

Posthumous US asylum bid highlights gang debate

Associated Press

JANUARY 22, 2012, 4:28 P.M. ET

JERSEY CITY, N.J. — Josue Rafael Orellana Garcia fled his impoverished neighborhood in Honduras for the United States as a teenager, to escape what began as teasing over his disabilities and escalated into what his mother said were threats to kill him if he did not join a gang.

Making his way illegally to New Jersey to be with his mother, he applied for asylum in 2008, claiming he'd be killed by gangs if forced to return to the small but violence-plagued nation. He lost his case, was deported in 2010, and last year was found dead, his body riddled with bullets. He was 20.

Now his family has taken the unusual step of trying to win him asylum posthumously. His attorney, Joshua Bardavid, said it's an effort to get the U.S. government to acknowledge the "entire system let him down" and to call attention to the plight of thousands of Central American teenagers.

But the case also highlights a growing debate among immigration experts over whether the grounds for asylum in the United States should be expanded to include more modern forms of conflict, such as gang violence.

To be granted asylum in the U.S., applicants must prove a well-founded and documented fear of persecution because of their race, religion, nationality, political opinion or membership in a particular social group. They must also show that the government or ruling authority in their home country is unwilling or incapable of adequately protecting them.

U.S. Immigration Judge Frederic Leeds in Newark found Orellana's claims credible but said the young man had not sufficiently documented that he and his family had been targeted by gangs. Even if he had, there is no legal precedent for extending "the concept of family group to the concept of joining gangs," wrote the judge, while expressing appreciation for what he said were creative arguments on the young man's behalf.

Though the law does not consider the threat of gang recruitment as meeting the definition of a protected social group, some believe it should, said Dana Leigh Marks, the president of the National Association of Immigration Judges.

"There are those who would argue the asylum law is old-fashioned and needs to be modernized, while others would argue it is a limited remedy that is not supposed to resolve all problems and allow everyone to qualify," Marks said.

The Office of the United Nations High Commissioner for Refugees, the international body responsible for the protection of refugees and asylum seekers worldwide, issued a memo in 2010 urging courts to expand existing asylum law interpretations to consider victims of organized gangs as warranting protection, if their cases satisfy all other legal requirements.

But those who oppose expanding the class of potential asylum seekers say it could undermine an already overburdened U.S. immigration system with a flood of new applicants.

"There's no limit to the categories you could add by our (U.S.) standards. There is a lot of oppression in the world," said Steven Camarota, director of research at the Washington, D.C.-based Center for Immigration Studies, an organization which advocates stricter immigration rules and believes asylum and all other aspects of immigration law should be decided by the U.S. Congress, not the courts.

"We may find the treatment of women in some countries poor, compared to our standards, but would you say if they're treated poorly, they're a member of a particular social group?" Camarota said.

Ricardo Estrada, a minister of migratory affairs with the Honduran embassy in Washington, said he was not familiar with Orellana's case but that "it's likely that his story could be true, because conditions point to it."

"Lamentably, our country is going through a crisis of violence," Estrada told The Associated Press, in an interview conducted in Spanish. "The problem is enormous, and security is an issue the government is really trying to tackle, but it's very challenging with a government that has little resources in comparison to the narco-cartels, who often have better arms than the police."

Investigators face a huge backlog of homicide investigations, but have few resources, he said.

Honduras has the highest homicide rate in the world, according to a 2011 United Nations report which cited 6,200 killings, or 82.1 murders per 100,000 inhabitants, in 2010. Earlier this month, the Peace Corps withdrew all volunteers from the country, citing safety and security concerns. The U.S. agreed this past week to send a team of experts to help the Honduras government with "citizen security issues."

In a motion filed in December with the Board of Immigration Appeals, Bardavid argued that Orellana, as a result of being shot dead after being deported, now meets the burden of proof required of asylum applicants to show they would suffer irreparable harm if sent back to their country.

"I think it's something that needs to be acknowledged: that we failed him; that he came here seeking safety, and the entire system let him down," Bardavid said.

Spokeswoman Kathryn Mattingly of The Executive Office for Immigration Review, which oversees the BIA, said the agency does not comment on pending cases or prior decisions.

Orellana's mother, Josefa Rafaela Garcia Mejia, lives legally in the United States under a program that allows immigrants from qualifying countries to live and work in the U.S. on a restricted visa. She said gangs killed her son, the youngest of her four children.

Orellana had been picked on from a young age after losing one eye and much of his hearing from being struck by a tree during Hurricane Mitch, which devastated much of Honduras in 1998, Garcia said. She sent money home, working as a home health aide in New Jersey, to support Orellana and his three siblings, and to buy him a glass eye.

As he got older, his mother said, Orellana told her in frequent phone calls that he was being pursued and threatened by gangs that controlled their San Pedro Sula neighborhood, trying to recruit young people. The threats got so bad, she said, her son fled, against her advice. He was alone at the age of 17 when he crossed illegally into the U.S. to join her in New Jersey.

In a court hearing in July 2009, the judge asked Orellana why, if he had been attacked several times by notorious Central American gangs, he had never gone to the police to file a report.

"Like I mentioned, we would call the police but the police were afraid to come where we lived," Orellana replied.

After Leeds' decision was upheld on appeal, the young man was deported to Honduras in March 2010. He disappeared on July 23, 2011, after telling his grandmother he was running to the store, his mother said. His body was discovered three days later in a nearby wooded area, according to a story in the Honduran newspaper La Tribuna.

"I say as a mother, as a Christian woman, my son was not involved with gangs; he never carried so much as a nail clipper," Garcia said, crying as she clutched a photograph of him. "If they had not deported my boy, he would not be dead."

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