

SPECIAL REPORT

Gendered Paths to Legal Status:

The Case of Latin American Immigrants in Phoenix, Arizona



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ABOUT THE IMMIGRATION POLICY CENTER

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INTRODUCTION

One of the many assumptions in the contemporary immigration system concerns relationships between women and men. Immigration law, which on its face appears gender neutral, actually contains gender biases that create barriers for many women trying to gain legalization within the current immigration system. We come to this conclusion after more than a decade of research in which we conducted in-depth interviews with immigrant women who found themselves outside the immigration system, attempting to access a system that simply was not designed to recognize their needs and circumstances. Most particularly, we discovered that immigration laws assume dependencies that privilege male applicants over females and that often make women an afterthought in the implementation of immigration laws. The cases in our study illustrate how gender inequalities seep through the formulation, interpretation, and implementation of immigration laws, so that women and men going through the immigration process have very different experiences. We observe that patriarchal regimes defined by masculine traits are present in the United States and permeate every sphere of life and institutions, including the legal system. This phenomenon occurs in ways that mask explicit exclusionary practices based on gender. Thus, rather than revealing overt discriminatory practices, in our study we found associations of expectations of behavior based on gender, such that women are expected to assume certain family responsibilities and men gender-specific roles. These expectations about what women and men should do in a family and in society more generally position women as dependents and men as breadwinners, further cementing inequalities before the law.

These inequalities appear across immigration law, such that even as new laws are put into place, stereotypes and assumptions remain unchallenged. Ironically, in our study, based on 51 in-depth interviews with immigrant women and men originally from Mexico, El Salvador, Guatemala, and Honduras, conducted in the Phoenix metropolitan area between 1998 and 2007,¹ we found that even laws written specifically to protect women, such as the Violence Against Women Act (VAWA), continued to play out in practice along gender-biased lines. For the purposes of this report, we have chosen to highlight gender expectations of what women and men should do as reflected in four key avenues for gaining lawful status in the United States: employment-based visas, family reunification, the asylum process, and a VAWA visa.²

Our findings indicate that women's status of dependency, presumed and reinforced by immigration law, hinders women's legal incorporation in the host society. In particular, many women rely on male relatives to petition for them in the legalization process, both through family-based and employment-based immigration. Because of structural barriers (e.g., access to educational opportunities and acquisition of skills in their countries of origin) women have fewer opportunities than men to apply as principal visa holders. Women also face specific obstacles when petitioning for asylum and applying for VAWA protection. These hurdles go from additional and detailed administrative paperwork (such as the difficulties in obtaining proof of abuse) to more structural issues that have to do with the realities that women face in their countries of origin. But the problems we identify are not limited to the petitioning

phase. Once a woman enters the legalization process, it is often difficult for her to secure employment outside the home because work permits often take a long time to arrive and, thus, she ends up conforming to the image of the “non-working” or “stay-at-home” woman, depending on the spouse’s income for long periods of time.

As immigration reform is being debated, our findings point to the need that any pathway to citizenship and integration be open, affordable, and accessible to all immigrant women, including those whose work is unpaid (e.g., those in the care economy), and those employed in the informal economy. In order for this to occur, there should be more and stronger open channels for women to access the legalization process without having to rely on a principal visa holder to petition on their behalf. And even in the cases in which women apply as dependents, they should have expedited access to work permits so that they are not confined to a status of dependency. Additionally, evidentiary requirements should not be excessively burdensome and the information regarding formal steps toward legalization/citizenship should be clear and widely disseminated among all immigrant women.

