

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

File: A73 476 695

In Re:

**Fauziya Kasinga
Respondent**

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IN EXCLUSION PROCEEDINGS

BRIEF FOR THE RESPONDENT

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INTRODUCTION

Fauziya Kasinga, an eighteen year old national of Togo, applied for political asylum and withholding of deportation in exclusion proceedings before Immigration Judge Donald V. Ferlise. Ms. Kasinga had fled Togo to escape from a forced polygamous marriage, and from the imminent infliction of female genital mutilation (FGM), a brutal ritual practice which involves the removal of part or all of the female genitals. FGM is performed by midwives or elders who use knives, broken glass or old razor blades. It is done without anesthesia or antibiotics. FGM, which can be fatal, causes life-long physical and psychological problems, and has been condemned as a violation of women's international human rights.

Ms. Kasinga was represented in exclusion proceedings by attorney Eric Bowman. Mr. Bowman's representation was far from zealous, as demonstrated by the poor quality of the asylum application which he submitted on her behalf. The application was skeletal, contained spelling and grammatical errors, and was not accompanied by a detailed affidavit of the relevant facts. Furthermore, Mr. Bowman did not submit any relevant documentary evidence.

Subsequently, Layli Miller Bashir, a third year law student who was clerking for Mr. Bowman, attempted to remedy deficiencies in the case. She prepared a pre-hearing brief with relevant exhibits. Mr. Bowman requested of Judge Ferlise that pursuant to 8 C.F.R. § 292.1(a)2, he permit Ms. Miller Bashir to represent Ms. Kasinga at the hearing on her claims for political asylum and withholding of deportation.

Mr. Bowman's teaching and supervision of Ms. Miller Bashir fell far below the acceptable standard. Without proper mentoring and supervision, Ms. Miller Bashir, who had never appeared in immigration court before, found it difficult to conduct the hearing.

Furthermore, Mr. Bowman did not instruct Ms. Miller Bashir to make appropriate offers of proof when the judge foreclosed relevant areas of questioning. Mr. Bowman's actions, both in his poor quality preparation of Ms. Kasinga's application, and in his inadequate supervision of Ms. Miller Bashir, were highly prejudicial to Ms. Kasinga. As a result, material evidence was not admitted into the record.

At the conclusion of the hearing, Judge Ferlise denied both political asylum and withholding of deportation. He ruled that Ms. Kasinga was not credible, and that even if she were credible and was fleeing a forced marriage and FGM, she would not meet the statutory standard for the requested relief. In finding Ms. Kasinga not credible, the judge relied upon non-existent inconsistencies, and made incorrect assumptions about cultural norms in Togo.

A transcript of the proceedings was produced pursuant to 8 C.F.R. §§ 3.28, 3.63 (1994). The quality of the transcript is exceptionally poor, with key portions of the testimony untranscribed as "indiscernible." As a matter of fact, in a transcript of ninety-five pages, the word "indiscernible" appears 160 times. The poor quality of the transcript is compounded by the fact that Mr. Bowman never prepared Ms. Kasinga's detailed affidavit. Therefore, the existing record does not contain a clear, concise articulation of the facts underlying Ms. Kasinga's claim.

For all of these reasons, Ms. Kasinga requests that the Board exercise its authority to conduct a de novo review, and to consider new evidence. Ms. Kasinga requests that the Board accept and consider her detailed affidavit (attached as Exhibit A to Respondent's brief), as well as the detailed affidavit of Professor Merrick Posnansky, a renowned academic expert on Togo (attached as Exhibit B to Respondent's brief). Professor Posnansky is Professor Emeritus of

History and Anthropology at the University of California, Los Angeles. He has spent extensive periods of time in Africa over the past thirty years, and has authored numerous publications. He is an expert on Togo, a country he has visited sixteen times in the past sixteen years. Professor Posnansky directly rebuts Judge Ferlise's incorrect assumptions about cultural norms in Togo. Furthermore, he finds Ms. Kasinga's story to be entirely consistent with his knowledge of Togo. Ms. Kasinga also asks the Board to accept a translated copy of her "certificate of marriage contract," an additional piece of corroborating evidence which was not offered by Mr. Bowman (attached as Exhibit C to Respondent's brief). Ms. Kasinga requests that the Board, in conducting its de novo review, find her credible, reverse the immigration judge's decision, and grant her the requested relief.

If the Board accepts de novo review, but declines to make a credibility determination on the basis of the existing record (which includes a transcript of exceptionally poor quality, with over 160 "indiscernibles") Ms. Kasinga requests that the Board remand her case for the development of a clear record upon which a credibility finding may be based. Counsel for the Respondent requests the opportunity to appear before the Board to present oral argument on the foregoing.

FACTUAL BACKGROUND

Ms. Kasinga was born on January 1, 1977 in Kpalime, Togo. She is a member of the Tchamba-Kunsuntu tribe. (TR 17) Female genital mutilation, forced marriage, and polygamy are widespread practices among members of the Tchamba-Kunsuntu tribe. (TR 28) As the U.S.

State Department has documented, women in Togo suffer extensive discrimination. Women are discriminated against in the educational arena, with far fewer women attending secondary school or university. As a result, the illiteracy rate among women is far higher than that among men. In addition, men decide whether their wives may be permitted to work, and they control their salaries. Violence against women, including wife-beating, is pervasive, with little police intervention. U.S. Department of State, 1993 Human Rights Report, Togo Human Rights Practices.

Ms. Kasinga's father, Muhammad Kasinga, was not in agreement with FGM, forced marriages, or polygamy. He was married to only one woman for his entire life. He made a conscious decision to marry a woman who had not suffered female genital mutilation. (TR 25). His wife, Zuwere, who is Ms. Kasinga's mother, was from the Dandi¹ tribe of Benin. Although FGM is the norm in the Bandi tribe, it was not inflicted on Zuwere, since her older sister had died as a result of complications from it. (TR 26)

Ms. Kasinga's father was also not in agreement with limited educational opportunities for girl children. He encouraged his five daughters, including Ms. Kasinga, to pursue an education far more advanced than is the norm for Togolese women. (Aff. of Ms. Kasinga, at 2; TR 35) He even sent Ms. Kasinga abroad to a boarding school in Ghana to study, which is very unusual within the Tchamba-Kunsuntu. (Aff. of Prof. Posnansky, at 4).

Ms. Kasinga's father refused to allow his daughters to be subjected to the ritual practice of female genital mutilation. (TR 25) In addition, he encouraged them to enter into monogamous

¹ The transcript refers to the tribe as "Bandi" (TR 18) The correct spelling the of the tribe is "Dandi".

marriages, with a spouse of their own choosing. (Aff. of Ms. Kasinga, at 2). Mr. Kasinga's father was able to refuse to comply with cultural norms because he was a wealthy and successful businessperson (TR 27-30). Nonetheless, the Kasinga family was subjected to community criticism for its flouting of these norms. (Aff. of Ms. Kasinga, at 3).

On January 16, 1993, Ms. Kasinga's father died. At the time he died, all four of Ms. Kasinga's sisters were already married to men of their choice. They had avoided being mutilated, which is usually required before marriage. Ms. Kasinga was the only daughter who was still single. When her father died, Ms. Kasinga was studying in Ghana. (TR 33-34). She returned home immediately for the services, and then returned to school. (Aff. of Ms. Kasinga, at 3).

In the summer of that same year, June 1993, Ms. Kasinga again returned home for vacation. Upon her return to the family home, she discovered that her mother was gone, and that her paternal aunt, Haja-Mammud, was living there instead. (TR 33). Although Ms. Kasinga's aunt told her that her mother left voluntarily to return to her family in Benin, (Aff. of Ms. Kasinga, at 3) Ms. Kasinga later learned that her aunt had ordered her mother to leave the home. (Aff. of Ms. Kasinga, at 3-4; TR 19). Togo is a patriarchal society, which means that the father's family has tremendous control. It is not at all uncommon for the father's family to take over everything after the father's death. (Aff. of Prof. Posnansky, at 4-5). In fact, "[when a wife becomes a widow it is very common, no matter what the ethnic group, for the wife to lose everything, including her home and assets, to the family of her now deceased spouse." *Id.* It is also not uncommon for the father's family to "banish" the widow from the family and home. *Id.*

That summer, Haja-Mammud told Ms. Kasinga that she would not be permitted to return to high school in Ghana to complete the remaining two years. (TR 15, 36, 81) The aunt indicated

that extended education for a girl wasn't necessary. Shortly after this conversation, her aunt informed Ms. Kasinga that she was going to be married to Ibrahim Isaka,² a powerful man in the community, who had served as a district assemblyman. (Aff. of Ms. Kasinga, at 4). Mr. Isaka was forty-five years old and already had three wives. (TR 16, 41). Along with the marriage, Ms. Kasinga would also suffer genital mutilation. (TR 36).

On a number of occasions, Ms. Kasinga told her aunt that she did not want to marry or be mutilated. In response her aunt became harsh, yelling at her, and on at least one occasion, hitting and kicking her. (Aff. of Ms. Kasinga, at 5). Ms. Kasinga believes that one of the motivations her aunt had for forcing her to marry was to obtain the "marr" or payment of money that a husband gives to the wife's family.

On October 17, 1994, Ms. Kasinga was forced to marry Ibrahim Isaka, according to local customs. Following these customs, the marriage takes place with the bride and the groom in separate locations. The bride is in a room with the husband's other wives, who are supposed to tell her about the likes and dislikes of her husband. (Aff. of Ms. Kasinga, at 6). The husband is with the Imam, or holy man, who prays and announces when the marriage is complete.

After the "ceremony", Ms. Kasinga's aunt brought her a certificate of the marriage contract (Exhibit C), which her husband had signed, and which she was required to sign. Out of defiance, she refused to sign it. (Aff. of Ms. Kasinga, at 6). The contract lists Ibrahim and Fauziya as the husband and wife, and shows Ibrahim's date of birth to be 1950, making him 45

² Two different spellings have been given for the husband's last name. In the transcript and affidavit of Ms. Kasinga, his last name has been spelled "Isaka." In the marriage contract, it is spelled "Ishaq."

years old. Consistent with Ms. Kasinga's version of events, the contract bears the husband's signature, and the signatures of two witnesses, but in the space reserved for the wife's signature, the contract shows "none."

Ms. Kasinga's aunt told her that she was to be mutilated within a few days of the marriage. Her aunt directed her to stay in a room in the house that had previously been used as a storeroom (Aff. of Ms. Kasinga, at 6). Ms. Kasinga feared the imminent mutilation, but didn't know what to do.

The evening of the wedding day, her sister Ayisha came to visit her. Ayisha told Ms. Kasinga that her aunt Haja-Mammud had informed their mother about the marriage and mutilation, and that her mother wanted to help Ms. Kasinga escape from it. (Aff. of Ms. Kasinga, at 7). The mother and Ayisha planned to help Ms. Kasinga flee from Togo, and the mother gave Ayisha \$3,000 to give to her to help her get out of the country. The \$3,000 was the amount which Ms. Kasinga's mother had been given as her share after the father's death. That evening of the wedding day, Ayisha told Ms. Kasinga about this plan, and said that she would return the next day. (Aff. of Ms. Kasinga, at 7).

Ayisha returned the following evening. The aunt had other company, and left Ayisha and Ms. Kasinga to visit alone. After visiting for about twenty minutes, Ayisha went to say good-bye to aunt Haja-Mammud. Then Ayisha and Ms. Kasinga slipped out to Ayisha's car, heading towards Ghana. (Aff. of Ms. Kasinga, at 7).

