

AILA Info Net Doc. No. 1402-0450

I. SUMMARY OF THE CASE

BIA decision dated Dec 31, 2013

Respondent X Y Z, a Somali asylum seeker, presented herself to CBP officials at the San Ysidro port of entry on May 20, 2010. See I-213 at Exh. 3. Ms. Z indicated her fear of returning to Somalia and requested asylum. Id. She was taken into ICE custody and given a credible fear interview with the Miami Asylum Office on July 6, 2010. See Credible Fear Worksheet at Exh. 9. Ms. Z was found to have a credible fear of persecution. Id. She was issued a Notice to Appear placing her in immigration proceedings on July 7, 2010. See Notice to Appear at Exh. 1. Ms. Z was released from ICE custody on July 20, 2010 and paroled into the U.S. See I-94 card at page 5, Exh. 5.

At her initial Master Calendar Hearing, Ms. Z filed an I-589 asylum application with the Bloomington Immigration Court on November 4, 2010. See Original I-589 application at Exh. 5. Ms. Z appeared at that hearing with her attorney, Summer Allchin. Tr. 1. She conceded allegations one through five and admitted the charge. Tr. 3. She declined to designate a country and the Court declined to designate a country of removal as Ms. Z was an arriving alien. Id. Respondent sought asylum, withholding of removal, and Convention Against Torture (CAT) as her forms of relief. Id. Immigration Judge Kristin Olmanson set an individual hearing for March 1, 2011. Tr. 12.

Respondent appeared at her individual hearing with her attorney Summer Allchin, on March 1, 2011 in front of Judge Olmanson. Tr. 14. At that hearing, testimony was not completed and therefore the IJ reset Ms. Z's individual hearing for May 25, 2011 to complete testimony. Tr. 123. Testimony was completed at the May 25th hearing and the IJ closed the case to issues a written decision. Tr. 216.

~~In a written decision issued by Judge Olmanson on August 10, 2011, the IJ found~~ Respondent to be not credible based on alleged inconsistencies and a lack of corroborating evidence. See Immigration Judge's Decision (hereinafter IJ Dec.) at 7. Despite the fact that the IJ found that Ms. Z had suffered past persecution on the basis of her Female Genital Mutilation (FGM) claim, the IJ denied Respondent's application for asylum as a matter of discretion. IJ Dec. at 12. The IJ granted Ms. Z's application for withholding of removal. Id. at 14. Ms. Z respectfully requests the Board of Immigration Appeals ("BIA") overturn the IJ's denial of Ms. Z's asylum application and grant Ms. Z's application for asylum based on her past persecution and well-founded fear of future persecution in Somalia.

II. STATEMENT OF THE ISSUES

Whether the IJ erred in denying Respondent's application for asylum given that the IJ found that Respondent qualified for asylum under *Hassan v. Gonzales* and other controlling law.

Whether the IJ's denial of Respondent's application for asylum as an exercise in discretion was an abuse of discretion.

Whether the IJ erred in finding Respondent not credible based on speculation and improperly perceived inconsistencies.

Whether the IJ erred in finding Respondent had not established her identity.

Whether the IJ erred in finding Respondent not credible because she did not submit additional evidence regarding her travel from Somalia to the United States.

Whether the IJ erred in not evaluating Respondent's past persecution claim in regards to Al Shabaab.

Whether the IJ erred in finding Respondent had reached a "safe haven" in Mexico.

Whether the IJ erred in finding Respondent engaged in forum shopping by failing to request asylum in any of the countries through which she travelled.

III. SUMMARY OF IJ DECISION

In a written decision issued by Judge Olmanson on August 10, 2011, the IJ found Respondent not credible based on alleged inconsistencies and a lack of corroborating evidence to support Respondent's claims of persecution, her travel and her identity. IJ Dec. at 7. The IJ also based her adverse credibility determination on claiming there was little corroborating evidence to support Respondent's claim, and claimed inconsistencies within the corroborating evidence Respondent did submit. Id. The IJ based her determination largely on the fact that Respondent did not provide corroborating evidence of her travel route to the United States. Id. at 10-11. However, Respondent's travel route has nothing to do with the heart of her claim, and there is no one year deadline issue as Ms. Z filed her asylum application well within one year of her entry into the United States. The IJ did not analyze Respondent's past persecution claim as it related to the persecution she suffered at the hands of Al Shabaab, and instead merely stated that she found Respondent not credible and that Respondent had not provided sufficient corroborating evidence to establish past persecution by Al Shabaab. Id. at 10. However, as noted in the Department of State Somalia Reciprocity Schedule, no documents are available in Somalia and there are no circumstances under which they can reasonably be expected to be obtained. Exh. 12 at 6. Respondent provided independent evidence of her forced FGM through a doctor's letter. Exh. 7 at 4. Despite the fact that the IJ found that Ms. Z had suffered past persecution on the basis of her FGM claim (and that the government had not rebutted the presumption of fear of future persecution), the IJ denied Respondent's application for asylum as a matter of discretion. IJ Dec. at 12. The IJ based her discretionary denial in part on her opinion that Ms. Z engaged in

forum shopping by not applying for asylum in one of the 12 countries she travelled through on her way to the United States. Id. at 12-13. However, the IJ acknowledged that the smuggling route Ms. Z took to come to the United States was not unknown to the judge as she had seen a number of cases where respondents had used the same route. Tr. 7. The IJ also accused Ms. Z of forum shopping because she did not stay in the refugee camp in Kenya and wait to be firmly resettled through UNHCR. Id. at 13. The IJ granted Ms. Z's application for withholding of removal. Id. at 14.

The IJ erred in finding Respondent not credible based on improperly perceived inconsistencies and speculation. Respondent has been consistent in her testimony throughout the entire asylum process as reflected in her testimony and documents in the record – including the doctor's letter confirming Ms. Z was the victim of female genital mutilation. The IJ did not give proper weight to Respondent's corroborating evidence and country conditions. The IJ abused her discretion and committed legal error in denying Respondent's application for asylum even though she found Respondent had been persecuted in the past and would likely be persecuted in the future based on her FGM claim.

This is Respondent's timely appeal to the BIA.

IV. STATEMENT OF THE FACTS

A. Factual Background

X Z is a native and citizen of Somalia. See Resp. Aff. at Exh. 5 at 1. She was born in Mogadishu, Somalia on April 5, 1988. Id. Ms. Z is a member of the Badi Ade tribe. Id. The Badi Ade tribe is a sub clan of the Hawiye tribe. Exh. 13 at 9.

