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ILAP *Pro Bono* Attorneys Provide Crucial Representation to Asylum Seekers in Maine

by Jennifer Archer and Sue Roche

Since 2000, the Immigrant Legal Advocacy Project's (ILAP) *Pro Bono* Asylum Panel has helped hundreds of individuals gain asylum in the United States, preventing their deportation back to countries where they were persecuted. The *Pro Bono* Panel was launched in 1994 as Maine's first legal resource specifically for asylum seekers, before ILAP became a staffed agency providing a wide range of immigration legal aid to low-income Maine residents in 2000. ILAP's *Pro Bono* Panel has grown from fourteen to over eighty attorneys in 2010. While ILAP staff attorneys represent clients in a myriad of immigration cases, pro bono attorneys represent the majority of ILAP's asylum clients. Although asylum cases are extremely complicated and time-intensive immigration matters, they are also among the most rewarding and meaningful. A positive outcome in an asylum case is not just life changing, it literally can mean the difference between life and death. ILAP's *Pro Bono* Panel attorneys come from various areas of practice, from litigation to employment or family law. They attend asylum trainings and are mentored by more experienced attorneys on their first cases in order to come up to speed on asylum law and procedure.

In the past year, ILAP has seen a 450 percent increase in asylum seekers coming for help. As a result, ILAP was forced to stop accepting new asylum clients in the spring of 2010 in order to finish placing cases that had already been accepted, and to focus on expanding the *Pro Bono* Panel in order to increase its capacity to serve asylum seekers. Unfortunately this means that many survivors of persecution and torture have been left unrepresented. However, running a large and effective

Pro Bono Panel requires substantial staff time. To grow the Panel further, ILAP must have a staff attorney dedicated to this role, and is now raising funds specifically to hire an Asylum Coordinator who will recruit, train, mentor and manage the *Pro Bono* Panel. This will allow ILAP to better meet the needs of Maine's vulnerable asylum seekers.

One of the many individuals helped by an ILAP *pro bono* attorney is Sasha, a Rwandan citizen of Tutsi ethnicity



Rodophe Houanche and his family are Haitian citizens who were granted asylum through the help of an ILAP *pro bono* attorney. From left: Ralph Houanche, Arave Houanche, Rodolphe Houanche, Annah Houanche.

husband was a Lieutenant Colonel in the Rwandan army who was killed in 1995 while on a peaceful mission in southern Rwanda. The official report was that Sasha's husband was killed by rebels, but Sasha believed that her husband was killed by one of his own soldiers because he affirmatively advocated for the reconciliation of Hutus and Tutsis.

Over the next ten years, Sasha never stopped quietly questioning her husband's death and gathering evidence. When Sasha learned that Rwanda might prosecute military crimes, she sought out a Colonel and member of both the Rwandan army and the government's national intelligence service, who was previously a former officer under her husband. She questioned the Colonel about her husband's death and told him that she wanted to know all the circumstances so that she could pursue prosecution. One week later, Sasha came home from work to find four officers waiting for her. They forced her into a truck and took her to the intelligence service headquarters where she was beaten and held for several days. She was only released when members of a human rights organization went to the detention facility to help her. Even then, her freedom was contingent upon her agreement to return to be formally charged, although the intelligence service never told her why she was arrested, detained and beaten.

After Sasha recovered in the hospital, she went home to her children rather than returning to the intelligence service headquarters. It was then that a grenade was thrown at her home in the middle of the night. Fearing for her safety and the safety of her children, she sent her children to stay with a friend and she fled to a large city in the hopes that the intelligence service would have difficulty finding her. Sasha then immediately made an appointment with the United States Embassy to apply for a visa for herself and her children. Unfortunately, only she was given a visa so she was forced to leave her children behind when she fled Rwanda one week later.

Sasha came to ILAP for assistance.

After conducting a detailed asylum eligibility assessment, ILAP accepted her case and placed it with an attorney on ILAP's *Pro bono* Panel. Sasha's lawyer affirmatively applied for asylum within one year of her admission to the United States, as required by the Immigration and Nationality Act (INA). See 8 U.S.C. § 1158(a)(2)(B). As an applicant for asylum, Sasha bore the burden of demonstrating her eligibility for asylum by establishing that she was a "refugee" within the meaning of the INA. See *id.* § 1158(b)(1); *Orelien v. Gonzales*, 467 F.3d 67, 70 (1st Cir. 2006); *Matter of Acosta*, 19 I&N Dec. 211, 213 (BIA 1985). A refugee is someone who has suffered past persecution or who has a well-founded fear of future persecution on account "race, religion, nationality, membership in a particular social group, or political opinion." *Albathani v. INS*, 318 F.3d 365, 373 (1st Cir. 2003) (quoting 8 C.F.R. § 208.13(b)). While persecution encompasses a broad range of acts, such as detention coupled with torture or rape, it must have been inflicted by either the foreign government or "by persons or an organization that the government was unable or unwilling to control." *Matter of Acosta*, 19 I & N Dec. at 222. See also *Lopez-Galarza v. INS*, 96 F.3d 954 (9th Cir. 1996); *Matter of D-V-*, 21 I & N Dec. 77 (BIA 1993).

Upon meeting her burden of establishing past persecution, Sasha was entitled to a rebuttable presumption of future persecution. *Orelien*, 467 F.3d at 71. The burden then shifted to the government to establish by a preponderance of the evidence either that (1) there "has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution," or (2) the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality . . . and under all the circumstances, it would be reasonable to expect the applicant to do so. 8 C.F.R. § 208.13(b)(1)(i)(A)-(B). Where the government itself was the persecutor, however, "internal relocation will almost always be a moot point." *Silva v. Ashcroft*, 394 F.3d 1, 7 (1st Cir. 2005). Following an interview in Boston, the Asylum Office of the U.S. Citizen-

ship and Immigration Services granted Sasha asylum. Many applicants for asylum are not as fortunate and are referred to Immigration Court, where the applicant must again apply for asylum in an adversarial proceeding before an Immigration Judge who will either grant or deny the asylum application. 8 C.F.R. § 1208.14(a).

Legal representation is extremely important to the outcome of an application for asylum. According to the Transactional Records Access Clearinghouse's Immigration Project, only 11% of those without legal representation were granted asylum during FY 2010 as compared with 54 percent for those represented by attorneys. Asylum applicants in Maine have an even greater chance of receiving approval when represented by ILAP *Pro Bono* Panel attorneys, whose average approval rating is 97 percent.

Without an attorney, Sasha would likely not have won her case. Proving the intricacies of an asylum case, compiling expert and country condition documentation, presenting the pertinent facts, and making complicated legal arguments are something most newcomers are unable to do on their own. Arriving in the United States with nothing more than what she could pack when she fled her country, and without any money, Sasha could not have afforded a private attorney. Clients like Sasha will continue to rely on ILAP's *Pro Bono* Panel attorneys to prevent their return to countries where they fear persecution. If you would like to become involved in ILAP's *Pro Bono* Panel, you can contact Sue Roche at 207-780-1593, sroche@ilapmaine.org.

1. Sasha's name and identifying information has been changed for her protection.

2. For more reports, see <http://trac.syr.edu/immigration/>



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