Ayisha took Ms. Kasinga to the airport in Ghana. Ms. Kasinga was afraid that her aunt and Ibrahim Isaka would look for her as soon as they discovered that she was gone, so she wanted to leave the country that night. (Aff. of Ms. Kasinga, at 7). She decided to take a plane

for Germany, because it was the next plane leaving the country.

Ms. Kasinga arrived in Germany on October 20, 1994. Although the German authorities allowed her to enter after she told them she was a student, and showed them that she had sufficient funds, Ms. Kasinga did not know where to go. (Aff. of Ms. Kasinga, at 8). She did not speak German, nor did she have any family or friends to turn to. (Aff. of Ms. Kasinga, at 8- 9). She wandered around the airport, looking for the familiar faces of fellow Africans who might be able to provide her with some assistance. (TR 48-49).

After several hours of wandering about the airport, a young German woman struck up a conversation with Ms. Kasinga. (TR 48-49). The woman, whose name is Rudina Gergs,³ spoke a little English, so they were able to converse. Ms. Kasinga told Ms. Gergs why she had fled Togo, and Ms. Gergs offered to provide her with a place to stay in Bochum, where she lived, until Ms. Kasinga decided what to do. (TR 50).

Ms. Kasinga ended up staying with Ms. Gergs for almost two months, sleeping in the living room. When Ms. Gergs would go off to work, Ms. Kasinga would cook and clean the house. She would go out and wander a bit around the town. (TR 51). But because she did not speak German, it was difficult for her to feel at home. Ms. Kasinga also missed not being able to study, or to have contact with family members. (TR 54).

In mid-December, Ms. Kasinga was traveling to a shopping center on a train when she struck up a conversation with a young man by the name of Charlie, who was from Nigeria. (TR 52). This was the first person from Africa she had spoken to since she fled Togo. (Aff. of Ms.

³ The transcript refers to a Ms. "Gerges". (TR 50) The correct spelling is Ms. Gergs.

Kasinga, at 9). Ms. Kasinga explained her predicament to Charlie. During that discussion Charlie told Ms. Kasinga that he had his sister's British passport. He suggested that Ms. Kasinga use it to try to seek asylum in the United States, where she has an aunt and uncle, and a cousin. (Aff. of Ms. Kasinga, at 8). Ms. Kasinga paid Charlie for his sister's passport, and he helped her purchase airplane tickets. (TR 54).

Ms. Kasinga arrived in the United States on December 17, 1994. She did not attempt to use the British passport to enter the United States, but immediately requested asylum (TR 57). Immigration Judge Ferlise explicitly found that Ms. Kasinga "did not attempt to commit a fraudulent entry ... notwithstanding the fact that she was in possession of a fraudulent document." (Transcript of oral decision, p.2) .

Since arriving in the United States, Ms. Kasinga's cousin, Jabar Ali, has received two letters from her mother, which were admitted into the record as part of Group Exhibit 3. Because her mother is illiterate, Ms. Kasinga's mother dictates the letters to Ms. Kasinga's sister, who writes them. (TR 67-68). The first of the two letters is dated December 17. It refers to a "very serious" thing which had happened, and mentions that Fauziya's father's family wanted to "circumcise" her and "marry her to an old man." The second letter, which is dated December 30,⁴ mentions that on October 20 the family realized Fauziya had fled, and that they had reported it to the police, who "are searching for her."⁵

⁴ The Judge erroneously refers to these letters as being dated July 20 and July 25, 1995. (TR 68).

⁵ Ms. Kasinga's mother is illiterate, so Ms. Kasinga's mother dictates the letters to one of the sisters. (TR 63). The judge implied that under these circumstances, it was misrepresentation to characterize the letters as coming from the mother. (TR 64). If Judge Ferlise's opinion were widely held, businesspeople who dictate letters to their secretaries would be engaged in misrepresentation in

PROCEDURAL HISTORY

Ms. Kasinga arrived in the United States at the Newark, New Jersey airport, where she immediately requested political asylum. She was placed in custody, and was initially detained at the Esmor facility in Elizabeth, New Jersey. At the request of Ms. Kasinga's cousin, Jabar Ali, attorney Eric Bowman entered an appearance as counsel in Ms. Kasinga's case.⁶

Ms. Kasinga appeared before Immigration Judge Esmeralda Cabrera on January 9, 1995, where she renewed her request to apply for political asylum and withholding of deportation. Judge Cabrera ordered that the I-589 application for asylum and withholding be filed by January 19, 1995. (TR 4) Mr. Bowman submitted an I-589 on Ms. Kasinga's behalf. (Group Exhibit 3)

Ms. Kasinga's merits hearing was rescheduled on several occasions. In late June, as a result of the riots at Esmore, Ms. Kasinga was transferred to the Lehigh County Prison in Allentown, Pennsylvania. On August 25, 1995, Ms. Kasinga appeared for her merits hearing before Immigration Judge Donald V. Ferlise, sitting in Philadelphia, Pennsylvania. Ms. Kasinga was represented by Ms. Layli Miller Bashir, pursuant to 8 C.F.R. §292.1(a)2.

At the conclusion of the August 25, 1995 hearing, Judge Ferlise rendered an oral decision, denying Ms. Kasinga political asylum and withholding of deportation. A timely appeal was filed with the Board of Immigration Appeals on September 1, 1995.

Subsequent to the merits hearing, Ms. Kasinga retained new counsel. She terminated

affixing their signatures, rather than the signature of their secretaries.

⁶ Current counsel is not in possession of all correspondence and court papers related to Ms. Kasinga's case. When present counsel took over from Mr. Eric Bowman, he provided us with his files. However, these files appear to be less than complete. Thus, there may be some small inaccuracies in the recounting of the procedural history of this case.

attorney Eric Bowman, and retained Karen Musalo of the American University, Washington College of Law International Human Rights Clinic. On or about October 18, 1995, present counsel made a request to District Director Scott Blackman for the humanitarian parole of Ms. Kasinga, pursuant to 8 C.F.R. § 212.5. This request was based on the strength of Ms. Kasinga's case, her youth and delicate health, and the fact that she has relatives in the area with whom she could live. The request was accompanied by official letters of support from Congressmembers Patricia Schroeder and Cynthia McKinney. The request for parole was denied on November 15, 1995, and Ms. Kasinga remains detained at Lehigh County Prison.

LEGAL ARGUMENT

I. Introduction

The Immigration Judge ruled that Ms. Kasinga was not credible, and that even if she were, she would not meet the statutory standards for political asylum and withholding of deportation. The judge's adverse credibility finding is not supported by the record. Furthermore, the judge's ruling that assuming *arguendo* credibility, Ms. Kasinga would still not qualify for relief, is legally erroneous, and against the weight of the evidence.

The Board has the plenary power to review Ms. Kasinga's case de novo, and to consider new evidence. Ms. Kasinga requests that the Board exercise its powers of de novo review, and consider the detailed affidavit of Ms. Kasinga, the affidavit of expert witness Professor Posnansky, and a copy of Ms. Kasinga's marriage "contract."

On the basis of its de novo review, the Board should reverse the Immigration Judge's decision on credibility and grant political asylum and withholding of deportation. If the Board

declines to reverse the Immigration Judge's adverse credibility finding on the existing record, it should remand her case because the exceedingly poor quality of the transcript does not constitute an adequate basis for making an adverse credibility finding.

II. Standard of Review

A. The Board Should Conduct a De Novo Review and Consider New Evidence Proffered with this Brief

The Board is not bound by the analysis and conclusions of the immigration judge, but has plenary power to review the record de novo and to make its own independent determinations on questions of law and fact. *Matter of Lok*, 18 I&N Dec. 101 (July 1981)(citing to *Matter of Becerra-Miranda*, 12 I&N Dec. 358 (BIA 1967) and *Matter of Vilanova-Gonzalez*, 13 I&N Dec.399 (BIA 1969).

Because the Board has full power to make both factual and legal determinations, "it may consider new evidence not presented to the Immigration Judge[.]" *Hazzard v. INS*, 951 F2d 435, 440 (1st Cir. 1981). The Board has discretion as to whether it will exercise a de novo review, or accept new evidence.

Ms. Kasinga offers three new pieces of evidence with this brief: her own detailed Affidavit, the Affidavit of Professor Merrick Posnansky, a renowned academic expert on Togo, and a translated copy of her marriage "contract." Professor Posnansky's Affidavit is especially significant given the fact that it directly rebuts the assumptions about Togo which Judge Ferlise relied upon in finding Ms. Kasinga to be not credible. Ms. Kasinga requests that the Board consider this evidence because it is material, and was not offered earlier due to the poor quality of representation provided by her previous counsel, Mr. Bowman.

Mr. Bowman's representation was below standard, both in the way he handled Ms. Kasinga's asylum application, as well as in the manner he represented her at the merits hearing. The I-589 asylum application which he submitted on her behalf contains a bare minimum of information, is replete with spelling and grammatical errors, and is not supplemented by a detailed affidavit, which is the practice of many more conscientious attorneys. Although the lack of an affidavit could have been cured at the hearing by eliciting key information in an organized and detailed way, as described below, this did not happen.

In preparing her asylum application, Mr. Bowman also did not appear to recognize the importance of submitting documentary evidence, or expert witness testimony to corroborate relevant patterns and practices in Togo. He also did not appear to recognize the importance of submitting corroborating evidence specific to her claim, such as the marriage "contract" which confirms significant aspects of Ms. Kasinga's story.

Mr. Bowman further prejudiced Ms. Kasinga at her merits hearing. Mr. Bowman requested of Judge Ferlise that pursuant to 8 C.F.R. § 292.1(a)2, he permit Ms. Miller Bashir to represent Ms. Kasinga at the hearing on her claims for political asylum and withholding of deportation. Ms. Miller Bashir worked as a law clerk at Mr. Bowman's office, and prepared a pre-hearing brief with supporting exhibits which supplemented the earlier barebones I-589 submission.

Mr. Bowman's teaching and supervision of Ms. Miller Bashir at the merits hearing fell far below the acceptable standard. Without proper mentoring and supervision, Ms. Miller Bashir, who had never appeared in immigration court before, found it difficult to conduct the hearing. Furthermore, Mr. Bowman did not instruct Ms. Miller Bashir to make appropriate offers of proof

when the judge foreclosed relevant areas of questioning. Nor did Mr. Bowman himself intervene during the proceeding in an attempt to remedy the situation.⁷

Mr. Bowman's actions, both in his poor quality preparation of Ms. Kasinga's application, and in his inadequate supervision of Ms. Miller Bashir, were highly prejudicial to Ms. Kasinga. As a result, material evidence was not admitted into the record.

The Board could remedy the injustice caused by the failure of Mr. Bowman to provide competent and zealous representation by exercising its authority to conduct a de novo review, and to consider the new evidence submitted with this brief.

III. The BIA Should Reverse the Immigration Judge's Adverse Credibility Finding Because it is Against the Weight of the Evidence, or in the Alternative, the Board Should Remand the Case Because the Current Transcript Record Constitutes an Inadequate Basis for Making an Adverse Credibility Finding

A. The Board Should Reverse the Immigration Judge's Adverse Credibility Finding Because it is against the Weight of the Evidence

An immigration judge's credibility findings are granted substantial deference by the reviewing courts because the judge had the opportunity to evaluate the witness' demeanor.