When Ms. Z was approximately six years old, she was forced to undergo FGM. Id. A neighbor woman did it. Tr. 85, 161. Ms. Z was unable to walk after the procedure and was never taken to a hospital for medical treatment. Tr. 86. Ms. Z was unable to walk for **months** after the cutting. Id. Ms. Z continues to suffer medical and emotional problems from the FGM. Tr. 86-88, 161-162. **She was forced to be recut with scissors in order to have sexual relations with her husband.** Tr. 161-162. **Ms. Z would like to have children someday, but she knows she will have to be recut in order to do so.** Tr. 163. Ms. Z's mother and sister were also forced to undergo FGM. Tr. 86.

In early 2008, Ms. Z's father was killed by militia members in her neighborhood. Exh. 5 at 1. Ms. Z was not home when it happened, but when she returned she saw her father's body; he had been shot in the head. Id. Ms. Z, her mother and siblings all fled the house. Id. Not knowing where her other family members were, Ms. Z sought refuge with her neighbor, Asha. Id. Ms. Z fled Somalia to Kenya with Asha. Id. They stayed in a refugee camp in Kenya for a few days and then took a bus to Nairobi where Asha rented a home for her and her children and Ms. Z to stay. Id. Approximately a year later, Ms. Z left Nairobi to stay at a refugee camp. Id. While there, Ms. Z registered as a refugee with the UNHCR. Exh. 13 at 3-4. Ms. Z received a phone call from her cousin informing her that her mother and siblings were alive and staying in a refugee camp outside of Mogadishu. Exh. 5. at 1. Ms. Z returned to Somalia to rejoin her family. Id. at 1-2.

In October of 2009, Ms. Z married her husband, Ahmed Shiire. Id. at 2. Ms. Z was introduced to her husband through her mother, as he is a distant relative of her mother. Id. They were married at the refugee camp in Mogadishu. Id. After the marriage, Ahmed moved in with Ms. Z and her family. Id. Shortly after they were married, Ms. Z, her husband, her mother and

her siblings all moved back into their family home in Mogadishu. Id. The fighting had quieted down in their neighborhood, so they thought it was safe to return. Id.

In December of 2009, members of Al Shabaab came to Ms. Z's family home. Id. The first time they came, they had a list and asked if those people on the list were living there. Id. When Ms. Z's family told them no, they left. Id. A few days later, Al Shabaab returned to her house asking Ms. Z's husband and her brother Mowlid to join them. Id. They both refused to join. Id. Al Shabaab told Ms. Z's husband and brother they would give them time to think it over and that if they continued to refuse to join, they would be killed. Id. A few days later Al Shabaab returned to Ms. Z's home for a third time. Id. Again, they asked her husband and brother to join them. Id. When they refused, Al Shabaab shot Ms. Z's husband and brother. Id. Ms. Z's husband died instantly from gunshot wounds to the heart. Id. Her brother was shot in the head, but he did not die instantly. Id. Al Shabaab left. Id. Ms. Z and her family took her brother to the hospital, but he died three days later. Id. at 2-3.

A few days later, Al Shabaab returned to Ms. Z's house searching for her other brothers to join them. Id. at 3. Al Shabaab also told Ms. Z's mother that they were going to take Ms. Z away and force her to marry one of their members. Id. Al Shabaab said they would return and force Ms. Z's other brothers to join them and force her to marry them. Id. That same night, Ms. Z, her mother and remaining siblings fled their home and returned to the refugee camp outside of Mogadishu. Id.

Sometime in January of 2010, Ms. Z's mother sent her back to Nairobi, Kenya to stay with their neighbor Asha again. Id. Ms. Z's mother sold their father's home in Mogadishu and sent Ms. Z the money to leave Somalia. Id. at 3. Ms. Z came into contact with a smuggler named Abdi who said he could get her to Cuba. Id. Ms. Z paid Abdi \$4,000 to obtain a Somali

passport with a Cuban visa and fly her from Nairobi to Cuba. Id. Once Ms. Z arrived in Cuba, other smugglers helped get her to Mexico. Id. Ms. Z turned herself over to Mexican immigration officials, where she was held for 15 days and then released. Id. Ms. Z then took a flight to Tijuana, Mexico, and on May 20, 2010, she crossed the border at San Ysidro, California. Id. Ms. Z turned herself over to immigration officials and asked for asylum. Id.

Ms. Z is afraid to return to Somalia because of the past persecution she suffered by being forced to undergo FGM. She is also afraid to return to Somalia because of the persecution she faced at the hands of members of Al Shabaab. They murdered her brother and husband, threatened to force her other brothers to join, and threatened to force her to marry one of their members against her will. Id. at 4. Ms. Z is afraid that if she is forced to return to Somalia, members of Al Shabaab will find her and kill her. Id.

V. ARGUMENT

A. Standard of Review

The BIA may review *de novo* questions of law, discretion, and judgment, and all other issues in appeals from decisions of IJs. 8 C.F.R. § 1003.1(d)(3)(ii). However, the BIA may not engage in fact-finding in the course of deciding an appeal. 8 C.F.R. § 1003.1(d)(3)(iv). A party who asserts that the BIA cannot properly resolve an appeal without further fact-finding must file a motion for remand. 8 C.F.R. § 1003.1(d)(3)(ii). If further fact-finding is needed, the BIA may remand the case to the IJ. Id. The Attorney General's plenary authority to resolve applications for withholding or deferral of removal empowers him to remand a case whenever he deems additional fact-finding necessary or appropriate. INA § 103(g)(2) (citing In Re A-H, 23 I.&N. Dec. 774, 791 (BIA, 2005)). The BIA may take administrative notice of commonly known facts. *See In Re Y-L*, 24 I.&N. Dec. 151, 159 (BIA, 2007).

The BIA reviews findings of fact by the IJ, including those pertaining to the credibility of testimony, to determine whether the findings are “clearly erroneous.” 8 C.F.R. § 1003.1(d)(3)(i). The United States Supreme Court has held that “[a] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948). “A fact-finding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the fact finder.” Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 Fed. Reg. 54,878, 54,889 (Aug. 26, 2002) (Supplementary Information) (citing Anderson v. City of Bessemer, 470 U.S. 564, 573 (1985)).

