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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Baltimore, MD

Date: APR 1 4 2008

In re: A(b)(6) T(b)(6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Ronald D. Richey, Esquire

ON BEHALF OF DHS: Christopher R. Coxe
Senior Attorney

APPLICATION: Reconsideration

This case was last before the Board on September 29, 2007, when we affirmed the Immigration Judge's decision pretermitting the respondent's application for asylum and denying her request for withholding of removal and protection pursuant to the Convention Against Torture ("CAT"). *Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007). The respondent now asks us to reconsider that decision pursuant to 8 C.F.R. § 1003.2(b) (2007). The Department of Homeland Security ("DHS") opposes the motion. The motion will be denied.

A motion to reconsider must include an allegation of material factual or legal error in the prior decision that is supported by pertinent authority. *See Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006). The respondent challenges our decision on several grounds. She first argues that we erred as a matter of law and fact in finding that she failed to prove that she qualifies for a regulatory exception to the one-year filing deadline for asylum applications, and thus is statutorily barred from seeking asylum. *See* section 208(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). The respondent asserts that she was in lawful nonimmigrant status until shortly before she was placed in removal proceedings and that the definition of "extraordinary circumstances" includes maintenance of lawful status (MTR at 9). *See* 8 C.F.R. § 1208.4(a)(5)(iv). She further notes that she appeared for a master calendar hearing in November 2003, at which time the Immigration Judge advised her to file her asylum application at the next hearing on May 12, 2004 (Tr. at 5). The respondent therefore argues that she filed her application within a "reasonable period" of falling out of lawful status and of learning of her family's plan to have her marry her cousin.

The respondent has been in the United States since October 2000. She entered as a visitor with permission to remain until April 2001 (Tr. at 43). The respondent then changed her status to that of a student in July 2001 (Tr. at 43). As the DHS points out, the respondent admitted on cross-examination that she violated the terms of her status by engaging in unauthorized employment as early as September 2001 (I.J. at 2; Tr. at 44-46). The respondent also failed to comply with the terms of her visa by changing schools without authorization (I.J. at 2). Although the respondent may not have been placed in removal proceedings until 2003, the record reflects that she failed to maintain

lawful status prior to that time. In her reply to the DHS's opposition brief, the respondent observes that, with regard to calculating unlawful presence under section 212(a)(9)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i), section 30.1(d)(1)(B) of the United States Citizenship and Immigration Services ("USCIS") Adjudicator's Field Manual provides that "[n]onimmigrants admitted to the United States for [duration of status] begin accruing unlawful presence on the date USCIS finds a status violation while adjudicating a request for another immigration benefit or on the date an immigration judge finds a status violation in the course of proceedings." The respondent suggests that, analogously, she should be considered to have "maintained" her nonimmigrant status until such time as the DHS denied her request for reinstatement of her student status in July 2003. We disagree. The referenced section of the Adjudicator's Field Manual pertains to the accrual of unlawful presence for purposes of section 212(a)(9)(B)(i) of the Act and bears no relation to the regulations governing the filing of asylum applications. There is no indication in the regulatory history of 8 C.F.R. § 1208.4(a)(5) that the drafters intended the exception to the 1-year filing deadline for "extraordinary circumstances" to be read in tandem with the unlawful presence provisions under the Act. *See Asylum Procedures*, 65 Fed. Reg. 76121-01 (Dec. 6, 2000).

Further, while the respondent cites *Matter of Y-C-*, 23 I&N Dec. 286 (BIA 2002), in arguing that her efforts to maintain lawful status prevented her from filing a timely application, we note that the respondent in that case was a minor who had been detained by the DHS for a year after his arrival in the United States and therefore was unable to file a timely application. Here, the respondent is an adult, has never been detained, and was properly charged with being aware of the requirements of maintaining lawful nonimmigrant status in this country. Accordingly, the respondent has not met her burden of demonstrating that she qualifies for an exception to the filing deadline based on "extraordinary circumstances." Moreover, as explained in our prior decision, we see no error in the Immigration Judge's finding that the respondent cannot show "changed circumstances" based on the formal announcement of her engagement to her cousin in July 2003 when it appears from the record that she knew of the possibility of an arranged marriage much earlier. *See* 8 C.F.R. § 1208.4(a)(4). Consequently, in light of our conclusion that the respondent has established neither "changed" nor "extraordinary" circumstances for purposes of a regulatory exception to the filing deadline, we need not address whether she filed her application within a "reasonable period" of falling out of lawful status or of discovering her parents' plans for her engagement. *See* 8 C.F.R. § 1208.4(a)(4)(ii), (5).

