

ASYLUM A BATTLE FOR CONNECTICUT IMMIGRANTS

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HARTFORD, Conn. -- Marie-Rose has scars on her legs and stories of rape and brutality from war-torn Burundi. When she asks for political asylum this week, that will be her only evidence.

On that alone, a federal judge must decide not only whether soldiers raped the 54-year-old woman, but whether they raped her for political reasons. If she was victimized simply because the African nation is embroiled in civil war, she will be sent back.

The odds are against her. Immigration judges in Connecticut are among the toughest in the nation when it comes to granting asylum, according to federal statistics.

The burden of proof is high. Immigrants must show persecution occurred for one of five reasons: race, religion, nationality, group membership or political opinion.

One set of rules governs all asylum claims, but judicial discretion has produced widely differing results. The numbers suggest that Marie-Rose has slightly better than a one-in-four chance of winning asylum in Connecticut, but would have as great as a 71 percent chance elsewhere.

For immigration attorneys, the disparity is maddening.

"It's very discouraging and very frustrating to tell a client that it's hardly even worth it to apply for asylum in this district," said Elizabeth Woike, who works for VIVE, Inc., which provides legal aid and shelter for refugees in Buffalo, N.Y.

Immigration judges in Buffalo granted 6 percent of asylum applications, a nationwide low according to U.S. Department of Justice data from the 2002 fiscal year, the most recent data available.

With a grant rate of 28 percent, Connecticut has the 11th lowest approval rate among 32 full-service immigration courts. It trails the 37 percent national average, and nearby courts in New York City (48 percent) and Boston (38 percent).

Meanwhile, Phoenix judges granted 71 percent of applications, and judges in Honolulu and San Francisco granted 57 percent.

"It's the nature of the human factor that goes into making these determinations," said Elaine Komis, a spokeswoman for the Executive Office for Immigration Review, an arm of the Justice Department.

Marie-Rose, whose identity is being protected because she is a rape victim, says she was targeted because of political strife between Tutsis and Hutus in Burundi. She is a Hutu, and a member of the Frodebu political party. The military is controlled by Tutsis.

In 1995, three soldiers armed with AK-47 assault rifles broke into Marie-Rose's home, according to her affidavit.

"They began to beat me and tear my clothes off," she said. "All three soldiers raped me, and one of them raped my daughter. . . I remember praying for us all to die."

Tutsi soldiers shot Marie-Rose's father. Her sister was burned alive inside. Now, a year after arriving in the United States on a visitor's visa, she says she still believes that soldiers are looking for her.

She even fears that a court-appointed translator might recognize her and tip off soldiers in Burundi, Hartford attorney Kristin Hoffman said.

But horror stories do not guarantee asylum.

"Immigration judges do not have the discretion to grant asylum if the person happens to be a good person or if they feel sorry for the person," Komis said.

More than 200,000 people, most of them civilians, have been killed in the Burundi civil war, and a judge could find that Marie-Rose was caught in the middle - and must return.

There's a joke in immigration circles: "They say, can you get a note from your persecutor, explaining why you were persecuted?" Hoffman said.

The sarcasm reflects the frustration of building an asylum case.

"A person who's being victimized knows why they're being victimized," Hoffman said.

It can be tough to sort out. Some qualify for asylum. Others have had terrifying experiences but do not qualify. Still, others want asylum protection just to get employment papers.

"The variety of decisions that one can get based on the same facts is shocking," said Alison Parker, a researcher at Human Rights Watch in New York. "The distinction between those fleeing civil conflict and those fleeing individual persecution does vary from state to state."

In Connecticut, federal data suggests, judges are becoming less likely to make that distinction. In three years, the number of asylum applications has increased 125 percent while the approval rate has fallen from 41 percent to 28 percent.

During the same period, courts in New York City, Phoenix, and Honolulu were among many that increased their approval rates.

Some experts suggested that asylum approval rates would be higher in courts where immigrants are likely to have a lawyer, but that correlation is not perfect.

San Francisco and Honolulu boast an above-average representation rate, but so do two of the toughest courts to win asylum: El Paso, Texas, and Imperial, Calif. Representation rates in Phoenix are below average.

"I don't think it's good to have a system of justice that seems more like a lottery than a merit-based system," said Benjamin Johnson, director of immigration policy at the American Immigration Law Foundation in Washington, D.C.

If a solution exists, nobody is clamoring to get it out. Judicial discretion creates discrepancies, but immigrant advocates fear any changes that might discourage using that discretion to help refugees.

Workers at VIVA in Buffalo have adapted to their court's tough stance on asylum. For those asylum-seekers who can afford it, workers advise them to look elsewhere:

"Do you have any friends in New York?" Woike said. "Do you have any friends in San Francisco? Phoenix? That would be great.

"We have the list. We use it here."