B. The IJ’s discretionary denial of Respondent’s application for asylum was an abuse of discretion.

The Eight circuit established in *Hassan v. Gonzales* that FGM could form the basis of a grant of asylum based on past persecution of a particular social group. 483 F. 3d 513 (8th Cir. 2007). Like the Respondent in *S-A-K and H-A-H*, Ms. Z is a victim of Type III infibulation. *Matter of S-A-K- and H-A-H*, 24 I. & N. Dec. 464, 465, Interim Dec. 3602 (BIA 2008). As such, all of her external genitals were removed and her vaginal opening was sewn shut. Ms. Diriye was forced to undergo a second cutting in order to have sexual relations with her husband. Tr. 161-162. This has caused her to have excruciating pain during sexual intercourse and to have difficulty urinating and menstruating. Id. **In her order, the IJ acknowledged that Ms. Z had suffered past persecution in the form of FGM. IJ Dec. at 12. The IJ further found that Ms. Z was entitled to a rebuttable presumption of fear of future persecution and that OCC had failed to demonstrate that Respondent had no fear of future persecution in Somalia or that**

she could internally relocate within Somalia and avoid persecution. *Id.* at 13-14. Therefore, Ms. Z has demonstrated – by the IJ’s own findings – that she is entitled to asylum under the requirements of *Hassan*.

Ms. Z is also entitled to asylum on humanitarian grounds because of the severity of her past persecution. Humanitarian asylum is permitted under the statute without demonstrating a well-founded fear where the applicant is unwilling to return based on the severity of past harm or the demonstration of serious future harm. 8 C.F.R. § 1208.13(b)(1)(iii)(A). In the *Matter of S-A-K- and H-A-H*, the Board of Immigration Appeals awarded humanitarian asylum where a woman’s vaginal opening was cut and sewn shut five times in the course of sexual intercourse and childbirth. *Matter of S-A-K- and H-A-H*, 24 I. & N. Dec. 464, 465, Interim Dec. 3602 (BIA 2008). In Ms. Z’s case, she was forced to undergo FGM at the age of six. Tr. 160. Ms. Z was forced to undergo Type III infibulation – the worst type of FGM. Exh. 7 at 4. She was forced to be recut in order to have sexual relations with her husband. Tr. 161-162. In addition, Ms. Z hopes to have children someday and testified that she will be forced to be cut yet again in order to have children. Tr. 163. Ms. Z continues to suffer from back pain, menstrual pain, difficulties urinating and emotional trauma as a result of her FGM. Tr. 161-163. As such, Ms. Z meets the standards under *Matter of S-A-K and H-A-H* for a grant of humanitarian asylum.

Ms. Z’s credible evidence of past persecution and a well-founded fear based on her past FGM experience strongly weighs in favor of a discretionary grant of asylum. The BIA has held that, once an asylum applicant has demonstrated a well-founded fear of persecution, “the danger of persecution should generally outweigh all but the most egregious of adverse factors.” *See Matter of Pula*, 19 I. & N. Dec. 467, 474 (B.I.A. 1987). The exercise of discretion involves looking at the totality of the circumstances, including the applicant’s criminal history, whether

she poses a danger to the security of the United States, whether she has been granted protection elsewhere, and general humanitarian concerns. *See Id.* at 473-74; *see also Matter of Soleimani*, 20 I. & N. Dec. 99, 107-08 (B.I.A. 1989). In Ms. Z's case, the discretionary factors strongly weigh in her favor. Ms. Z's FGM evidence, which includes a medical report from a physician, country condition reports, and her own testimony, are unchallenged in the court's record. As a whole, these submissions constitute compelling evidence of just the type of severe harm that is supposed to be a prevailing consideration in the discretionary grant of asylum. There are no adverse factors in Ms. Z's case which would justify a denial of asylum in the exercise of discretion. She is not barred by any of the grounds listed in 8 C.F.R. § 208.14; she is neither a criminal, nor a security risk. Furthermore, she was not firmly resettled in any of the countries she traveled through during her voyage to the U.S. In addition, there is a strong likelihood that if Ms. Z were forced to return to Somalia, she would be subject to repeated persecution in the form of defibulation and re-infibulation.

Finally, the government's attempt to impeach Ms. Z's credibility on her Al Shabaab claim is not adequate to rebut Ms. Diriye's past persecution. Ms. Z's FGM evidence, which included a letter from a physician, the State Department Report, and her own testimony, has been unrebutted. *See Hassan*, 484 F.3d 513 (**rejecting the government's argument that an adverse credibility determination on one claim rebuts an applicant's past persecution based on a separate claim.**)(emphasis added). For the above reasons, Ms. Z merits a discretionary grant of asylum.

- C. **The IJ erred in finding Respondent not credible and the basis of that finding is contrary to evidence that is in the record, as well as commonly known facts.**

In her written decision, the Immigration Judge found that Respondent “is not credible based on inconsistencies and lack of corroborating evidence to support her claims of persecution, her travel, and her identity.” IJ Dec. at 7. The IJ erred when she found Respondent not credible as that determination is clearly erroneous and contrary to the evidence in the record. The IJ’s adverse credibility determination is based on improperly perceived inconsistencies. The discrepancies that the IJ alleges are present in Respondent’s case do not actually exist or are taken out of context. In addition, the IJ’s adverse credibility determination is based on improper speculation and conjecture. First, the IJ erred in failing to give proper weight to Respondent’s corroborating evidence that she submitted in support of her application for asylum. Id. After dismissing Respondent’s corroborating evidence, the IJ then inexplicably based her adverse credibility determination in part on allegations that Respondent did not submit enough corroborating evidence. Id.

The credibility issues cited by the IJ are not only contrary to the record, but they are also contrary to commonly known facts. It is a fact that no mail services are available in Somalia. See attached USPS Country Conditions for Mailing to Somalia at 1. See also attached BBC Somali Service at 2. It is a fact that Ms. Z has been subjected to female genital mutilation, as with 98% of all women in Somalia. Exh. 7 at 4. Exh. 5 at 38. It is a fact that Somali birth certificates do not exist. Exh. 12 at 6. It is a fact that **no** Somali documents exist and cannot be expected to be obtained. Id. It is a fact that the smuggling route Ms. Z took to get to the United States is a well-known route. Tr. 7. The Board of Immigration Appeals (BIA) should overturn The IJ’s adverse credibility determination as it is clearly erroneous, and grant Respondent’s application for asylum, or in the alternative, remand the case back to the Immigration Judge for further proceedings.

