting refugees, and has set an example for other countries in protecting women from gender-related violence. But U.S. leadership in this area has been undermined by the barriers imposed by the 1996 immigration law. Refugee women who flee from gender-based harm may be particularly vulnerable to these barriers, but the impact of these provisions on all refugees is cause for serious concern. The U.S. should restore fairness to the process so that vulnerable refugees, like the women profiled in this report, are not unfairly denied a safe haven in this country.

The Lawyers Committee recommends that the following reforms be made to the expedited removal, detention and filing deadline provisions of U.S. law.

- **Limit expedited removal to immigration emergencies.** Congress should sharply restrict the use of expedited removal to extraordinary migration situations. It should ensure that additional safeguards are included in those situations where expedited removal is authorized. These safeguards, which should include immigration judge review of all removal orders, will reduce the risk of mistaken deportations.
- **Restore due process.** The decision to deport an asylum seeker or other individual who arrives without proper documents should not be entrusted to immigration enforcement officers at the airport or border. Instead, these decisions should be made by trained immigration judges in fair proceedings that afford individuals the right to legal representation and the opportunity to have decisions reviewed on appeal.
- **Improve conduct of secondary inspection.** The INS must reform its conduct of secondary inspection and dramatically improve the training of inspectors. Women should generally be interviewed by female officers and female interpreters. The INS should cease the practice of handcuffing and shackling women and other people who do not constitute a risk to others.
- **Clarify detention policies.** Congress should clarify that the policy of the United States generally is not to detain asylum seekers who pose no risk to the community, and in particular not to detain asylum seekers who have met the “credible fear” standard by establishing a significant possibility of winning asylum. Any exceptions to this general rule should be narrowly tailored. These changes would ensure that U.S. law is consistent with American tradition and international standards.

- **Reform parole procedures.** The Department of Justice should issue regulations providing for immigration judge review of decisions to detain asylum seekers, and periodic review of detention determinations. These regulations should also specify the criteria to be considered in evaluating decisions to detain, and should make clear that asylum seekers who meet the “credible fear” standard and pose no danger to the community should generally be released. Congress should require that the Department of Justice issue such regulations. The regulations should specifically provide for the parole of women and men who are responsible for the care of children and for the parole of families. The INS should no longer be permitted to issue only guidelines – rather than regulations – on parole of asylum seekers, as this practice has repeatedly proven insufficient to ensure accountability and compliance by local INS districts.
- **Alternatives to detention.** Asylum seekers should generally not be detained. In those cases in which it is determined that some degree of supervision is needed, the INS should be required to consider alternatives to detention, including supervised release, and for women with children, release to family, friends, or facilities operated by non-profit agencies.
- **Improve Detention Conditions.** Asylum seekers should not be housed with criminals or in remote county and local jails. The Department of Justice should issue regulations codifying its detention standards. All asylum seekers should be provided with appropriate medical care, including professional counseling for survivors of torture, rape or gender-based persecution. All detention facilities should be staffed with female officers and with female health care staff. Adequate visitation, including contact visits with children and other family members, should be permitted.
- **Eliminate the one-year filing deadline.** Congress should eliminate the one-year asylum filing deadline. At the very least, the filing deadline should be eliminated in affirmative asylum applications, and the fact that an application has been filed more than one year after arrival should be considered a negative discretionary factor, subject to a good-cause exception, in connection with asylum applications filed defensively before immigration judges.

Changes made by the U.S. government in the wake of September 11, including changes to the immigration appellate process, have further eroded the fairness of the U.S. asylum system. The transfer of the INS to the Department of Homeland Security will leave asylum seekers in an even more vulnerable position. Restoring fairness to the asylum process is more important than ever. A fair asylum system is essential to ensure that the U.S. lives up to its obligation to protect the victims of human rights abuses who flee to its shores in search of refuge.