EMPLOYMENT-BASED IMMIGRANT VISAS

Every fiscal year approximately 140,000 employment-based immigrant visas are made available to qualified applicants. These visas are divided into five preference categories: (1) priority workers (including persons with extraordinary abilities in the arts and sciences, academics, and high-level executives); (2) professionals with advanced degrees and exceptional abilities; (3) skilled workers, professionals, and unskilled workers; (4) special immigrant categories; and (5) investors.³

Of all the forms of legal entry, employment-based visas are the most skewed along gender lines. Although in Fiscal Year (FY) 2004 women received nearly half of the employment-based visas, only 26.8 percent were principal visa holders and 73.2 percent were dependents of a principal visa holder (spouses or children of workers). In contrast, in the same year, the majority of men, 65.3 percent, were principal visa holders compared to 34.7 percent who were dependents.⁴ As these figures indicate, while there may seem to be equality in the number of employer-based visas granted to women and men, a closer look at the level of dependency reveals that fewer women were principal visa holders as compared to men; since men were the principal visa holders, they were not dependent on a second party for their employment-based visa. In more cases, women depended on a spouse or parent as their petitioner (who was the principal visa holder).

While not all women are dependent on men for their legalization process, ideals and expectations of work that are based on gender (and social class) play a key role in the employment-based legalization process. Nora, a 19-year-old Guatemalan with a second-grade education, worked three jobs to support family in Guatemala and in Phoenix. She worked three night shifts a week at a McDonald’s, cleaned model homes on the other nights, and took care of an elderly couple during the day. But none of her

jobs offered her the opportunity to legalize her status through employment because her jobs are seen simply as extensions of domestic work, and not what the law encodes as “high demand” jobs—a requirement for an employment-based visa. Moreover, only 5,000 visas are available annually for “low skilled” jobs, meaning that much of the work done by immigrant women simply cannot compete in a system skewed toward education and training. She has consulted with notaries and immigration lawyers and she has been told that,

There is no way on this earth to even try to apply because the work I do is not good, like high status. So there is no reason why the U.S. government would want to grant me legalization for cleaning or cooking or taking care of the couple. I have been told that for me it's impossible, that only people with good jobs can be legalized through jobs. Yes, I work and work and work, but what I do is not what the law recognizes.

Nora’s case illustrates that even when women support their families as heads of household and contribute to the economy by literally working day and night, an employment-based visa is virtually impossible to obtain. To be sure, men working in jobs that are also considered unskilled and expendable lack opportunities for legalization through employment, such as the case of day laborers who take temporary jobs in gardening, construction, and the like. However, given the gender bias in education in Central America and Mexico, where primarily men tend to earn degrees that translate into skilled labor (e.g., engineers, scientists, and physicians), men continue to dominate the category of immigrants who apply for and obtain employment-based legal status, in spite of the thousands of immigrant women who work for pay to support families in the U.S. and in their countries of origin.

Even highly skilled professional women often find it difficult to secure legal status through employment because gender stereotypes about women’s place in society shape the visa-granting process. This was the case of Elena, a Mexican woman with a college degree, several years of work experience, and English-language skills, who was denied a visiting visa three times because, she was told, as a single and attractive woman she “ran the risk” of overstaying her visa. Nora’s case demonstrates how gender and class bias in the formulation of this part of the immigration law blocks avenues that could lead to legalization, and Elena demonstrates how gender stereotypes shape paths of legalization.

FAMILY REUNIFICATION

Family reunification is the main avenue for female legal immigration and the category that most clearly underscores how gender affects the legalization process. The first requirement for a family-based petition is for the petitioner to reside with lawful status in the United States. Based on cultural practices in Central America and Mexico and on persistent stereotypes about women in the United States, the women we interviewed were often assumed to be primarily members of a family unit, as mothers, wives, daughters, or sisters. It was assumed that women would attend to any dependents or other domestic responsibilities, even when they held jobs outside the home. In contrast, men were

largely viewed as the breadwinners and heads of households. For this reason, many women came to rely on male relatives to petition for them in the legalization process. Thus, while family reunification constitutes only one of several paths to legalization, it is one of the greatest promoters of the increase in female immigration, which in turn cements the image of women as “dependents.” Moreover, a common requirement to petition a spouse under U.S. immigration law is a valid marriage. Yet among many immigrants, particularly Central Americans, common-law unions are commonplace. Given that women tend to rely on men to petition for them, the lack of a certificate documenting a marriage disadvantages women more than men.

