



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: W [REDACTED], M [REDACTED] Y [REDACTED] A [REDACTED]-210

**Date of this notice: 11/13/2018**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Donovan, Teresa L.  
Wendtland, Linda S.  
Crossett, John P.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A-210 – Dallas, TX

Date: **NOV 13 2018**

In re: M-Y-W

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael G. Andegeorgis, Esquire

ON BEHALF OF DHS: Michelle Allen-McCoy  
Assistant Chief Counsel

APPLICATION: Asylum

The respondent, a native and citizen of Ethiopia, has appealed from the Immigration Judge's June 28, 2017, decision denying her application for asylum under section 208(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1) (2012).<sup>1</sup> The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be sustained and the record will be remanded for any necessary background and security investigations.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent has been in ongoing removal proceedings since December 2010 (IJ at 1; Exh. 1). On April 25, 2014, the Board dismissed the respondent's appeal of the Immigration Judge's denial of her claim for asylum on account of her political opinion. On October 27, 2014, the Board granted the respondent's motion to reopen proceedings to apply for asylum due to her undergoing female genital mutilation. The Immigration Judge determined that the respondent was not credible (IJ at 6-8). *See Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002) (stating that the Board must defer to the factual determinations of an Immigration Judge in the absence of clear error). The Immigration Judge further determined that the respondent did not submit reasonably available corroborating evidence sufficient to meet her burden to establish eligibility for asylum (IJ at 8). *See* section 208(b)(1)(B) of the Act; *Matter of L-A-C-*, 26 I&N Dec. 516, 519 (BIA 2015) (holding that regardless of whether a respondent is credible, he has the burden to corroborate the

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<sup>1</sup> The Immigration Judge also denied withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2) (2018). The respondent has not meaningfully challenged these determinations on appeal (*see* Notice of Appeal; Respondent's Br.). Hence, any challenge to the matters is deemed waived. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012); *Matter of J-S-*, 24 I&N Dec. 520, 526 n.4 (A.G. 2008) (declining to address determinations not challenged on appeal).

material elements of his claim where the evidence is reasonably obtainable without advance notice from the Immigration Judge).

Although there are discrepancies in the respondent's testimony and documentary evidence related to the details of her experience with female genital mutilation ("FGM"), the respondent has nevertheless submitted medical evidence that confirms she was subjected to such harm (*see* IJ at 3-8; Exhs. 3, 11; Respondent's Motion to Reopen, Tab C). Additionally, although the Immigration Judge rejected the doctor's clinical diagnosis because she did not submit a curriculum vitae, the clinician was not providing an expert opinion – and such certification was not required here (IJ at 8; Respondent's Br. at 6-7). Furthermore, in light of this evidence, statements from her mother and sisters were not necessary to corroborate her claim of undergoing FGM (IJ at 8). Therefore, we reverse the Immigration Judge's determination that the respondent was not credible and had not sufficiently corroborated her claim of past persecution on the basis of FGM.

As the respondent has established past persecution, she is entitled to a presumption that her life or freedom would be threatened in the future upon her return to Ethiopia. *See* 8 C.F.R. § 1208.13(b)(1)(i). We acknowledge that the respondent testified that female genital mutilation only happens one time for girls within the Gurage ethnic group – she would not be forced to undergo it again – and the respondent did not fear any other harm due to her membership in the Gurage ethnic group (IJ at 11-12). *See* 8 C.F.R. §§ 1208.13(b)(1)(i)(A), (B). As such, the Immigration Judge properly determined that the DHS has satisfactorily rebutted the presumption of any future harm (IJ at 8-12).