1. Standard for credibility determinations in applications for asylum, withholding of removal and CAT relief

Under the REAL ID Act of 2005, credibility determinations in applications for asylum, withholding of removal and CAT relief filed after May 11, 2005 are subjected to the “totality of circumstances test” based on all relevant factors. See 8 C.F.R. § 208(b)(1)(iii). Respondent’s asylum application was received by the court on November 4, 2010 and as such, is subject to the REAL ID Act. The BIA will only review an IJ’s credibility determination if it is “clearly erroneous.” 8 C.F.R. § 1003.1(d)(3)(i).

2. The IJ’s determination that Respondent was not credible is based on improperly perceived inconsistencies and is thus clearly erroneous.

The BIA will uphold an IJ’s adverse credibility determination based on inconsistencies and omissions if the record reveals that 1) the discrepancies and omissions described by the IJ are actually present in the record; 2) such discrepancies and omissions provide specific and cogent reasons to conclude that the applicant provided incredible testimony; and 3) the applicant has failed to provide a convincing explanation for the discrepancies and omissions. *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000). Credibility determination must be reasonable and an IJ is not allowed to “cherry pick solely facts favoring an adverse credibility determination.” *Shrestha v. Holder*, 590 F.3d at 1043 (9th Cir. 2010). In the present case, the IJ’s adverse credibility determination was based on improperly perceived inconsistencies.

a. The discrepancies that the IJ alleges are present in Respondent’s case do not actually exist.

The IJ erred in alleging numerous inconsistencies between Respondent’s testimony and supporting evidence that does not actually exist in the record. Where alleged inconsistencies between testimony and written statements do not actually exist, an adverse credibility

determination should be reversed. *Kueviakoe v. Attorney General of the U.S.*, 567 F.3d 1301, 1304-06 (11th Cir. 2009).

In her decision, the IJ claimed that Ms. Z was not credible because she was inconsistent in her testimony regarding the manner in which she obtained the money she used to pay smugglers to help her get to the United States. IJ Dec. at 10. The IJ claims that Ms. Z's testimony is inconsistent because she testified at her CBP interview and in her affidavit submitted in support of her asylum application that her mother sold her father's land in order to get money for Ms. Z's trip to the United States, but at her interview with the Asylum Officer and during her testimony at her individual hearing, she claimed her mother sold her father's house to get the money. *Id.* Ms. Z's testimony was not inconsistent as selling a house is not inconsistent with selling land; a house cannot be sold without selling the land on which it sits. A house sits on land and therefore testimony that her mother sold her father's house is not inconsistent with testimony that her mother sold her father's land. To base an adverse credibility determination on such an improperly perceived inconsistency is an abuse of discretion.

In the entire fourteen pages of the IJ's decision, only one brief paragraph addresses Ms. Z's persecution claim by members of Al Shabaab. IJ Dec. at 10. The IJ claims that Ms. Z is not credible because she could not state how much time passed between each visit by members of Al Shabaab. However, Ms. Z consistently testified multiple times that although she did not know how long it was between each visit by members of Al Shabaab, they came to her home four times in one month. Tr. 47-48, 56, 91, 164. In addition, the IJ held that Ms. Z was not credible because she had not submitted anything from her mother or siblings to corroborate her own claim. Ms. Z testified that the last time she spoke to her mother, her mother and siblings were in a refugee camp outside of Mogadishu, Somalia. Tr. 84-85. Under the REAL ID Act, the IJ may

request corroborating evidence of a Respondent's testimony; however, that request must be reasonable. El-Sheikh v. Ashcroft, 388 F.3d 643, 647 (8th Cir. 2004)(emphasis added). There is currently no mail service available in Somalia. See attached USPS Notice and BBC Somalia Notice at 1-3. The Department of State Somalia Reciprocity Scheduled also says no documents are available from Somalia and there are "no circumstances under which ... applicants can reasonably be expected to recover" documents. Exh. 12. at 6. As such, it is unreasonable for the IJ to request that Ms. Z's family submit corroborating evidence when they are in a refugee camp in war-torn Somalia with no mail service available. The IJ's holding that Ms. Z is not credible because she could not produce documents from her family in Somalia is unreasonable and an abuse of discretion. Further, any alleged discrepancy does not go to the heart of Ms. Z's asylum claim and should not be used as a basis for an adverse credibility determination.

The IJ also based her determination that Ms. Z was not credible on allegations that Ms. Z was inconsistent in her testimony regarding when she met Shafia and Hodan – two other Somali nationals who were smuggled at the same time as Ms. Z. IJ Dec. at 10. The IJ erroneously claimed that Ms. Z testified in her supplemental affidavit that she met Shafia and Hodan when she arrived in Cuba. Id. However, Ms. Z merely stated that she stayed in the same house in Cuba with Hodan and Shafia; she did not state in her supplemental affidavit when exactly she met Shafia and Hodan. Exh. 7 at 2. The IJ then erroneously claimed that Ms. Z testified at her March 1, 2011 hearing that she met Shafia and Hodan in Cuba. IJ Dec. at 10. Ms. Z first mentioned Shafia and Hodan's actual names at her March 1, 2011 hearing during her testimony regarding when she landed in Cuba. Tr. 70. However, Ms. Z did not testify that she met Shafia and Hodan in Cuba. In fact, Ms. Z testified at her March 1st hearing that there were other Somalis travelling with her from Nairobi to Dubai. Tr. 65. She then testified that a young

Somali man and young Somali woman helped her know which plane to board from Dubai to Russia. Tr. 68. Ms. Z then testified that the two young Somalis she was travelling with – Shafia and Hodan – left the airport in Cuba with her and the smuggler, Mohamed. Tr. 70. Therefore, the IJ again incorrectly misstated Ms. Z’s testimony regarding Shafia and Hodan. Lastly, the IJ claimed that when Ms. Z was asked about the alleged discrepancies regarding her testimony of whether or not she met Hodan and Shafia in Cuba, Ms. Z “was evasive and never answered the question.” IJ Dec. at 10. Ms. Z testified that she met Shafia and Hodan in Dubai. Tr. 110. She testified that Hodan and Shafia were on the same plane from Nairobi, Kenya to Dubai, but that she did not speak to them until they reached Dubai. Id. OCC then asked Ms. Z why earlier she had not mentioned their names until Cuba. Tr. 111. Ms. Z responded “You mean I didn’t mention their names before I came to Cuba?” Id. OCC then asked “In your earlier statement, in your written statement and in your testimony today, your description of your trip, the first time you mentioned their names was regarding meeting them in Cuba.” Id. Ms. Z tried to clarify OCC’s questions by asking “Do you mean that I mentioned their names when I came to Cuba?” OCC then moved on to another question on another topic without clarifying her previous question regarding Ms. Z’s alleged inconsistency. Id. As the record demonstrates, Ms. Z was **not** being evasive and the only reason why she did not answer OCC’s question was because OCC did not clarify their question so that Ms. Z could give an answer. Therefore, the IJ’s determination that Ms. Z was inconsistent regarding her testimony of when she met Shafia and Hodan is clearly erroneous and cannot support an adverse credibility determination.

