

**U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

IN RE A-T-,

Respondent  
In Removal Proceedings

No.:

**Respondent's Motion to  
Reconsider**

**RESPONDENT'S MOTION TO RECONSIDER IN REMOVAL  
PROCEEDINGS BEFORE THE BOARD OF IMMIGRATION APPEALS**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
RESPONDENT’S MOTION TO RECONSIDER IN REMOVAL PROCEEDINGS BEFORE THE BOARD OF IMMIGRATION APPEALS .....	1
I. INTRODUCTION .....	1
II. RESPONDENT’S COMPLIANCE WITH STATUTORY AND JURISDICTIONAL REQUIREMENTS.....	1
III. MOTION TO RECONSIDER.....	2
A. Preliminary Statement – Errors Of Fact And Law Justifying Reconsideration .....	2
B. Factual and Procedural Background.....	4
C. Argument .....	8
1. The Board Erred As A Matter of Law In Its Determination That Respondent Had Not Timely Filed Her Asylum Application. ....	9
2. The Board Misapplied Its Own Regulatory Framework For Evaluating Asylum And Withholding Claims Based On Past Persecution. ....	13
a. The Board Failed To Evaluate Whether A.T. Suffered Past Persecution On Account Of A Protected Characteristic As Required By Its Own Regulations. ....	14
b. The Board Erred In Concluding That DHS Rebutted The Presumption Of A Well-Founded Fear Of Persecution Based Solely On The Fact Of A.T.’s Prior Persecution. ....	15
c. The Board’s Regulatory Analysis Was Further Flawed Because It Misconstrued The 1996 Amendment To The Refugee Definition And The Legislative Purpose Animating That Amendment. ....	19
d. The Board’s Refusal To Recognize Its “Continuing Persecution Doctrine” In FGM Cases Was Based On An Erroneous Reading Of Its Decision In Matter Of Y-T-L-. ....	21
e. The Board Erred As A Matter Of Fact And Law In Failing To Properly Consider A.T.’s Reasonable Fear Of Forced Marriage. ....	24
IV. CONCLUSION.....	27

**TABLE OF AUTHORITIES**

**Page**

**CASES**

<i>Matter of A-T-</i> , 24 I&N Dec. 296 (BIA 2007) ) .....	<i>passim</i>
<i>Abay v. Ashcroft</i> , 368 F.3d 634 (6th Cir. 2004) .....	14n
<i>Anonymous</i> , 27 Immig. Rptr. B1-[93] (BIA May 23, 2003).....	23n
<i>Anonymous</i> (BIA Nov. 7, 2005) .....	23n
<i>Balogun v. Ashcroft</i> , 374 F.3d 492 (7th Cir. 2004) .....	14n
<i>Berishaj v. Ashcroft</i> , 378 F.3d 314 (3d Cir. 2004) .....	17n
<i>Bollanos v. Gonzales</i> , 461 F.3d 82 (1st Cir. 2006).....	17n
<i>Matter of Cerna</i> , 20 I&N Dec. 399 (BIA 1991).....	9
<i>Matter of Chang</i> , 20 I&N Dec. 38 (BIA 1989).....	20, 21
<i>Matter of G-</i> , 20 I&N Dec. 764 (BIA 1993) .....	20, 21
<i>Hassan v. Gonzales</i> , 484 F.3d 513 (8th Cir. 2007).....	14n, 16n, 24
<i>INS v. Cardoza-Fonseca</i> , 480 U.S. 421 (1987).....	13, 21n, 23n
<i>INS v. Elias-Zacarias</i> , 502 U.S. 478 (1992).....	13
<i>Marquez v. INS</i> , 105 F.3d 374, 379 (7th Cir. 1997) .....	15
<i>Matter of Kasinga</i> , 21 I&N Dec. 357 (BIA 1996).....	<i>passim</i>
<i>Liu v. INS</i> , 475 F.3d 135 (2d Cir. 2007).....	12
<i>Mohammed v. Gonzales</i> , 400 F.3d 785 (9th Cir. 2005).....	14n, 24
<i>Matter of N-M-A-</i> , 22 I&N Dec. 312 (BIA 1998) .....	15, 17n
<i>Naizgi v. Gonzales</i> , 455 F.3d 484 (4th Cir. 2006).....	17n
<i>Niang v. Gonzales</i> , 422 F.3d 1187 (10th Cir. 2005).....	14n
<i>Matter of Ramos</i> , 23 I&N Dec. 336 (BIA 2002).....	9
<i>Rios v. Ashcroft</i> , 287 F.3d 895 (9th Cir. 2002).....	17n

**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<i>Sagaydak v. Gonzales</i> , 405 F.3d 1035 (9th Cir. 2005) .....	9
<i>Watt v. Alaska</i> , 451 U.S. 259 .....	23n
<i>Matter of Y-C-</i> , 23 I&N Dec. 286 (BIA 2002) .....	10, 11, 13
<i>Matter of Y-T-L-</i> , 23 I&N Dec. 601 (BIA 2003) .....	<i>passim</i>

**STATUTES & REGULATIONS**

8 C.F.R. § 3.31(c) (2007) .....	11
8 C.F.R. § 1003.2(b) (2007) .....	1
8 C.F.R. § 1003.2(b)(1) (2007) .....	9
8 C.F.R. § 1208.4(a)(2)(i)(B) (2007) .....	10
8 C.F.R. § 1208.4(a)(4) (2007) .....	9, 10, 12
8 C.F.R. § 1208.4(a)(4)(i)(A) (2007) .....	10
8 C.F.R. § 1208.4(a)(4)(ii) (2007) .....	10
8 C.F.R. § 1208.4(a)(5) (2007) .....	10
8 C.F.R. § 1208.4(a)(5)(iv) (2007) .....	9
8 C.F.R. § 1208.13(b)(1) (2007) .....	<i>passim</i>
8 C.F.R. § 1208.13(b)(1)(i)(B) (2007) .....	25
8 C.F.R. § 1208.13(b)(2)(ii) (2007) .....	25
Immigration & Nationality Act § 101(a)(42)(A) .....	14
Immigration & Nationality Act § 101(a)(42)(B) .....	20
Immigration & Nationality Act § 208(a)(2)(B) .....	9
Immigration & Nationality Act § 208(a)(2)(C) .....	9
Immigration & Nationality Act § 240(c)(6)(A) .....	1
Immigration & Nationality Act § 240(c)(6)(C) .....	2, 9
Immigration & Nationality Act § 240(c)(6)(B) .....	1

## **TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (now codified as 8 USC § 1101(a)(42)).....	14, 21n

### **LEGISLATIVE HISTORY**

142 Cong. Rec. H11,071.....	20
142 Cong. Rec. S11,491.....	10
142 Cong. Rec. S4592.....	20
H.R. Rep. No. 104-469 (1996).....	20
H.R. Rep. No. 104-478 (1996).....	20

### **INTERNATIONAL TREATIES**

1967 United Nations Protocol Relating to the Status of Refugees. Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 .....	21n
------------------------------------------------------------------------------------------------------------------------	-----

