



Psychological Evaluations of Domestic Violence Victims in the Current Context of Asylum Proceedings

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Asylum proceedings in immigration courts are typically complex legal cases that require thorough knowledge of relevant legislation and international humanitarian treaties. Their complexity extends to the psychological factors occurring parallel to the legal proceedings. An emotionally and physically strenuous migration process, along with various levels of exposure to trauma prior to relocation, as well as the experience of being apprehended and detained in Immigration and Customs Enforcement (ICE) facilities are typical components of current asylum cases. Mental health providers may be required to provide services to asylum-seekers in a variety of roles and at different points throughout the course of legal proceedings. This article aims to discuss aspects of the forensic and clinical psychological assessment in asylum cases based on domestic violence claims and the role of expert witness testimony in immigration court.

Aside from educational credentials, relevant experience, and compliance with the ethical guidelines of their profession, forensic and clinical psychologists involved in asylum proceedings are required to have a basic understanding of the legal aspects of such cases. Recent case law and the current public debate with regards to proposed changes to immigration law are relevant aspects to consider when approaching asylum cases based on domestic violence claims. On June 11, 2018, former Attorney General Sessions (A.G.) issued a precedential decision in

Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018). The decision overruled a prior decision, Matter of A-R-C-G-, 26 I&N Dec.338 (BIA 2014), which held that in some circumstances, domestic violence survivors could receive asylum protection. A.G.'s decision to overrule the A-R-C-G- casted doubt on the viability of domestic violence-based asylum claims and, in general, on asylum claims involving non-state actors.

Although the A.G.'s overruling of the A-R-C-G- was merely dicta, it caused many adjudicators to be more reluctant to grant asylum in domestic violence-based claims. This type of asylum claim was already complicated and subject to interpretation. Challenges to asylum cases based on domestic violence claims prior to A-B- involved judges who were not willing to accept that domestic violence provisions applied to non-marital relationships and not just to couples who were officially married, and judges who would routinely deny cases involving non-traditional forms of domestic violence. Some judges still routinely deny claims involving consensual relationships, same-sex relationships, and non-marital relationships because they do not match the "A-R-C-G- group."

When enlisted to conduct a psychological evaluation of an asylum applicant with an alleged history of domestic violence, the psychologist is expected to assess and document the details of the abusive relationship as well as the impact on the applicant's functioning in the past and at the time of the assessment. Persecution due to membership in a particular social group (PSG) typically based on an immutable characteristic (race, ethnicity, religious affiliation, sexual orientation, nationality, political opinion) is expected to stand out as the central reason for the migration. The applicant must explain whether internal relocation was reasonably available to avoid future persecution and if such measure of self-protection was attempted. In cases where the persecutor is a non-governmental actor, the applicant must show that the harm or suffering was inflicted by persons or an organization that his or her home government is unwilling or unable to control. Many of the applicants are unaware of the fact that providing these details is a key component of sharing their migration story in a way that is relevant to their asylum proceedings. Although it is likely that some of this information will be evident in other documents included in the asylum application, the psychological evaluation is an opportunity for the applicant to describe the circumstances of their migration in more detailed and personal ways.

A typical asylum application includes official documents such as:

- The standard airport interview.
- The Credible Fear Interview (CFI).
- A written declaration (affidavit).
- The I-589 application.
- An oral testimony at the applicant's merits hearing.
- Information about the home country conditions.
- Medical and psychiatric records.

With the exception of the written declaration/personal affidavit, the completion of these documents rarely allows for ample descriptions or for self-reflection with regards to the development of potential emotional or functional issues. In many cases, the psychological evaluation is a unique window for the applicant to share these relevant details. Discussing confidentiality issues can reduce the level of "healthy paranoia" and give the applicant more control over the details they chose to share.

Assessment tools need to be determined based on thorough consideration of the applicant's level of literacy and exposure to formal education, prior exposure to testing situations, level of acculturation, language skills, potential functional impairment, and culturally sanctioned manifestations of emotional distress at the time of the administration. It is also expected that the resulting affidavit produced by the psychologist for the use of the immigration judge will identify relevant cultural factors (e.g., attitude toward victims of domestic violence in the applicant's home country, religious beliefs and their impact on domestic violence situations, societal norms placing applicant at risk for discrimination or persecution). The diagnostic conclusions and treatment recommendation section also typically include a discussion of potential risk for emotional or functional impairment associated with applicant's potential return to their home country.

With regards to conceptualizing asylum cases, it is helpful to use a model that places the persecutory actions within the context of a broader policy or practice. When collecting the data, the evaluator should inquire about attempts to seek governmental protection, and if no attempts were made, establish the potential reasons for such decision (e.g., perhaps doing so would have been unsafe or futile). When discussing potential options for relocation within the applicant's country of origin, it is important to be mindful that, from a legal standpoint, it is required that relocation options must be both safe and reasonable. If applicable, a discussion of the unreasonableness of relocation (e.g., a single mother with children may be unable to secure housing in an area without familial support or in some communities, it might be culturally unacceptable for single women to live alone) should be included. Living in hiding is not considered an acceptable form of relocation in most judicial districts.

From a forensic perspective, the issue of establishing nexus and credibility in asylum cases raises the issue of malingering, particularly in cases where memory disturbances and attention deficits prevent the applicant from providing a consistent cause-and-effect timeline and ample details about the circumstances of their migration. A thorough assessment of malingering is required as part of the diagnostic assessment and conclusion section of the report. Inconsistencies found between the data provided by the applicant during the psychological evaluation and the data available to the evaluator in the border-entry documents are very important to address because, without an explanation of what might account for them, the conclusions of the evaluation can be seen as irrelevant or unreliable.

Although the overruling of A-R-C-G- placed asylum cases based on grounds of domestic violence at an increased risk for denial, it is important to remain mindful that the Attorney General's decision is merely dicta. The Refugee Convention, the Immigration and Nationality Act (INA), and precedential case law at the Courts of Appeals and Board of Immigration Appeals (BIA) continue to support much of what the BIA previously held in A-R-C-G-.

Author's Biography:

Dr. Mihaela Dranoff, Ph.D., holds a master's degree in child and adolescent clinical psychology from Montclair State University and a Ph.D. in Clinical Psychology from Fairleigh Dickinson University. She has extensive experience as a clinical and forensic psychologist working with children and families in the context of abuse and neglect assessments, autism spectrum disorder and learning disabilities, child custody and parenting evaluations, and immigration-related assessments. Dranoff has been qualified and has served as an expert witness by the Superior Courts of New Jersey and New York State. She also serves as a pro bono provider of psychological evaluations for

Physicians for Human Rights. Dranoff also provides psychotherapy services to children and adults, employing the ecological model of child development and a family dynamics perspective. Prior to becoming the director of the Montclair Center for Psychological Services, Dranoff was employed at the Montclair State Center for Autism and Early Childhood Mental Health. She also completed a three-year postdoctoral clinical experience in a forensic practice specialized in immigration-related psychological assessment. Dranoff is a forensic psychological evaluator for the Division of Children's Protection and Permanency for the State of New Jersey and conducted forensic evaluations for the Division of Children's Protection and Permanency for the State of New Jersey. During her doctoral training, she completed clinical placements at the Fairleigh Dickinson Center for Psychological Services, Youth Development Clinic, Hackensack University Medical Center, and Youth Consultation Services. Dranoff has been an adjunct professor at Montclair State University since 2010. She teaches undergraduate and graduate courses in child development, issues in child advocacy, ethical issues in multicultural psychology, and abnormal psychology.