Lastly, the IJ found Ms. Z was not credible because her testimony regarding her FGM was allegedly inconsistent with the doctor’s letter she submitted in support of her asylum application. IJ Dec. at 11. The letter from Dr. Maust confirmed that Ms. Z has been subjected to

Type III FGM. Exh. 7 at 4. The letter then went on to state that Ms. Z had a indented scar on her inner right thigh approximately three inches long that was consistent with a wound from a knife/bayonet/similar sharp object. Id. The IJ stated that Ms. Z did not mention any sort of knife or bayonet wound and found Ms. Z was not credible because she failed to testify about the wound. IJ Dec. at 11. **Ms. Z testified in her affidavit and during her hearing that she was forced to undergo FGM when she was six years old.** Exh. 5 at 1. Tr. 85. When asked what she remembered about her circumcision, Ms. Z stated that she remembered it was very painful. Tr. 86. When Ms. Z was later asked if she remembered what was used to cut her she stated “I don’t recall it very well, I was little.” Tr. 161. Ms. Z was very young when she was forced to undergo FGM – a horrible and traumatic event. Ms. Z truthfully testified that she did not remember much from her cutting. Ms. Z was obviously very traumatized from the event as she continues to have nightmares about the event to this day. Tr. 87. **The IJ’s insinuation that Ms. Z is not credible because she does not remember what utensil was used to mutilate her vagina when she was six years old is incomprehensible, clearly erroneous and an abuse of discretion.**

In addition, if an IJ bases an adverse credibility determination on inconsistencies, the IJ must first give the asylum applicant an opportunity to explain the alleged inconsistencies before making an adverse finding. *Soto-Olarte v. Holder*, 555 F.3d 1089, 1091-93 (9th Cir. 2009). With the exception of Ms. Z’s testimony regarding her UNHCR card, the IJ never questioned Respondent about the alleged inconsistencies identified in her decision or gave Respondent the opportunity to address the alleged inconsistencies. As such, the alleged inconsistencies should not be used as a basis for finding an adverse credibility determination.

- b. The IJ's determination that it was implausible that Respondent did not know the information contained in the Somali birth certificate submitted by OCC is based on pure speculation and conjecture.

The IJ expressed concerns over the birth certificate that was submitted by OCC in Ms. Z's case. IJ Dec. at 8. The IJ found it "strange" that Ms. Z could testify as to where the documents was made, who made it and what she did with it, but could not testify as to what the document actually was. Id. An IJ's credibility determination cannot be based on speculation and conjecture. *Shahinaj v. Gonzales*, 481 F.3d 1027 (8th Cir. 2007). Ms. Z testified during at her hearing that the birth certificate submitted by OCC was not her birth certificate, and that she did not have a Somali birth certificate because birth certificates did not exists in Somalia. Tr. 157, 160. The Department of State Somalia Reciprocity Schedule corroborates Ms. Z's testimony that birth certificates are not available in Somalia. Exh.12 at 6. Ms. Z testified that the document was given to her by the smuggler. Tr. 158. She testified that the smuggler did not explain what the document was, only that it would help her with her case and that she was to give it to the immigration officers. Id. Ms. Z testified that she did not know the document was an alleged Somali birth certificate until OCC informed her what the document was at the hearing on March 1, 2011. Id. Ms. Z testified that she did not ask the smuggler to make the document for her or pay him to make the document for her. Tr. 159. It is important to note that Ms. Z referred to the document as "letter" and it was only **after** OCC called the document a birth certificate that Ms. Z referred to it as a birth certificate. Tr. 100, 102. It is important to note that Ms. Z was very clear that she was not claiming the birth certificate offered by OCC was hers and she was not submitting it in any way in support of her asylum application. Tr. 117, 125. Ms. Z testified that she did not know how to read or write. Tr. 66, 158. See also Exh. 7 at 1. Being illiterate does not mean a person is ignorant. It is completely reasonable that although Ms. Z did

not know what the document given to her by the smuggler was because she was unable to read it, she could still testify as to how she obtained the document, who made it and what she did with it. The IJ's determination that it was implausible that Respondent did not know the information contained in the Somali birth certificate submitted by OCC— despite the fact that Ms. Z explained multiple times that she was illiterate – is based on pure speculation and conjecture and cannot support an adverse credibility determination.

- c. The IJ's claim that Respondent attempted to mislead the court regarding her clan membership is clearly erroneous and in direct contradiction to evidence in the record.

The IJ found that Ms. Z was not credible in part because she allegedly attempted to mislead the court regarding her clan membership. IJ Dec. at 8. However, that allegation is in complete contradiction to the evidence in the record. Ms. Z testified numerous times (through herself and by her counsel) that she is the member of the Badi Ade tribe/clan. See I-589 application at Exh. 5. See also Exh. 5 at 1.; Exh. 3 at 2.; Exh. 8 at 3.; Tr. 32, 128, 143. Ms. Z further testified that the Badi Ade is a sub-clan of the Hawiye tribe/clan. Tr. 128, 143. Ms. Z submitted documents to the court to demonstrate that the Badi Ade is a sub-clan of the Hawiye. Exh. 13 at 3, 4, 9. When the IJ questioned Ms. Z as to whether she was a member of a sub-clan of the Hawiye clan, Ms. Z truthfully testified that she was. Tr. 143. At no point during her testimony did Ms. Z attempt to hide from the IJ that the Badi Ade are a sub-clan of the Hawiye. The IJ accused Ms. Z of not admitting that she was a member of the Hawiye until presented with contradictory evidence. IJ Dec. at 9. In fact, it was Ms. Z's affirmative submissions to the court that notified the IJ that the Badi Ade is a sub-clan of the Hawiye. Exh. 13 at 9. It is incomprehensible how the IJ can state that Ms. Z attempted to mislead the court regarding her clan membership when she testified truthfully that the Badi Ade are a sub-clan of the Hawiye

and she submitted affirmative evidence to the court to support that testimony. The IJ's allegations that Ms. Z attempted to mislead the court are clearly erroneous, in direct contradiction to the evidence in the record and cannot support the basis of an adverse credibility determination.