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Arthur C. Helton & Alison Nicoll, <i>Female Genital Mutilation as Ground for Asylum in the United States: The Recent Case of In re Fauziya Kasinga and Prospects for More Gender Sensitive Approaches</i> , 28 Colum. Human Rights L. Rev. 375, 383 (1997) .....	17-18
Layli Miller Bashir, <i>Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law</i> , 4 Am. U. J. Gender & Law 415, 444 (1996).....	18n
Kris Ann Balser Moussette, <i>Female Genital Mutilation and Refugee Status in the United States - A Step in the Right Direction</i> , 19 B.C. Int'l & Comp. L. Rev. 353, 356 (1996).....	18n
Leigh A. Trueblood, <i>Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory</i> , 28 Denv. J. Int'l L. & Pol'y 437, 448-449 (2000) .....	18n
<i>Asylum Officer Basic Training Course – Lesson Plan Overview: One Year Filing Deadline</i> (Nov. 30, 2001), available at <a href="http://www.asylumlaw.org/docs/united_states/asylum_officer_training_oneyear_112001.pdf">http://www.asylumlaw.org/docs/united_states/asylum_officer_training_oneyear_112001.pdf</a> .....	11n

### **OTHER SOURCES**

Global Consultation Fair and Efficient Asylum Procedures EC/GC/01/12 (31 May 2001).....	10n
Executive Committee Conclusion No. 15 (1979).....	10n

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**Respondent's Motion to  
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**I. INTRODUCTION**

Respondent A.T. ("Respondent"), by and through her undersigned counsel, seeks the Board of Immigration Appeals' (the "Board") reconsideration of its decision dated September 27, 2007, *Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007) (the "Board's Decision") dismissing her appeal from the decision of the Immigration Judge ("IJ") denying her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"), granting voluntary departure and ordering her removed from the United States. The characterization of Respondent's motion as one for reconsideration is proper because it challenges the substantive factual and legal errors relating to her eligibility for asylum, withholding of removal and relief under CAT made by the Board in its decision on appeal. *See* 8 C.F.R. § 1003.2(b) (2007).

**II. RESPONDENT'S COMPLIANCE WITH  
STATUTORY AND JURISDICTIONAL REQUIREMENTS**

Respondent has filed a timely motion to reconsider the Board's Decision by filing her motion within 30 days of that Decision. *See* Immigration & Nationality Act ("INA") § 240(c)(6)(B). This is her first and only motion to reconsider. INA § 240(c)(6)(A). In this motion, Respondent identifies and provides authority for her assertion that the Board made errors

of fact and law in its Decision on the merits of her application for asylum, withholding of removal and relief under CAT. INA § 240(c)(6)(C).

### **III. MOTION TO RECONSIDER**

#### **A. Preliminary Statement – Errors Of Fact And Law Justifying Reconsideration**

The Board’s Decision should be reconsidered because of four critical errors of fact and law. First, as a threshold matter, the Board failed to follow its own regulations for determining whether applications for asylum comply with the one-year deadline for filing those claims and ignored critical evidence in the record relevant to A.T.’s timely filing. In doing so, the Board miscalculated the period of time properly counted toward A.T.’s deadline.

Second, in analyzing A.T.’s past persecution—and the likelihood of future persecution evidenced by that past harm—the Board misconstrued the nature of female genital mutilation (“FGM”) and failed to follow its own regulatory framework for assessing a well-founded fear. Specifically, the Board erroneously viewed the legal inquiry as whether A.T. would be singled out for identical harm again. *Matter of A-T-*, 24 I&N Dec. at 299. The regulations governing past persecution, however, do not provide for such a limited inquiry and the Board has never required “identical” harm in any other case. Rather, the Board’s own regulations aim to determine what the act of past injury indicates about the status of the applicant, and the likelihood that her status renders her vulnerable to further—and, of course, potentially different forms of—harm. Reconsideration is necessary because the Board failed to conduct this fundamental inquiry and ignored evidence in the record indicating that country conditions and A.T.’s status in Mali have not changed.

Third, the Board’s erroneous conclusion that A.T. could not be found to have a well-founded fear of future persecution absent a congressional enactment was based on faulty

statutory construction. Specifically, the Board misconstrued a 1996 amendment to the refugee definition governing coercive population control measures and the legislative purpose animating that enactment. The plain language of that statute and its extensive legislative history make clear that the 1996 amendment was addressed to the “nexus” requirement in cases involving forced sterilization and forced abortion, but did not alter the regulatory framework in any way. In this regard, the Board also erred by misinterpreting its decision in *Matter of Y-T-L-*, 23 I&N Dec. 601 (BIA 2003). The Board failed to recognize that the “continuing persecution” doctrine created by *Matter of Y-T-L-* was not premised on the 1996 amendment involving nexus.

Fourth, the Board erred as a matter of fact and law in failing to properly consider A.T.’s reasonable fear of forced marriage. Specifically, the Board failed to hold the government to its burden to demonstrate by a preponderance of the evidence that A.T. would not be subjected to the further harm of forced marriage on account of her status in her tribe. Moreover, in erroneously concluding that A.T. would not be “disadvantaged” by her forced marriage, *A-T-*, 24 I&N Dec. at 302, the Board ignored critical evidence in the record to the contrary, including A.T.’s vehement opposition to the marriage and country conditions evidence indicating that Malian women subjected to forced marriages commonly suffer abuse and severe deprivation of freedom.

In short, the Board erroneously failed to consider cumulatively all factors in the record that establish a reasonable possibility of persecution. Respondent was a victim of FGM because she is a young woman from a Malian tribe that forcibly subjects its young women and girls to female genital mutilation and arranged marriage in order to subjugate women and control their sexuality. The fact of A.T.’s FGM did not change her membership in that social group, nor did the procedure fully achieve her persecutor’s goals; the purpose of FGM in this case—

subjugation of the victim in Malian society, sexual repression, and domination by husbands—are fully realized after the procedure, particularly once the victim is married. It is those future harms, combined with the fact of A.T.’s prior persecution, and the fact that her family and tribe will force her into an involuntary, arranged marriage, that demonstrate A.T.’s well-founded fear of persecution if returned to Mali. Because those future harms are likely and A.T. is at risk on account of her membership in her particular tribe, A.T. is entitled to asylum and withholding of removal.

### **B. Factual and Procedural Background**

The Board’s factual errors were grounded in misunderstandings of the record and a failure to consider material testimony and evidence. The critical facts relevant to this motion to reconsider are recounted here:

When Respondent A.T., a 28 year-old native of [X], Mali, was a young child, her family subjected her to female genital mutilation (“FGM”) involving complete excision of her genitalia. (Tr.<sup>1</sup> at 20, 25; Aff. at 1; Ex. A.) The act left A.T. “with both physical and mental scars that [she] will bear for all [her] life.” (Aff. at 1.) For A.T. “sexual intercourse is painful and devoid of pleasure” and she fears “complications at child birth.” (*Id.*)<sup>2</sup>

Although A.T. resolves that her past suffering “is something [she] cannot change,” it has become her “motivation not to endure [her] family’s degrading customs.” (*Id.*) She opposes FGM, and explained at her asylum hearing that if she has daughters, she does not want them

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1. Transcript of Hearing Before IJ Jan. 19, 2005 (“Tr.”); *see also* Respondent’s Affidavit in Support of Application for Asylum and Withholding of Removal (“Aff.”); List of Respondent’s Intended Evidence and Witness List in Support of Her Applications for Relief (“Ex.”) Ex. A (Letter from [ ] M.D., dated March 16, 2004).
  2. The record before the Board reflects that according to the World Health Organization, FGM causes numerous short and long-term consequences: “[l]ong term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse), and sexual dysfunction and difficulties with childbirth.” (Ex J.)

subjected to the procedure. (Tr. at 25.) As practiced in Mali, however, FGM “is so deeply rooted in tradition and culture that any challenge to it invokes strong social opposition and repercussions.” (Ex. J.)

