

Woman Fleeing Tribal Rite Gains Asylum; Genital Mutilation Is Ruled Persecution

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Byline: Roberto Suro, Washington Post Staff Writer

Body

The nation's highest immigration court **ruled** yesterday that a 19-year-old West African **woman** should be granted political **asylum** because she fears the bloody but traditional practice of **genital mutilation** by members of her tribe.

The **ruling** marked the first time that a court with national jurisdiction recognized the practice of female **genital mutilation** as a form of **persecution**, and the decision will serve as a precedent for the 179 immigration judges who hear **asylum** cases around the country.

In an 11 to 1 decision, the Board of Immigration Appeals found that Fauziya Kasinga of Togo was a credible witness and that she met the standards of U.S. law by showing that she had a well-founded fear of suffering **genital mutilation**. Previous rulings by immigration judges were divided on the issue.

"The characteristic of having intact **genitalia** is one that is so fundamental to the individual identity of a young **woman** that she should not be required to change it," said the majority opinion written by appeals board Chairman Paul W. Schmidt.

An estimated 80 million **women** have been subject to **genital mutilation** worldwide, according to the Immigration and Naturalization Service (INS). The crude and frequently dangerous practice is often performed on girls at the age of puberty. The opinion cited evidence that **genital mutilation** has often been used to assure male domination of **women**.

"We find that [female **genital mutilation**] can be a basis for **asylum**," Schmidt said in the opinion.

Kasinga fled her homeland in 1994, days after she said she was forcibly married to an older man and prepared for circumcision in accordance with **tribal** custom. She arrived at Newark airport with a false passport and was immediately put in prison while her **asylum** case progressed. After being denied **asylum** by an immigration judge in Philadelphia, she pursued an appeal and was released from detention in April two weeks before the appeals board heard her case.

The board found that Kasinga's account was "plausibly detailed and internally consistent." Her attorneys had argued that the judge who initially **ruled** against her was biased and uninformed about practices in Togo. In presenting its case before the appeals board, the INS argued that there were serious inconsistencies in Kasinga's story but the agency declined to make a firm determination on her credibility.

"I am very happy for her. I feel all the injustices she suffered under our system have been, if not redeemed, at least dealt with responsibly," said Layli Bashir Miller, a law student at American University who helped Kasinga with her **asylum** case.

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In making its grant of asylum to Kasinga, the appeals board rejected arguments by the INS that Kasinga's case ought to be sent back to the immigration judge that originally heard it for reconsideration. The INS, which like the appeals board is a part of the Justice Department, argued that forcible female genital mutilation can be grounds for asylum, and asked the court only for a broad framework that could be used to evaluate applications for asylum by people claiming fear of female genital mutilation.

While the ruling broke new ground by recognizing genital mutilation as a form of persecution, much of the appeal board's reasoning was framed around the specific circumstances of Kasinga's case.

A key aspect of the ruling concluded that Kasinga was a member of a persecuted social group by virtue of her membership in the Tchamba-Kunsuntu tribe of Togo and by reason of her opposition to the practice of genital mutilation. Among members of that tribe, as in many parts of Africa and Asia, the genitals of young women are ritually cut away in the belief that it keeps them pure and faithful.

In another key finding, the appeals board concluded that Kasinga faced the danger of persecution throughout Togo, meaning that the police and other government agencies offered no real protection to her from her husband and other members of her tribe who wanted to subject her to genital mutilation.

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