

U.S. Grants Asylum to Woman Fleeing Genital Mutilation Rite

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Body

The highest administrative tribunal in the **United States** immigration system **granted** political **asylum** yesterday to a 19-year-old **woman** from Togo who said she had fled her homeland to escape having her **genitals** cut off.

The decision of the Board of Immigration Appeals in the case of the **woman**, Fauziya Kasinga, is its first recognition of genital **mutilation** as a form of persecution and a basis for **asylum**. The **rite** has been practiced on millions of **women** in 26 African countries.

The ruling sets a precedent that is binding on the 179 immigration judges across the country. The few who have heard such cases have been divided in their decisions.

The board, part of the Justice Department, rejected the position of the Immigration and Naturalization Service, also part of the department. It had argued that although **genital mutilation** should be a reason for **granting asylum** in carefully defined circumstances, Ms. Kasinga's case should be sent back to an immigration judge to consider what the service said were inconsistencies in her story and new testimony from an expert on Togo.

Immigration law calls for **asylum** to be **granted** to people who can show that they have a well-founded fear of persecution because of their race, religion, nationality, political opinions or membership in a social group.

Ms. Kasinga's lawyers sought a narrow ruling that would also not foreclose future claims by **women** in different circumstances, for example those who had already been subjected to the practice. The immigration service argued that **women** who had already undergone the procedure as children, or who would face ostracism, not actual **mutilation**, for opposing it should not qualify for **asylum** in most cases.

The ruling, written by the chairman, Paul W. Schmidt, rejected the framework proposed by the immigration service. "We decline to speculate on, or establish rules for, cases that are not before us," he wrote.

The ruling went on to say that **genital mutilation** as practiced by the tribe to which Ms. Kasinga belonged, the Tchamba-Kunsuntu, constituted persecution.

Karen Musalo, the lead attorney on Ms. Kasinga's legal team from American University, said that by rejecting the immigration service's proposed framework, the board "had clearly left open the door to **women** who have been mutilated in the past." Ms. Kasinga could not be reached for comment, but Ms. Musalo said her client was jubilant. "Her reaction was one of joy, ecstasy and relief," she said.

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Acknowledging that the board had not adopted his proposed framework, the immigration service's general counsel, David A. Martin, said, nonetheless, "We're pleased that the board recognized that female **genital mutilation** came be the basis for **asylum**."

Researchers on **women's** refugee issues have said that making **genital mutilation** a basis for **asylum** claims would be unlikely to lead to a flood of new claims. Most **women** are subjected to **genital mutilation** as young girls, before they have the means to escape. Even those who want to **flee** later often lack the money to do so, they said.

Only a handful of **women** have asked the **United States** for sanctuary in recent years because of **mutilation**. Canada, the first country to **grant asylum** to **women** because of **genital mutilation**, has found that such claims have remained relatively rare.

The board's ruling quoted from a report prepared by the immigration service on female **genital mutilation** in Africa. "It remains particularly true," the ruling quoted the report as saying, "that **women** have little legal recourse and may face threats to their freedom, threats or acts of physical violence, or social ostracization for refusing to undergo this harmful traditional practice, or attempting to protect their female children."

The board flatly dismissed the conclusion of an immigration judge, Donald V. Ferlise, that Ms. Kasinga's story lacked rationality and credibility. In contrast, the board found her story "plausible, detailed and internally consistent."

Ms. Kasinga told the immigration authorities that her father had opposed polygamy and ritual **mutilation** and, as a wealthy businessman, was able to defy the tribal customs. But he died suddenly when she was 15, and an aunt arranged for her to become the fourth wife of a middle-age man. To avoid the marriage and **genital mutilation**, Ms. Kasinga said she fled, first to Ghana, then to Germany and finally to the **United States**, where she had relatives.

Landing at Newark International Airport, Ms. Kasinga asked for **asylum**. She was detained in the Esmor detention center in Elizabeth, N.J., run by a private company under contract with the immigration service. The immigration service later found that Esmor detainees has been subjected to arbitrary cruelties by guards, strip searches and isolation. The conditions led to a disturbance a year ago and Esmor's closing. Ms. Kasinga was then held in Pennsylvania prisons.

At the York County (Pa.) Prison, Ms. Kasinga was strip-searched and locked in a maximum security cell with an American convict, said the warden, Thomas H. Hogan. A week before her case was to be heard by the immigration tribunal, after an article in The New York Times described her case, Ms. Kasinga was released. She has been living in the Washington area since her release in April.

The detention of a teen-ager seeking political **asylum** for more than a year brought a pointed footnote in yesterday's ruling. The tribunal noted that Ms. Kasinga had no criminal record and questioned the value of keeping her behind bars. It suggested that immigration service officials "might well wish to review this policy should future cases of this type arise."

Graphic

Photo: Fauziya Kasinga. (Associated Press)

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