CHAPTER 4

Fleeing Calamity, Seeking Asylum
Women and Refugee Policy

Although women are more likely to immigrate legally under programs for family unification or with temporary work visas, refugee status or asylum based on humanitarian considerations are other widely used options. Beginning in the 1980s, women began increasingly to request admittance to Western European countries and to a lesser extent the United States and Canada on the grounds of asylum. This development reflected unstable conditions in many parts of the world as well as the fact that opportunities for traditional immigration were largely closed off in the West. The dimensions of the refugee situation and the ramification for women are amply illustrated by the statistics. As mentioned earlier, women constitute almost half the more than 32 million refugees and persons of concern listed by the United Nations High Commission for Refugees (UNHCR) for whom data on sex were available. In 2001 70 percent of the new applications for asylum were filed in the member countries of the European Union, 11 percent in the United States, and 8 percent in Canada. Although there were annual fluctuations in the number of asylum applications filed in individual states, Britain usually received the largest number, followed by Germany and the United States, where refugees are approximately 10 percent of the total annual immigration. In 2001 53 percent of those requesting asylum were admitted to EU countries under the provisions of the United Nations refugee conventions, while the remaining 47 percent applied for asylum on humanitarian grounds as defined by individual countries.

The number of asylum applications filed by women has been due in part to their forcible expulsion from their homes by war, civil unrest, famine, or persecution. Seeking safety, women have immigrated. When the journey necessitated leaving their home country they have attempted to immigrate to a more peaceful and stable society where they could raise their children. However, the ability to do so has largely depended on being admitted as a refugee, since restrictions on immigration have afforded them virtually no other option.
Refugee status may be granted on one of two grounds: the criteria set forth in the United Nations protocols or the United Nations Convention against Torture, or asylum granted on humanitarian grounds. The first has generally been considered preferable to the second, since it provides refugees the same legal protections as those available to citizens. Of particular importance to women refugees is the fact that it guarantees both the right of dependent children to join them and the right to permanent residency. Asylum status granted for humanitarian reasons on the other hand does not necessarily extend to other family members, nor does it necessarily ensure permanent residency. Bosnian women admitted to several Western European countries on humanitarian grounds during that country’s civil war, for example, were not always allowed to be accompanied by their children. Their difficulties in securing entrance for their children provide a good example of the shortcoming of asylum based on humanitarian considerations.

The general procedures for reviewing requests for asylum are fairly similar in a number of respects. All requests are heard by immigration officers in the receiving country. These hearings largely determine whether or not an individual’s situation meets the criteria of a “well-founded fear of persecution.” There is usually the right to appeal an unfavorable decision. However, considerable variation exists among countries in the way in which the hearing is conducted and in interpreting a “well-founded fear.” It is not unusual for officials in one country to reject a request for refugee status on the grounds that the criteria has not been met, while hearing officers in another country grant refugee status on the same grounds. For example, not all countries agree that there must be individual persecution for a well-founded fear to exist. While some countries accept the existence of a civil war or internal upheaval as sufficient to establish persecution, others require evidence that the individual applying has personally experienced persecution. Conflicting interpretations of “a well-founded fear” are further exacerbated by cultural differences. For example, overly deferential behavior during an asylum hearing or reticence in discussing the details of the persecution suffered may be interpreted by some hearing officers as an absence of a well-founded fear. Similarly indirect statements of the facts may be taken as an indication or even evidence that there was little threat of persecution. Yet such behaviors may merely represent a form of cultural politeness on the asylum seeker’s part or a reluctance to describe a particular type of humiliating torture. As a result there is considerable variation among countries in deciding what constitutes a threat of persecution. Moreover, even within the same country, there are instances where similar evidence of a well-founded fear is accepted by one hearing officer but not by another.

In cases where the basis for a claim for asylum is considered serious but not included in the various UN protocols, the receiving country may decide to grant it on humanitarian considerations. In such instances individual states have the prerogative of defining the conditions under which the individual can enter and remain. For example, many of today’s refugees suffer from a generalized anxiety stemming from human rights violations, which is not included in the UN