3. The IJ erred in finding Respondent was not credible because she had not established her identity.

In denying her application for asylum based on discretion, the Immigration Judge found that Ms. Z was not credible because she did not provide sufficient evidence to corroborate her identity. IJ Dec. at 11. An IJ's request for additional corroborative evidence must be **reasonable**. *El-Sheikh v. Ashcroft*, 388 F.3d 643, 647 (8th Cir. 2004)(emphasis added). The IJ found that Ms. Z had not submitted sufficient corroborating evidence by relying on *Matter of M-D* (21 I&N Dec. 1180)(BIA 1998). IJ Dec. at 11. However, the present case is wholly distinguishable from the *Matter of M-D*. The respondent in *M-D* provided **no** corroborating documents in support of his identity (despite their availability). Here, Ms. Z submitted documents from the UNHCR corroborating her Somali identity. Exh. 13 at 304. The UNHCR documents included a copy of Ms. Z's photo, which clearly establishes that the X Z that testified in the courtroom is the same X Z that registered as a refugee in the Kakuma, Kenya refugee camp. Ms. Z also provided affidavits from two family members regarding her identity. Exh. 5 at 6-11. Those witnesses also testified in court under penalty of perjury regarding their knowledge of Ms. Z's identity. Tr. 171-198.

The IJ erroneously discredited the affidavits and testimony of Ms. Z's witnesses claiming that their affidavits and testimony did not verify Ms. Z's identity because Mr. Ali had not met Ms. Z before she arrived in the United States and Ms. Ali had not seen Ms. Z since she was four

years old. IJ Dec. at 8. The IJ merely implied that Ms. Z just showed up in Minnesota claiming to be X Z and that somehow Mr. Ali and Ms. Ali were fooled into just taking her word for it. Id. However, Mr. Ali and Ms. Ali's testimony was very specific in how they knew that the X Z that testified in court was the same X Z they were related to. It is also important to note that the IJ did not make an adverse credibility determination against Mr. Ali or Ms. Ali. The INA states that if an adverse credibility determination is not made, a rebuttable presumption of credibility is established. INA § 208(b)(i)(B)(iii). As OCC did not rebut that presumption, it is reasonable to conclude that the IJ found Mr. Ali and Ms. Ali credible as witnesses.

Mr. Ali testified that Ms. Z was his cousin on their fathers' sides. Tr. 174. He testified that although he did not meet her in Somalia, his grandmother used to tell him stories about Ms. Z and her family. Tr. 175-176. Mr. Ali testified that sometime in 2008, he spoke to Ms. Z's mother by phone who confirmed that Ms. Z's father had been killed. Tr. 176-177, 179-180. Mr. Ali testified that he knows Ms. Z is who she says she is because she knew details about their joint family. Tr. 178. Ms. Ali testified that she is related to Ms. Z as her mother and Ms. Z's mother are cousins. Tr. 188. She also testified that she saw Ms. Z twice in Somalia – once about a month after she was born and again when Ms. Z was approximately four years old. Tr. 188-189. Ms. Ali testified that she has spoken with Ms. Z's mother twice by phone. Tr. 191, 197. Presumably, if Ms. Z was not the actual daughter of the woman with whom Ms. Ali spoke on the phone, she would have informed Ms. Ali that Ms. Z was an imposter. Aside from speaking with Ms. Z's mother on the phone and remembering Ms. Z's face as a child, Ms. Ali also testified that she knew Ms. Z was who she said she was because Ms. Z looks like her mother. Tr. 192. Lastly, Ms. Ali testified that while on a trip to Kenya, she attempted to locate Ms. Z's UNHCR documents from Ms. Z's time in a UN refugee camp. Tr. 192-194. It is highly doubtful that Ms.

Ali would take Ms. Z into her home, testify under penalty of perjury regarding Ms. Z's identity, and go through the trouble of trying to locate refugee documents in Kenya for Ms. Z if Ms. Z was a stranger and not the relative of Ms. Ali that she claimed to be. The IJ's dismissal of Mr. Ali and Ms. Ali's corroborating affidavits and testimony is clearly erroneous and an abuse of discretion.

The respondent's asylum application in *Matter of M-D* was denied in part because the IJ specifically requested that he attempt to obtain documents from the refugee camp where he stayed in Senegal, and the respondent failed to do so. Here, Ms. Z provided corroborating evidence regarding her stay in the Kakuma, Kenya refugee camp. Exh. 13 at 3-4.

Lastly, the respondent in *Matter of M-D* did not provide identity documents from his country of origin, despite the fact that the IJ and BIA found it was reasonable for him to provide those documents because they were available. In the present case, Ms. Z testified that birth certificates, death certificates and other such documents are not available in Somalia. Tr. 105, 116. To support her testimony, Ms. Z submitted the State Department Somalia Reciprocity Schedule which establishes that no civil documents are available from Somalia and there is no circumstance under which a person can reasonably be expected to obtain those documents. Exh. 12. At 6. As such, Ms. Z's case is distinguishable from the facts in *Matter of M-D* and does not support an adverse credibility determination.

In addition, the IJ ignored other evidence in the record corroborating Ms. Z's identity. First and foremost is the fact that DHS charged Ms. Z as being a native and citizen of Somalia. Exh. 1 at 1. Second, the Asylum Office found that Ms. Z had established her identity with a reasonable degree of certainty by her own credible statements. Exh. 9 at 5. Lastly, the fact that

Ms. Z testified throughout the entire hearing with the assistance of a sworn Somali interpreter should give significant weight in support of Ms. Z's testimony that she is Somali. Tr. 14.

