**FOUR RECENT RULINGS BY THE BIA ON FEMALE GENITAL MUTILATION**

*Matter of Y,* [BIA Feb 6, 2014) [AILA InfoNet Doc. 1402-1250]

“The Immigration Judge found, and we agree, that the infliction of FGM constitutes persecution.” [page 1]. “Once the respondent has demonstrated past persecution on account of a protected ground, she is presumed to have a well-founded fear of future persecution.” [at page 2]. The DHS has not rebutted this presumption.

“For these reasons…the respondent is eligible for and warrants a grant of asylum.” *Id.*

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*Matter of X,* [BIA Dec 31 2013) : woman granted asylum 18 years after the FGM.

Applicant was a Somali woman who had suffered FGM at the age of six, in 1994. She was unable to walk for months. She was forced to be recut with scissors in order to have sexual relations with her husband. She suffered excruciating pain when having sex; she has difficulty urinating and menstruating.

Nonetheless, she was denied asylum by the Immigration Judge, because she was not credible, because she had passed through 12 countries, and because she had “safe haven”in Mexico. The Board of Immigration Appeals [BIA], however, reversed.

The BIA noted that the Immigration Judge had not considered whether the applicant should be afforded a humanitarian grant of asylum, under *Matter of S-A-K- & H-A-H-,* 24 I&N Dec. 464 (BIA 2008) (FGM under aggravated circumstances could merit a grant on humanitarian grounds).

The BIA further noted the “heavy burden” on the part of the DHS to show changed circumstances in FGM cases. *Hassan v. Gonzales,* 484 F.3d 513, 519 n.2 (8th Cir. 2007). [The decision of the BIA is AILA InfoNet Doc. No. 1402-0450. Applicant’s brief to the BIA is at http://1949ella.wix.com/louisetraumacenter]

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*Matter of Z,* ( BIA Dec. 12, 2013)

Applicant was a Senegalese woman who suffered FGM 27 years earlier, at the age of 14, who missed the one-year deadline, who had returned once to her country, and was deemed not credible by the Immigration Judge, who denied her asylum. The BIA nonetheless reversed, and granted her asylum.

The BIA noted that she was unable to return to school for an entire year, that she “continues to suffer ongoing consequences” such as urinary and sexual problems. Also, she needed episiotomies upon giving birth. This is a “deplorable and extremely harmful” form of FGM; hence, she “merits a humanitarian grant of asylum.”

The applicant stated she did not fear being subjected to FGM upon her return. However, this is “insufficient to rebut the presumption of future persecution.”

“Rather, an asylum applicant who has suffered female genital mutilation on account of a protected characteristic is presumed to risk future persecution on the basis of that protected characteristic, regardless of whether any future harm will likely be identical in form to the harm previously suffered.”*Matter of A-T-,* 24 I&N Dec. 617 (A.G. 2008).

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*Matter of C,* [BIA Oct. 10, 2012 [available at www.lexisnexis.com]

The Immigration Judge granted withholding of removal to a victim of FGM, but denied asylum because she applied for relief five years after arriving in the United States. The BIA reversed, finding that Ms. C had demonstrated “extraordinary circumstances directly relating to her failure to timely file her application for asylum.”

The BIA decision is very short. The following facts are taken from respondent’s brief on appeal:

Ms. C suffered FGM at the age of 12, in 1990. A woman “cut deeply into her vagina with a knife, using no anesthetic.” In 1996, she got married, and experienced terrible pain every time she had sex. Nonetheless, she believed that her mutilation was “normal and appropriate,” and that “all girls in Guinea had to go through it.”

She arrived in the United States in the year 2000, and never discussed her situation with anyone for five years. She barely spoke any English, and could not read or write. In the year 2005, by chance, Ms. C met the friend of a friend, who told her that “the real purpose behind the practice is to control women and keep them from having sex before marriage.”

Ms. C then applied for asylum. A psychologist found that Ms. C had deep feelings of humiliation; that she was “embarrassed, uncomfortable, and ashamed” while speaking of it.

At the conclusion of a hearing in 2006, The Immigration Judge found that there was no change in circumstance; rather, it was a change in “respondent’s thought.” Perhaps Ms. C had PTSD, but the Immigration Judge found that Ms. C was not “disabled.” Furthermore, the Immigration Judge ruled that FGM had already been performed and “certainly could not be repeated on the respondent.” The BIA affirmed, but the Second Circuit Court of Appeals reversed and remanded. The Immigration Judge held a second hearing in 2011.

At that hearing, the DHS stipulated that it could not rebut the presumption arising from the past persecution [the FGM]. The Immigration Judge accepted that, and granted withholding of removal. (in other words, the Immigration Judge withdrew his 2006 finding that “FGM had already been done and therefore could not be repeated.”)

Counsel for respondent argued that the purpose of the one-year deadline is “to prevent fraudulent applications but not to force premature ones.”

Counsel for respondent’s 35-page brief is available at the office of the Louise Trauma Center.