



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: T [REDACTED], N [REDACTED]  
Riders: [REDACTED]

A [REDACTED]

Date of this notice: 10/14/2011

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:

Grant, Edward R.  
Liebowitz, Ellen C  
Malphrus, Garry D.

Falls Church, Virginia 22041

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Files [REDACTED] - Houston, TX  
[REDACTED]

Date: OCT 14 2011

In re: N [REDACTED] I [REDACTED]  
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Geoffrey A. Hoffman, Esquire

ON BEHALF OF DHS: Wm. Tracy Hamby  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, married natives and citizens of Mali, appeal the Immigration Judge's August 3, 2009, decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. § 1208.16. The appeal will be sustained, and the record will be remanded for updated background and identity checks.

We review the findings of fact, including the determination of credibility made by the Immigration Judge, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008). As the respondents' asylum applications were filed after May 11, 2005, they are governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The female respondent initially filed an asylum application with her husband listed as a derivative beneficiary. The husband also filed a separate application (*see* Exh. 3). Initially, we consider the Immigration Judge's finding that both respondents were barred from asylum for not complying with the 1-year filing deadline, and for failing to qualify for an exception (I.J. at 10). Sections 208(a)(2)(B) and (D), 8 U.S.C. §§ 1158(a)(2)(B), (D); 8 C.F.R. §§ 1208.4(a)(2), (4), (5)(iv). Under the totality of the circumstances unique to this case, including the birth of the respondents' child and evolving legal doctrines, we conclude that the female respondent presented exceptional circumstances which qualify as an exception to the 1-year asylum filing deadline. *See* 8 C.F.R. § 1208.4(a)(4). Therefore, we find her eligible for asylum. The following analysis focuses on her application, with her husband as a derivative beneficiary.

The Immigration Judge found that the female respondent was subject to past persecution on account of her membership in a particular social group (I.J. at 10-11), and the Department of

Homeland Security (DHS) does not specifically contest these findings on appeal. We uphold these determinations. *See Matter of A-T-*, 25 I&N Dec. 4 (BIA 2009); 24 I&N Dec. 617 (A.G. 2008). The respondent's past persecution, specifically female genital mutilation (FGM), triggers a presumption of future harm on the basis of the same statutory ground, which the DHS bears the burden of rebutting. *See Id*; *Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008). The Immigration Judge found that there has been a fundamental change in circumstances rebutting the presumption. We do not agree that DHS has sufficiently rebutted the presumption of a well-founded fear, as the documentary evidence of record does not demonstrate any relevant, fundamental change in country conditions or circumstances. As noted by the Immigration Judge, the record reflects that around 95 percent of all women in Mali are subjected to FGM (I.J. at 11). Moreover, by focusing solely on the probability that the female would again suffer FGM, the Immigration Judge failed to heed the ruling of the Attorney General in *Matter of A-T-*, *supra*, that the government's burden is to show that changed conditions obviate the risk of persecution. *Matter of A-T-*, 24 I&N Dec. at 622-633.

Based on the foregoing, and there being no apparent discretionary reasons for denial, we conclude that the respondents have established their eligibility for asylum. Because the record does not contain the required background and security investigations for the respondents, we will remand the record for this purpose. Given our disposition of this case, we need not consider the application for withholding of removal or CAT, or the male respondent's separate asylum application. Accordingly, the following orders will be entered.

ORDER: The respondents' appeal is sustained.

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 further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

Ellen Riebowitz  
FOR THE BOARD