

ILW Teleconference – August 16, 2007
Citation List for Participants
Regina Germain



FGM

Matter of Kasinga, 21 I&N Dec. 357, 365 (BIA 1996) - The BIA, for example, found that female genital mutilation (FGM), also known as female genital cutting (FGC), is a form of persecution, relying in part on legacy INS's Considerations for Adjudicating Claims from Women, which acknowledges that FGM is a form of persecution.

Abay v. Ashcroft, 368 F.3d 634, 641–42 (6th Cir. 2004) - The Sixth Circuit held that “where a parent and protector is faced with exposing her child to [FGM]” she could establish eligibility for asylum.

Bah v. Gonzales, 462 F.3d 637, 643 (6th Cir. 2006) – The Sixth Circuit has also refused to extend that protection to female children who remain in the home country and are at risk of FGM.

Mohammed v. Gonzales, 400 F.3d 785, 795-96 (9th Cir. 2005); *Niang v. Gonzales*, 422 F.3d 1187, 1189 (10th Cir. 2005) – These courts have found that past FGM is persecution and a continuing form of harm that allows for a finding of a well-founded fear.

Other Particular Social Groups

Particular social groups may include:

Somalian females - *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005).

The educated, landowning class of Colombian cattle farmers - *Tapiero de Orjuela v. Gonzales*, 423 F.3d 666, 672 (7th Cir. 2005).

Former U.S. Embassy employees - *Ang v. Gonzales*, 430 F.3d 50, 56 (1st Cir. 2005).

Former child soldiers - *Lukwago v. Ashcroft*, 329 F.3d 157, 178–79 (3^d Cir. 2003).

Families - *Thomas v. Gonzales*, 409 F.3d 1177, 1187 (9th Cir. 2005) (en banc) (finding that a family may constitute a particular social group for purposes of refugee status), *vacated by, Gonzales v. Thomas*, 547 U.S. 183 (2006) (finding Ninth Circuit's decision violated “ordinary remand rule” and issue of whether families constitute a particular social group should have been decided in the first instance by the BIA).

Persons with disabilities - *Tchoukhrova v. Gonzales*, 404 F.3d 1181, 1189-90 (9th Cir. 2005) (finding “persons with disabilities are precisely the kind of individuals that our asylum law contemplates by the words ‘particular social group’”), *rehearing en banc denied*, 430 F.3d 1222 (9th Cir. 2005) (dissent criticized court for creating a reverse derivative asylum claim by imputing harm suffered disabled child to parents), *vacated*, 127 S. Ct. 57 (2006).

Unmarried Chinese women who have been subjected to arranged marriages and who oppose such practices - *also Gao v. Gonzales*, 440 F.3d 62, 70-71 (2d Cir. 2006) (finding women who have been sold into marriage and who live in a part of China where forced marriages are considered valid and enforceable constitute a particular social group).

UNHCR also takes the position that victims of trafficking and persons at risk of being trafficked might also qualify for refugee status under certain circumstances. *See* UNHCR’s Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (Geneva, April 7, 2006), available online at www.unhcr.org.

Groups found not to be particular social groups, under the facts presented:

Criminal deportees - *Toussaint v. Gonzales*, 455 F.3d 409, 417-18 (3d Cir. 2006); *Elien v. Ashcroft*, 364 F.3d 392, 397 (1st Cir. 2004).

Honduran street children - ¹ *Escobar v. Gonzales*, 417 F.3d 363, 367-68 (3d Cir. 2005).

Noncriminal drug informants working against the Cali drug cartel, - ¹ *In re C-A-*, 23 I&N Dec. 951 (BIA 2006), *aff’d Castillo-Arias v. U.S. Att’y. Gen.*, 446 F.3d 1190 (11th Cir. 2006), *cert. denied*, 127 S. Ct. 977 (Jan. 8, 2007).

Young, attractive Albanian women forced into prostitution - *Rreshpja v. Gonzales*, 420 F.3d 551, 555-56 (6th Cir. 2005).