Aguilera Cota v. INS, 914 F2d 1375, 1381 (9th Cir. 1990). Nonetheless, the immigration judge

⁷ It is questionable whether Mr. Bowman acted in compliance with 8 C.F.R. § 292.1(a)2 in asking that Ms. Miller Bashir be permitted to represent. This section provides in relevant part that a law student may represent if: "he or she is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by the law school[.]"

Mr. Bowman is not a faculty member of any law school, nor would his office come within the definition of a "legal aid program or clinic conducted by the law school."

Many law students who are enrolled in law school clinics do provide representation pursuant to 8 C.F.R. § 292.1(a)2. The clinics are structured so that students work closely under faculty supervision, so that they are well-prepared to represent a client in a full deportation or exclusion hearing. It is for this reason that the regulation limits law student representation to situations where the student receives adequate mentoring.

must rely upon legitimate factors in evaluating credibility. As the Ninth Circuit has held, an immigration judge "must not only articulate the basis for a negative credibility finding, but those reasons must be substantial and must bear a legitimate nexus to the finding." *Id.*

Immigration Judge Ferlise found Ms. Kasinga to be not credible. This adverse credibility determination was based upon the judge's finding that Ms. Kasinga's testimony lacked "rationality," "internal consistency" and "inherent persuasiveness." (Transcript of oral decision, p.10).

The aspects of Ms. Kasinga's testimony which the judge focused on in reaching his conclusions were those concerning the pervasiveness of the practice of FGM in her tribe, the relationship between Ms. Kasinga's mother and aunt, Ms. Kasinga's relationship with her own mother, and Ms. Kasinga's relationship with Rudina Gergs and Charlie.

The judge did not think it was rational that if FGM was pervasive, Ms. Kasinga would have been able to avoid it until her father's death. (Transcript of oral decision, at 11). He also did not believe that Ms. Kasinga did not know how to contact her mother, and questioned why, if her aunt sent her mother away, the aunt would have later told the mother about the impending forced marriage and mutilation. (Transcript of oral decision, at 10). And lastly, Judge Ferlise found it "beyond belief" and "incredible" (Transcript of oral decision, p.11) that Ms. Kasinga had the luck to run into Rudina Gergs and Charlie, both of whom helped her out when she was in Germany.

Judge Ferlise's credibility determination is based on a set of incorrect assumptions about the cultural norms and practices in Togo, and the inappropriate use of the judge's own concept of "common sense." When examined closely, not one of the bases for the adverse credibility

finding stands as reasonable or sufficient to support the negative finding.

First, Judge Ferlise finds inconsistency between Ms. Kasinga's assertion that FGM is the norm in her tribe, and the fact that she and her sisters had managed to escape the ritual mutilation. Judge Ferlise seizes upon this as a basis for finding her not believable.⁸ Yet, the very point Ms. Kasinga was making was that she had not been subjected to FGM because of the protection of her father, but with his death she would no longer be shielded. She also testified that, with her father's blessing, her sisters married men outside of the tribe, which was another way to avoid being mutilated.

Professor Posnansky, an expert who has worked in, and written extensively about Togo, confirmed the reasonableness of Ms. Kasinga's testimony on this point. First, he verified the pervasiveness of the practice, noting that "[the majority of the women [in the Tchamba-Kunsuntu ethnic group] either choose or are forced to undergo this ritual." (Aff. of Prof. Posnansky, at 3). Professor Posnansky also confirmed that: "[it is very probable...that she [Ms. Kasinga] was able to avoid FGM while her father was still alive and able to protect her from this practice. It is also likely that, after her father's death, her aunt could dictate her marriage and subsequent FGM." (Aff. of Prof. Posnansky, at 3). Thus, the judge's characterization of Ms. Kasinga's testimony on this point as irrational is simply without basis.

⁸ The judge's decision on this point reads as follows:

The applicant, furthermore, would have the Court believe that in her tribe circumcision is an absolute rule. Now, she, and all of her sisters have avoided it because her father objected to it. She avoided it and was committed to marry before being circumcised, which she stated is contrary to tribal law. She was able to postpone the circumcision. The Court wonders then how absolute this tribal law can be with so many exceptions being allowed for that rule. (Transcript of oral decision, at 11).

The second basis for Judge Ferlise's adverse credibility determination concerns the relationship between Ms. Kasinga's mother and aunt, and the fact that Ms. Kasinga was not in touch with her mother before she fled Togo. The immigration judge ruled that it didn't "make sense" that Ms. Kasinga's aunt would drive her mother from the family home, but then inform the mother about the impending marriage and mutilation. He also found it unbelievable that Ms. Kasinga didn't know where her mother was, and wasn't able to communicate directly with her.

Once again, there is nothing irrational or inconsistent in Ms. Kasinga's testimony on these points. And once again, Ms. Kasinga's version of events is confirmed by Professor Posnansky as being credible, and consistent with his knowledge of tradition and culture in Togo. Ms. Kasinga testified that her aunt had the power to dispossess her mother. (TR 19, 57-59) Professor Posnansky's affidavit bears this out, stating that: "Ms. Kasinga's assertion that her aunt banished her mother from the family and home conforms with Tchamba tradition." (Aff. of Prof. Posnansky, at 4). Therefore the aunt not only had nothing to lose by telling the mother about the plans for the marriage and mutilation, but she may have even enjoyed flaunting the power she had over Ms. Kasinga.

Professor Posnansky also finds it credible that Ms. Kasinga and her mother would not be able to be in communication. He notes that once Ms. Kasinga's mother was banished, she "would be afraid to contact her daughter at the family house." (Aff. of Prof. Posnansky, at 5). Ms. Kasinga might have been equally fearful of trying to contact her mother, as it might have been going against her aunt's authority. Prof. Posnansky comments that, "it is highly probable that due to the fact that Ms. Kasinga was taught to show great deference to her father's family, Ms. Kasinga refrained from questioning her aunt's authority." (Aff. of Prof. Posnansky, at 4).

Lastly, Judge Ferlise disbelieved Ms. Kasinga because she testified that both a German woman, Rudina Gergs, and a Nigerian man, Charlie, helped her out while in Germany. The judge found it "beyond belief" that Ms. Gergs, who did not previously know Ms. Kasinga, would let Ms. Kasinga stay with her for two months. He also found it "incredible" that Ms. Kasinga met Charlie by coincidence, and that he provided Ms. Kasinga with a British passport. (Transcript of oral decision, p.11).

The judge doesn't explain what it is that is so beyond belief or incredible. Perhaps Ms. Kasinga's story does not comport with the judge's notion of how the world is, but one should be careful not to rely upon so-called "common sense" assumptions. Common sense is "culturally determined and thus not universal[.]"⁹

There are kind and generous people in all parts of the world, and Ms. Gergs appears to be one of them. People like her may be unusual, but they are certainly not "beyond belief." Furthermore, as Ms. Kasinga explains, she also helped Ms. Gergs out by cleaning and shopping. (Aff. of Ms. Kasinga, at 9). In addition, Ms. Gergs told Ms. Kasinga that she had a previous boyfriend who was Nigerian, and that she "liked Africans." (Aff. of Ms. Kasinga, at 8).

Regarding Charlie, Judge Ferlise doesn't indicate what it is that is so incredible about the fact that he and Ms. Kasinga met on the train, and that Charlie provided her with a British passport. In a country like Germany, two Africans on a train would certainly notice each other, and it would not be remarkable if they decided to chat. The fact that Charlie happened to be able to obtain a British passport for her doesn't make this encounter any more unbelievable.

⁹ Walter Kalin, "Troubled Communication: Cross Cultural Misunderstandings in the Asylum Hearing," 20 INT'L. MIGRATION REV. 230, 236 (1986).

Ms. Kasinga's asylum claim is based on her fear of being mutilated and of being returned to the polygamous marriage into which she was forced. Even if the Board were to find that some details of the encounter are questionable, it should recognize that her interactions with Ms. Gergs and Charlic are not material to the claim. "Minor inconsistencies, misrepresentations, or concealment in a claim should not lead to a finding of incredibility where the inconsistency, misrepresentation or concealment is not material to the claim." INS Supplementary Refugee/Asylum Adjudication Guidelines, reprinted in 67 Interpreter Releases 101-03 (Jan. 22, 1990).

Ms. Kasinga has consistently testified as to the issues which are material to her claim -- the forced polygamous marriage and infliction of female genital mutilation. Such consistency is the hallmark of credibility. *Matter of Vilanova - Gonzalez*, 13 I. & N. Dec. 399, 403 (BIA 1969); *Murphy v. INS*, 54 F.3d 605 (9th. Cir. 1995). Not only did she articulate it to the immigration official at the airport, she reiterated it in her I-589 application,¹⁰ and testified to it at her exclusion hearing.

Furthermore, there is ample corroboration of those issues which are central to her case: the pervasiveness of FGM and the practice of polygamy in her tribe, as well as her father's ability to protect her while living, but her vulnerability following his death. In addition to Professor

¹⁰ In response to Part C, question 1 of her asylum application prepared by former counsel, Eric Bowman, Ms. Kasinga answered the question "why are you seeking asylum?" as follows: "The reason I am seeking asylum is that I am a young girl of 18 years and when my father who was my legal guardian [sic] past [sic] away I was sold into an arranged marriage [sic] without my consent, and against my will. This man which I am being forced to marry is old enough to be my father, has many wives, and has requested that I be circumcised." [sic]

Posnansky's affidavit¹¹, documentation submitted with the pre-hearing brief, support these key points.

In the publication, Female Genital Mutilation: A Call for Global Action (1993), submitted as part of Group Exhibit 4, there is an estimate that FGM is inflicted on over 50% of the women in Togo. This was corroborated in a letter from Professor Charles Piot, of Duke University, which was admitted as Exhibit 6. As a matter of fact, the record reflects that the judge accepts that her tribe requires "circumcision." (TR at 89).

Ms. Kasinga has also provided corroboration of key facts of her case through the previously submitted letters from her mother (Group Exhibit 4) which refer to Ms. Kasinga's fleeing from "circumcision" and the forced marriage to an "old man." These letters also refer to the fact that the police have been searching for her, the credibility of which point is also confirmed by Professor Posnansky. (Aff. of Prof. Posnansky, at 6). As additional evidence Ms. Kasinga has submitted her marriage contract. Considering the foregoing, Judge Ferlise's adverse credibility finding is simply against the weight of the evidence and should be reversed.

B. If the Board Declines to Affirm Ms. Kasinga's Credibility on the Record Before it, it Should Remand the Case Because the Current Transcript Record Constitutes an Inadequate basis for Making an Adverse Credibility Finding

Due to no fault of her own, the record in Ms. Kasinga's case is highly defective. There are 160 instances in which the word "indiscernible" replaces parts of Ms. Kasinga's testimony, as

¹¹ The courts have consistently given weight to the opinions of academic experts in asylum and withholding cases. See, e.g., *Ramirez-Rivas v. INS*, 899 F.2d 864, 869 (9th Cir. 1990); *Ananeh-Firempong v. INS*, 766 F.2d 621, 628 (1st Cir. 1985).

well as questions from the judge, and counsel. The gaps in testimony often make it impossible to understand what was asked, as well as what was answered. For example, the judge makes a great deal of the fact that Ms. Kasinga doesn't know where her mother was, while her aunt and sister do. Yet the defects in the transcript make it difficult to understand the details of Ms. Kasinga's testimony on this point:

The judge asks Ms. Kasinga:

Q. Now getting back to my initial question, because we got on the topic of who wrote the letters -- how is it that you don't know where your mother is located ma'am?

