

Bruce Fein is a Washington, D.C.-based attorney who falls close to the "open borders" end of the spectrum of opinion on immigration. We thought our readers would like to see how far these ideas can take someone, together with an evaluation of his thought process. This item and a letter to the editor are reprinted from The Washington Times of June 1 and June 8, 1994.

Seeking a Fair Deal for Women Refugees

By Bruce Fein

Post-revolutionary Iran is emblematic of the persecution that millions of women abroad confront — women who should be entitled to asylum in the United States.

As documented by Halah Afsher's investigations of the plight of Iranian women, Ayatollah Khomeini inaugurated laws that "reduced them to the status of privatized sex objects required by the new religious order to be at the disposal of their husbands at all times."

Halah Afsher noted that "[t]heir mere presence in public was described as 'seditious,' and 'they were required to don the Islamic *hijab*, covering them from top to toe and to return to the home.'" Infractions of the dress code were made punishable by 74 lashes. The testimony of women was rendered inadmissible in court unless corroborated by men, and those who were temerarious enough to give evidence were presumed mendacious and exposed to punishment for slander.

The statute in the United States governing asylum needs amending to ensure a square deal for females fleeing from persecution like that in Iran. The current law is too uncertain, it invites caprice and delay in addressing asylum claims founded on gender discrimination, and denies women guidance in gathering evidence to support their cases. Congress should awaken to the widespread androcentric and occasionally misogynist character of the global economy.

The Refugee Act of 1980 entitles persons to asylum in the United States if they are unwilling to return to the native lands "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." The law is administered by the Immigration and Naturalization Service, an agency neither renowned for mastery of conditions overseas nor for attracting keen and acute minds.

Gender-based claims of persecution have been presented to INS on the awkward theory that common gender constitutes "membership in a particular social group." Generally speaking that theory has won acceptance, although a federal court of appeals in *INS v. Gomez* (1991) declared: "Possession of broadly based characteristics such as youth and gender will not

by itself endow individuals with membership in a particular social group." That declaration seems persuasive because otherwise the concept of social group would make redundant the preceding categories of race and nationality.

Legal clarity is urgent in asylum law. Many will shun the daunting hazards of flight from persecution abroad if their qualification for asylum in the United States is problematic. And the vast majority of would-be refugees unsteeped in asylum jurisprudence are probably doubtful that common gender qualifies as a particular social group.

Congress should thus amend the Refugee Act to include persecution on account of gender as an express avenue of asylum. In 1992, Congress enacted a similarly-clarifying amendment to ensure evenhandedness and attention to asylum claims advanced by aliens fleeing the independent states of the former Soviet Union, the Baltic States, Vietnam, Laos and Cambodia, with special categories for Jews, Evangelical Christians, and members of either the Ukrainian Catholic Church or the Ukraine Orthodox Church.

The 1980 Act is also deficient in neglecting to define persecution. That omission handicaps a would-be refugee from gathering evidence abroad pivotal to a successful asylum claim. A comprehensive and exclusive definition of gender-based persecution is neither feasible nor desirable. But a statutory enumeration of guidelines would be exceptionally constructive. The following harms should qualify per se as gender-based persecution: rape; sexual abuse; genital mutilation; bride-burning; forced marriage; sweeping restriction on female educational, pro-fessional or employment opportunities; humiliating sumptuary codes governing female dress, marriage, public behavior, or otherwise; serious violations of provisions of international human rights covenants that address gender discrimination; and denial to females of effective access to courts to redress legal wrongs.

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Under general rules of asylum law, a well-founded fear of persecution that justifies asylum may be instilled either by government or private entities or persons. If the latter, the fear may arise because the government is either unable or unwilling to enforce the law against the wrongdoer, such as a requirement in the Muslim Sharia law that rape be proven by four eye-witnesses, or systematic nonenforcement of laws punishing spousal brutality. Also pertinent to proving a well-founded fear is whether the female claimant sought and was denied protection by her home government, and whether that government remained passive despite knowledge of actual or impending harm.

The Refugee Act needs amendment to incorporate these asylum standards and criteria in express language. The benefits would be twofold: asylum judges would be better guided in evaluating asylum claims; and, more importantly, claimants would be alerted before fleeing their homelands of the type of evidence essential to proving a right to asylum. The latter task is ordinarily infeasible once the claimant has reached the United States.

Congress should further direct the assistant secretary of state for human rights to compile a list of nations earmarked by systematic degradation of women through law, custom or practice. A reasonably particularized description of the degradation should accompany each listed nation. The list would be available to INS to assist in resolving gender-based asylum claims.

Many valid types of claims defy foreseeability. But by providing important clarity, the amendments would guarantee a square deal for women seeking asylum.

Who could be opposed to that?

And in Response:

Your Genius Columnist Wants to Extend Refugee Status to Half the World

I read with total astonishment Bruce Fein's June 1 column, which proposes to expand the Refugee Act to include women as a special class. In fact, I had to reread the piece, believing at first that it was written tongue-in-cheek.

What exquisite timing! During a period of strong backlash against the current immigrant flood, Mr. Fein wants to extend refugee status to literally half the Earth's population. Such a plan would allow women to

apply for refugee status because of forced marriages, lack of educational and professional opportunities, dress codes and restrictions on public behavior. Oh please! The original concept of granting political asylum to someone fleeing for his life has already been twisted beyond recognition. What next, refugee status for Canadians escaping socialized medicine?

The only winners here are the immigration lawyers who desire an ever-expanding number of potential clients to tie up our already overburdened asylum system. Ongoing and potential abuses to our immigration laws and policies are the root causes of the anti-immigrant tide now sweeping this country.

Reasonable numbers of immigrants enhance and add vitality to American society. Abusers of the system, like Mr. Fein, are a destructive element who will bring about a total end to immigration. While that result would be unfortunate, at least immigration lawyers would be forced into a more useful line of work.

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