A.T. was admitted to the United States on October 4, 2000 as a B-2 visitor. Subsequently, the United States Immigration and Naturalization Service (“INS”)<sup>3</sup> granted her a change to F-1 student status on July 2, 2001 and she enrolled at Lado International College in Silver Spring, Maryland. (Tr. at 20-22.) In January 2002, she enrolled at Montgomery College in Rockville, Maryland, unaware that she was required to obtain a new I-20. (Tr. at 22, 34.)

In August, 2003, upon learning that her student visa had expired, A.T. called her father to inform him of her intention to return home and her plan to apply for a new student visa. (*Id.* at 23-24.) A.T.’s father, however, saw her immigration problems as a “sign from God,” and informed her that he had arranged for her to marry her first cousin upon her return. (Aff. at 1; *see also* Tr. at 23-24.) Although A.T. protested to her father that she did not want to marry her cousin, (Tr. at 24, 26; Aff. at 2), her father insisted, reminding his daughter that forced marriage is the norm in her family: “[m]y decision is irrevocable. You are going to marry the man I have chosen for you, i.e. your cousin [].” The dowry has been paid, and all the T. clan agrees.” (Ex. D, Letter dated January 2, 2004 from E.B.T.; *see also* Tr. at 24, 34; Aff. at 2.)

A.T. first learned of these plans during that phone call in August 2003. (Tr. at 34.) That fact is corroborated by a letter from A.T.’s father, sent to her only a few months later. In that letter he confirmed his plans in language indicating a nascent arrangement, stating that “[t]he family and I are happy because your engagement brings joy to all.” (Ex. E, Letter dated November 18, 2003, from E.B.T.) A.T.’s mother also wrote a letter to her daughter around this

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3. Now the United States Citizenship and Immigration Services (“USCIS”).

same time, noting that “news of your engagement is the main topic of your father’s conversation.” (Ex. C, Letter dated December 20, 2003 from A.T.’s mother.)<sup>4</sup>

The likelihood of A.T.’s forced marriage was reflected throughout the record. According to A.T.’s uncle, M.T., it is “certain” that if A.T. is returned to Mali, she will be forced into a marriage against her will. (Tr. at 52.) A.T.’s father is “a very authoritarian person” and as the oldest male among his siblings, other family members will support the father’s dictate. (*Id.* at 52, 28, 54; *see also* Aff. at 2.) Indeed, A.T.’s mother told her daughter that she has no “voice” and cannot contest her husband’s plans. (Tr. at 29.)

The record also reflected that if forced to return to Mali, A.T. would be powerless to refuse this marriage and could not extricate herself from her family or live independently away from them. A.T.’s “parents have complete control over [her] life by tradition and custom,” and will only “relinquish that control” when they “hand” it over to her husband upon her marriage. (Aff. at 1; *see also* Ex. F<sup>5</sup>; Ex. P.) Given that communities in her region of Mali are so close-knit, news of A.T.’s arrival would spread quickly, and neither she nor her uncle believe she could hide. (Tr. at 27-28, 52, 53.) Nor could she resort to the Malian government for assistance, which would refuse to intervene in what they consider a family affair. (*Id.* at 29.)<sup>6</sup> According to A.T.’s uncle, it would be difficult for any Malian woman to obtain protection from the government; he had never heard of a woman doing so successfully. (*Id.* at 56.) For A.T. that task would be even

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4 Although A.T.’s uncle M.T., who testified at her asylum hearing, believed that the plan for A.T.’s forced marriage “materialized” in 1999, he acknowledged that at that time A.T.’s father had not yet told his daughter, and he never discussed the marriage with A.T., believing that it was not his place to do so. (Tr. at 50-51, 54-55.) None of A.T.’s other relatives ever indicated to her the existence of such plans. (*Id.* at 35.)

5 Statement from the Malian Association for the Monitoring of Orientation of Traditional Practices noting that forced marriages and FGM were the norm in Malian culture.

6 *See also* Ex. K (noting that Mali’s laws disregarded the mandates of International Covenant on Civil and Political Rights to ensure equal rights of men and women and that Malian laws grant “husbands control over decisions regarding type of marriage, the marital residence, and their wife’s ability and right to work”).

more difficult, given that her father is a well-known citizen, having worked for the government as an agent at the [X] for many years. (*Id.* at 28, 52.)

The record also reflected that women subjected to forced marriage in Mali suffer a loss of liberty and autonomy that renders them vulnerable to abuse. According to a report for the Human Rights Committee, because women lack the power to decide to enter a marriage, they also lack the power to leave the marriage. (Ex. K.) Consequently, “[w]omen are subjected to all sorts of violence in a name of a tradition where girls must accept the husband of their fathers choosing.” (Ex. P; *see also* Ex. Q.)

USCIS eventually denied Ms. A.T.’s request for reinstatement of her student visa and ordered her to leave the United States. (Tr. at 36-37.) An attorney whom she consulted at that time, advised her not to leave but to wait for another letter that would notify her to appear in immigration court, at which time she could present her case to an immigration judge. (*Id.* at 38.)

On September 16, 2003, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) issued a notice to appear charging A.T. with failing to maintain her student status because she did not notify the immigration service before changing schools.<sup>7</sup> (Notice to Appear, dated Sept. 16, 2003.) At A.T.’s first court date, the immigration judge adjourned the case until May 12, 2004, and directed her to file her application at that time, which she did. (Tr. at 5.)

On January 19, 2005, the IJ ruled by oral decision, denying all relief, except voluntary departure. (Bench Decision and Order, dated Jan. 19, 2005 (“IJ Decision”) at 15.) On September 27, 2007, the Board dismissed A.T.’s appeal, and affirmed the IJ’s Decision. *Matter of A-T-*, 24 I&N Dec. at 296. In concluding that A.T. was time- barred from seeking asylum, the

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7. Specifically, the NTA alleged that she had enrolled in Montgomery College without authorization and had engaged in unauthorized employment.

Board focused entirely on when A.T. had knowledge of the forced marriage, and adopted the IJ's factual findings. *Id.* at 301-302. The Board did not engage in any further legal analysis regarding accrual of the one-year period. The Board also agreed with the IJ that A.T. was not entitled to a presumption of a well-founded fear based on her past FGM, viewing the question narrowly in terms of A.T.'s risk of identical harm. *Id.* at 299. In concluding that A.T. could not establish a well-founded fear of persecution, the Board also relied on an amendment governing nexus in asylum claims based on forced sterilization. *Id.* at 299-301. The board reasoned that absent similar Congressional enactment addressed to FGM, A.T. could not establish a well-founded fear. *Id.* at 300-301. The Board also concluded that A.T. would not be "disadvantaged" by forced marriage, ignoring evidence in the record indicating that Malian women subjected to forced marriage commonly suffer abuse and lack of freedom. *Id.* at 302. Finally, the Board concluded that A.T. had not demonstrated a nexus between the harm she feared and a protected ground, without evaluating whether A.T.'s membership in her particular tribe was the reason she suffered FGM and would be subjected to forced marriage upon removal. *Id.* at 302.