A. I don't know because when they forced -- drove my mother from the house she went to Benin.

Q. Okay.

A. She went to Benin -- after they wanted to force me to man for marriage [sic] and then (indiscernible) they would tell me. And, my sister told me that my mom (indiscernible) to stay in Benin. She's now trying to come back to Togo.

Q. Your mom's coming back to Togo?

A. Yes, that's why I don't know where she is right now. (TR at 66)

In another key passage which concerns the manner in which genital mutilation is performed in Togo, the record is equally riddled with indiscernibles, and demonstrates the manner in which the judge attempted to cut off relevant testimony.

Ms. Bashir to Ms. Kasinga:

Q. How exactly do they perform the operation, with what tools do they use?

A. They use knives.

Judge to Ms. Bashir:

Q. Is that (indiscernible)?

A. I'm sorry?

Q. Is that germane?

A. Can you--

Q. Is it important that we know what tools they use?

A. Yes because it speaks to whether or not its persecution.

Q. What are the tools they use?

A. How severe, and how damaging it is (indiscernible).

Q. I'm going to limit (indiscernible) but I don't (indiscernible) Alright?

A. Okay.

Ms. Bashir to Ms. Kasinga:

Q. What kind of side effects result from this operation?

A. Excuse me?

Q. What kind of effects happen to your body -- what side effects does it produce?

A. (indiscernible) circumcised -- there is bleeding and (indiscernible) died from that circumcision. And I know other girls they [sic] proud of that. (TR, 30-31)

Although it was in a different context, the Board recently addressed the importance of having an accurate and clear record when credibility is at issue. In *In re S-S*, File A70 867 427 (BIA November 8, 1995), involved an adverse credibility finding based on alleged inconsistencies between the information provided by the applicant in his first and second interviews with an asylum officer, and with the information contained in his I-589. The Board held that it could not adequately make a credibility determination on the record before it, which consisted of informal notes taken by the asylum officer. The Board characterized the asylum officer's notes as "randomly organized, cryptic to all but the note-taker, and partially illegible." *Id.* at 3. The Board held: "[when...the applicant's credibility is placed in issue because of alleged statements made at the asylum interview, our review requires a reliable record....At a minimum, the record must contain a meaningful, clear and reliable summary of the statements made by the applicant...." *Id.*

In *In re S-S* the Board suggests that such a record could be a handwritten account of specific questions and answers asked at the interview, or it could be produced through transcription of a recording of the asylum interview. Although in Ms. Kasinga's case, there was a transcription of the recorded hearing, the quality of the transcription renders large parts of it just as "cryptic" as the record in *In re S-S*.

On some pages, the word "indiscernible" appears up to eight times (TR 28); on other

pages the entire sense of the testimony is lost due to the portions that are not audible. This often happens in key portions of the testimony. For example, Ms. Kasinga was asked about her "husband."

Ms. Bashir to Ms. Kasinga:

Q. Is your husband a respected man in Togo?

A. Yeah, he was.

Q. What is his status in the community?

A. (indiscernible)

Judge to Ms. Kasinga:

Q. What's a (indiscernible)?

A. (indiscernible) (TR, 41-42)

The courts have long recognized the importance of a clear record in order to properly evaluate a claim for asylum and withholding. As the Second Circuit held in *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984), "[the alien and the judge must be able to understand each other, in order for the hearing to be of any value." Although *Augustin v. Sava* addressed the defects in a record caused by inadequate translation from Creole to English, the basic principle for which it stands applies equally in Ms. Kasinga's case. When the transcription is so defective as to render large portions of the testimony incomprehensible to the Board, the applicant's procedural and substantive rights have been violated. Such a record cannot appropriately serve as the basis for sustaining an adverse credibility determination. If the Board declines to find Ms. Kasinga credible on the record, the only proper remedy is a remand to the immigration court so that a proper record of proceedings may be rendered.

IV. The BIA Should Reverse the Immigration Judge's Ruling Because Ms. Kasinga Clearly has Met the Requisite Burden of Proof for Withholding of Deportation and Political Asylum

The Immigration Judge ruled that even if he believed the facts of Ms. Kasinga's case, he would find her ineligible for political asylum and withholding of deportation. The bases for his conclusions are both legal and factual. The legal bases are that: 1) Ms. Kasinga was not being singled out for persecution since all members of her tribal group are mutilated, and 2) the government is not the entity carrying out the FGM. The factual bases are that: 1) the police would have protected Ms. Kasinga from mutilation; 2) Ms. Kasinga could have relocated with her mother; 3) Ms. Kasinga could have sought asylum in Ghana or Germany. (Transcript of oral decision, p.12).

The judge's legal analysis is erroneous and his factual conclusions are against the weight of the evidence. Under clearly established precedent the fact that all members of Ms. Kasinga's tribal group are mutilated does not render Ms. Kasinga's claim any less viable. *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1984)(holding that "[it should be obvious that the significance of a specific threat to an individual's life or freedom is not lessened by the fact that the individual resides in a country where the lives and freedom of a large number of persons are threatened.")

Furthermore, the fact that FGM is carried out by private actors, rather than directly by the government, does not vitiate Ms. Kasinga's claim. A claim will lie where the government is the persecutor, or is unable or unwilling to protect the asylum seeker from non-state actors.

McMullen v. INS, 658 F.2d 1312,1315 (9th Cir. 1981). In this case, FGM is carried out with the acquiescence of the government, which is unwilling or unable to protect Ms. Kasinga.

Furthermore, the fact that the police are looking for Ms. Kasinga to return her to her aunt or "husband" makes the government an active participant in the persecution.

The judge's factual conclusions are against the weight of the evidence. First, Judge Ferlise held that Ms. Kasinga failed to show that the police would not have protected her. He ignored Ms. Kasinga's testimony that the police were searching for her to return her to her aunt or husband. Based on the documentation, it is clear that the police were not seeking her in order to provide her with protection. The INS Resource Information Center's Alert Series, Women, Female Genital Mutilation, July 1994, which was admitted as Group Exhibit 4, noted the extreme difficulty in obtaining protection from FGM. The Report notes that "few African countries have officially condemned female genital mutilation and still fewer have enacted formal legislation against the practice." *Id.* at 6. The Report goes on to list those countries which have either condemned the practice or enacted legislation against it. Togo is not among these countries. The report concludes that, "women have little legal recourse and may face threats to their freedom, threats or acts of physical violence, or social ostracization" for attempting to refuse mutilation. *Id.* at 7.

The Affidavit of Professor Posnansky corroborates the non-existence of protection from the police. He notes that a powerful person like Ibrahim Isaka could get the police to seek out Ms. Kasinga. (Aff. of Prof. Posnansky, at 6). This was confirmed by the letter from Ms. Kasinga's mother.

Second, Judge Ferlise ruled that Ms. Kasinga could have relocated with her mother. In the first place, Ms. Kasinga testified that she did not know where her mother was. Second, even if she did know, there is no indication that Ms. Kasinga's mother would have been able to help her daughter. The mother had just lost everything she ever possessed: her husband, the family home, two-thirds of the family fortune, and the right to raise her own children. It is unclear how

she would be able to survive after having been dispossessed in this manner.

Perhaps far more important is the fact that Ms. Kasinga would not be safe from FGM if she went to Benin. As Ms. Kasinga testified, and as she explained in further detail in her Affidavit, FGM is practiced among the Dandi tribe. Her mother was allowed to forego the practice simply because her mother's older sister had died as a result of complications from FGM. (TR 25-26).

Lastly, Judge Ferlise ruled that Ms. Kasinga could have remained in Ghana, or could have sought asylum in Germany. The assumption that Ms. Kasinga could have remained in Ghana is rebutted by Prof. Posnansky, who notes that her husband could have easily located her in Ghana. (Aff. of Prof. Posnansky, at 5). Prof. Posnansky also observes that it would be extremely difficult for Ms. Kasinga to survive with the limited marketable skills she has. He concludes that "it is very likely she would have drifted into prostitution" had she managed to evade her husband and remain in Ghana.

As regards Germany, Ms. Kasinga explained in her testimony and affidavit that she found Germany very difficult since she did not speak the language and had no family there. (TR 54; Aff. of Ms. Kasinga, at 8). These are legitimate factors for her to have considered, and do not constitute a legitimate basis for denying relief. *Matter of Pula*, 19 I&N Dec 467, 475 (BIA 1987) (noting the significance of the fact that the applicant had relatives in the U.S. to whom he could turn for assistance, and no significant ties to any other country where he would be safe from persecution).

A. The BIA Should Grant Ms. Kasinga Withholding of Deportation and

**Political Asylum Because She Has Met the Burden of Proof for these
Respective Forms of Relief**

**1. Ms. Kasinga should be granted withholding of deportation because she has
established a clear threat to her life or freedom on account of membership in
a particular social group**

Pursuant to the 1980 Refugee Act, the Attorney General is prohibited from deporting an individual who establishes that her life or freedom would be threatened on account of race, religion, nationality, political opinion, or membership in a particular social group. INA 243(h)2, 8 U.S.C § 1253(h)2. The Supreme Court has held that in order to establish eligibility for withholding of deportation, the individual must show that the threat to life or freedom is "more likely than not." *INS v. Stevic*, 467 U.S. 407 (1984).

Ms. Kasinga has clearly met this standard. If she returns to Togo, there is a more than fifty percent probability that Ms. Kasinga will be subjected to a threat to her life and freedom through the infliction of FGM, and the requirement of living in a forced marriage. The evidence clearly establishes that FGM is a well-established practice among the members of her tribe. (Aff. of Prof. Posnansky, p.3). Her father is no longer living to protect her. Furthermore, she has been sold into a marriage to a husband who demands that she be mutilated. Under these circumstances, there is little doubt that this will be her fate. She barely escaped this horrible fate, fleeing Togo two days before the ritual ceremony was to be performed. This threat to her life or freedom will befall her because of her membership in the social group of young women of the Tchamba-Kunsuntu tribe who resist these practices, but have no protection against them.

- a. The infliction of FGM constitutes a threat to the life and
freedom of Ms. Kasinga, within the meaning of the statute**

Female genital mutilation is the practice by which a portion or all of the female genitals are removed.¹² It is prevalent in Africa and parts of Asia. FGM is performed on infants, children, adolescents and adult women. Generally it is carried out by midwives or elders who use kitchen knives, broken glass, or old razor blades. It is done without anesthesia or antibiotics. (Group Exhibit 3, INS RIC Alert Report).

FGM is often fatal, and even when it is not, it has long-term negative health consequences. Included among the adverse health consequences are: "scarring, infertility, painful sexual intercourse, long and obstructed labor, chronic uterine and vaginal infections, HIV infection from contaminated instruments, bladder incontinence and the obstruction of the flow of menstrual blood." (Group Exhibit 3, INS RIC Alert Report).

The practice of female genital mutilation is often justified as being in conformance with religious, cultural or traditional norms. Its primary purpose is to control the sexual drive of women and ensure that they remain faithful to their husbands. Without the clitoris, a woman's ability to enjoy sexual relations is extinguished. (Group Exhibit 4, Nahid Toubia, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION at pg 17).

