



Protecting Immigrant
Women and Girls
Fleeing Violence

April 14, 2011

Gerald S. Hartman
Barbara McDowell and Gerald S. Hartman Foundation
3607 Whispering Lane
c/o Gerald S. Hartman
Falls Church, VA 22041

Re: Six-month Progress Report for the "Matter of MA"

Dear Mr. Hartman:

On behalf of the Tahirih Justice Center (Tahirih), I am writing to submit a six-month progress report regarding the \$2,500 grant from the Barbara McDowell and Gerald S. Hartman Foundation to support Tahirih's litigation aimed at defining domestic violence in appropriate cases as persecution sufficient to establish grounds for refugee status (and thus, a grant of asylum) under US law. This case is positioned to establish precedent and create a systemic impact that will protect immigrant women from violence.

I. A description of the litigation, including the case name of the opposing party(ies), the expected duration of the litigation, and its goals:

Name: *Matter of MA*; Opposing party: US government; Duration: the unpredictable nature of the Board of Immigration Appeals (BIA) docket makes it hard to estimate – it could be anywhere from 6 months to 10 years; Goal: establish precedent re: domestic violence as grounds for asylum.

Since 1996, when gender-based persecution was first recognized as grounds for asylum in the United States in a precedent-setting case decided by the BIA in which Tahirih's Executive Director was involved (*Matter of Kasinga*, involving female genital mutilation), the law has precariously progressed to accept certain forms of violence against women as a valid basis for protection under US law. However, in recent years, advocates have seen a disturbing stagnation and even some regression in the treatment of asylum claims by women and girls seeking protection, particularly from domestic violence.

Efforts to establish precedent and clarify domestic violence as a basis for asylum have proven unsuccessful in the past. The high profile case of *Matter of RA* was poised to establish precedent and languished in the immigration court system for 14 years. It was denied by the highest immigration appellate court (the BIA), vacated by one Attorney General and put on hold to await the issuance of regulations to govern such claims, reviewed by two other Attorneys General, remanded to the BIA, and finally remanded back to an immigration judge who issued a simple one paragraph decision, which held no precedential value. Without clear and binding guidance to resolve the novel and complex issues that asylum claims by domestic violence victims have raised, inconsistent and incoherent decision-making around the country is taking this field of law dangerously off-course, preventing women and girls fleeing persecution from receiving justice in the United States.

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With the support of the Barbara McDowell and Gerald S. Hartman Foundation, Tahirih is continuing to pursue a case now at the BIA which is well-positioned to establish precedent in this area. It is the case of "Maria."

In 2000, when Maria was almost sixteen, members of a gang robbed her family's home in the early evening. The supervising police officer "Juan" took an interest in Maria. He told the family that he needed time alone with her to gather information from the witness of the crime. At first, he would take her on police jobs and flirt with her. After a few outings, he took her to a field behind a building and raped her; she told no one. Juan continued to take Maria out on fake investigations and rape her in the months that followed and, eventually, she got pregnant. Without Maria's consent, Juan arranged with her mother for Maria to live with him; the violence quickly worsened. He would punch her in the face with his fists until she fell down, and then kick her while she was on the ground. One time he whipped Maria with his belt and then strangled her with it until she almost passed out. Juan's abuse was well-known to his police colleagues. On numerous occasions, Maria went to Juan's supervisors and colleagues to ask for help. They refused to intervene. In an unusual display of courage and tenacity, Maria hired a lawyer and retained a restraining order. She went to the courts on several occasions to receive protection from Juan but to no avail. She tried to escape him several times, but he would forcibly return her, often using his police car and uniform. He told Maria that he wanted to kill her.

Maria knew that she could no longer stay in the country and fled to the United States. She has since heard stories of Juan's violence towards her family in retaliation for her escape and his vows to find her. Her case is a strong illustration of the failure of the current state of the law to clearly establish domestic violence as grounds for gender-based asylum.

2. The progress of the case for which the grant was made:

At the time of our proposal, Maria had applied for asylum and been denied asylum by an Immigration Judge. Her case has been appealed and is now pending at the BIA. We have requested oral arguments and continue to advocate with government lawyers representing the US Dept. of Justice for her grant of asylum. Informally and "off the record," the Board of Immigration Appeals has indicated that they do not intend to address gender-based violence related cases until the government issues regulations intended to provide overall guidance for such asylum claims. Therefore, Maria's case may remain relatively dormant until federal regulations are issued.

In the interim, Tahirih has worked to maintain the case; we have helped Maria to secure her Employment Authorization Document annually and are working with the Deportation and Removal Office to try to extend the time between the client's mandatory check-ins. In addition, the lead attorney has undertaken professional development opportunities, including a full-day training regarding the appeals process in which she was able to interact and gain insight from members of the BIA including David Neal, Acting Chairman of the BIA, in order to remain at the forefront of this cutting edge area of immigration law.