The respondent also argues that the Board misapplied the regulatory framework for asylum and withholding of removal in concluding that female genital mutilation ("FGM") constitutes a "fundamental change in circumstances" such that an applicant for relief no longer has a well-founded fear of persecution. First, the respondent incorrectly asserts that we failed to make a determination regarding whether her past experience with FGM qualifies as past persecution on account of a protected ground. Indeed, for purposes of our analysis concerning whether the presumption of well-founded fear was rebutted by evidence of a fundamental change in circumstances, we assumed that the respondent's past experience with FGM constituted persecution under the Act. *Matter of A-T-*, *supra*, at 299-301. The respondent also argues that we misconstrued the 1996 amendment to the "refugee" definition, which specifically recognizes victims of forcible abortion and sterilization as qualifying for asylum despite the fact that, once sterilized, an individual cannot again be subjected to the same harm and ordinarily would not be considered to have a well-founded fear of future

persecution. *See id.* at 300-01 (addressing the "continuing persecution" approach to coercive population control cases set forth in *Matter of Y-T-L-*, 23 I&N Dec. 601 (BIA 2003)). Specifically, the respondent asserts that the amended definition was intended to create a nexus between coercive population control measures and an individual's political opinion, such that asylum applicants would have grounds for seeking relief for which they otherwise would have been considered ineligible. *See, e.g. Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996) (superseding *Matter of Chang*, 20 I&N Dec. 38 (BIA 1989)). The respondent is correct that the amended definition helped establish a nexus that was not previously recognized; however, in doing so, Congress also created a new category of asylum applicants with certain advantages over other individuals who also have suffered serious, permanent harm that typically can be done only once. As we explained in our prior decision, people who have experienced past persecution but have no present well-founded fear due to a fundamental change in circumstances generally can establish eligibility for asylum only by demonstrating compelling reasons for being unwilling to return to their country of origin based on the severity of the past persecution, or by showing that they face a reasonable possibility of other serious future harm. *Matter of A-T-, supra*, at 300 (addressing 8 C.F.R. § 1208.13(b)(1)(iii)). The outcome of *Matter of Y-T-L-* represented an exception to ordinary asylum principles designed to give full effect to the amended refugee definition, which created a special class of aliens who qualify for asylum based "on the strength of the past harm alone." *Matter of A-T-, supra,* at 300.

Contrary to the respondent's argument in her motion, our decision in *Matter of A-T-* does not represent a "reversal of [our] earlier policy of granting protection to FGM victims" (Respondent's Reply to DHS's Opposition at 6). Prior to the respondent's case, we had not had occasion to address in a published decision a situation in which the applicant was requesting relief based on past experience with FGM; rather, we had considered only the threat of imminent FGM in the case of a women who had fled her native country to avoid the procedure. *See Matter of Kasinga*.21 I&N Dec. 357 (BIA 1996). Moreover, we note that our decision in *Matter of A-T-* does not foreclose the possibility that an individual could receive a humanitarian grant of asylum based on her past experience with FGM. *See, e.g., Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464 (BIA 2008). Under 8 C.F.R. § 1208.13(b)(1)(iii), an individual who has suffered past persecution on account of a statutorily protected ground, but who no longer has a well-founded fear of persecution due to a fundamental change in circumstances, or who could avoid future persecution by internal relocation, may nonetheless be granted asylum in the exercise of discretion if the "applicant has demonstrated compelling reasons for being unable or unwilling to return to [his or her] country arising out of the severity of the past persecution." *See also Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). As we noted previously, however, the respondent in this case is not eligible for such relief because she is time-barred from asylum, and there is no comparable provision in the regulations governing withholding of removal under the Act.[1] *See* 8 C.F.R. § 1208.16(a). The "continuing persecution" approach of *Matter of Y-T-L-* is not embodied in the regulations that govern asylum claims; instead, it is an exception to the normal rules that arises from a special statute. The respondent has not

[1] We emphasize that in a case where the applicant is eligible to be considered for asylum and raises a claim based on past experience with FGM, an Immigration Judge certainly may evaluate whether a discretionary grant of asylum is warranted under 8 C.F.R. § 1208.13(b)(1)(iii) based on the severity of the harm.