### **C. Argument**

A motion to reconsider is a "request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked." *Matter of Ramos*, 23 I&N Dec. 336, 338 (BIA 2002) (quoting *Matter of Cerna*, 20 I&N Dec. 399, 402 n.2 (BIA 1991)). The motion must state the reasons for the motion by specifying the errors of fact or law in a prior Board decision, and set forth pertinent supporting authority. INA § 240(c)(6)(C) (2005); 8 C.F.R. § 1003.2(b)(1).

Here the Board's prior decision affirming the IJ's denial of A.T.'s asylum and withholding claims warrants reconsideration because it contains significant errors of combined law and fact.

**1. The Board Erred As A Matter of Law In Its Determination That Respondent Had Not Timely Filed Her Asylum Application.**

The Board's adoption of the IJ's determination that A.T. had not timely filed her application within one year of arriving in the United States as required by INA § 208(a)(2)(B) and had not established that she met an exception from the one year deadline under 8 C.F.R. § 1208.4(a)(4) constituted an error of law. INA § 208(a)(2)(C). In affirming the IJ's conclusion that Respondent's application was untimely, the Board failed to follow its own regulatory framework by ignoring the fact that the respondent was in lawful temporary nonimmigrant status until just before the time that removal proceedings were initiated, 8 C.F.R. § 1208.4(a)(5)(iv). Further, the Board misconstrued the factual record concerning the significance of the news A.T. received from her father in August 2003, thus failing to consider all the facts in the record in ruling that extraordinary and/or changed circumstances did not exist. *See Sagaydak v. Gonzales*, 405 F.3d 1035, 1040, 1045 (9th Cir. 2005) (remanding where IJ failed to address whether delay in asylum application was due to extraordinary circumstances).

Extraordinary circumstances directly related to the failure to meet the deadline may include, *inter alia*, maintenance of immigrant or non-immigrant status. 8 C.F.R. § 1208.4(a)(5)(iv). Changed circumstances include, *inter alia*, changes in conditions in the applicant's country of nationality. 8 C.F.R. § 1208.4(a)(4)(i)(A). The applicant bears the burden of proving "[t]o the satisfaction of the asylum officer, immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline." 8 C.F.R. § 1208.4(a)(2)(i)(B). Whether the applicant presents changed or extraordinary circumstances, she must file her application within a "reasonable period" given those circumstances. 8 C.F.R. § 1208.4(a)(4)(ii), (5). The permissive nature of this standard reflects Congress's intent that the bar not cut off legitimate

claims for protection, but only serve as a deterrent to fraudulent applications.<sup>8</sup> In determining whether the alien has demonstrated extraordinary circumstances to excuse her failure to meet the deadline for filing an asylum application, the immigration judge must conduct an individualized analysis of the facts of the particular case. *Matter of Y-C-*, 23 I&N Dec. 286, 287-88 (BIA 2002). The totality of the applicant's circumstances must be considered in determining whether the applicant has shown extraordinary circumstances. *Id.* at 289 (Filppu, concurring).

First, the Board erred in adopting the IJ's determination that the respondent did not demonstrate extraordinary circumstances. The IJ's analysis, however, did not take into account the totality of circumstances in the A.T.'s case. *Id.* at 287. Specifically, both the IJ and the Board overlooked the evidence of record indicating that A.T. was in a lawful nonimmigrant status until just prior to her being placed in proceedings.

The record indicates clearly that A.T. was lawfully admitted to the United States in B-2 visitor status, and then obtained non-immigrant student status, which she maintained until July 28, 2003 when immigration authorities informed her that she was out of status because of her unauthorized transfer to a different school. The record reflects that she was advised by previous counsel to wait for a notice to appear in court, which she received less than two months later on September 16, 2003 and was found removable by the IJ on November 19, 2003 at which time the IJ set the schedule, instructing her to file her application for asylum at the next master calendar hearing on May 12, 2004.

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8. *See* 142 Cong. Rec. S11,491 (daily ed. Sept. 27, 1996) (comments of Sen. Orin Hatch that "I believe that the way in which the time limit was rewritten in the conference report-with the two exceptions specified-will provide adequate protections to those with legitimate claims of asylum"); Global Consultation Fair and Efficient Asylum Procedures EC/GC/01/12 (31 May 2001) at 5 ("The automatic and mechanical application of time limits for submitting applications has been found to be at variance with international protection principles"); Executive Committee Conclusion No. 15 (1979) ("(i) While asylum-seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead to an asylum request being excluded from consideration").

These circumstances are akin to those in *Matter of Y-C-*, 23 I&N Dec. 286, 287 (BIA 2002), in which a minor asylum applicant who had been detained for one year attempted to file an application for asylum five months after being released to the custody of his uncle, but the IJ rejected it and set a filing schedule. The Board held that the respondent had demonstrated extraordinary circumstances, because the immigration judge had authority to set the deadline for filing the application, *id.* at 288 (citing 8 C.F.R. § 3.31(c)), and that the respondent “did not, through his own action or inaction, intentionally create these circumstances, which were directly related to his failure to meet the filing deadline.” *Id.* Likewise, the record reflects that A.T. followed the IJ’s rulings with respect to filing her application for asylum. The Board’s conclusion that A.T. did not explain the period of nine months time that elapsed before she filed her application is erroneous, as is the Board’s characterization that she “waited” nine months to do so. *Matter of A-T-*, I&N Dec. at 301. Her compliance with the instructions and orders of the IJ should be dispositive, and therefore, the Board’s conclusion that A.T. did not file for asylum within a reasonable period cannot be upheld. 8 C.F.R. § 1208.4(a)(4)(ii).<sup>9</sup>

The record contains undisputed evidence that A.T. first learned that her forced marriage was imminent when she contacted her family in 2003; the IJ’s determination that Respondent must have known of her betrothal to her cousin prior to her arrival in the United States is not supported by the record. Although the IJ recounted certain testimony of A.T.’s uncle pertaining to this issue, the IJ omitted the critical qualification in that testimony: that the plan for A.T.’s forced marriage only “materialized” in 1999; that respondent’s father had not told his daughter of the plan, and that he never discussed the marriage with respondent, believing that as her uncle,

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9. In determining what constitutes a reasonable time in which to file the Department of Homeland Security instructs its asylum officers to give applicants the “benefit of the doubt.” See *Asylum Officer Basic Training Course – Lesson Plan Overview: One Year Filing Deadline* (Nov. 30, 2001), available at [http://www.asylumlaw.org/docs/united\\_states/asylum\\_officer\\_training\\_oneyear\\_112001.pdf](http://www.asylumlaw.org/docs/united_states/asylum_officer_training_oneyear_112001.pdf).

it was not his place to do so. (Tr. at 50-51, 55). Contrary to the IJ's characterization, the letters from A.T.'s family indicate that the formal announcement of her betrothal occurred contemporaneously with her being placed in proceedings. In his November 18, 2003, letter her father wrote "the family and I are happy because your engagement brings joy to all," (Ex. E), while her mother wrote that "news of your engagement is the main topic of your father's conversation." (Ex. C.)

A.T., being unaware that betrothal plans had "materialized," would not have had a reason to fear persecution on this basis and seek asylum protection at the time she arrived in the United States. Accordingly, the Board's conclusion that A.T.'s imminent forced marriage did not amount to changed circumstances is incorrect and constitutes an error of law. *See Liu v. INS*, 475 F.3d 135, 137-38 (2d Cir. 2007) ("a reviewable issue of law may arise . . . 'where the IJ states that his decision was based on petitioner's failure to testify to some pertinent fact when the record . . . reveals unambiguously that the petitioner did testify to that fact'") (internal citation omitted).

