



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: G. A

Date of this notice: 05/26/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

**Frank Krider
Chief Clerk**

Enclosure

**Panel Members:
OSUNA, JUAN P.**



U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A

Date:

MAY 26 2006

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Raha Jorjani, Esquire

ON BEHALF OF DHS: Virginia A. Vasquez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Deferral of removal under the Convention Against Torture

The Department of Homeland Security (DHS, formerly the Immigration and Naturalization Service) appeals from the Immigration Judge's decision dated January 30, 2006. The appeal will be dismissed.

The sole issue on appeal is whether the Immigration Judge erred in granting the respondent, a native and citizen of Liberia, deferral of removal under the Convention Against Torture (CAT). *See* 8 C.F.R. § 1208.17 (2006).¹ The respondent testified that when she was a child in Liberia, she was gang raped on several occasions by government soldiers in her family's home (Tr. at 23-24, 34; Exhs. 4, 7, 8). She also testified that after the family relocated to Sierra Leone, a group of individuals took her from her home and forced her to undergo female genital mutilation (FGM), a traumatic event that continues to interfere with her daily life, causing chronic physical pain, sleeping problems, and various psychological issues (Tr. at 24-26, 34-36; Exhs. 4, 7, 8). The Immigration Judge determined that the respondent's credible testimony about her past experiences, combined with the documentary evidence regarding country conditions in Liberia, established that she more likely than not would be subjected to torture if returned to her native country (I.J. at 5-6).

¹ Because of the respondent's two 1994 convictions for forgery under section 13-2002 of the Arizona Revised Statutes, she is ineligible for asylum or withholding of removal (I.J. at 2; Exh. 3).

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As an initial matter, we agree with the DHS that because the respondent's FGM took place in Sierra Leone, it is not relevant to the analysis of whether the respondent is more likely than not to be tortured in Liberia. We understand that FGM may be considered torture, as defined under 8 C.F.R. § 1208.18(a)(1). See *Mohammed v. Gonzales*, 400 F.3d 785, 802 (9th Cir. 2005); *Oforji v. Ashcroft*, 354 F.3d 609, 615 n.2 (7th Cir. 2003) ("It is undisputed that FGM as practiced in Nigeria constitutes 'torture' within the meaning of the CAT."). We further recognize that evidence of past torture is the first consideration in any analysis concerning the likelihood of future torture. See *Nuru v. Gonzales*, 404 F.3d 1207, 1217-18 (9th Cir. 2005); 8 C.F.R. § 1208.16(c)(3). However, while the documentary evidence reflects that FGM is a common practice in Liberia and that some women who were forced to undergo FGM as children are subjected to subsequent procedures later in life, it would be impermissibly speculative to conclude that a woman who underwent FGM in one country is more likely than not to suffer the same type of torturous conduct in another country.² See *Matter of M-B-A-*, 23 I&N Dec. 474, 479 (BIA 2002).

Nevertheless, we will affirm the Immigration Judge's grant of CAT relief on other grounds. As the Immigration Judge observed, the respondent was raped by Liberian soldiers as a young girl, and rape has long been recognized as a form of torture. See *Al-Safer v. INS*, 268 F.3d 1143, 1147 (9th Cir. 2001); see also *Lopez-Galarza v. INS*, 99 F.3d 954, 962-63 (9th Cir. 1996). Although the events to which the respondent testified occurred three decades ago, conditions in Liberia for women of Mandingo ethnicity have not improved. In fact, the record contains evidence that as recently as November 2004, Mandingo women were systematically raped during an inter-ethnic dispute over land (Exh. 6-B). The evidence also reflects that those who perpetrate such atrocities do so with impunity, as the Liberian government does not enforce its laws against rape (Exhs 5, 6-B). See *Ochoa v. Gonzales*, 406 F.3d 1166, 1172 (9th Cir. 2005) (holding that to qualify for CAT relief, a respondent need only prove that the government is aware of torturous activity yet does nothing to intervene to prevent it). While we recognize that Liberia's newly elected president, Ellen Johnson-Sirleaf, has vowed to reform the government and end the rampant violence, we also note that the country is in transition and that change will likely occur slowly. Given the past torture the respondent has endured, the absence of any remaining family members in Liberia, and ample documentary evidence of Liberia's poor human rights record and ongoing ethnic hostility toward Mandingos, we conclude that the respondent has met her burden of demonstrating that she more likely than not will experience torture if returned to her country of origin (Tr. at 30-31). We therefore affirm the Immigration Judge's decision to grant the respondent deferral of removal under the CAT. Accordingly, we will enter the following orders.

ORDER: The DHS's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and

² We therefore decline to address whether FGM is a "permanent and continuing harm" that would qualify the respondent for CAT relief. See *Mohammed, supra*, at 802 (discussing the possibility that FGM constitutes ongoing torture that automatically entitles the victim to CAT protection).

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further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).
See Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).



FOR THE BOARD