4. The IJ erred in finding Respondent not credible because she did not submit additional evidence regarding her travel from Somalia to the United States

In an adverse credibility determination, such a determination should be based on alleged inconsistencies that go to the heart of the case and relate to the basis of persecution. *Redd v. Mukasey*, 434 F.3d 838 (8th Cir. 2008). In the present case, Ms. Z's travel route to the United States has nothing to do with the basis of her persecution claim. There is no one-year deadline issue as Ms. Z clearly filed her asylum application within one year of entry to the United States. See I-589 at Exh. 5. Therefore, any adverse credibility determination based on such trivial issues that do not go to the heart of Ms. Z's persecution claim are an abuse of discretion and warrant a reversal of the IJ's denial of Ms. Z's asylum application.

The IJ found Ms. Z's travel route of great concern. IJ Dec. at 10. However, by the IJ's own testimony, Ms. Z's travel route was not unknown to the court as they had seen many cases where the same travel route was used. Tr. 7-8. The IJ found Ms. Z was not credible in part because she did not provide corroborating documentation of her travels from Somalia to the United States. IJ Dec. at 11. Ms. Z gave very detailed testimony regarding her travels to the United States from Somalia. See Supplemental affidavit at Exh. 7 at 1-3. See also Tr. 60-82, 107-114. Ms. Z testified that she paid a smuggler to arrange her travel from Somalia to the United States. Tr. 62-63. She obtained her Somali passport directly from the smuggler. Tr. 64. The smuggler purchased the plane tickets for her. Tr. 65. Ms. Z does not remember what day she left Nairobi, Kenya. Exh. 7 at 1. She testified that because she is illiterate, she could not read what airline she was taking. Tr. 66. She testified that she got off the plane and got on a

D. The IJ erred in not evaluating Respondent's past persecution claim.

In her order denying Respondent's application for asylum, the IJ erred in failing to evaluate Respondent's past persecution claim as it related to the persecution she suffered at the hands of Al Shabaab. In her entire decision regarding Respondent's asylum claim, only one brief paragraph addresses Respondent's past persecution and fear of future persecution by members of Al Shabaab. The IJ merely stated that Respondent could not prove that the events occurred in Somalia and thus failed to establish that she suffered past persecution. IJ Dec. at 12. First, Respondent has established that the persecution she faced did occur in Somalia as supported by her credible testimony and supporting country condition reports. The IJ's determination that Respondent has not proven that the events occurred in Somalia is clearly erroneous and in direct contradiction to the record. Additionally, an Immigration Judge **must** analyze and determine whether or not an asylum applicant has suffered past persecution, and failure to do so is reversible error. 8 C.F.R. § 208.13(b)(1). Because the IJ failed to thoroughly analyze Respondent's claims of past persecution and fear of future persecution on account of a protected ground as it relates to her persecution claim against Al Shabaab, the Board should remand Respondent's case to the IJ for further analysis.

E. The IJ erred in finding Respondent had reached a "safe haven" in Mexico.

The IJ's determination that Ms. Z had reached a "safe haven" in Mexico is based on pure speculation, is clearly erroneous and is not based on evidence in the record. The IJ's determination that Ms. Z was offered the opportunity to legalize her status in Mexico is in direct contradiction to the record and cannot support a discretionary denial of her asylum application.

1. The IJ's determination that Mexico was a "safe haven" that provided Respondent the opportunity to legalize her status is based on pure speculation and conjecture and is in direct contradiction to evidence in the record.

As a basis for denying Ms. Z's application for asylum in her discretion, the IJ claimed that Ms. Z "reached a safe haven in Mexico and chose to abandon it." IJ Dec. at 12. The IJ erroneously claims that the documents Ms. Z was issued by Mexican Immigration Officials is proof that the Mexican government offered Ms. Z the opportunity to regularize her status and had no intention of sending Respondent back to Somalia. IJ Dec. 12-13. Even if the Mexican government were unable to send Ms. Z back to Somalia, there is no indication that they would have granted her any legal immigration status in Mexico. The document issued by the Mexican authorities is merely a permit allowing the holder (Ms. Z) to be released from immigration custody and gives her 30 days to initiate proceedings to attempt to regulate her status – i.e., apply for asylum. Exh. 11 at 2-3. In many ways, this document seems analogous to a parole document issued by the U.S. DHS to allow an immigrant in immigration custody release from custody in order to pursue an application for asylum. Contrary to the IJ's erroneous holding, the document in no way alleges to provide any type of immigration status to the holder – merely an opportunity to apply for some sort of status. It in no way guarantees the holder that they will receive some type of status. Ms. Z testified that she believed the letter that was given to her by Mexican officials merely entitled her to stay in the city for 30 days and then she had to leave. Tr. 152-153. The Mexican officials never explained to Ms. Z what the document said. Tr. 153. The officials never informed her that she could apply for asylum in Mexico, or gave her directions on how to do so. Tr. 152. They never informed her she could apply for **any** legal status. Tr. 154. They never gave her any application to fill out. Id. In fact, no Mexican official explained anything directly to Ms. Z. Instead, they "explained" things to a Somali man who spoke some

English, who then told Ms. Z what they said. Tr. 153-154. **A Somali interpreter was never provided to explain anything to Ms. Z.** Tr. 155. There is nothing in the Mexican document that indicates it was ever read to Ms. Z in a language she understood. Exh. 11. Therefore, the IJ's determination that Ms. Z reached a "safe haven" in Mexico and was afforded the opportunity to regulate her status is based on pure speculation and conjecture, is in direct contradiction to evidence in the record and cannot support a discretionary denial of asylum.

If the IJ is attempting to imply that Ms. Z was firmly resettled in Mexico (or any other country), there is simply nothing in the record to support such an allegation. Ms. Z's asylum application clearly states that she did not apply for any immigration status in any other country besides the United States. See I-589 at Exh. 5. In addition, the burden of proving that Ms. Z was firmly resettled is the government's burden under 8 C.F.R. § 208.15(a)-(b). In the present case, the government has not met their burden of proof of firm resettlement.

F. The IJ's finding that Respondent was forum shopping by failing to request asylum in any of the countries through which she travelled is erroneous and an improper basis for denying Respondent's asylum application.