One Year Deadline

Asylum Officer Basic Training Course on One Year Deadline is available online at: <http://www.rmssdenver.org/documents/Oneyear14Sept06LP.pdf>

For purposes of deadline, time begins to run when individual who sought asylum in Canada returns to U.S. - - *see Matter of R-D-*, 24 I&N Dec. 221 (BIA 2007), available online at <http://www.usdoj.gov/eoir/vll/intdec/vol24/3571.pdf>

Firm Resettlement

An applicant is considered to be “firmly resettled” if “prior to arrival in the United States, he [or she] entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement.” 8 CFR §1208.15.

An applicant is not considered to be firmly resettled if the applicant establishes:

- That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
- That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. *Id.*

In making a determination under subsection (b), the adjudicator must consider:

- The conditions under which other residents of the country live;
- The type of housing, whether permanent or temporary, made available to the refugee;
- The types and extent of employment available to the refugee;
- The extent to which the refugee received permission to hold property; and
- The extent to which the refugee enjoyed other rights and privileges, such as travel documentation including a right of entry and/or re-entry, education, public relief, or naturalization, ordinarily available to others resident in the country. *Id.*

Maharaj v. Gonzales, 450 F.3d 961, 964 (9th Cir. 2006) (en banc) - According to the Ninth Circuit, DHS must first make a threshold showing that the asylum applicant received an offer of some type of official status permitting the applicant to reside in a third country indefinitely. This showing may be made by direct or circumstantial evidence. *Id.* Once DHS has produced some evidence, the burden shifts to the applicant to show that he falls within one of the regulatory exceptions under 8 CFR §208.15(a) or (b).

A similar approach has also been used by the following circuits:

First - *Salazar v. Ashcroft*, 359 F.3d 45, 50-51 (1st Cir. 2004)

Third - *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001).

Eighth - *Rife v. Ashcroft*, 374 F.3d 606, 611 (8th Cir. 2004)

Tenth - *Elzour v. Ashcroft*, 378 F.3d 1143, 1151 (10th Cir. 2004).

Other courts have adopted a totality of the circumstances approach. *See, e.g., Sall v. Gonzales*, 437 F.3d 229, 232 (2d Cir. 2006).

Courts, however, have refused to allow applicants who have severed ties with countries which offered permanent status to bootstrap a claim for asylum on the rationale that they can no longer return to the country that offered them status. *See Firmansjah v. Gonzales*, 424 F.3d 598, 604 (7th Cir. 2005); *Abdalla v. INS*, 43 F.3d 1397, 1400 (10th Cir. 1994).

Other reported cases finding an individual has been firmly resettled include:

In re K-R-Y- and K-C-S-, 24 I&N Dec. 133 (BIA 2007) (finding applicants who became citizens of South Korea and had significant ties there were firmly resettled in South Korea).

Sultani v. Gonzales, 455 F.3d 878, 883 (8th Cir. 2006) (finding a family from Afghanistan granted refugee status in Australia was firmly resettled in Australia).

Nahrvani v. Gonzales, 399 F.3d 1148, 1150 (9th Cir. 2005) (finding that a Iranian national was firmly resettled in Germany where he was offered permanent residency, married a German citizen, and worked and traveled freely in Germany).

In contrast, the Ninth Circuit has rejected a finding by an IJ that a Somali asylum applicant was firmly resettled in Ethiopia where the evidence credited by the IJ established that although she remained in Ethiopia for five years, she had no right to remain there permanently. *Ali v. Ashcroft*, 394 F.3d 780, 782 (9th Cir. 2005); *see also Makadji v. Gonzales*, 470 F.3d 450, 452 (2d Cir. 2006) (finding IJ's determination that Mauritanian applicant was firmly resettled in Mali was not supported by substantial evidence and that IJ improperly placed burden of proof on the applicant to show he was not firmly resettled).