Female genital mutilation has been broadly condemned. The International Federation of Gynecology and Obstetrics, as well as the American Medical Association, have called for its abolition. (Group Exhibit 3). Numerous United Nations bodies have also declared the practice to

¹² Type I clitoridectomy involves the partial or complete removal of the clitoris. Type II clitoridectomy (excision) involves the excision of the clitoris and part of the labia minora. Type III infibulation involves the removal of the clitoris, labia minora, and parts of the labia majora. Type IV infibulation involves the same amount of cutting, but the labia majora are sutured together to cover the urethra and the vagina, leaving a very small opening by inserting a reed or piece of wood for the passage of urine and menstrual blood. Nahid Toubia, Female Circumcision as a Public Health Issue, group Exhibit 3).

be a violation of women's human rights. For example, the U.N. General Assembly adopted the Declaration on the Elimination of Violence Against Women, which explicitly states that "female genital mutilation and other traditional practices harmful to women" are forms of violence against women. (United Nations General Assembly, Declaration on the Elimination of Violence Against Women, [A/RES/48/104] (20 December 1993)). (Annex 2, p.2).

In light of the foregoing, there can be no question that FGM is a threat to the life or freedom of Ms. Kasinga. FGM is often fatal, therefore it literally poses a threat to her life. Ms. Kasinga testified that her mother's sister died of complications (TR 25-26), and that she knew of at least four girls in her village for whom it had also been fatal. (TR 31). Because FGM causes long-term health complications, it constitutes an on-going threat to life and freedom. Finally, because it destroys a woman's ability to experience sexual pleasure, it is also a threat to Ms. Kasinga's freedom to realize her full potential as a human being.

b. Ms. Kasinga has established that the infliction of FGM upon her is more likely than not

As provided in 8 C.F.R. §108.16, an applicant for withholding of deportation can meet his or her burden of proof by establishing a "pattern or practice in the country ...of persecution of groups...similarly situated to the application" on account of one of the enumerated grounds. Ms. Kasinga has clearly met this burden.

Ms. Kasinga testified that FGM is prevalent among her tribal group, the Tchamba-Kunsuntu. She was only able to avoid it because of the protection of her father who due to his wealth, was able to ignore tradition. Once her father died, Ms. Kasinga's mother was banished, and her Aunt Haja-Mammud took control of Ms. Kasinga. Haja-Mammud sold Ms. Kasinga into

a marriage with Ibrahim Isaka, a powerful former politician.

Pursuant to cultural norms of the Tchamba-Kunsuntu, women are generally mutilated prior to the marriage. (TR 40). However, Ms. Kasinga's aunt arranged for the marriage to be legally performed prior to the mutilation, but with the mutilation scheduled to take place four days later. Ms. Kasinga's "husband" was not to sleep with her until after the ritual mutilation.

Ms. Kasinga managed to escape two days before she was to be mutilated. If she were to return to Togo, she would be forced to return to her husband. She has already received notice that the police have come to search for her, and as Professor Posnansky has verified, the police would certainly assist her husband in forcing her back. There is no doubt that at that point she would have no alternative but to submit to female genital mutilation. Under these circumstances, Ms. Kasinga has established that the threat to her life or freedom is more likely than not.

c. The threat to Ms. Kasinga's life or freedom is on account of her membership in the particular social group of young women of the Tchamba-Kunsuntu tribe who resist FGM and do not have protection against it.

Eligibility for asylum based on membership in a particular social group requires the applicant to show that she will be persecuted because of her membership in a group of persons "all of whom share a common immutable characteristic." The characteristic must be one which the members of the group cannot change, or should not be required to change because it is "fundamental to their identities or consciences." *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

In *Fatin v. INS*, 12 F3d 1233 (3rd Cir. 1993) the court provided additional guidance, holding that in order to prevail on a social group membership claim the individual must: 1)

identify a group that constitutes a particular social group, 2) establish that she is a member of that group, and 3) show that she would be persecuted based on that membership. *Fatin v. INS*, supra, at 1240.

Pursuant to *Acosta* and *Fatin*, Ms. Kasinga has identified a group which constitutes a particular social group. This group is defined as a young women of the Tchamba-Kunsuntu tribe who resist FGM and who do not have protection against it. Ms. Kasinga is a member of this group. She became member of this social group when her father, who had previously shielded her from the practice, passed away.

Ms. Kasinga's definition of the social group (to which she obviously belongs) is consistent with the requirements of *Acosta*. The characteristics which define the group are either immutable, or so fundamental to her identity and conscience that she should not be expected to change them. She cannot change her gender, or her ethnic identity as a member of the Tchamba-Kunsuntu ethnic group. Nor can she bring back her father, who was the only person capable of protecting her. Her resistance to being mutilated, or being sold into an involuntary marriage are fundamental to her identity and conscience.

Ms. Kasinga also meets the third requirement set forth by the Court in *Fatin*. She can show that she would be persecuted on the basis of her membership in the particular social group.

Fatin involved the claim of an Iranian woman who believed in the equal rights of women, and was opposed to the imposition of fundamentalist Muslim norms. She feared that she would either be forced to comply with such norms---such as the wearing of the chador (veil) -- or would suffer the consequences. The record showed that the penalty for refusal to conform could be whippings, a year's imprisonment, or even brutal rape and death. In analyzing the case, the

Third Circuit observed that Fatin had two choices: to comply or to resist. The court had no doubt that if she resisted, the resulting penalty would be persecution (“the indicated consequences of non-compliance would constitute persecution.” *Id.* At 1242).

The Third Circuit, however, denied relief holding that Fatin had not demonstrated that compliance was so abhorrent to her that it would constitute persecution. In reaching this conclusion, the court ruled that when a government forced an individual to “engage in conduct that is not physically painful or harmful” it may nonetheless constitute persecution if it is “abhorrent to that individual’s deepest beliefs.” The court denied relief to Fatin, finding that wearing the veil, and conforming with other Muslim norms, was not deeply abhorrent to her beliefs.

Ms. Kasinga’s case can be clearly distinguished from *Fatin*, because it differs from it in a number of significant respects. First, Ms. Kasinga does not even have a choice whether to comply or refuse compliance. The record makes it abundantly clear that if she is returned to Togo, she will be forced against her will to be mutilated. She will be forced against her will into an involuntary polygamous marriage. Ms. Kasinga will not be able to choose between punishment or compliance. She will simply have to comply.

Second, the harm which Ms. Kasinga will be forced to undergo, is clearly and unequivocally persecution. The Third Circuit in *Fatin* made it clear that forcing someone to engage in conduct which is “physically painful or harmful” is persecution. The record clearly reflects that FGM is both physically painful *and* harmful. In addition, the Third Circuit ruled that forcing someone to do something which is abhorrent to her deepest beliefs is also persecution. Ms. Kasinga was raised to believe in the right to enter into a voluntary,

monogamous marriage. There is no doubt that selling her into a marriage not of her choosing, with a man old enough to be her father, is abhorrent to her beliefs. Although these practices are accepted in her culture, she was raised by her parents to think differently. Therefore, the imposition of such a marriage upon her is clearly abhorrent to her deepest held beliefs.

For all of these reasons, the Third Circuit's decision in *Fatin* clearly supports Ms. Kasinga's case. Furthermore, Ms. Kasinga's claim to asylum based on the social group membership theory is also consistent with international norms,¹³ as well the developing trend of jurisprudence in the United States¹⁴ and Canada.¹⁵

2. Ms. Kasinga qualifies for Political Asylum because she has a well-founded fear of persecution on account of her membership in a particular social group, and there are no adverse discretionary factors which would justify a denial of relief

Political asylum is a discretionary remedy which may be granted to an individual who meets the statutory definition of refugee. A refugee is defined as a person who has suffered past persecution or who has a well-founded fear of future persecution. INA § 1101(A)(42)(a), 8 U.S.C.

¹³ See, e.g., United Nations High Commissioner for Refugees, Memorandum: Female Genital Mutilation (Geneva, UNHCR Division of International Protection, 10 May 1994) (encouraging the use of the particular social group to extend protection to women asylum seekers who otherwise satisfy the refugee definition).

¹⁴ Although the INS Considerations For Asylum Officers Adjudicating Asylum Claims From Women (May 1995) are not binding on the Board of Immigration Appeals, they demonstrate a valuable approach to the analysis of gender-based claims. The Considerations contemplate the use of social group analysis in cases of gender-based claims, including those involving female genital mutilation.

¹⁵ The Canadian Guidelines for Women Refugee Claimants Fearing Gender-Related Persecution (March 1993) encourages the use of social group membership to protect women asylum seekers. The guidelines look towards whether the woman is at risk of suffering "severe discrimination or harsh and inhuman treatment." *Id.* at p.6.

§ 1101(A)42(a) The Supreme Court has held that a fear is well-founded if it is subjectively real, and objectively reasonable. *Cardoza Fonseca v. INS*, 107 S. Ct 1207 (1987) A fear can be well-founded if there is a one in ten likelihood of the harm occurring.

Ms. Kasinga qualifies for political asylum because she has established a well-founded fear of suffering female genital mutilation and of being forced to spend her life in a polygamous marriage she was sold into. The feared persecution is on account of her membership in the social group of young women of the Tchamba-Kunsuntu ethnic group, who are in disagreement with these practices, but do not have protection from them.

a. The Infliction of FGM and life in a forced polygamous marriage constitute persecution within the meaning of the Refugee Act

There is no universally accepted definition of persecution. As the Board has held, persecution means a "threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Acosta, supra* at 16. Persecution can include egregious physical harms, such as rape or torture, as well as severe forms of discrimination. *In Matter of -- , Krome* (BIA May 25, 1993)(holding rape to be persecution); U.N. Handbook, para. 54-55 (advising that "discrimination may amount to persecution" if it leads to "consequences of a substantially prejudicial nature for the person concerned[.]")

Both the infliction of FGM and life in a forced polygamous marriage constitute persecution within the meaning of the statute. FGM is clearly persecution because, as discussed

in Section IV.1.A.a, *supra*, it is often fatal and carries with it life-long adverse consequences.¹⁶

Being sold into a forced polygamous marriage also clearly rises to the level of persecution. It deprives the individual of fundamental civil and human rights, and results in the virtual enslavement of the wife who has no choice in the matter. A relevant Convention addressing women's rights provides that: "No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person[.]"¹⁷

The forced marriage of Ms. Kasinga to a man more than twice her age, who she did not even know, much less like, is certainly persecutive. It violated Ms. Kasinga's fundamental belief, taught to her by her father, that marriage should be monogamous and a matter of choice.

b. Ms. Kasinga's fear of persecution is well-founded

The Supreme Court has held that for a fear to be well-founded it must be subjectively real, and objectively reasonable. *Cardoza-Fonseca v. INS*, *supra*, at 107 S.Ct. 1207 (1986). In elaborating on this standard, the Board has held that a fear is well-founded if a reasonable person in the same circumstances would fear the occurrence of the particular harm. *Matter of Mogharrabi*, Int. Dec. 3028 (BIA 1987).

Ms. Kasinga's fear of the dual harms of FGM and return to a forced polygamous marriage

¹⁶ The decision and rationale of Immigration Judge Paul A. Nejelski in *Matter of M.K.* (August 9, 1995) provides a useful analysis. Judge Nejelski had no difficulty finding that FGM constitutes persecution because it: "caused her [the applicant] serious physical and psychological harm, was contrary to her basic human rights...and constitutes discriminatory behavior that has resulted in permanent sensory loss and difficulties in marital relations and delivery of children." *Id.* at 12. The Immigration Service initially filed a Notice of Intent to Appeal Judge Nejelski's decision, but subsequently withdrew their appeal.

