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U.S. Immigration Court Ruling Undermines Asylum Protections for Women, Expert Warns

August 3, 2025

— Categories: Human Rights



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A recent decision by the Board of Immigration Appeals is raising alarm among legal experts and advocates, who say the ruling could sharply curtail asylum protections for women fleeing gender-based violence.

The case, known as *Matter of K-E-S-G-*, held that a “particular social group”, one of the five grounds under U.S. and international refugee law, cannot be defined solely by gender, or by

gender in combination with nationality. The decision is binding nationwide and represents a significant departure from decades of evolving legal standards that had begun to recognize women as eligible for refugee protection based on gender-related persecution.

Karen Musalo, a law professor at the University of California (UC) Law, San Francisco, and founding director of the Center for Gender and Refugee Studies, criticized the decision as a dangerous legal setback. She warned that it undermines decades of evolving legal recognition of gender-based violence as grounds for asylum.

“The legal reasoning is both unpersuasive and alarming,” Musalo wrote in her op-ed first published by the *Los Angeles Times*. “It seeks to return refugee law to an era when violence against women was dismissed as a private matter, not of concern to governments or human rights institutions.”

Under the 1951 Refugee Convention and its 1967 Protocol, both of which guide U.S. asylum law, a refugee is defined as someone with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. While gender is not explicitly listed, it has increasingly been interpreted as fitting within the “social group” category, particularly in cases of domestic violence, honor killings, and female genital mutilation.

In 1995, the U.S. Department of Justice directed asylum officers to consider gender as a factor in determining membership in a particular social group. A year later, the BIA recognized female genital cutting as grounds for asylum. That interpretation was reaffirmed by subsequent decisions, including a 2014 ruling acknowledging domestic violence as valid grounds for refugee protection.

But in 2018, then-Attorney General Jeff Sessions reversed that trend, asserting in a case involving a Salvadoran domestic violence survivor that such claims represented personal or private harm, not persecution on account of a protected ground. Sessions’ position drew sharp criticism from advocates who argued that it dismissed systemic violence against women.

In 2021, Attorney General Merrick Garland reversed Sessions’ decision, reinstating the 2014 precedent and reopening the door for some gender-based claims. However, the *Matter of K-E-S-G* decision now re-imposes a more restrictive interpretation, raising the burden of proof for women and girls fleeing gender-based violence.

Musalo cautioned that the ruling “erects an even higher barrier for women and girls fleeing persecution” and reflects a broader effort to roll back legal protections for vulnerable populations.

“The implications are profound,” she wrote. “This ruling will make it far more difficult for women and girls to win asylum, even though their claims often involve some of the most egregious human rights violations.”

While the decision does not preclude all gender-related asylum claims, Musalo emphasized that it will likely be challenged in federal courts across the country. She called for a renewed legal and policy commitment to gender equality in refugee protection.

“Our refugee laws should protect women, because women should not be subject to gender-based violence,” she wrote. “That is, in fact, one of our human rights.”