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Final Report Submitted to the Barbara McDowell and Gerald S. Hartman Foundation

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Overview

Thanks to support from the Barbara McDowell and Gerald S. Hartman Foundation, CGRS and our co-counsel have had great success in the case known as *Matter of R-P-* over the last year. We brought the case to the best possible posture for the asylum seeker, Ms. R-P-, while also advancing protections for immigrant women survivors of domestic violence more broadly. As previously reported, CGRS used the August 2014 landmark victory in *Matter of A-R-C-G-*¹ to convince the Board of Immigration Appeals (BIA) to remand Ms. R-P-'s case back to the immigration judge to provide her with another opportunity to present her claim for asylum under the new standard. In achieving this victory for Ms. R-P-, CGRS influenced how the BIA treats hundreds of cases of women asylum seekers with similar claims that had been previously denied and were stalled at the BIA pre-*A-R-C-G-*. Rather than adjudicating these cases as usual, the BIA had placed these appeals on hold due to the uncertainty surrounding the viability of asylum claims based on domestic violence. After the BIA definitively recognized domestic-violence-based asylum in *A-R-C-G-*, many women like Ms. R-P- are now being afforded a new chance to go forward with their cases in light of that positive precedent. In her hearing next year, Ms. R-P- thus stands not only to achieve protection for herself, but also to expand application of *A-R-C-G-*, which will lead to the protection of many other women and their children. CGRS's efforts in this regard could not come at a more critical juncture – the majority of Central American women and children who came to the U.S. in the recent “surge” are fleeing gender-based persecution and will rely on the materials and legal precedents of cases like Ms. R-P-.

Summary of the Selected Case Background

Ms. R-P- is a Mam Maya woman from Guatemala who suffered severe abuse at the hands of her father and her common law husband, a man 10 years her senior forced on her by her father when she was only 15 years old. Ms. R-P-'s common law husband starved, beat, raped and threatened her with death repeatedly until she fled to the United States, where she applied for asylum. An immigration judge denied Ms. R-P-'s asylum claim because she had filed her application more than one year after arriving in the United States. The judge found that her mental health status resulting from the trauma she endured in Guatemala did not excuse her failure to file within the one-year deadline. Although the judge found the severe domestic abuse she suffered constituted persecution and torture, he nonetheless denied withholding of removal (a related humanitarian protection that does not have a filing deadline). He held that the abuse she suffered was not on account of a statutorily protected ground. In other words, he found that Ms. R-P- was not persecuted for being a member of a “particular social group” or for her race—the two grounds she had argued applied to her case. Instead, the judge granted Ms. R-P- relief under the Convention Against Torture (CAT), as someone who will more likely than not be tortured if returned, and whose likely harm need not be inflicted for a protected reason. Unfortunately, however,

¹ *Matter of A-R-C-G-* represents a culmination of 15 years of CGRS advocacy. The legal rationale adopted by the BIA tracks closely the theories CGRS argued as counsel in the highly publicized *Matter of R-A-* and *Matter of L-R-* domestic violence cases that preceded *A-R-C-G-*, but which did not result in binding precedents. Moreover, CGRS intervened to assist counsel to Ms. C-G- and filed a critical amicus brief.

CAT does not entitle her to the same benefits as asylum. For example, it provides no path to permanent residency or citizenship and does not allow her to petition to bring her children. Thus, Ms. R-P- decided to appeal.

On appeal, the BIA initially upheld the judge's decision in its entirety. In March 2014, CGRS moved the BIA to reconsider its dismissal of Ms. R-P-'s case and simultaneously appealed the BIA's decision to the U.S. Court of Appeals for the Ninth Circuit. Among other points, CGRS argued in both the motion and the appeal that the BIA misapplied law on the particular social group standard, and that it failed to analyze some of the claims Ms. R-P- had advanced as it was required to do. In September 2014, CGRS filed a supplemental brief alerting the BIA that the intervening *A-R-C-G-* decision was applicable to Ms. R-P-'s case and supported our argument that the BIA reconsider and remand the *R-P-* case back to the immigration judge.

Although motions to reconsider are rarely successful, we prevailed. On November 21, 2014, the BIA granted the motion and sent the case back to the trial level for further proceedings. This was a huge victory for Ms. R-P- and a significantly positive development in our efforts to push for an expansive interpretation of the *A-R-C-G-* decision. The BIA accepted our arguments that it had erred in failing to consider all of Ms. R-P-'s social groups, including the group related to the partner abuse she suffered (defined by gender, nationality and marital status) and the group related to the domestic abuse her father inflicted (defined by her nuclear family). The BIA has given Ms. R-P- the chance to file additional supporting evidence and the judge the ability to fully reconsider his decision following the precedent-setting *A-R-C-G-* decision. The remand also presents the opportunity for the judge to revisit his decision on the one-year filing deadline for asylum.

After the BIA granted our motion for reconsideration and we secured the remand to the immigration judge, we successfully moved the Ninth Circuit to dismiss the appeal. Therefore, with her case back in front of the immigration judge, Ms. R-P- is in a strong position to finally achieve a grant of asylum. CGRS remains involved in her representation because of the important opportunity to advance asylum law for survivors of domestic violence through the proper application of *A-R-C-G-* to future cases.

Ms. R-P-'s next status hearing before the immigration judge is scheduled for 2016. We are working with co-counsel to pursue all available strategies to secure a grant of asylum for Ms. R-P-. Based on the positive precedent set in *A-R-C-G-*, our excellent bank of litigation resource materials and country conditions evidence, our access to top expert witnesses, and recent success we have secured on behalf of other women similarly situated, we are confident we will prevail on her behalf.

Conclusion

The success achieved to date in *Matter of R-P-* represents an advancement of the protections available to refugee women and their children fleeing domestic violence. Importantly, CGRS intervened to turn what stood to be a significant setback in the law into a victory for the client and a positive development for a broad class of women whose cases involve similar facts and procedural posture. The case continues to raise critical issues in asylum law concerning women survivors of domestic violence. While the landmark decision in *Matter of A-R-C-G-* is favorable to Ms. R-P-'s case, there remains resistance on the part of many adjudicators to recognize domestic violence asylum claims. Now that her case has been remanded to the immigration judge, Ms. R-P- is well-positioned to secure the protection her case merits. We will continue to be involved in this case and others that allow us the opportunity to educate immigration judges and government lawyers on the evolving area of gender asylum law.