¹⁷Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Opened for signature* 10 December 1962, I. Nos. 21513 (21526)1297 U.N.T.S. 403 (1983).

are well-founded. As discussed in Section IV.A.1.b, *supra*, it is more likely than not that if Ms. Kasinga were returned to Togo, she would be returned to Ibrahim Isaka. She would be unable to refuse the marriage which she was sold into, and she would have no protection from the imposition of FGM. Since Ms. Kasinga satisfies the higher burden for withholding of deportation, she *a fortiori* meets the lower burden of establishing a well-founded fear.

- c. **The persecution is on account of her membership in the particular social group of young women of the Tchamba-Kunsuntu tribe who are opposed to the tribal practices of FGM and forced polygamous marriages, and have no protection against it.**

As discussed in Section IV.A.1.c, *supra*, Ms. Kasinga's feared persecution is on account of her membership in the social group of young women of the Tchamba-Kunsuntu tribe who are opposed to, and do not have protection against the practice of FGM. The persecution of being sold into a forced polygamous marriage has the same social group nexus. Ms. Kasinga was able to avoid such a marriage until her father died, and her aunt took over as her legal guardian.

- d. **There are no adverse discretionary factors which would justify a denial of political asylum**

Unlike withholding of deportation, a grant of political asylum is not mandatory for those persons who meet the statutory definition. Political asylum is a discretionary form of relief which may be granted to a person who establishes a well-founded fear of persecution on account of one of the enumerated grounds. INA § 208(A), 8 U.S.C. § 1158(a).

The INS regulations provide for a mandatory denial of relief where the applicant has been convicted of an aggravated felony or a particularly serious crime, is a danger to the security of

the U.S., or is firmly resettled in a third country. 8 C.F.R. § 208.14.

A denial in the exercise of discretion may be appropriate in circumstances other than those enunciated in the regulations. However, because the denial of political asylum to a refugee could result in the return of that person to a situation of persecution, legitimate bases of denial should be somewhat circumscribed. As the Board has held: "discretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-founded fear of persecution. The danger of persecution should generally outweigh all but the most egregious of adverse factors." *Matter of Pula, supra*, at 474. See also, *Bastinpour v. INS*, 920 F.2d 1129, 1133 (7th Cir. 1992) (holding that a denial in the exercise of discretion must be based upon a "reasoned justification of its actions that has some support in the record.").

There are no adverse factors in Ms. Kasinga's case which would justify a denial of asylum in the exercise of discretion. She is not barred by any of the grounds listed in 8 C.F.R. § 208.14; she is neither a criminal, nor a security risk. Furthermore, she was not firmly resettled in either Ghana, or Germany. Pursuant to 8 C.F.R. § 208.15 an individual may be considered resettled if "prior to arrival in the United States, he ... received an offer of permanent resident status, citizenship, or some other type of permanent resettlement[.]" Ms. Kasinga had no legal status in either Ghana or Germany.

Although she used a British passport in order to board an airplane bound for the United States, she did not attempt to use that passport to effectuate entry into the United State. In light of her youth, her isolation in Germany, where she did not have family or speak the language, her decision to attempt to enter the U.S. where she had an aunt, uncle and cousin, is certainly

understandable. In and of itself, such a decision should not be the basis for an adverse exercise of discretion. *Matter of Pula, supra* at 474.

Finally, Immigration Judge Ferlise explicitly found that Ms. Kasinga "did not attempt to commit a fraudulent entry in the United States, notwithstanding the fact that she was in possession of fraudulent documents." (Transcript of oral decision, p.2). In the absence of any negative factors, Ms. Kasinga should be granted asylum in the exercise of discretion.

CONCLUSION

The immigration judge's decision is legally erroneous, and is against the weight of the evidence. The Board of Immigration Appeals should exercise de novo review, consider the new evidence submitted with this brief, and grant the requested relief. If the Board accepts de novo review, but declines to make a credibility determination on the basis of the existing record, with its exceptionally poor transcript, Ms. Kasinga requests that the Board remand her case to the immigration judge for the development of a clear record upon which a credibility finding may be based. Counsel for the Respondent requests the opportunity to appear before the Board to present oral argument on the foregoing.

Dated: December 4, 1995

Respectfully submitted,



Professor Karen Musalo
International Human Rights Law Clinic
American University
Washington College of Law

AFFIDAVIT OF FAUZIYA KASINGA
A 73 476 695

I, Fauziya Kasinga, do hereby declare:

My name is Fauziya Kasinga. I am eighteen years old. I left my home in Togo on October 18, 1994 because my family situation had radically changed and I was going to be forced to undergo female genital mutilation. I had never been circumcised because my father did not believe in it and he did not want his daughters to have the permanent pain and suffering that female genital mutilation causes. Unfortunately my father died in 1993 and when that happened, my paternal Aunt took over all of the assets and banished my mother. This is common practice in Togo. In 1994 my Aunt made plans for me to become circumcised and marry a local wealthy man who already had three wives. I did not want to enter into this polygamous marriage, my Aunt forced me. I was to be circumcised a few days following the wedding but before that happened my sister helped me escape out of Togo. If I am sent back to Togo I will be forced to return to the man I did not want to marry and I will be forcibly circumcised. The details of this situation follow.

Family History

I was born on January 1, 1977 in Kpalime, Togo and I am the youngest daughter in my family. I have four older sisters and two brothers. We always lived in Kpalime, Togo in a suburb called Zongo. My tribe is the Tchamba-Kunsuntu who are originally from the Tchamba-Kasale region in Northern Togo. A number of tribes live in Kpalime, and my tribe, Tchamba-Kunsuntu also lives there. The tribes all live separately and I knew only people from the Tchamba-Kunsuntu tribe. We are all Muslim and are a very close community. Female circumcision is the custom in my tribe and my culture requires that the women have this operation done to them before women marry.

My father, Muhammad Kasinga, was a well traveled and educated man. Because my father did not agree with the tribe's custom of circumcision he married my mom, Zuwere, a member of the Dandi ethnic group, who is from Benin, the country next to Togo. Although the Dandi tribe in Benin do practice circumcision, my mother was not circumcised. Her older sister's second husband demanded that my mom's sister be circumcised and my aunt died while having the operation. Because my father did not believe in female genital mutilation he did not allow my sisters to have this done to them. He encouraged them to marry outside the tribe, which they all did.

Polygamy is also common in my tribe. My father was not in agreement with that either. My father did not believe in polygamous marriages which everyone in our tribe practiced. He criticized and condemned this practice. He thought that to marry more than one woman was punishment for the woman. He never wanted to force any of his children to marry someone they didn't want to marry. My sisters all chose their own husbands and didn't have arranged marriages.

I have four older sisters. My four older sisters are in monogamous marriages because my father made sure that they all married men who were educated and didn't believe in polygamous marriages or circumcision. Ayisha, who is 32, is the oldest and is married to Ahmad who is from the Dandi tribe. They live in Lome, Togo in a suburb called Agoi. Narhila, who is 27 years old, is married to Sumailia from the Bassari tribe. They live in Kpalime. Shawana is 25 and is married to Mumin from the Kotokoli tribe and they also live in Kpalime, Togo. Finally, Asmahu is 23 and is married to Amin Adam and he's also Kotokoli. They also live in Kpalime. I also have two brothers, Alfa who is twenty one and Babs who is fifteen. My brothers also both hated the custom of circumcision.

My father also believed in the education of women. My four older sisters all went to high school. This is different from most people in my tribe. Some girls only go to primary school and others don't go at all. But the boys usually go to high-school. I went to kindergarten in Togo until I was six years old. Then, I went to primary school until sixth grade in Ghana. I attended an Anglican day school. For my high school I went to boarding school in Sogakobke, Ghana and I would come home for Christmas and summer holidays. When I would come home I would attend the Islamic grammar school in Kpalime, Togo. My older sisters did all of their schooling in Kpalime at a day school. The reason my father sent me and my younger brother to boarding school was because he wanted us to learn English to help him with his business. They only taught French in the day schools in Kpalime where my sisters went. It was common to send boys to boarding school in Ghana, but girls were hardly ever sent because the community believed it would give them too much freedom.

My father was wealthy and owned a trucking business. He had three trucks and he used them to ship goods inside the country and to other countries. Because my father was wealthy it was easier for him to say no to the customs of our tribe. My father was opposed to the tribe's custom of female circumcision and did not want any woman in his family to have it done. He had asked the tribe members why we practiced circumcision, but they could not give a reason so he hated the practice even more. He strongly disbelieved in female circumcision.

Because my father did not marry a woman who was circumcised and did not have his daughters circumcised, people in the community criticized him. The community said he was wasting money by educating his daughters and spoiling them by letting them choose their own husbands. Because he let my mom drive a car, people thought she acted like a man instead of acting the way a wife should. Because my mom and sisters weren't circumcised, the people in the community said that they weren't full women and my mom was not involved in special events such as baby-naming ceremonies. Girls who were circumcised didn't speak to my sisters and ignored them. Because they weren't full women they weren't allowed to give advice and voice their opinions. My oldest sister Ayisha miscarried her first child. My Aunt Haja-mammud told Ayisha that the reason she lost the baby was because she had not been circumcised. Every girl I knew over the age of fifteen years old was circumcised except for my mother and sisters. I was told many reasons why women should be circumcised. Some of the reasons are to prevent a woman from sleeping with a man before she is married or from cheating on her husband. But I know circumcised women who still sleep around with other men even though they aren't married. Because these reasons aren't true, I am not ashamed that I am not circumcised. In the Tchamba-Kunsuntu community a woman only gains respect when she is circumcised, otherwise everyone ignores her.

Death of Father

On Saturday, January 16, 1993 my father died. I was in school in Ghana. The school told me on Monday and I came home right away. This was the last time I would see my mother. After the services, I went back to school. My mother stayed in our house in Kpalime for four months and ten days that she was allowed to stay according to Muslim law. When I came back for vacation in June of 1993, my mother was gone and my Aunt Haha-mammud, who is in her fifties, was living in our home. My Aunt's husband had died one year earlier and since she was the fourth wife she didn't want to live with the other wives.

My Aunt is the only sibling of my father. Because of this she is very powerful in the family and now was the head of the household. In Togo, the father's side of the family always decides everything. When I came back to the house, my Aunt told me that my mother wanted to go back to Benin to be with her family in Zugu, Benin. During that summer, I worked around the house and kept going to Islamic grammar school which I attended only during my summers. Living with my Aunt during this summer was okay because my Aunt didn't mention anything about my marriage or circumcision. In July of 1993, I went to visit my sister Ayisha in Lome, Togo. She told me that my Aunt lied about my mother wanting to go to Benin, and that the truth was that my Aunt made my mother leave. My sister cried when she told me this. The other sisters in Kpalime, Togo are scared of my Aunt which is why they didn't tell me. I asked my sister if I could go live with my mom, but she said no because my mom had no permanent home now that her husband was dead. It was also against the law for me to leave my Aunt's home and I

believe that my Aunt would tell the police that I had been kidnapped by my mom if I left to be with her. I believe the police would come to take me back to my Aunt. The reason my Mom did not come visit me is that she was not allowed according to Muslim law and Togolese tradition. My Aunt would not give her permission to come and visit me. When September came I returned to school.

Muslim Law and Togolese Tradition

When my father died, his family took over my father's money. Under traditional Muslim law the money is divided into three parts; one third goes to the wife, one third is for the children, and one third is for the family. My father's family gave my mother one third of the wealth and drove her from the family. My Aunt took the remaining two thirds because she said she would take care of the youngest children, myself and my younger brother, and that the other children were married or did not need support. My father's family never liked that he ignored some of our tribe's traditions and when he died they had the opportunity to get rid of my mother because she was an embarrassment. They did not like that he sent me and my sisters to school. They did not like that my sisters had married outside the tribe and were not circumcised.