The process to adjust to lawful permanent resident status can mean long waiting times for reunification that heavily affect the women sponsored to immigrate via this category. As Kavitha Sreeharsha notes,

...the family immigration system has been fraught with backlogs and burdens that sometimes separate families for more than 20 years. The backlogs force women to wait in their home countries, separated from the sponsoring family member with whom they seek reunification. While separated, many of these women are left as the sole providers in countries where women may lack the same economic and employment opportunities as men. These immigration-processing backlogs create an emotional and financial burden on women and their families even though they will ultimately be eligible to unify with their families in the United States.⁵

The effects of backlogs in visa processing are further complicated by gender ideologies and assumptions about what women are supposed to do. For instance, Adriana, a 54-year-old Salvadoran who entered the United States through family reunification, spoke about the long and difficult process of entering the United States legally. Adriana mentioned the limited types of jobs to which she had access given the long wait for her work authorization, which highlights how class and gender biases intersect. It had been nine years since she submitted her paperwork to the government and she was still waiting for her green card.⁶ In her words,

They give you one permit to be in all of the United States and to work...[and] every year it expires and every year I have to go to immigration to request it again and pay and all. Yes, since I put in my papers, I have only had three permits, before that I had nothing. Three permits is what I have, three years of living with that...I spent lots of time not working, only at home. I would take care of children, but you know that is nothing...I have taken advantage of my permits now...

Adriana’s case demonstrates how men, the presumed heads of household, continue to dictate women’s ability to petition for their own legal status and how women then live as “good housewives and mothers” to continue their dependency status (implicitly required in the law). Indeed, our data illustrate that, though not formally encoded or overtly enforced, gender biases continue to be embedded in immigration law as many requirements reflect specific conceptions of women’s and men’s

roles and behavior. Furthermore, since immigration laws require that individuals being petitioned not work for pay until a work permit is authorized, many women find themselves either depending solely on the spouse's income or on "informal jobs" that sustain the association of women with domestic responsibilities for extended periods of time. This situation reinforces their dependent status on the spouse and images of women in general as dependents.

POLITICAL ASYLUM

A person may be granted asylum in the United States if that person can establish past persecution or a "well-founded fear" of future persecution in his or her home country on account of race, religion, nationality, membership in a particular social group, or political opinion. If granted asylum, a person can apply for lawful permanent resident status within one year and is eligible to apply for naturalization five years later. If an asylum case is initially denied, the appeal can take from a few years to decades to resolve. The outcome of the initial case is dependent on many factors such as the documentation the person presents, the quality of the work of the organizations (if any) that assist the individual, and the professional skills of those who prepare the applications.

There are ways in which gender can shape the interpretation of asylum law. In determining whether an asylum-seeker has proven a "well-founded fear," an adjudicator must determine that the asylum-seeker's fear is reasonable based on the standard of what a "reasonable person" would fear. In the case of an asylum claim based on political opinion, what is reasonable may be viewed through the lens of political activities that are believed to be more common among men, even when women participate actively politically, even in armed conflict. The "perspective and interpretation" of immigration and refugee law based on male experiences serves to maintain gender differentiation and inequalities.⁷ Thus, while one basis for asylum, such as a particular social group of women who have undergone or fear female genital mutilation, may be viewed through the "reasonable person" lens of a woman and perceived as a clear case for "well-founded fear," another based in the male experience remains questionable.

For example, a woman who fears persecution based on political activities that have been defined by her gender (such as providing shelter for guerrillas, cooking, and hiding ammunition) may have a more difficult time proving that it is reasonable to fear persecution for engaging in these activities than a male who has engaged in what are believed to be male activities (such as leafleting, ambushing, shooting, demonstrating, or joining a guerrilla army). Thus, convincing decision-makers that political actions and opinions constitute a threat remains a challenge for women seeking asylum.

