File: (b) (6)

Date: JAN 19 2006

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael A. Walker, Esquire

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) Noting that it is undisputed that the respondent was forced to undergo female genital mutilation (FGM) in Senegal, the court remanded for the Board to consider whether the respondent suffered FGM on account of her membership in the Tukulor Fulani tribe, and whether the FGM was committed by the government or by forces the government is unable or unwilling to control.

The record before us reflects that the respondent is a member of the Tukulor Fulani tribe in Senegal, and that this tribe has a history of performing FGM on girls. The respondent claims that she was forced to undergo the procedure at the age of 24, by the family of a man she was expected to marry. The Immigration Judge questioned this account, noting that the respondent testified that her sisters had the procedure done when she was about 10, but she managed to avoid it at that time, and finding that the respondent did not credibly explain the discrepancy regarding when FGM was performed on her. Although the Senegalese government banned FGM in 1999, that was after the respondent, who is now 35, was forced to undergo the procedure, whether it was performed on her at the age of 10, or at the age of 24. Moreover, the record reflects, and the most recent Department of State *Country Report* confirms, that many Senegalese ignore the ban.

Under these circumstances, we find that the respondent was forced to submit to FGM on account of her membership in her tribe, and that the government was unable to control this widespread practice. She therefore suffered persecution on account of a protected ground. *See Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Further, we find that the fact that the procedure has already been done, and cannot be performed again, is not a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution. *See* 8 C.F.R. § 1208.13(b)(1)(i)(a). We note that FGM, like sterilization, is a permanent and continuing act of persecution that has very definite, lifelong consequences for the women who have endured it. *See Matter of Y-T-L-*, 23 I&N Dec. 601, 607 (BIA 2003).

(b) (6)

Accordingly, the respondent is found eligible for asylum, dependent upon the required security checks, and the record does not reflect that a denial of asylum in the exercise of discretion is warranted in her case. *See generally Matter of Kasinga, supra.* Further, in view of our decision, the respondent is also eligible for withholding of removal from Senegal.

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). *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

IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jul 14, 2006. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to

Respondent's application for:

[X] Asylum was (X) granted ( ) denied ( ) withdrawn

[ ] Withholding of removal was ( )granted ( ) denied ( ) withdrawn

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) witholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date: Jul 14, 2006

DONN L. LIVINGSTON
Immigration Judge

Appeal: Waived/Reserved (both sides) Appeal Due By:

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