The one-year filing deadline is inapplicable in A.T.'s case due to both extraordinary and changed circumstances. The record is clear that she was in a lawful non-immigrant status until sometime in 2003, and it was at this same time that that she contacted her family, and learned of her impending forced marriage. The Respondent notified the IJ that she wished to apply for asylum at her first master calendar hearing, and it was the IJ who ordered her to file her application six months later. *Matter of Y-C-*, *supra*. Accordingly, A.T. filed her application for asylum within a reasonable time in compliance with the order of the IJ, and should not be subject to the one-year bar. Because these factors were completely overlooked and not taken into

account, the Board's affirmance of the IJ's decision is inconsistent with the record and contrary to the regulations and BIA precedent, making reconsideration appropriate.

**2. The Board Misapplied Its Own Regulatory Framework For Evaluating Asylum And Withholding Claims Based On Past Persecution.**

A.T.'s motion to reconsider should be granted because the Board's decision made the sweeping conclusion that victims of FGM are generally not entitled to a presumption of future persecution on the basis of their past FGM, without analyzing A.T.'s specific situation as the Board's own carefully-crafted regulations require. To obtain asylum or withholding, an applicant must demonstrate past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). An asylum applicant may establish a well-founded fear of persecution by showing that the applicant was persecuted in the past on account of one of the enumerated grounds in INA Section 101(a)(42). *See Matter of A-T-*, 24 I&N Dec. at 297 (citing *INS v. Elias-Zacarias*, 502 U.S. 478 (1992)); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). Once the applicant demonstrates past persecution, she is entitled to a presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1). Under the regulations, the burden of proof then shifts to the government to show by a preponderance of the evidence that the applicant's circumstances have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if returned to her country, or that the applicant could avoid future persecution by relocating to another part of the country. 8 C.F.R. § 1208.13(b)(1)(i, ii). Applying the regulatory framework demonstrates that Respondent has established eligibility for asylum and withholding for the following reasons.

**a. The Board Failed To Evaluate Whether A.T. Suffered Past Persecution On Account Of A Protected Characteristic As Required By Its Own Regulations.**

The Board erred by failing to determine whether A.T. suffered past persecution on account of a protected ground. Instead, the Board only “assume[ed] arguendo that she is a member of particular social group who has suffered past persecution.” *Matter of A-T-*, 24 I&N Dec. at 299. By failing to follow its regulations and determine whether A.T. had established past persecution and nexus, the Board’s entire regulatory analysis was flawed from the start.

As the Board recognized, it is well-settled that FGM rises to the level of persecution and is inflicted on women and girls “on account of” characteristics protected by the Refugee Act. *Matter of Kasinga*, 21 I&N Dec. 357, 365-67 (BIA 1996). The Board and numerous federal courts have recognized that FGM can serve as the basis for an asylum claim whether a woman fears FGM in the future, or has already been subjected to FGM and has a presumptive well-founded fear of further harm.<sup>10</sup>

Pursuant to the regulations, the Board should have identified whether A.T.’s past persecution was on account of her membership in a protected group. Had the Board done so, it would have ensured that the Board properly considered the regulatory presumption and whether A.T.’s membership in that group exposed her to additional harm.

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10. See, e.g., *Matter of Kasinga*, 21 I&N Dec. at 365; *Hassan v. Gonzales*, 484 F.3d 513, 517-19 (8th Cir. 2007) (explaining that FGM constitutes persecution that created presumption that alien also possessed well-founded fear of future persecution and remanding to agency to shift burden to DHS to show changed conditions); *Niang v. Gonzales*, 422 F.3d 1187, 1197, 1202 (10th Cir. 2005) (explaining that FGM constitutes persecution and remanding to agency to consider alien’s asylum claim); *Mohammed v. Gonzales*, 400 F.3d 785, 795, 802 (9th Cir. 2005) (same); *Balogun v. Ashcroft*, 374 F.3d 492, 499, 507-08 (7th Cir. 2004) (noting that FGM constitutes persecution under the INA but affirming denial of asylum claim on credibility grounds); *Abay v. Ashcroft*, 368 F.3d 634, 638, 643 (6th Cir. 2004) (explaining that FGM “involves the infliction of grave harm constituting persecution on account of membership in a particular social group that can form the basis of a successful claim for asylum” and remanding to agency to consider eligibility for asylum and withholding).

As the Board has explained, the regulation (8 C.F.R. § 1208.13(b)(1)(i)) “serves as an evidentiary presumption founded on the probability of a past event being indicative of a future event. . . . [I]t provides an evidentiary link between the actual past persecution that an applicant has suffered and any well-founded fear of future persecution.” *Matter of N-M-A-*, 22 I&N Dec. 312, 317 (BIA 1998). Because “[a]sylum is a prophylactic protection for those who might face future persecution,” the “rationale for looking at past persecution is that the ‘past serves as an evidentiary proxy for the future.’” *Id.* at 318 (quoting *Marquez v. INS*, 105 F.3d 374, 379 (7th Cir. 1997)). Here, the Board erred by failing to consider whether A.T.’s membership in a particular social group animated the infliction of FGM. That failure prevented the Board from properly considering—as contemplated by the regulations—whether A.T.’s continued status in that social group rendered her vulnerable to further harm. Instead, the Board erroneously only considered whether the exact same form of persecution inflicted on A.T. could be inflicted on her again.

**b. The Board Erred In Concluding That DHS Rebutted The Presumption Of A Well-Founded Fear Of Persecution Based Solely On The Fact Of A.T.’s Prior Persecution.**

After assuming that A.T. established past persecution, the Board wrongly concluded that the fact that Respondent had already suffered FGM was sufficient to rebut the presumption of future harm. *Matter of A-T-*, 24 I&N Dec. at 299. To rebut the presumption that Respondent had a well-founded fear of persecution as a result of having suffered FGM, the government was required to establish by a preponderance of the evidence that there was (A) “a fundamental change in circumstances such that [Respondent] no longer has a well-founded fear of persecution . . .”; or (B) Respondent “could avoid future persecution by relocating to another part of [Mali] . .

.” 8 C.F.R. § 1208.13(b)(1)(i)(A, B). DHS simply pointed to the fact that FGM had already been inflicted on Respondent and could not be inflicted on her again.

Accepting DHS’s position, the Board erroneously fixed the inquiry on whether the particular abuse suffered by A.T.—genital mutilation—was capable of repetition. That analysis erroneously read an absurd limitation into the regulatory framework: that the presumption based on past-persecution only protects applicants in the future from re-exposure to the exact same harms suffered in the past.<sup>11</sup> The regulations do not provide for that inquiry and the Board has never required such a limitation in any other case. Thus, the Board’s analysis of changed circumstances contravened the regulations and constituted legal error.

The Board’s discussion of the “severed limb” example in its decision further exhibits its failure to follow the regulatory framework. In analogizing a FGM victim to a refugee who suffers a severed limb, the Board implied that the latter victim might not be entitled to a presumption of future persecution because his limb could not be severed again. *Matter of A-T-*, 24 I&N Dec. at 301. Contrary to that reasoning, the regulations require the Board to view the severing of a victim’s limb as evidence that a persecutor will again seek to single out the victim for additional, and possibly other forms of, persecution—whether beatings, wrongful detention, or the persecutor’s purposeful subjugation of the disabled victim in his society. The same analysis applies in the context of FGM.

