

April 25, 2008

Michael B. Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Mukasey:

We are writing to request that you review the decision of the Board of Immigration Appeals (BIA) in *Matter of A-T-*, 24 I. & N. Dec. 296 (BIA 2007). The reasoning used in *Matter of A-T-* fails to adequately protect against gender-based persecution and other human rights abuses committed against women and contradicts precedent recognizing the continued fear of persecution rooted in subjecting a woman to female genital mutilation (FGM), particularly where combined with the likelihood of additional threats to women's autonomy such as forced marriage.

In 1996, Congress passed P.L.104-208, which prohibited the practice of FGM, finding that "the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved," and that "such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional."

The reasoning in *Matter of A-T-* diverges from both the BIA's previous decisions on these matters and from case law in many federal circuits. In *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996), the BIA recognized that the FGM constitutes persecution and provides a basis for an asylum claim. The BIA noted that,

FGM is extremely painful and at least temporarily incapacitating. It permanently disfigures the female genitalia. FGM exposes the girl or woman to the risk of serious, potentially life-threatening complications.<sup>1</sup>

The BIA recognized that FGM is a form of "sexual oppression...to ensure male dominance and exploitation."<sup>2</sup> In later decisions, the BIA agreed with the characterization of the effects of FGM as providing a well-founded fear of persecution that does not dissipate, "may be taken as permanent" and "is not rebutted by simply averring that the respondent cannot have further FGM performed upon her."<sup>3</sup>

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<sup>1</sup> *Matter of Kasinga*, 21 I. & N. Dec. 357, 361 (BIA 1996).

<sup>2</sup> *Id.* at 366.

<sup>3</sup> From two unpublished opinions of the BIA, *Matter of Anon.* (BIA Nov. 7, 2005), and *Matter of Anon.*, 27 Immig. Rptr. B1-93 (BIA May 23, 2003), respectively.

The United States Courts of Appeals have increasingly recognized that FGM rises to the level of persecution.<sup>4</sup> The Eighth Circuit, as an example, held that once a woman demonstrates that she was subjected to FGM, “she is entitled to a presumption of a well-founded fear of persecution,”<sup>5</sup> which requires the government to rebut the presumption of persecution by a preponderance of the evidence. The court then rejected a narrow reading of persecution and stated that, though FGM occurs one time, a woman living in and subjected to the societal discrimination that led to the initial genital mutilation can constitute a “risk of other prevalent forms of persecution.”<sup>6</sup> The court reasonably required the government to prove that fundamental changes have occurred “to such an extent that [the woman subjected to FGM] no longer has a well-founded fear of the infliction or threat of death, torture, or injury to her person or freedom.”<sup>7</sup>

*Matter of A-T-* addresses the plight of a woman who was subjected to FGM and, if deported, faces not only ongoing physical and psychological trauma as a result of the procedure, but also the near certainty of forced marriage to her first cousin, with attendant risks of abuse and powerlessness similar to those credited by the Eighth Circuit in *Hassan v. Gonzales*.<sup>8</sup> Despite these dangers and precedent supporting the position of the woman in *Matter of A-T-*, the BIA only asked whether she would, in the future, be subjected to the identical harm that she previously suffered. In essence, the BIA’s reasoning in this case condones the abhorrent practice of performing FGM on young girls because it forces them to return to their countries of origin to face the risk of ongoing, gender-based persecution and the denial of women’s autonomy engendered in practices such as forced marriage.

To summarize, we are concerned that the reasoning reflected in *Matter of A-T-* inadequately protects against gender-based persecution and human rights abuses committed against women. Therefore, we request that you review *Matter of A-T-*.<sup>9</sup>

Sincerely,

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Olympia J. Snowe

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Carl Levin

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<sup>4</sup> See *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007); *Barry v. Gonzales*, 445 F.3d 741, 745 (4th Cir. 2006); *Niang v. Gonzales*, 422 F.3d 1187, 1197 (10th Cir. 2005); *Mohammed v. Gonzales*, 400 F.3d 785, 795 (9th Cir. 2005); *Balogun v. Ashcroft*, 374 F.3d 492, 499 (7th Cir. 2004); *Abay v. Ashcroft*, 368 F.3d 634, 638 (6th Cir. 2004).

<sup>5</sup> *Hassan*, 484 F.3d at 516-17.

<sup>6</sup> *Id.* at 518.

<sup>7</sup> *Id.* at 518-19.

<sup>8</sup> *Id.* at 519.

<sup>9</sup> Under 8 C.F.R. § 1003.1(h)(1)(i), the Attorney General has the authority to direct the Board of Immigration Appeals (BIA) to certify a case for review. In 2001, Attorney General Janet Reno directed the BIA to certify a case to her for review, which also marked a failure to protect against gender-based persecution. See *Matter of R-A-*, Int. Dec. 3403 (BIA 1999). *Matter of R-A-* was on appeal at the 9th Circuit at the time it was certified to Ms. Reno.