

November 25,
2008

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In the Courts**FGM Asylum Cases Forge New Legal Standing***Run Date: 11/25/08**By Zainab Zakari
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Women have been winning U.S. asylum to avoid female genital mutilation in their homelands. But in 2007 three denials challenged that trend. One of those cases now under review could clarify their legal standing.

NEW YORK (WOMENSENEWS)--Ami Doumbouye was 10 when five women in her village in the Ivory Coast held her head, arms and legs as another woman tried to slice her clitoris off with a sharp thumbnail. Thirty minutes later, when that method did not work, the women turned to the knife they'd used on seven girls before her.

Doumbouye couldn't walk for a week. Now 38 and across the world in New York City's South Bronx, she said she doesn't feel anything between her legs.



Fauziya Kassindja

Credit: Richard A. Boswell

Doumbouye joined her husband in 1994 in the United States using a borrowed visa, a common practice before Sept. 11 brought new security regulations. She applied for political asylum in 2005 and within three months the government granted her residency.

Though it was too late to save herself from genital mutilation, Doumbouye filed her application for asylum using the case that she needed to secure the safety of her 13-year-old daughter, who had not been cut.

"I can't send my daughter there," Doumbouye told Women's eNews.

Doumbouye is one of a small number of African immigrant women who are securing legal residency in the United States through political asylum. They had reason to believe the process would be smooth going since a 1996 precedent-setting case.

Now it is anyone's guess whether experiencing FGM, and related practices, will qualify women for political asylum in the United States. Four recent FGM survivors have had their requests for asylum rejected. However, in a rare move, U.S. Attorney General Michael Mukasey intervened and asked the immigration board to reconsider a case involving a woman from Mali.

In his ruling, Mukasey referred to the 1996 case that involved a 19-year-old woman from Togo, Fauziya Kassindja (initially misspelled Kassinga), who resisted deportation to escape mutilation. After more than a year of legal battles, the U.S. Board of Immigration Appeals granted her asylum.

Kassindja's lawyer, Karen Musalo, called it the first time a court issued binding precedent which accepted that a woman who fled genital cutting could be eligible for asylum.

Reliable data regarding the number of grants of asylum based on FGM are not available as most cases are kept confidential after being granted.

Asylum Seekers Disappointed in 2007

However, in an apparent reversal, in 2007 the Board of Immigration Appeals denied asylum to three Guinean women and a Malian woman, all of whom had been cut at young ages.

The most recent case involved Alima Traore, a Malian. The board, consisting of 11 administrative judges appointed by the U.S. attorney general, found that while FGM--also called female circumcision by practitioners--was "reprehensible," it was a "one-time" occurrence and Traore risked no further harm.

Musalo, director of University of California-Hastings Center for Gender and Refugee Studies and a leading lawyer on asylum applications based on women's special vulnerabilities, said that for the board to rule that Traore's abuse was finite, it had to ignore that the past cutting was part of what she called a "constellation of harm."

"Female genital cutting doesn't happen in a vacuum," she said. "We'll see there are other things she'll be subjected to."

In Traore's case, Musalo said that if she returned to Mali, her family planned to force her to marry a first cousin.

Increasingly advocates in FGM asylum cases have relied on the legal argument that FGM is not just a one-time ordeal, but rather the women risk further trauma such as domestic abuse, rape or undergoing the procedure again. That was the case for a Sierra Leonean woman who had her vagina sewn together and cut open every time her husband wanted sex.

Signal From Washington

In response to the board's denial of Traore's application, Seton Hall Law School in New Jersey led a coalition of legal and medical professionals, politicians and law school clinical professors--including Musalo--to petition Mukasey's office to reverse the board's decision.

Mukasey rejected the original ruling in September and ordered the case sent back for review, a rare reversal that heartened Musalo.

"The attorney general basically set guidance (for future cases) and, if properly applied, could end up protecting women who are victims of genital cutting."

The final outcome is still pending but Musalo and legal observers are confident

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the board will grant Traore asylum.

Nearly 3 million girls in sub-Saharan Africa--and 140 million girls worldwide--risk genital mutilation each year, according to the Geneva-based World Health Organization. And in the Ivory Coast, nearly 40 percent of women between the ages 15 to 49 are cut, a 2008 UNICEF report states.

For some girls, the tip of the clitoral hood is cut off, while in other cases, the entire clitoris and inner labia are removed before the outer labia is sewed together. Often these women are plagued with lifelong problems such as an increased risk to HIV infection, urinary incontinence and childbirth complications.

Musalo said recently it was tough in the 1996 precedent-setting case of Fauziya Kassindja to persuade the immigration board that it was a form of gender-based persecution necessitating asylum, rather than a custom.

"The thinking was that since female genital mutilation is so prevalent, if we protect women from this, then we'll have millions more applying," Musalo said.

Closing the Floodgates

Musalo said critics of her client's application warned that it could encourage a flood of women seeking asylum in the United States.

David Smith was a consultant to the U.S. Committee for Refugees and Immigrants in Washington, D.C. He focused on FGM cases for the committee and directed an FGM task force during the Clinton administration.

He said that the number of women seeking asylum for FGM has remained small and will most likely stay that way.

"Part of the reason it's not going to be a big number is because most of the females who are cut are young girls and are not in a position to seek asylum," Smith said in a phone interview. The cases where women have made it out of their countries without getting cut are few, he added.

The number of Africans--male or female--granted asylum remains low.

According to a July 2008 report by the Department of Homeland Security and the Executive Office for Immigration Services, the largest numbers of immigrants granted asylum status in 2007 came from Asian, Caribbean and South American countries, not places where ritual FGM is commonly practiced.

In 2007 the United States issued asylum to nearly 850 people from Ethiopia, where genital mutilation has a prevalence rate of 80 percent.

Comparatively, the government approved the asylum for more than 2,000 immigrants from Colombia, a country with a population roughly half of Ethiopia's.

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