Moreover, the Board’s analysis of the rebuttable presumption was categorical, not individualized as required by the Board’s own precedent. In other words, the Board’s decision was overly broad in that it suggested that past FGM may always constitutes changed

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11. *See Hassan*, 484 F.3d at 518 (stating that the court had “never held that a petitioner must fear the repetition of the exact harm that she has suffered in the past”); *Matter of Y-T-L-*, 23 I&N Dec. at 605 (rejecting the anomalous situation that would result should “the act of persecution itself also constitute . . . the change in circumstances that would result in the denial of asylum”).

circumstances that rebut a well-founded fear of future persecution. As the Board and numerous federal courts have recognized, such a categorical analysis violates the Board's own regulations which require a case-by-case contextual analysis of country conditions and the applicant's circumstances to determine whether changed circumstances exist. *See* 8 C.F.R.

§ 1208.13(b)(1)(i)(A).<sup>12</sup> Here, the Board erred by failing to do that contextual analysis and making a *per se* ruling about FGM.

In failing to perform an individualized assessment of A.T.'s situation in Mali, the Board ignored key factual evidence in the record. The record demonstrates that as a FGM victim in Mali, A.T. would endure subjugation in a culture where FGM is a tool used to control women and their sexuality. (*See* Aff. at 1 (noting that her parents control her life by tradition and custom until they "hand" such control over to her husband); Ex. F.) Scholars have noted that at its core, FGM is a ritual designed to control women's sexual autonomy, perpetuate "an inaccurate stereotype of women as irrational individuals, incapable of making decisions about their own sexuality" and "maintain[] male dominance over essential aspects of a woman's life, i.e. freedom." Arthur C. Helton & Alison Nicoll, *Female Genital Mutilation as Ground for Asylum in the United States: The Recent Case of In re Fauziya Kasinga and Prospects for More Gender*

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12. *See, e.g., Matter of N-M-A-*, 22 I&N Dec. at 320 (rejecting argument that change in conditions "automatically reverts the burden of proof back to the applicant to show that he has a well-founded fear of persecution. . . . Nor does it substitute for careful analysis of the facts of each applicant's individual circumstances"); *Bollanos v. Gonzales*, 461 F.3d 82, 85 (1st Cir. 2006) (explaining that "[g]eneralized evidence is not sufficient to demonstrate a change in circumstances"); *Naizgi v. Gonzales*, 455 F.3d 484, 488-89 (4th Cir. 2006) (remanding where IJ and Board failed to analyze factual question of whether changed circumstances rebutted applicant's presumption of a well-founded fear); *Berishaj v. Ashcroft*, 378 F.3d 314, 327-28 (3d Cir. 2004) (describing the need for individualized, not categorical, analysis of rebuttable presumption); *Rios v. Ashcroft*, 287 F.3d 895, 901 (9th Cir. 2002) (explaining that "[the] INS is obligated to introduce evidence that, on an individualized basis, rebuts a particular applicant's specific grounds for his well-founded fear of future persecution" and generalized information is not sufficient) (internal quotation omitted).

*Sensitive Approaches*, 28 Colum. Human Rights L. Rev. 375, 383 (1997).<sup>13</sup> By denying asylum and withholding, the Board is forcing A.T. to return to a society in which she must again relinquish her freedom and autonomy, evidenced by the fact that she will be forced to marry her first cousin, a man she does not love, and thereafter be forced to endure painful sexual intercourse devoid of pleasure, and live a life deprived of independence. (*See Aff.* at 1.) This is precisely the harm and persecution that FGM is designed to perpetuate, and it is also the type of harm from which our asylum and withholding laws are designed to rescue people.

Significantly, DHS made no showing—nor is there otherwise any evidence in the record—that there has been any change in the culture, the laws or the protection offered to women in Mali who oppose the imposition of FGM, the attendant loss of sexual identity and autonomy, and subjugation in forced marriage. Thus, the presumption of A.T.’s persecution in Mali was not rebutted simply by averring that Respondent cannot be subjected to FGM again. *Cf. Hassan*, 484 F.3d at 518-519 (explaining that the fact that a woman can generally not be subjected to FGM twice does not rebut the presumption of a well-founded fear of future persecution, but rather the government must prove that conditions have changed such that the victim “no longer has a well-founded fear of . . . injury to her person or freedom”). By viewing the persecution inflicted on women whose tribes practice FGM as limited to one act, the Board, in contravention of its own regulations, wholly ignored what A.T.’s past persecution indicated

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13. *See also* Layli Miller Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 Am. U. J. Gender & Law 415, 444 (1996) explaining that the purpose of FGM is “to control the sexual drive of women and ensure that they remain ‘pure’ for their husbands”); Kris Ann Balser Moussette, *Female Genital Mutilation and Refugee Status in the United States – A Step in the Right Direction*, 19 B.C. Int’l & Comp. L. Rev. 353, 356 (1996) (explaining that “the underlying purpose of FGM is to control a woman’s sexual appetite in order to maintain” virginity and marriageability); Leigh A. Trueblood, *Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory*, 28 Denv. J. Int’l L. & Pol’y 437, 448-449 (2000) (explaining that one of the key justifications for FGM is to reduce women’s sexual desire, so that they may maintain chastity and virginity before marriage and fidelity during marriage, revealing FGM is really about men maintaining control over women’s actions and desires).

about the goals of those who perpetrated the abuse. Accordingly, the Board must review, or remand to the IJ to review, the evidence in the record that supports the finding that Respondent continues to have a well-founded fear that she will be subjected to persecution as a result of her membership in a tribe that subjects its women and girls to FGM and forced marriages.

**c. The Board’s Regulatory Analysis Was Further Flawed Because It Misconstrued The 1996 Amendment To The Refugee Definition And The Legislative Purpose Animating That Amendment.**

In eschewing the applicable regulatory analysis, the Board wrongly suggested that past persecution in the form of FGM did not entitle a victim to a presumptive well-founded fear of future persecution in the absence of a specific statutory provision addressing FGM. The Board’s reasoning relied on an erroneous statutory analysis that misconstrued the 1996 amendment to the refugee definition addressing coercive population control (“CPC”) and Congress’s purpose in enacting that statute.

In suggesting that past FGM could not form the basis for asylum or withholding without specific authorization from Congress, the Board relied heavily on the fact that the INA expressly addresses forced sterilization as a basis for asylum, but does not address FGM. *Matter of A-T-*, 24 I&N Dec. at 300. In reaching that conclusion the Board failed to recognize that the 1996 amendment was directed at the nexus requirement in forced sterilization and abortion-based asylum claims and in no way altered the regulatory framework for assessing past persecution or an applicant’s well-founded fear.

A plain reading of the text of the amendment shows that the intention was to deem coercive population control measures as meeting the nexus of persecution based on political opinion:

For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been

persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, *shall be deemed to have been persecuted on account of political opinion*, and . . . shall be deemed to have a well founded fear of persecution on account of political opinion.

INA § 101(a)(42)(B) (emphasis added).

