



IMMIGRATION LESSONS FROM THE FALL AND RISE OF STRAUSS-KAHN - PART II

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By [Cyrus D. Mehta](#)

Ever since the criminal case of Strauss-Kahn began to disintegrate after the New York District Attorney's office [revealed flaws](#) in the credibility of the accuser, I looked back at my earlier blog, [Immigration Lessons From the Fall of Strauss Kahn](#) and feel that many of the immigration lessons I reflected upon still hold true. I wrote:

It is difficult for any victim of a sex crime to come forward, given that the defense will seek to turn the tables against her and undermine her credibility. It is even more difficult for an immigrant who has been a victim of a sex crime to come forward since this person's immigration status, or lack thereof, will also be put under the microscope.

One of the reasons why the case has collapsed is because DSK's accuser lied on her asylum application. She also fudged her tax returns. I can only speculate that if the NY DA's office had an immigration expert on its team at the very outset, her asylum story could have been closely analyzed. If it was found to be fabricated, she could have been advised to come clean. Even if her asylum grant was potentially revocable, she could have been assured a U visa status in exchange, which is issued to non-citizens who have been or who will be helpful in a prosecution involving certain offenses, including rape and sexual abuse. Even if the prosecution of such an offense is not successful or is not likely to move forward presently, the non-citizen may still qualify for U visa status. It may have also been possible to file another asylum claim based on the genuine grounds.

Many asylum applicants may have genuine claims, but are still encouraged by

unscrupulous practitioners, often times unauthorized, to embellish or alter their stories. This is particularly true of [people fleeing desperately poor countries like Guinea](#) who may not be sophisticated and employ the services of a competent attorney in their quest for asylum. The same holds true for the filing of tax returns. Many poor immigrants are misled into filing less than perfect tax returns. An experienced immigration attorney often comes across immigrants who have claimed dependants they were not supposed to claim in their tax return, and the prudent course is to advise the client to amend the tax return or explain to the Immigration Judge, especially in a waiver application where demonstration of good moral character is crucial, the circumstances that caused the filing of an improper tax return. Often times, this strategy is successful and it is still possible to invoke the favorable discretion of the Immigration Judge in granting relief. Putting the false tax return issue in perspective, I am sure if IRS agents looked really carefully they might find flaws in the tax returns of many Americans with regard to their deductions or other positions they may take to save a few dollars in taxes.

The bottom line is that such a person should not be branded as a fabricator and liar. Such actions are a desperate attempt to flee poverty and persecution in exchange for hope in America. While one should not condone the filing of false applications to gain an immigration benefit, there may be ways to mitigate the adverse consequences by either rehabilitating the application or by exploring other forms of relief. If DSK's accuser had a history of filing a false asylum application and tax returns, it should not undermine her ability to be a credible witness regarding the circumstances of her sexual assault, and there is still clearly [a case for trying Strauss-Kahn](#). As to the conversation the accuser had with her friend in immigration detention regarding gaining a financial benefit, one need not reach the sole conclusion that her accusation was false. Is it so unusual for anyone who has been victimized to vent to a family member or close friend that she is prepared to take the perpetrator to the cleaners because he can afford to compensate her for lost wages?

Possibly, if the accuser was advised by someone with a perspective on how desperate immigrants try to enter the US, and given assurances regarding her ability to continue to remain in the US notwithstanding the fabrication in her asylum claim, there may have been less of a chance for the case to get derailed and she may have testified more consistently to the grand jury. Even so, there is no reason why the case should not go ahead. Failure to prosecute this case,

when there is still a credible accusation of sexual assault, will dissuade other immigrants from coming forward if their immigration past will be viewed under a microscope for the purpose of tearing their credibility to shreds. One ought not to be the perfect immigrant or victim to be able to come forward with a criminal complaint.

Finally, in my prior blog post, I also reflected about how non-citizens on temporary visas are less likely to get bail even before they have been found to be guilty. This is because their non-immigrant status, often linked to a job, evaporates after they are arrested and indicted, and they are then automatically viewed as a flight risk. I do hope that after the lessons learned from the fall and rise of Strauss-Kahn, judges in criminal court will be more prone to releasing a non-citizen defendant on bail and not automatically view this person as a flight risk just because he or she is not a US citizen.