

Exam for JUR1530 and JUR5530 - Refugee and Asylum Law

Spring 2007

Marisa is eighteen years old and grew up in Guatemala City, in Guatemala. She attended a hairdressing school and was hoping to graduate in the following year. She lived together with her father Antonio, who worked for a ship transport company servicing the banana export business. For six months, Marisa had been continually harassed by Domingo, a young man who lived in the same neighbourhood as Marisa. Domingo had recently been recruited into the Maras gang and Marisa was fearful, due to the group's involvement in crime. Domingo insisted that he was madly in love with Marisa and that he would not accept a refusal: "You will be mine, as I have claimed you!" Marisa suffered great anxiety as her cousin Guadalupe had rejected the advances of Domingo's friend, Jorge, a leader of the Maras gang. One afternoon, when Guadalupe was returning home from school, she was assaulted by two men who slashed her face with a knife, who revealed the cause of the attack: "This is a message from the Maras: That which is beautiful within our territory belongs to us. Should it be denied, it will cease to be beautiful." Guadalupe's mother was devastated by her daughter's disfigurement and tried unsuccessfully for one year to have the police investigate and prosecute the assailants. Due to the delays, and her fear that the Maras would target her for her attempts to attain justice, she migrated to Sweden with Guadalupe. The Maras sent word to the neighbourhood that the area had been "cleared" of the troublesome family that failed to submit to their authority.

Antonio contacted the Office of the Special Prosecutor, which responded that since Domingo had not committed a violent act against Marisa, they could not issue a protection order. They classified Guadalupe's attack as "due to personal problems" and indicated that Domingo suffered from "passion problems" that Marisa could take care of herself. "We don't have the time and resources to resolve people's love lives." said the investigator. He added that Antonio had brought the situation on himself by residing in an area controlled by the Maras: "You choose to live where they operate, then you risk these consequences." Antonio told Marisa that he was terrified that she would suffer the same fate as Guadalupe: "I cannot stand to wait here, knowing that the police will do nothing to prevent your sacrifice; such pain is intolerable for me!" Antonio arranged safe passage for himself and Marisa aboard a transport ship headed for Antwerp, Belgium. Upon arriving in Antwerp, Antonio sought out a temporary job to earn some money to travel to Sweden, where his sister and Guadalupe had received asylum. Antonio and Marisa stayed in Antwerp three months and then travelled by train to Stockholm, Sweden, where they lodged an asylum claim.

Question: You are a lawyer working for a legal aid service specializing in asylum law. 1) Please prepare a memo which sets forth whether Marisa would be considered a refugee under the Swedish Aliens Act and the EU Minimum Standards for Qualification as a Refugee or whether she could merit subsidiary protection. 2) You should also determine whether Marisa's father, Antonio, would also qualify for protection. 3) Finally, please address whether or not it is likely that the Swedish authorities will accept responsibility for processing the claim or whether they will send it back to Belgium. Please identify any arguments for retaining the case in Sweden. You should refer to your readings and cases within the memo. Good Luck!

The Annex contains an Excerpt from the Swedish Aliens Act, the EU Minimum Standards for Qualification as a Refugee and the EU Standards on Procedures, the UN Declaration on the Elimination of Violence against Women, and the US State Department Country Report on Guatemala for 2006.

Annex:

The Swedish Aliens Act 2006

Chapter 4. Refugees and persons otherwise in need of protection

Definitions

Section 1

In this Act 'refugee' means an alien who

- is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and

- is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country.

This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals.

Section 2

In this Act a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she 1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, 2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or 3. is unable to return to the country of origin because of an environmental disaster. The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

EU Minimum Standards for the Qualification as a Refugee:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

EU Standards on Procedures:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>

UN Declaration on the Elimination of Violence against Women:

<http://www.un.org/documents/ga/res/48/a48r104.htm>

US State Department Country Report on Guatemala:

<http://www.state.gov/g/drl/rls/hrrpt/2006/78893.htm>