The legislative history also makes eminently clear that Congress passed the 1996 amendment to overcome the hurdle that individuals fleeing China’s coercive population control measures had faced in establishing the nexus requirement of the refugee definition. *See* H.R. Rep. No. 104-478, at 136 (1996) (Conf. Rep.) (noting that purpose of the legislation was to recognize that “forced abortion, forced sterilization or persecution for resistance to such measures are ‘persecution on account of political opinion’”); *see also* 142 Cong. Rec. S4592 (daily ed. May 2, 1996); 142 Cong. Rec. H11,071 (daily ed. Sept. 25, 1996).<sup>14</sup>

Significantly, the Board reached its conclusion about the amendment despite its prior recognition of the amendment’s purpose in *Matter of Y-T-L*:

In the long course of administrative rulings, Presidential directives, proposed regulations, and congressional action that has marked the consideration of asylum claims based on coerced sterilization, the profound and permanent nature of such harm has rarely, if ever, been called into question. *The principal issue of contention, rather, was whether such harm was on account of a ground protected under the Act. See Matter of G-*, 20 I. & N. Dec. 764 (BIA 1993); *Matter of Chang*, 20 I. & N. Dec. 38 (BIA 1989).

23 I&N Dec. at 607 (emphasis added).

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14. In fact, the amendment was a direct response to the Board’s earlier decisions in *Matter of Chang*, 20 I&N Dec. 38 (BIA 1989), and *Matter of G-*, 20 I&N Dec. 764 (BIA 1993), in which the Board held that the implementation of China’s one-couple/one-child policy did not constitute persecution on account of one of the five enumerated statutory grounds for asylum because it was not motivated by animus toward particular characteristics, but rather reflected a nationwide policy directed at population control. *See* H.R. Rep. No. 104-469, at 173-74 (1996) (statements of Sen. Hyde explicitly state that the amendment aimed to “overturn” *Matter of Chang* and *Matter of G-* because the Board’s interpretation of nexus in those cases had been unduly restrictive).

Until this case, the Board has never interpreted the 1996 amendment to stand for any proposition other than that CPC constitutes persecution on account of political opinion. Thus, the Board's reliance on the amendment in the instant case was simply inapposite. *Matter of Kasinga*, 21 I&N Dec. at 357, resolved the question of whether FGM may constitute persecution on account of a protected ground.

In short, by invoking a statute addressed to nexus in the limited context of CPC claims in order to resolve a question involving the regulatory presumption afforded victims of past persecution, the Board misconstrued the plain reading of the statute, undermined congressional intent, and committed legal error.<sup>15</sup>

**d. The Board's Refusal To Recognize Its "Continuing Persecution Doctrine" In FGM Cases Was Based On An Erroneous Reading Of Its Decision In *Matter Of Y-T-L*.**

After wrongly concluding that the act of FGM rebuts the presumption of a victim's well-founded fear of persecution, the Board then misconstrued its own "continuing persecution" doctrine. The Board created that doctrine in *Matter of Y-T-L*, 23 I&N Dec. 601, a case involving the question of whether a Chinese citizen whose wife had been subjected to forced sterilization had a well-founded fear of future persecution. The Board held that the fact that the applicant's wife could not be subjected to forced sterilization a second time did not constitute "changed circumstances" rebutting her presumption of a well-founded fear. *Id.* at 607. In reaching that conclusion, the Board rejected the view that the regulatory presumption was limited

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15. The United States' commitment to provide protection to refugees also arises from its obligation under the 1967 United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. The Protocol was signed by the United States in 1968 and codified into domestic law under the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (now codified as 8 USC § 1101(a)(42)), which was designed to bring America's refugee system into accord with international norms. *Cardoza-Fonseca*, 480 U.S. at 436-37. In fact, the Refugee Act adopted nearly verbatim the refugee definition in the Protocol, changed the original withholding of deportation provision to conform to Article 33 of the Protocol, and made withholding of deportation mandatory.

to cases where the specific “act of persecution is one capable of repetition” and instead created the continuing persecution doctrine focused on the permanent and continuing nature of the harm. *Id.*

In this case, the Board suggested that the “continuing persecution doctrine” created in *Matter of Y-T-L-* is not really a doctrine, but instead is just a gloss on a result driven by Congress’s amendment to the refugee definition. *Matter of A-T-*, 24 I&N Dec. at 300 (“[I]n *Matter of Y-T-L-*, we treated sterilization as continuing persecution because it would have contradicted Congress’s purpose to find that the very act that constituted persecution under the coerced population control provisions was itself a ‘fundamental change of circumstances’ that obviated a future well-founded fear”). That interpretation of *Matter of Y-T-L-*, however, is belied by the Board’s own reasoning in that case.

In *Matter of Y-T-L-* the Board did not simply suggest that Congress’s amendment of the refugee definition—which addressed victims who had suffered forced sterilization in the past, as well as those who feared such harm in the future—obviated the need to analyze the regulatory presumption. Instead, the Board reasoned that forced sterilization “should not be viewed as a discrete, onetime act . . . [but] is better viewed as a permanent and continuing act of persecution that has deprived the couple of the natural fruits of conjugal life, and the society and comfort of the child or children that might eventually have been born to them.” *Matter of Y-T-L-*, 23 I&N Dec. at 607. Indeed, as the dissent in *Matter of Y-T-L-* pointed out, that reasoning was not driven by the Congressional amendment, which is solely addressed to nexus. *Id.* at 613 (Filppu, dissenting). Rather, according to the dissent, that reasoning was a “new theory” of persecution created by the Board in *Matter of Y-T-L-*. *Id.*

As a result, the Board’s conclusion in *Matter of A-T-* that the “continuing harm doctrine” does not apply to FGM cases because *Matter of Y-T-L-* was premised on the congressional statute is simply unsupported by a plain reading of that case. *Matter of A-T-*, 24 I&N Dec. at 299. Given that the Board has already recognized the ongoing harms associated with FGM, *Matter of Kasinga*, 21 I&N Dec. at 361 (noting FGM “permanently disfigures the female genitalia . . . exposes the girl or woman to the risk of serious, potentially life-threatening complications, including . . . psychological trauma . . . permanent loss of genital sensation and can adversely affect sexual and erotic functions”) (internal citation omitted)), the distinction the Board drew in *Matter of A-T-* between FGM and forced sterilization is neither analytically defensible nor just.<sup>16</sup>

Again, the Board erred by failing to recognize that this case is not solely about the physical effects of FGM—which admittedly may never be remedied, even by a grant of asylum—but rather about the likelihood that Respondent will suffer future harm specific to Mali for the same reasons she was singled out for FGM in the first place: her membership in a tribe that believes women’s sexuality and identity must be controlled. Whether characterized as “ongoing persecution” or “future persecution,” subjecting a FGM victim to the daily injury of knowing she does not control her own body, profound deprivations of freedom and autonomy, the constant reminder of her subjugation and second class status (the very goals of FGM), are forms of persecution entitling her to protection from removal to her country of origin, where

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16. Moreover, in unpublished reports, including one as recent as November 2005, the Board has ruled that the prior infliction of FGM does not rebut the presumption of a well-founded fear of future persecution despite the fact that the act is incapable of repetition, and the Board has noted the similarity between FGM and forced sterilization in terms of the ongoing harm of each procedure. *Anonymous*, 27 Immig. Rptr. B1-[93] (BIA May 23, 2003); *Anonymous* (BIA Nov. 7, 2005). The 2003 decision was released the day after *Y-T-L-*, further indicating that the distinction between FGM and forced sterilization in *Matter of A-T-* is not only wrong, but inconsistent with the Board’s outlook and reasoning when *Matter of Y-T-L-* was drafted. As the Supreme Court has noted, inconsistency of the positions of the Board entitles its position in a particular case to “considerably less deference.” *Cardoza-Fonseca*, 480 U.S. at 446 n.30 (quoting *Watt v. Alaska*, 451 U.S. 259, 273 (1981)).

these future harms will take place. *See Mohammed*, 400 F.3d at 800-801; *Hassan*, 484 F.3d at 518-519.

