

DEC 29 2008

Aparicio de Camacho v. Mukasey, No. 05-73557

NOONAN, Circuit Judge, concurring:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Immigration law is complex law, as complex to those uninitiated in legal studies as the Internal Revenue Code is to most laymen. Uncounselled aliens venture at their peril into its maze. In the present case the petitioner, without benefit of counsel, sought asylum long after the time for asylum-seeking had past. She did not pursue what might be an available solution to her situation: adoption by her kind benefactor in one of the several states that permit the adoption of adults. Instead, she struggled on, now with a lawyer, in the maze, and she has reached the legal end of the road.

A wise government, however, has realized that enforcement of the technical rules may not always do justice in a particular solution. The executive retains discretion. Aparicio is the mother of two American citizens, her daughter, Brianna Marie, age 13, and her daughter, Ileana Alicia, age 8. The policies of the United States are designed to strengthen the family not cause its disintegration by deportation of the mother. The two girls returning to Mexico with their mother will face the same conditions that she faced as a poor person of Indian descent vulnerable to abuse and impotent against the powerful. We have no reason to doubt the Country Report of the United States State Department (2004) when it

declares, “The most pervasive violations of women’s rights involved domestic and sexual violence, which was widespread and vastly underreported.” The Country Report goes on to note a reputable survey indicating that almost half of women in Mexico over the age of 15 have “suffered at least one incident of physical, emotional, or sexual aggression.” Aparicio is among these women. Having undergone sexual violence herself, she understandably fears subjecting her daughters to the risk of similar aggression. In our law a one in ten chance of persecution justifies asylum. In the realm of administrative discretion beyond the law, it could be found that the risk here to two American citizens justifies administrative termination of the proceedings against Aparicio.