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identified any error in our application of the regulations that apply generally to all victims of permanent or ongoing harm, including victims of FGM, who are not covered by the coercive population control provisions of the Act. *See Matter of A-T-, supra*, at 301.

Additionally, we reject the respondent's argument that we erred in not recognizing that FGM is only one aspect of the lifelong subjugation of women in her culture, and that she faces a clear probability of additional persecution in the form of forced marriage and mistreatment by her husband if she returns to Mali (Respondent's Reply to DHS's Opposition at 6-7). Initially, we note that the respondent's framing of her membership in a particular social group appears to have shifted since she filed her appellate brief. On appeal, we understood the respondent to be claiming membership in two separate groups. The first was similar to the group addressed in *Matter of Kasinga, supra*, i.e., women from countries that traditionally practice FGM who oppose the procedure. The second group, as we understood it, was women of the Bambara tribe who oppose arranged marriage. We adjudicated the respondent's appeal with these two groups in mind, discussing each claim separately. In her motion to reconsider, the respondent seeks to combine her past experience with FGM with her fear of an arranged marriage in the future by suggesting that both are cultural traditions that have the effect of relegating women to a subordinate role in Mali society. By presenting her claim in this light, the respondent essentially has created a much broader social group that appears to include all women from Mali.

The respondent makes a legitimate argument in this regard, and we do not dispute that an asylum applicant could present a successful claim on the theory that FGM is a single type of harm in a series of injuries inflicted on account of one's membership in a particular social group, and that she continues to have a well-founded fear of future persecution based on the potential for related harm.[2] Nevertheless, we are unable to conclude on this particular record that the respondent has met her burden of proof for such a claim. We first note that most of the evidence submitted by the respondent concerns general country conditions in Mali, and such evidence is typically insufficient on its own to establish an individual's potential for future harm (DHS Opposition at 16). *See Matter of M-D-*, 21 I&N Dec. 1180, 1183 (BIA 1998). Moreover, the discussion of arranged marriage in these documents mainly addresses situations in which a young girl is forced to marry a man who is significantly older than she is and has greater standing in the community (Exh. 2, Tab K, at 277, 279). As we observed in our prior decision, the respondent is an adult whose parents have arranged for her to marry a cousin of similar age and background. *Matter of A-T-, supra*, at 302. Thus, her circumstances do not appear to be analogous to those discussed in the evidentiary documents. Further, the respondent has offered no evidence that she would actually be forced into marriage if she refuses to acquiesce to her family's wishes; rather, the situation to which she testified is an arranged marriage, which is a common practice throughout the world. *See id.* at 303. Even the letters from the respondent's family members – which are not considered "independent evidence" in the relevant circuit, *see Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 358-59 (4th Cir. 2006) – are nonspecific with regard to the consequences of her failure to abide by their wishes (Exh. 2, Tabs B, C, D). Moreover, the respondent has not shown that she could not reasonably relocate

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[2] Indeed, our decision was careful not to announce a rule that the infliction of FGM foreclosed asylum claims by women pertaining to their status in general. Rather, we limited our ruling to "(a)ny presumption of FGM persecution" being rebutted by the fundamental change arising from that very procedure. 24 I&N Dec. at 299.

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elsewhere in Mali to avoid the marriage; indeed, the State Department's Country Reports on Human Rights Practices in Mali do not indicate that she could not find safety within her native country or that the government would not protect her from being forced into a marriage against her will. *See, e.g., Pan v. Gonzales*, 445 F.3d 60, 62 (1st Cir. 2006). The Country Reports do reflect that women have limited access to education and employment and that they constitute only 15 percent of the workforce; however, the Reports also indicate that the government is the country's largest employer and provides women and men with equal pay for similar work (Exh. 2, Tab Q). Finally, while we do not doubt that the respondent may face discrimination in Mali as a single woman, she has not shown that the harm from such discrimination would likely rise to the level of persecution. We therefore decline to revisit the issue of whether the respondent qualifies as a member of a particular social group for purposes of withholding of removal; even assuming that she did, we would be unable to find on this record that she faces a clear probability of persecution. We conclude that the respondent has failed to identify an error of fact or law that warrants reconsideration of our prior decision. Accordingly, we will enter the following order.

ORDER: The motion to reconsider is denied.

FOR THE BOARD