**e. The Board Erred As A Matter Of Fact And Law In Failing To Properly Consider A.T.’s Reasonable Fear Of Forced Marriage.**

The Board erred by failing to hold the government to its burden to demonstrate by a preponderance of the evidence that A.T. would not be subjected to the further harm of forced marriage on account of her status in her tribe. Separate from its failure to adhere to the regulations governing this burden, the Board further erred by failing to consider evidence demonstrating that A.T. had indeed established a well-founded fear of forced marriage.

In failing to hold the government to its burden to demonstrate by a preponderance of the evidence that A.T. would not be subjected to forced marriage, the Board misconstrued 8 C.F.R. § 1208.13(b)(1). That regulation states: “If the applicant’s fear of future persecution is *unrelated* to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.” *Id.* (emphasis added). Contrary to the Board’s interpretation, the regulation (8 C.F.R. § 1208.13(b)(1)) does not require that past and future harms to “relate” in the sense that they be the same. Rather, before switching the burden back to the applicant, the pivotal consideration is whether the applicant’s social group—the reason for the persecution—provides a link between her past and future harms.

Here, in reasoning that A.T.’s FGM was unrelated to forced marriage, the Board failed to recognize that A.T.’s FGM did not change her membership in her social group of Malian women of her tribe, nor did the act of FGM fully achieve her persecutor’s goals. Moreover, the Board failed to recognize that the purpose of FGM—subjugation of the victim in Malian society, sexual repression, and domination by husbands—is not fully achieved on completion of the act of FGM, but is fully realized after the procedure, once the victim is married. It is precisely because of her

membership in her social group, that A.T. has been subjected to FGM in the past and will be singled out for forced marriage in the future. Thus, the Board erred by improperly shifting the burden to A.T. on the issue of the likelihood of her forced marriage.

Although the regulations placed the burden on DHS to show by a preponderance of the evidence that Respondent was not entitled to asylum or withholding because she could avoid future persecution by relocating to another region of Mali, 8 C.F.R. §§ 1208.13(b)(1)(i)(B), (b)(2)(ii), DHS made no effort to comply with this burden. The Board's finding that DHS had apparently met this burden was based solely on a statement by A.T.'s uncle, M.T., who was not a witness offered by DHS and, as the IJ noted, was not an expert in Malian country conditions. (Tr. at 53.) The sole evidence relied on by the IJ and the Board in this regard was a statement by A.T.'s uncle in response to questioning by the IJ that Mali "ha[s] some" single women who are able to live by themselves and work in Mali. (Tr. at 53-54.)<sup>17</sup> That testimony was inconclusive as to A.T.'s ability to refuse forced marriage because the witness did not specify—nor did the IJ inquire—whether the single women to which he referred: (1) were of the Bambara tribe to which he and Respondent belong; (2) were meaningfully employed as opposed to serving as prostitutes; (3) were supposed to enter arranged marriages and were able to evade them; and (4) were of any measurable number. In the absence of these or other facts to substantiate M.T.'s vague responses about single women in Mali, the IJ erred as a matter of law in finding that this

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17. After noting that M.T. was not qualified as an expert, the IJ questioned him as follows:

JUDGE TO WITNESS:

Q. Yes, do you have single women in Mali?

A. Yes, yes.

Q. And are they adults?

A. Yes, we have some.

Q. And to they work in Mali?

A. Yes.

Q. And do they live by themselves in Mali as single women, working?

A. Yes, yes.

evidence showed—under the significant preponderance standard—A.T.’s ability to extricate herself from further harms in Mali.

The Board’s error was compounded by its failure to measure this testimony against significant contrary evidence in the record. The record reflected that if forced to return to Mali, A.T. would be powerless to refuse this marriage and could not escape from her family and tribe or live independently away from them. She testified—and her uncle’s testimony corroborated—that A.T.’s “parents have complete control over [her] life by tradition and custom,” and will only “relinquish that control” when they “hand” it over to her husband upon her marriage. (Aff. at 1; Tr. at 52-53; *see also* Ex. F<sup>18</sup>; Ex. P.) The record also reflected that A.T. could not avoid detection by her family upon her return, nor seek the intervention of the police, which considers forced marriage to be a family affair. (Tr. at 27-29, 52-53.)<sup>19</sup>

In fact, A.T.’s uncle, the same witness relied on by the IJ and Board to conclude A.T. would be able to extricate herself from forced marriage, also testified that it would be difficult for any Malian woman to obtain protection from the government, and that he had never heard of a woman doing so successfully. (*Id.* at 56.) The Board never considered this evidence or what it indicated about A.T.’s status in Malian society, and the enormous barriers she and other women face in fleeing private-actor violence and oppression.

Irrespective of the Board’s failure to adhere to the regulations governing government’s burden, the Board further erred by overlooking material evidence demonstrating that A.T. met the burden of demonstrating a well-founded fear. In doing so, the Board summarily concluded

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18. Statement from the Malian Association for the Monitoring of Orientation of Traditional Practices noting that forced marriages and FGM were the norm in Malian culture.

19. *See also* Ex. K (noting that Mali’s laws disregarded the mandates of International Covenant on Civil and Political Rights to ensure equal rights of men and women and that Malian laws grant “husbands control over decisions regarding type of marriage, the marital residence, and their wife’s ability and right to work”).

that A.T. would not be “disadvantaged” by her forced marriage to her own cousin, ignoring critical evidence in the record to the contrary. The Board’s conclusion relied solely on A.T.’s age and economic status, instead of properly focusing on her vehement opposition to the marriage and country conditions evidence related to forced marriages in Mali. The record reflected—but the IJ and the Board ignored—that women subjected to forced marriage in Mali suffer severe deprivations of liberty and autonomy that render them vulnerable to abuse. According to a report to the Human Rights Committee, because women lack the power to decide to enter a marriage, they also lack the power to leave the marriage. (Ex. K.) Consequently, “[w]omen are subjected to all sorts of violence in a name of a tradition where girls must accept the husband of their fathers choosing.” (Ex. P; *see also* Ex. Q.)

The Board further erred by concluding that A.T.’s fear of forced marriage lacked a nexus to a protected ground. *Matter of A-T-*, 24 I&N Dec. at 303 (finding lack of nexus based on doubt “that young Bambara women who oppose arranged marriage have the kind of social visibility that would make them readily identifiable to those would be inclined to persecute them”). The Board’s reasoning flies in the face of its previous decision in *Matter of Kasinga*, 21 I&N Dec. at 357, which recognized that women singled out for the abusive practice of FGM, were identifiable to their persecutors because of their membership in their tribe. The same is true in the context of this case, where A.T. is vulnerable to forced marriage because her persecutors (her family) have identified her as a female member of their tribe and because of that status require her to conform to oppressive and harmful social norms, including forced marriage.

#### **IV. CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that the Board grant her motion for reconsideration, vacate the order of removal, remand to the IJ for further proceedings, and grant such other and further relief as is fair and appropriate.

Respectfully submitted,

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