Marriage

I came home from school in Ghana on vacation in June 1994. I still had two years of high school to finish. My Aunt said I did not need to go back to school for my last two years of school. She said, "You can read and write, what else do you need now that you can even read and write in English." She said, "Your sisters went to school and just ended up getting married, so why do you need to continue going to school." At first, I did not think she was serious. I thought I would go back to school in September. My Aunt was now in charge of making decisions for my life because she sent my mother away. My Aunt was in control of the money that my father had left.

One day after I came back from school my Aunt asked me if I knew of Ibrahim Isaka. I said yes because everyone knew of him. He had once been a District Assemblyman and was still a very powerful man in the community. She asked me if I thought he was nice and I said yes because I thought she was interested in him. My Aunt told me that Ibrahim was interested in me. She told me he was very wealthy and was willing to arrange a marriage with me. My Aunt informed me that he was 45 years old and he had three other wives. My Aunt tried to convince me that he was nice and rich. But I did not like him because he was old and had kids older than me. I told my Aunt I did not want to marry him and be circumcised. I did not want to marry a man that I did not know. I told her I wanted to go back to school. Because he had three other wives I would be the last permitted wife according to Muslim law. The last wife is the servant to all the older wives and their children.

Because my Aunt had taken over the family, she got to set the amount of marr. The marr is a payment of money or land that the parents can dictate for the marriage of their daughter. I asked my Aunt what the amount was, but she wouldn't tell me. She just told me that he would pay the marr amount that she asked for.

My Aunt told me that she had discussed this with my mother before I had come home from school in June, 1994. That summer in July, I went to visit my sister Ayisha in Lome, Togo. Ayisha told me that my mother asked my Aunt to let me finish school. But, my Aunt did not listen to her. My Aunt thought that Ayisha poisoned my mind. In my country, the father's family is always the one with power to make decisions. My Aunt had the power to make decisions about my life. My mother did not have this power. After the death of a father, it is common for the father's family to take over the family.

After I told my Aunt I did not want to marry this man and get circumcised, my Aunt was very mean to me. She would ignore me unless she wanted something. She did not use my name. She would say "hey you, who has no respect" when she wanted me to do something. She would always criticize everything I did in the house. I could not look at her face.

One night at dinner, my Aunt talked to me about getting married soon. I told her that I did not want to get married to that man and have to be circumcised. After I said this, my Aunt pushed me off the chair and kicked me. She said, "I won't be disgraced in front of him, he is a respected man in this town". My Aunt yelled at me every time I said I would refuse to marry him. If I was hanging up wash on the line she would throw it on the ground and make me do it again. She would interfere with the work that I did. My Aunt said she would not spoil me the way my father and mother did. During the summer I thought my Aunt would change her mind. Even though she wanted me to marry I said I would not.

Usually a woman from my tribe must be circumcised before she is married. My family knew I did not want to be circumcised. To make me get circumcised they made me get married first because they thought if I was married I would obey my husband and let them cut me. It is very difficult for a wife to leave her husband so they thought if I was married I would get circumcised. In the Muslim faith to become divorced the husband must agree. Until that happens I belong to the man who married me.

On Monday October 17, 1994, I was told that I was going to get married that day. My Aunt had invited some girls that I knew but they weren't really friends because I did not have close friends in Togo. It had been kept a secret from me. I was in a room in my house with Ibrahim Isaka's three wives and my Aunt and another girl. Only women were in the room. Ibrahim Isaka's three wives were there according to custom to tell me what Ibrahim Isaka liked and disliked and what I should do as his wife. They told me they had

all been circumcised. We were waiting for the men's ceremony to be finished. The traditional ceremony takes place in the man's house. With only men present, the Imam (holy man) prays and announces that the marriage is complete. In my case, there was a legal paper concerning the marriage. The best man brought this paper to my house for my Aunt and me to sign it. I did not want to do it but I did not know what I could do to stop it. My Aunt put me in a room and showed me the paper that I would have to sign. I saw that Ibrahim Isaka had already signed it. I refused to sign it. She yelled at me that, "when I return back to this room, I want you to have signed the this or else." I never signed it, but the marriage was legal anyway. I have a copy of this paper because my sister Ayisha mailed the certificate to me in April. I became married to Ibrahim Isaka.

My Aunt put me in a room in my own house after the ceremony and told me that I had to wait for the elder woman who would come in a few days to perform the circumcision. It was the room we used for storage that had been cleaned out. They had placed a mat in there on the floor for me to sleep on.

The practice of Female Genital Mutilation in the Tchamba-Kunsuntu ethnic group

Circumcision usually happens to girls who are around fifteen years old. After she is circumcised the young girl is ready to get married if there is someone willing to contract a marriage with her family for her. Otherwise, she is to wait until her family finds her a husband.

I have never seen a circumcision. Though all of the girls I know over fifteen have been circumcised, none of them have told me exactly what happens. I just know a little bit from what I have heard and what my parents explained to me. The circumcision first begins with prayers by the elder woman. Then four men would have held me down and spread my legs apart while they cut and scraped my woman parts off. The elder woman would have used a knife that is used to cut hair. They would not have given me anything to stop the pain.

I know of four girls from my tribe who have died because of their circumcisions. Alima tu Sadiya died at seventeen from a tetanus infection after her circumcision. Narhila died at nineteen during childbirth because she had problems caused by her circumcision. Zaina Mussah and Zaliya died from circumcision that took place before their marriage. They bled to death.

My parents had explained to me what happens after the circumcision. After they circumcised me they would have wrapped my legs from my hips to my knees and I would have to stay in bed for 40 days so the wound would close. No one would be allowed to visit me during this 40 day period because the circumcision would have caused me to be "reborn for my husband" and anyone who would see me after my "rebirth" might poison my mind or give me bad marital advice. Only the elder woman would have been allowed

to be with me to clean my wound and help me go to the bathroom which, because of the circumcision would cause much pain. After the 40 day time period the first person to see me would be my husband and that would be the first time he would sleep with me.

Leaving Togo

I had not seen my mother since January 1993 when she was sent away by my Aunt. I was not allowed to look for her and I didn't know where she was. When I came home for my June, 1994 holidays, my Aunt told me that my mom had come to visit my Aunt earlier that year. My Aunt got a message to my mom by a woman who trades between markets in Benin and Togo. I think my Aunt communicated with my mom because I am still her daughter and my Aunt wanted her to know what was going on in my life. When my mom came to Kpalime my Aunt told my mom that she was forcing me to be married and circumcised. My mom went to Lome to see my sister Ayisha to talk about what my Aunt was planning for me. Since my father's death my mom had no power in family matters and she was unable to stop the marriage or the circumcision. My mom and Ayisha decided they needed to make a plan. My mom did not know when the marriage would take place. My mom gave \$3,000 dollars to my sister Ayisha Muhammed and told her to help me find a way out. This was the money my mom got when my father died.

My sister Ayisha found out the marriage was going to happen because everyone knew of Ibrahim Isaka and knew he was getting married to a young girl. My sister Ayisha came from Lome to my house on the night of my marriage. Although the custom is not to have anyone see the girl before the circumcision, because Ayisha had come so far from Lome, my Aunt let her visit with me. Ayisha told me that she would come back the next day. The next day on Tuesday October 18, 1994 about 6 pm my sister came to visit again. My Aunt had company in another room and she escorted my sister to my room and went back to her company. We talked for about twenty minutes. Then Ayisha went and said good-bye to my Aunt. I walked my sister to her car which was parked out front. No one in my house saw me leave. I knew they were in a back room and could not see me leave. Nobody thought that I would leave the house. My Aunt did not see me leave and the people outside didn't really notice me. When no one was looking I got in the car.

Ayisha drove across the border to Ghana so we could find a plane leaving Africa. It took more than four hours to get to the airport in Accra and we waited all night to find a plane that left the country. We were both very scared because we didn't know what was going to happen and even Ayisha's husband had said he did not want to be involved in my family's affairs. The next plane was at midnight and was going to Germany. It was important to leave right away because I thought that my Aunt and my husband would be looking for me. When I left Togo and Ghana I had my student and Togo I.D. card. When I got to Germany the immigration person asked me if I was a student and I said

yes. The officer asked me if I had any money. I showed him the money I had from my mother. He asked me how long I was staying I said two weeks. He let me in and said have a nice vacation.

When my father's family found out I had disappeared they became very upset. My husband is very wealthy and the police helped him in trying to find me. My husband used to be a District Assemblyman which is a powerful political position. He is a successful builder and has built roads and schools. The Togolese police have asked my sister Ayisha in Lome, Togo to tell them where I was. They tried to force her to tell them, but she didn't. My sister Ayisha wrote to me about four times when I was at Esmor. She wrote that the police came to her house on October 20, 21, and 22, 1994. I do not have any of the letters from my sister. The U.S. authorities took them after the riot at the Esmor facility where I was detained. The Togolese police also came to where my sister worked at the market in Lome, and asked her if she knew where I was. Every time she answered she told them that she did not know where I was. Every time Ayisha wrote me she told me that the police were looking for me. I have not heard from Ayisha since I left Esmor. The police told Ayisha that if I return, they will turn me over to my husband because there is a paper making the marriage legal.

Arriving in Germany

When I arrived in Germany on October 20, 1994 I was very confused and scared. I did not speak German. I had no baggage. I had nothing but the clothes I was wearing and the money my sister gave me. It was very different than any place I had ever been. I had some relatives in the United States. My cousin Jabar Ali lives in Alexandria, VA and I have an uncle named Muhammad Ahmad in Newark, NJ and also an aunt in New York named Habiba Miakana. But I did not know anyone in Germany. I wandered around the airport for about two hours. I noticed this German woman who had smiled at me and I thought she looked friendly. I decided to ask her and where I could find other Africans. I thought if I found some other Africans they might be able to speak my language which is Tchamba and would be able to help me. This German woman, Rudina Gergs spoke a little English and she asked me what had happened to me and why I had come to Germany without any arrangements. Rudina told me that her old boyfriend was from Nigeria so she thought all Africans were nice. I told Rudina what had happened and she was so kind and nice. She said I could stay with her until I decided what to do. This made me a little nervous, taking advantage of a stranger's hospitality but I had no where else to go.

Rudina was about 30 years old. We could communicate on a very basic level in English. We went back to her apartment which was an hour and a half away by car to a

town called Bochum. It was a small apartment and I slept in the living room. I don't really know why she invited me to live with her except that she was very nice. I cooked and cleaned for her everyday. She left the house for work at 7:30 a.m. and would come home about 9:00.p.m and we would have dinner together. I don't know what kind of work she did. During the day I would watch T.V. or walk around the town. I even met some of her friends but they did not speak English.

I was uncomfortable staying with Rudina. I do not speak German and I did not have any family there. I was raised to understand that it is not proper for a young woman to live on her own without family supervision. Rudina would often ask me if I wanted to date German boys. This made me uncomfortable because in my culture we do not date. I did not understand what she was suggesting. I had bad thoughts about being hurt or kidnapped by men. The only other place that I definitely knew I had family was in the United States.