However, under the circumstances presented here, we agree with the respondent that she is eligible for asylum on a humanitarian basis (IJ at 13-14; Respondent's Br. at 7-10). As noted above, the respondent has submitted medical evidence that she was subjected to FGM and she has testified that she continues to experience mental suffering as a result of that experience (*see* Tr. at 32, 41). Moreover, there are no discretionary grounds upon which to deny such relief. Consequently, the respondent merits a grant of asylum on a humanitarian basis. *See* 8 C.F.R. § 1208.13(b)(1)(iii); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012); *Matter of S-A-K- and H-A-H-*, 24 I&N Dec. 464 (BIA 2008) (granting humanitarian asylum on the basis of the aggravated nature of FGM performed on the respondents).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent is eligible for asylum.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

*Tereza Donar*

FOR THE BOARD

Falls Church, Virginia 22041

File: A-210 – Dallas, TX

Date: **NOV 13 2018**

In re: M-Y-W

CONCURRING/DISSENTING OPINION: John P. Crossett, Temporary Board Member

I agree with the majority that the Immigration Judge's adverse credibility and corroboration findings were erroneous and that the respondent has carried her burden to prove that she suffered past persecution in Ethiopia in the form of female genital mutilation ("FGM"). This past persecution entitles the respondent to a presumption that she has a well-founded fear of persecution in Ethiopia on the same ground, *see* 8 C.F.R. § 1208.13(b)(1), but I also agree with the majority that the presumption has been rebutted here because the respondent acknowledged that she is not in jeopardy of experiencing future persecution—in the form of FGM or otherwise—in Ethiopia.

Where I part company with the majority is in their determination that the respondent qualifies for "humanitarian asylum" on the present record, despite the absence of a well-founded fear of future persecution, based on the severity of her past harm. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A); *accord Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464 (BIA 2008). I have no wish to minimize the physical and emotional consequences of FGM, and I believe the respondent deserves a compassionate hearing before the trier of fact on the question of her eligibility for humanitarian asylum, based either on the severity of her past persecution or the possibility that she will suffer "other serious harm" in Ethiopia. 8 C.F.R. § 1208.13(b)(1)(iii)(B).

However, I disagree with the majority that the facts currently of record establish the respondent's eligibility for humanitarian asylum as a matter of law. As the United States Court of Appeals for the Fifth Circuit has explained, "[f]or th[e humanitarian asylum] regulation to be invoked, the past persecution suffered by an alien must be particularly severe, as was the case of the German Jews, the victims of the Chinese Cultural Revolution, survivors of the Cambodian genocide, and a few other such extreme cases." *Shehu v. Gonzales*, 443 F.3d 435, 440-41 & n.6 (5th Cir. 2006); *see also Matter of Chen*, 20 I&N Dec. 16, 19-21 (BIA 1989).

The gravity of past harm required for a grant of humanitarian asylum is vividly illustrated by *Matter of S-A-K- & H-A-H-*, where this Board granted such protection to a mother and daughter from Somalia who had experienced particularly aggravated forms of FGM and related harm:

The daughter in this case testified that she was forcibly circumcised by women brought home by her father when she was 9 years old, in a procedure similar to that suffered by her mother. The procedure was done without anesthesia and, although she recovered after 2 weeks, she has continued to have difficulty urinating and has been unable to menstruate. The aggravated nature of the procedure performed on the daughter is also apparent in that, because her vaginal opening was sewn shut with a thorn, the man she was given to in marriage, who ultimately raped her, could not penetrate her for sexual intercourse. He was only able to rape her by cutting her open, causing her to bleed for many days.

The mother, who is the lead respondent, likewise testified that she suffered great pain following her forced circumcision, particularly during child birth, and that she almost died during the actual procedure because of infection. During her earlier pregnancies, her vaginal opening was sewn shut after being opened to allow for sexual intercourse and child birth. She was sewn shut approximately five times, and two of her children died during childbirth. Of her six daughters, the three oldest have been circumcised, and she was beaten for opposing the procedure.

24 I&N Dec. at 465.

In granting humanitarian asylum to the present respondent, the majority notes only that she was subjected to FGM and testified that she continues to experience mental suffering as a result. I conclude that these facts alone are not sufficient to warrant a grant of humanitarian asylum, which should be reserved for truly exceptional cases involving atrocious past persecution akin to that described in *Matter of S-A-K- & H-A-H-*. Therefore, I would remand the record for a further evidentiary hearing and for the entry of supplemental findings bearing on the nature and severity of the respondent's past harm and the probability that she will suffer "other serious harm" if removed to Ethiopia. Absent such findings, I believe the majority's decision is premature.

For the foregoing reasons, I respectfully concur in part but dissent from the majority's determination that the respondent qualifies for asylum on the present record.