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Slamming the Door on Domestic Violence Survivors: *Matter of A-B-*

Background

When former Attorney General Jeff Sessions exercised a rarely used privilege and certified an approved asylum application referred to as “*Matter of A-B-*” for review, he began a process of unraveling decades of legal precedent protecting women from violence.¹ The applicant in that case, Ms. A.B., had credibly testified that she had endured 15 years of abuse by her husband including beatings, rapes, and specific, detailed threats on her life. She had fled to different parts of El Salvador, divorced her husband, and twice taken out restraining orders against him, yet her husband continued to track her down and abuse her without consequence.

While the immigration judge denied her claim, the Board of Immigration Appeals (“BIA”) found that protection was warranted based on established legal precedent and the horrific violence Ms. A.B. had endured. On June 11, 2018, Sessions reversed the BIA’s grant of asylum to Ms. A.B., vacated the previously controlling BIA precedent decision in *Matter of A-R-C-G-* (BIA 2014), and effectively slammed the door in the face of women seeking asylum protection from domestic violence.

Current Status

While the use of Sessions’ *Matter of A-B-* ruling is currently enjoined in credible fear screenings, it continues to be applied in asylum decisions on the merits, leading to widely disparate outcomes that have resulted in domestic violence survivors being deported to persecution or death.

Matter of A-B- Found Unlawful as Applied to Credible Fear Screenings (*Grace v. Whitaker*)

In December 2018, the D.C. district court granted a nationwide injunction requested by the Center for Gender and Refugee Studies (CGRS) and co-counsel which blocked the application of the legal standards articulated in *Matter of A-B-* in credible fear interviews, the initial screening process for asylum seekers. In *Grace v. Whitaker*,² **the federal district court found the *Matter of A-B-* standards inconsistent with existing legal precedents and Congressional intent behind the enactment of the Refugee Act of 1980**, which was to bring the U.S. into compliance with its international treaty obligations. Today the injunction remains in effect, prohibiting asylum officers from using the *Matter of A-B-* standards in the credible fear process.³

Matter of A-B- Still Applies to All Merits Decisions

Both the Department of Homeland Security in its training of asylum officers and the Department of Justice in its guidance to immigration judges and the BIA have instructed that *Matter of A-B-* must be used in adjudicating asylum claims on their merits. As a result, many adjudicators summarily foreclose protection in these cases as a “matter of law,” denying asylum based on Sessions’ poorly reasoned decision without conducting the individualized, case-by-case analysis that is required. In fact, following the issuance of *Matter of A-B-* asylum grant rates for individuals from El Salvador, Guatemala, and

¹ See e.g., Blaine Bookey, *Gender-based Asylum Post-Matter of A-R-C-G-: Evolving Standards of the Law*, 1 Southwestern J. Int’l L. 22 (2016); Karen Musalo, *Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law*, Harvard International Review (2014)

² *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018)

³ The government has appealed the *Grace* decision, which remains pending at the D.C. Circuit.

Honduras fell to an average of 15 percent compared to a 24 percent grant rate in the year prior to the decision.⁴ All other countries saw virtually no change in grant rates during that time frame.

Ms. A.B.'s case

Ms. A.B.'s case is pending at the BIA, and she remains in the United States, uncertain of her future and terrified that she may be returned to El Salvador. "For me to go back, I don't even want to think about it," she has said. "I might end up like other women who are no longer here to tell their story."

Recommendations for the Next Administration

Congress passed the Refugee Protection Act of 1980 to bring the U.S. into compliance with its international treaty obligations as a party to the UN Convention on Refugees (1967 Protocol). Accordingly, interpretation of or changes to U.S. asylum law should comport with UNHCR guidelines and principles. While a nation has the sovereign right to decide who can enter and remain in its country, these policies must be consistent with treaty obligations. In this case, UN guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, as they were in Ms. A.B.'s case. **On this basis, CGRS requests that the next President adhere to international guidelines and principles to solve the issues created by the *Matter of A-B-* decision and do the following:**

Rescind *Matter of A-B-*: As the Judge in the *Grace* case found, *Matter of A-B-* is inconsistent with Congressional intent. Moreover, the consequences of continuing to implement *Matter of A-B-* are a matter of life and death for domestic violence survivors. Accordingly, the next President should direct the Attorney General to rescind the decision and make it clear that the U.S. will not turn its back on desperate women and children fleeing violence in their homes and communities, enabled by indifferent or complicit governments.

Improve asylum decision-making with regulations to correct and clarify erroneous interpretations of the refugee definition: Inconsistent interpretations of the "particular social group" and the "nexus" or "on account of" language in the refugee definition found in the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)) have led to disparate results in U.S. asylum jurisprudence. Simple rulemaking could clarify the particular social group definition and the requirements for establishing nexus in line with international law. This would prevent continuing confusion and wasted resources due to anti-immigrant, anti-woman, policy-oriented new interpretations, such as the one in *Matter of A-B-*, which result in numerous appeals and remands in the already overburdened immigration court system.

For Further Information

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Additional resources

- [Full text](#) of *Matter of A-B-*
- [Full text](#) of *Grace v. Whitaker*
- Additional [information about CGRS](#)
- [Video interview](#) with Ms. A.B.

⁴ According to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC) Asylum Decision tool, available at <https://trac.syr.edu/phptools/immigration/asylum/>.