The IJ cited *Matter of Pula* in her decision stating that a discretionary denial is based on the "totality of the circumstances" test. IJ Dec. at 13. *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). However, the IJ only mentioned two of the factors when denying Ms. Z's asylum application in discretion because the IJ did not approve of Ms. Z's failure to stay in the refugee camp in Kenya and wait for refugee resettlement, and did not like that Ms. Z did not apply for asylum in any of the countries through which she travelled to get to the United States. IJ Dec. at 13. The IJ must weigh both the positive and adverse factors when making a discretionary denial under *Matter of Pula*. See *Gulla v. Gonzales*, 498 F. 3d 911 (9th Cir. 2007). While the IJ may consider whether Ms. Z passed through any other countries on her way to the United States, a

discretionary denial cannot be based alone on this factor. See Matter of Pula, supra. The IJ must also consider the length of time the applicant spent in those countries, whether refugee procedures were available in the third country, and what was the applicant's living conditions, safety and potential for long-term residency in those countries. Id. In the present case, Ms. Z passed through twelve countries on her way to the United States. Resp. Aff. at Exh 7. However, Ms. Z was only in those twelve countries for at most a few days and some only a few hours. Ms. Z was in Nairobi, Kenya a few days before she flew to Dubai. Id. at 1. She was only in Dubai for a couple of hours while in transit to Moscow. Id. Ms. Z was only in Moscow for a couple of hours in transit to Havana, Cuba. Id. Ms. Z never even left the airport in Dubai or Moscow. Id. Once in Cuba, Ms. Z was immediately picked up by the smuggler at the airport and taken to a house where she stayed for four or five days waiting to be smuggled to Ecuador. Id. at 2. Ms. Z was only in Ecuador and Colombia for a couple of days, and then her trip from Panama to Costa Rica to Nicaragua to Honduras to Guatemala took merely hours until she reached Mexico. Id. Once she reached Mexico, Ms. Z turned herself over to Mexican immigration officials and she was kept in custody for 15 days. From Kenya to Mexico, Ms. Z was under the control of her smugglers the entire time. As stated in Section V.E.1. above, the Mexican immigration officials never explained to Ms. Z how she could apply for or obtain legal status in Mexico. There is no indication anywhere in the record that any official from any of the countries through which Ms. Z passed spoke with her regarding long-term residency in their countries.

The IJ erroneously claimed Ms. Z bypassed orderly refugee procedures that were available to her in Kenya. IJ Dec. at 13. Ms. Z did register with the UNHCR in Kenya and was found prima facie eligible as a refugee. Exh. 13 at 3-4. However, the IJ completely ignores the fact that Ms. Z **returned** to Somalia after registering with the UNHCR when she discovered her

family was still alive and living in a camp outside of Mogadishu. Exh. 5. at 1. Ms. Z's past persecution claims regarding Al Shabaab all occurred **after** she returned to Somali in 2009. Therefore, Ms. Z was not circumventing refugee procedures in Kenya as she returned to Somalia after her UNHCR registry. In addition, Ms. Z testified that nobody at the UNHCR refugee camp in Kenya explained how she could apply to resettle in a third country. Tr. 150. They never gave Ms. Z instruction on how to apply for refugee resettlement, and nobody from UNHCR sat down with Ms. Z to fill out any application to resettle in a third country. Tr. 150-151. Given that Ms. Z was illiterate and could not read or write, she could not fill out the forms (if they existed at all) on her own. Even if the IJ were correct in finding Ms. Z circumvented refugee procedures, too much emphasis should not be placed on that lone factor and by itself should not form the basis of a discretionary denial. *Matter of Pula* 19 I&N Dec. 467, 473.

Additional factors under *Matter of Pula* which the IJ failed to consider are Ms. Z's family ties in the United States, her lack of ties to any of the other countries she travelled through, her lack of fraud and the general humanitarian considerations that warrant a grant of Ms. Z's asylum application. The IJ's claim that Ms. Z did not come to the United States specifically to be with family or relatives is not a proper basis for denying her asylum application. IJ Dec. at 13. While Ms. Z may or may not have come to the U.S. specifically to be with relatives, she does have extended family here in the United States. Mr. Ali and Ms. Ali are both distant relatives of Ms. Z and testified to that fact in court. In addition, there is a large Somali population in the United States – particularly in Minnesota. Ms. Z has no family or ties to anyone in the other countries she travelled through. She also committed no fraud at her entry as she promptly turned herself over to immigration officials and requested asylum at her point of entry. Further, the humanitarian concerns laid out in section V.B. above give significant weight

plane many times from Kenya to Cuba, but that she does not know if it was the same plane or different planes. Tr. 66-67. Ms. Z testified that everything looked the same. Tr. 67-68. Ms. Z relied on another Somali couple to help get her from plane to plane. Tr. 68. Ms. Z did not remember what airline they took to fly from Cuba to Ecuador. Tr. 73. She testified that she was caught trying to enter Colombia twice, but that she was never given any paperwork by Colombian officials. Tr. 74. Ms. Z testified that a smuggler named Fernando took “everything” from her when they arrived in Ecuador – including the passport she had been using and copies of plane tickets and proof of travel. Tr. 75. The IJ asked for corroborating documents to verify Ms. Z’s travels from Kenya to Mexico, but as her attorney stated, without knowing what date she left Kenya or what airline she took, it would be impossible to locate that information. Tr. 116. As previously stated, an IJ’s request for additional corroborating documents must be reasonable. See *El-Sheikh*, supra. It is unreasonable for the IJ to request corroborating documents of Ms. Z’s travels when she testified that she did not know what date she left Somalia, what airlines she took – because she was illiterate and could not read what airlines she took-, and that the smuggler made all travel arrangements and took her passport, plane tickets and any proof of travel documents. It is unreasonable for the IJ to expect the smuggler to provide Ms. Z with a travel itinerary or other proof of her travels, as that would make it easier for the smuggler to get caught. The whole point of a smuggling operation is that it is illegal and therefore whoever is involved in the operation covers their trail and makes sure they don’t get caught. This is not a new phenomenon and one the IJ should have taken judicial notice of. To find Ms. Z was not credible because she did not submit corroborating documents regarding her travels – which were completely controlled by the smuggler – to the United States is unreasonable and an abuse of discretion which cannot support an adverse credibility determination.

in granting Ms. Z's asylum application. When all factors under *Matter of Pula* are considered, Ms. Z has demonstrated that she warrants an approval of her asylum application in discretion.

VI. CONCLUSION

Respondent respectfully requests the BIA to reverse the IJ's credibility determination and grant Respondent's request for asylum based on her past persecution of FGM in Somalia. In the alternative, Respondent asks that her case be remanded for a thorough analysis and decision regarding Respondent's claims of past persecution and fear of future persecution in Somalia based on her Al Shabaab claims. In addition, Respondent respectfully requests the BIA to reverse the IJ's discretionary denial of asylum as an abuse of discretion.

Dated:

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