Women have also found it difficult to fit the requirements to prove persecution specified in the law when it is based on their political opinion or direct political participation, even when they were persecuted and have been targets of death threats in their countries for expressing those opinions or

for participating in armed conflict to defend their political stance.⁸ For example, Sara left El Salvador at the end of 1982, during the war. In her words,

I applied for political asylum and I was denied...because we couldn't present enough proof but I don't understand which type of proof. I don't have a cut arm, I don't have scars, I don't have anything to show, thank God. But why would we have to stay [in El Salvador] any longer and leave until something happened to us?

Sara and her family left El Salvador and lived in Mexico for a year. However, they did not keep what would later prove vital in a court of law to prove what they went through and the potential dangers they would face if they ever returned. As Sara explained, “We never thought of keeping all these little papers [with death threats].” But even if they had kept the documents, they would not have helped Sara because those threats were directed at her husband, even though she was directly at risk as well.

VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act of 1994 (VAWA) was reauthorized in 2000 and in 2005, and again in February 2013. One piece of VAWA is intended to allow immigrant women in situations of domestic violence to self-petition or independently seek legal immigration status in the United States. In order to qualify for VAWA, applicants must submit evidence demonstrating that they fulfill a series of requirements.⁹ Many areas of VAWA (e.g., battery or extreme cruelty) are left to interpretation and victims who do not fit dominant ideals about “acceptable women” are excluded.

One requirement for a successful VAWA petition that led to unintended gendered consequences for a woman in our study is the joint residency requirement. VAWA requires the applicant to prove that she lived with her abuser. While the evidence to prove joint residence may include an apartment lease with both names on it, joint bank account statements, joint tax returns, joint insurance policies, letters addressed to both the self-petitioner and the abuser or a letter or affidavit from a landlord, this can be a difficult requirement for an abused woman, particularly one in a precarious legal status, to prove. For example, Lucia entered the United States in 1985 for the first time. She was undocumented. Her husband was also in the United States and in the mid-1990s became a lawful permanent resident. Despite promising to file a family petition for her, he never did and often threatened that he would have her deported if she left him.

When Lucia considered applying for VAWA protection, she feared that she could not prove that she had lived with her husband. She never acquired the paper trail to prove her U.S. residence such as pay stubs, utility bills, rental and later property ownership agreements. Her husband had been the primary breadwinner and these bills had all been under his name. While adjudicators of VAWA applications would have considered affidavits from Lucia’s landlord, she could not locate the people who knew her at the time she was living with her husband and told us that she could not obtain this type of evidence.

Lucía's case illustrates how gender expectations seep through and influence the legalization process, even through VAWA, as well as the very motivation to immigrate. In her years of marriage, Lucía had been the victim of abuse, and leaving that relationship came with high social, financial, and legal costs. Her husband's status as the breadwinner, whose presence became formalized through a paperwork trail, created the basis for his legal but also for her undocumented status, and extended the abuse through the use of threats based on legal status. As Lucía said during the interview, although her husband would tell her that he would petition for her green card, he never did, and would often threaten her with not filing or with seeking her deportation. Thus, women whose presence is not formally recognized even when they contribute financially to their household have little if any chance of regularizing their status. As Lucía's case demonstrates, being excluded from the formal legalization processes does not occur overtly on the basis of gender, but on characteristics and behaviors that are associated with stereotypes of (male) breadwinners and (female) dependents.

CONCLUSION

With increased population movements globally, the wealthier immigrant-receiving countries, such as the United States, have sought to restrict and reinforce narrow notions of who is admissible. However, even when laws are in place to confer access to legalization, not everyone has the same experiences with the process. Social positions such as race, ethnicity, class, and gender affect the processes. And women and men, regardless of class or ethnicity, have different legalization experiences that begin long before they initiate their formal legalization process.