In addition to the direct work on this case performed during this reporting period, Tahirih public policy staff are co-leading a national effort to promote the issuance of the regulations that would spur the adjudication of Maria's case and/or legislation that would provide similar guidance. In partnership with the Center for Gender and Refugee Studies (CGRS) Tahirih was consulted for our expertise by senior House Judiciary staffers about legislation they were developing to clarify the legal framework to be applied to gender-based asylum claims, among other asylum reform questions affecting women refugees. After much discussion with the staffers, and after convening conference calls among expert colleagues, Tahirih and CGRS succeeded in convincing the staffers not to pursue some particularly problematic

approaches. Instead, the staffers agreed to adopt the language from a companion Senate bill (the Refugee Protection Act) that Tahirih and CGRS had carefully developed through co-chairing a national expert working group over the past two years.

Tahirih is continuing to work closely with Judiciary staff in the House and Senate on the development of asylum reform legislation, which, if passed, would be tremendously beneficial to Tahirih's clients. In addition to clarifying the legal framework applied to gender-based claims, the bill would eliminate the arbitrary one-year filing deadline that bars many deserving asylum-seekers from protection, and also make changes to the rules that govern when an asylum-seeker may obtain work authorization. This would have a direct impact on Maria's case.

Tahirih is also serving as a critical liaison between the asylum advocacy community and the domestic violence/sexual assault advocacy community on legislative proposals of potential shared interest and concern. In addition to being a key member of the Asylum Working Group, Tahirih serves on the policy committee of the National Network to End Violence Against Immigrant Women (NNEVIW), and wearing those dual hats, Tahirih has succeeded in leveraging a number of synergies between advocacy efforts, including securing the inclusion of a number of provisions related to gender-based asylum in the package of legislative amendments being offered by NNEVIW for the reauthorization of the Violence Against Women Act (anticipated to occur in 2011).

We have also done extensive public education and outreach to build awareness through our 2009 report, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*, including by making a panel presentation at a law school colloquium hosted by Pennsylvania State alongside the senior counsel to Senator Patrick Leahy (lead champion of the Refugee Protection Act). Finally, Tahirih has also been conducting further research into the harsh implications of the one-year filing deadline for women asylum-seekers (particularly for domestic violence victims who, due to the lack of clarity in the law, may be unaware that the violence they escaped could qualify them for asylum), and into the inadequacies of a lesser form of protection, "withholding of removal," to which some women with domestic violence-based asylum claims may be relegated (again, because of the current lack of clarity in the law with respect to domestic violence victims' eligibility for asylum).

3. How the grant money was applied to the project

To date, a total of \$969.87 has been spent on the grant. Please find a detailed description of Grant Expenditures to Date in the Attachments.

4. The names of the attorneys who would be working on the litigation and their relevant experience

Ms. Morgan Weibel, who joined Tahirih in March 2010 as an Immigration Staff Attorney, is the lead attorney on the case, replacing Ms. Nirupa Narayan. Ms. Weibel received her BA from the University of California at Berkeley and her JD from the University of California, Hastings College of Law. Prior to joining Tahirih, Ms. Weibel served as a Graduate Research Fellow at the UC Hastings Center for Gender and Refugee Studies where she composed a protocol for the investigation of femicides (gender-motivated killings of women) to be used in regional trainings throughout Central America and assisted in updating sections of a course book on Refugee & Asylum Law related to membership in a particular social group and gender-based asylum claims.

In addition, Ms. Weibel's efforts on this impact litigation are supported and complemented by the efforts of Tahirih's Director of Public Policy, Jeanne Smoot, and other policy staff. Ms. Smoot is a national

expert on violence against immigrant women and, since 2003, has spearheaded Tahirih's innovative initiatives at the federal and state levels to press for laws, policies and precedent that enhance the legal rights of immigrant women and girls fleeing violence. Prior to joining Tahirih, Ms. Smoot managed the Harvard Program on Humanitarian Policy and Conflict Research (HPCR) and before HPCR, was a litigation associate at the law firm of Mintz, Levin. She received her J.D. from Harvard Law School and her Master's degree from the Fletcher School of Law and Diplomacy at Tufts University in 1999. In the summer of 1998, Ms. Smoot interned in the office of the Honorable David J. Scheffer, then the U.S. Ambassador-at-Large for War Crimes Issues.

Thank you for your support and for this opportunity to share our work. Your generosity is vital in enabling Tahirih to serve vulnerable immigrant women and girls fleeing violence. We are so grateful for your support and look forward to on-going collaboration in the future.

Sincerely,



Layli Miller-Muro, Executive Director

ATTACHMENT: Grant Expenditures to Date

Grant Expenditures to Date

CATEGORY	SUBTOTAL
Salary	\$596.00
Fringe Benefits	\$108.23
Occupancy	\$147.33
Management and Support	\$118.31
TOTAL	\$969.87