Based on the experiences of Central Americans and Mexicans in Phoenix, we examined how gender shapes four different avenues for legalization. As we noted, the law itself is intended to be gender neutral, but it is in fact charged with gendered meanings that often presume breadwinner or main applicants to be male and dependents to be female. As well, gender expectations permeate immigration law even when legislation is not intended to be gender-neutral (and supposed to benefit women), as in the case of VAWA. Importantly, gender differentiation occurs in both overt and subtle ways that veil, but at times formally differentiate between, women and men, creating what we call "gendered paths to legalization." Thus, the law does not formally differentiate between women and men, but women's and men's experiences are different because gender biases and expectations shape how the law is interpreted and applied on the ground. The law does not take into account that women are expected to leave the workforce to care for relatives and children, practices that can hinder the legalization process or exclude them altogether. Importantly, this is not the overt exclusion of the past; it is veiled exclusion by association, where women's activities are primarily associated with the domestic sphere.

Our observations thus reveal that both women and men encounter barriers in the legalization process, but gender remains an important marker that exacerbates the complexities of a non-linear legalization process. Immigration policies that eventually lead to legal citizenship should be sensitive to such social

inequalities and create categories (and guidelines for administration) that deviate from conventional expectations of behavior to incorporate the experiences of those who are excluded due to their gender, social class, or race. Even though VAWA was indeed intended to give priority to women in abusive relationships, this law provides an example of how conventional stereotypes and expectations of gender behaviors seep through to shape the interpretation and implementation of immigration law. Thus, policies based on the awareness that inequality can trickle in and affect the implementation and interpretation of the law can be more inclusive (and thus more effective) in bringing out of the shadow of the law entire groups of immigrants (in this case, women). This study shows that laws are not created in a vacuum devoid of the impact of the broader social environment in which they are enacted. We find that it is imperative to train individuals, such as lawyers, advocates, judges, and immigration officers, who play key roles in interpreting and assisting immigrants during the legalization process.¹⁰ Bias and inequality existing in society at large trickle in to shape the law and its implementation, most tellingly in the case we examined here, those based on gender.

ENDNOTES

1. In addition to these focal interviews, we also tapped on the expertise of individuals in key institutions for immigrants, such as churches, schools, social and sport clubs, and community organizations that aid immigrants.
2. While we have chosen not to discuss “undocumented” as a separate classification, we note that the structure itself of immigration law shapes this status, as it provides many ways toward an undocumented status, but very few avenues for individuals to move out of this category. For a fuller discussion of “undocumented” as well as in-between legal statuses, please refer to Cecilia Menjívar, “Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States.” *American Journal of Sociology*, 111 (4): 999-1037.
3. This information is summarized from: U.S. State Department, “Employment-Based Immigrant Visas.”
4. Susan C. Pearce, *Immigrant Women in the United States: A Demographic Portrait* (Washington, DC: Immigration Policy Center, American Immigration Council, Summer 2006).
5. Kavitha Sreeharsha, *Reforming America’s Immigration Laws: A Woman’s Struggle* (Washington, DC: Immigration Policy Center, American Immigration Council, June 28, 2010): 5.
6. The effects of these long-term separations are manifold. See Cecilia Menjívar and Leisy Abrego, “Parents and children across Borders: Legal Instability and Intergenerational Relations in Guatemala and Salvadoran Families,” in Nancy Foner, ed., *Across Generations: Immigrant Families in America* (New York: New York University Press, 2009): 160-189.
7. See Deborah E. Anker, “Refugee Law, Gender, and the Human Rights Paradigm,” *Harvard Human Rights Journal* 15 (2002): 133–54; and Heaven Crawley, *Refugees and Gender: Law and Process* (Bristol, UK: Jordan Publishing Limited, 2001).
8. Jocelyn Viterna, “Pulled, Pushed, and Persuaded: Explaining Women’s Mobilization into the Salvadoran Guerrilla Army,” *American Journal of Sociology* 112, no. 1 (2006): 1-45.
9. For the list of requirements, see U.S. Citizenship and Immigration Services, “Battered Spouse, Children & Parents,” updated January 16, 2013.
10. Roberta Villalón, *Violence Against Latina Immigrants: Citizenship, Inequality, and Community* (New York: New York University Press: 2010).

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