In December, about two weeks before I left Germany I met an African named Charlie, on the train while I was on my way to the shopping center. It was very crowded and I was standing when he offered me his seat. We started talking. He asked me if I was from Africa and he told me he was from Nigeria. He could speak some English. He also could speak Huasa which is not my main language but I also speak Huasa ,so we communicated in a mixture of English and Huasa. He was the first African that I really communicated with since I left Togo. I told him how I came to be in Germany. He asked me if I wanted to live with him but I told him no because I was living with a nice woman. I think he had somewhere else to go but he went with me instead to the shopping center. We made plans to meet at the train station the next day to talk more.

We met the next day and Charlie told me he had his sister's British passport. He suggested that I go to another country and request asylum. I did not think I should request asylum in Germany because I don't speak German and I knew I needed to be with someone in my family. Charlie suggested that I seek asylum in United States and I said that would be good because I have family there and I speak English. We made arrangements for me to get his sister's British passport and he helped me purchase my ticket. Before I left, I told Rudina I was leaving. She wanted to know where but I did not tell her. I only told her that I would be fine. Charlie told me not to tell anyone. She wished me luck. Later I met Charlie on the train to the airport. He had the passport and the airplane ticket. At the airport, we went to the airline counter with the ticket and passport. They did not even carefully look at the passport because it was British. I left Dusseldorf and changed planes in Frankfurt. I then flew to the United States.

Arrival in the U.S and Contact with Family

I arrived in the United States on December 17, 1994. I immediately told the authorities that I was asking for asylum because I was afraid of circumcision. After that, I was sent to the Esmor INS detention facility in Elizabeth, New Jersey. I sent Rudina a letter from Esmor explaining where I was and asking her to send me an I.D card that I forgot there. Rudina mailed me the card and wrote to me twice while I was at Esmor. These letters were also taken by the police during the riot at Esmor. The police said they would return them but they never did. I have not written to my sister since I have been at the Lehigh county jail because I am ashamed to tell her I am in a prison. My cousin Jabar who lives in Alexandria, VA said not to worry my family.

Conclusion

I am very afraid to return to Togo. My Aunt still believes I will come back because she told me I could not hide, even in heaven. Now that I am married, my husband has the right to demand that I return to him and that I be circumcised according to tradition. The rest of the community will not protect me since a husband has the right to say what will happen to his wife. No one can do anything now that I am married. Also it has been a serious loss of face for Ibrahim Isaka. The only way he can gain the lost respect in the community is to get me back. As a married woman in Togo, the only legal place for me is with my husband. If I were to try and go somewhere else, the police would come and find me. Because my husband was once a District Assemblyman, the police in Kpalime in Southern Togo know him very well and since he's originally from Northern Togo, the police know him there as well. The police would know that his wife was missing. If I returned to Togo, they would know from my documents that I am his missing wife and they would keep me at the airport until my husband came to pick me up. It is illegal to travel without proper documents in Togo. If I went without documents, they would put me in jail until they could contact a member of my family who would pay the fine to release me. The police would either return me to my family or my family would come get me.

The police would not protect me from my husband or from the impending circumcision. Since it is not illegal for a woman to be circumcised there is nothing anyone can do to protect me. I would be forced to go to a husband I did not want and risk my life being circumcised in order to be in a marriage that my Aunt made me enter into against my wishes. There is no way I could refuse for I would be alone and without protection.

I swear under penalty of perjury that the foregoing is true and correct.

Dated Dec. 4, 1995

F. Kasinga

Fauziya Kasinga

AFFIDAVIT OF PROFESSOR MERRICK POSNANSKY

I, Merrick Posnansky do hereby declare:

My name is Merrick Posnansky. I am a Professor Emeritus of History and Anthropology at the University of California, Los Angeles. I obtained a Bachelors degree in History and Geography from the University of Nottingham, 1952, a Diploma in Prehistoric Archaeology, at Peterhouse Cambridge, 1953, and my Ph.D. in Archaeology from the University of Nottingham, 1956.

I have spent extensive periods of time in Africa during the past thirty years. From 1956 to 1958, I served as the Warden of Prehistoric Sites of the Royal National Parks of Kenya. During this period, I was also the Curator of the Uganda Museum, Kampala, 1956-62 (Founder President of the Museums Association of Middle Africa 1959). Thereafter, I began teaching and also worked as the Assistant Director of the British Institute in Eastern Africa, Kampala 1962-64. In 1964, I became the Director of African Studies and Chairman of the Joint Board of Graduate Studies, Makerere University College, Kampala, Uganda 1964-67. In this position, I taught courses and chaired the College's first MA and Ph.D degrees. Subsequently, I moved to Ghana, a country that borders Togo, and headed the Department of Archaeology at the University of Ghana from 1967 to 1976. In this position, I introduced the first full degree and graduate program in archaeology in tropical Africa.

In 1976, I moved to the United States where I became a professor of History and Anthropology at the University of California, Los Angeles, 1976-95. I chaired the Archaeology Program, 1979-81 and then became the director of the Institute of Archaeology, 1984-87. From 1988 to 1992, I directed the well-renowned James S. Coleman African Studies Center.

I have been actively working in West Africa since 1967, mostly in Ghana, in which year I first visited Togo. From 1979 the focus of most of my research has been on Togo and the neighboring country of Benin where five of my doctoral students have completed research. After assisting the Togolese Ministry of Education as a consultant paid for by USIA in 1979 I helped to initiate a student exchange program with Togo in 1981 and was the coordinator of a USIA sponsored linkage program between UCLA and the Universite du Benin in Togo from 1982-85. In 1981, 1986 and 1992 I directed our University of California Education Program in Togo which brought as many as 19 UC students in close contact with their Togolese counterparts. For a time our African Studies Center published a biannual newsletter *Togo to go*. In 1984 and 1987 I chaired two conferences on Togolese Studies in Lome, Togo and for a time we organized an annual panel on Togo at the American African Studies Association meetings. As a result of these activities, UCLA has become an informal documentation center on Togo and our

research library has one of the most extensive holdings on Togo in the States. In various capacities, research, student and faculty exchange, lecturing and conferences and consultation with the staff of USIA in Togo, I have visited Togo some 16 times in the past sixteen years, five times for periods over a month. In collaboration with a colleague from UCLA Anderson School of Management and Business, I am completing a major study of the market of Notse, Togo where we carried out research in 1986, 1987, 1992, 1993.

I have visited all areas of Togo including Tchamba in 1979, and Kpalime on many occasions. I have interacted with Togolese from all different levels, Ministers, University personnel, Chiefs, students, craftsmen and market people. In 1985/86 I worked with the American Embassy and Amnesty International to help secure the release of a Togolese historian who had been condemned to death.

I have previously written papers on Togolese archaeology and material culture. I have published or edited 7 volumes. I have written a total of 135 papers, books, chapters in books, and 44 reviews. I was the editor of *Proc. Japanese/American Workshop for Cooperation in Africa*, UCLA 1994. I wrote a chapter titled "Coping with Collapse in the 1990's: West African Museums, Universities, and National Patrimonies," in *Plundering Africa's Past*, ed. Roderick McIntosh and Peter Schmidt, Indiana 1996 (forthcoming). I wrote a chapter called "Traditional Cloth from Ewe Heartland," in *History, Design and Craft in West African Strip-Woven Cloth* published by Smithsonian, 1992. I also wrote a work entitled "How Ghana's Crisis Affects a Village," *West Africa*, 1980.

Because of the political trouble which developed in 1992 our university suspended its program in Togo, though in January of this year I visited the Minister of Education and the Rector of the university, at their request, to discuss the resumption of activities.

I have reviewed the affidavit of Fauziya Kasinga and I have the following observations to make:

Togo is located in West Africa and has a population of approximately three million. Fauziya Kasinga comes from the Tchamba-Kunsuntu ethnic group, a majority of whom are located in the northern part of Togo in the department of Tchamba. Fauziya Kasinga and her family live in the southern town of Kpalime which has a total population of approximately 50,000. The Togo Atlas estimates the entire Tchamba population at no more than 40,000. I can safely estimate that the population of Tchamba population in Kpalime is less than 3,000. This is significant due to the fact that ethnic groups in Togo usually only mix with their own kind, especially those from the north. Ms. Kasinga probably had very little contact, if any at all, with people from other ethnic groups except possibly in her school in Ghana.

Female Genital Mutilation

Female genital mutilation is a very common practice among members of the Tchamba-Kunsuntu ethnic group. The majority of the women either choose or are forced to undergo this ritual. My knowledge of this practice is due to my extensive experience working and teaching in Togo. When I served as Coordinator of the university exchange program there was a great deal of discourse among both the Togolese and American students regarding the practice of FGM.

FGM is a very painful procedure with very serious health related side-effects. I have read papers which have periodically appeared on the practice during my time in Africa and I have spoken to many people in Togo about it. When I was a resident in East Africa I was very aware of its practice as many of our researchers at the East African Institute of Social Research at Makerere knew of its prevalence. Fortunately it is a practice which is becoming less widespread in the south where I normally work but it is still endemic in part of northern Togo.

It is very probable, as stated in Ms. Kasinga's Affidavit, that she was able to avoid FGM while her father was still alive and able to protect her from this practice. It is also likely that, after her father's death, her aunt could dictate her marriage and subsequent FGM. I find this to be particularly credible due to the fact that Ms. Kasinga is a minor. In many West African cultures, including the Tchamba, young people are treated very differently than people the same age in the developed world. They are given very little liberty and do not have much say in what happens to them. Ms. Kasinga's fear of female genital mutilation is therefore very well founded. She not only has friends that have died due to this practice, she also has been educated by her parents regarding the dangers and health problems associated with this ritual. Her parents were strongly opposed to the practice. They, however, were among the minority of the Tchamba ethnic group that see the practice as dangerous and without reason.

I can personally understand Ms. Kasinga's well founded fear of female mutilation. She has had friends who have died and she has a certain education and an awareness of the associated health problems. These issues are highlighted extensively in Ghana's educational curriculum. Tetanus is a very common cause of death among young women in Africa. During my time in Ghana I attended several funerals of teenagers who died of tetanus because of inappropriate abortion procedures. Circumcision, both male and female, is now one of the major ways in which HIV is transmitted because of infected knives. FGM is not legal, but customary, and often is condoned, as such it is always undertaken in relatively unsanitary conditions without access to the very limited health resources that a country like Togo possesses. Even in the more populated parts of Togo there is only one doctor to some 20,000 people and there is an inadequate health service. It is impossible to police all the unauthorized abortions and female genital mutilations even though the thrust of public education is to warn against such practices.

Due to Mr. Kasinga's wealth and role as patriarch of the family, it is very likely that he was able to prevent the circumcision of his daughters, including Ms. Kasinga. It is very unusual for Tchamba families to send their female children to study abroad as Mr. Kasinga did. In fact, this is the first instance I have heard of related to the Tchamba ethnic group. However, this would lead me to believe that Mr. Kasinga's non-adherence to Tchamba traditions caused him to experience a great deal of discrimination and resentment from other Tchamba and family members. Being that the Tchamba living in Southern Togo are considered a minority, Mr. Kasinga, due to his beliefs and practices, was operating as a minority within a minority ethnic group. It would appear that he was a progressive father and tried to secure a progressive environment for his family.

Polygamy

Polygamous marriages are very common among the Tchamba-Kunsuntu ethnic group but are practiced more among the wealthier segments of Tchamba society, due to the cost of supporting numerous wives and children. These marriages are typically arranged by the family even if mothers are not in agreement with the practice. If the family decides that a polygamous marriage will take place, there is very little a woman can do to avoid it, thus being forced to marry against her will. Even without the consent of the woman, the marriage is still considered legal.

Ms. Kasinga's assertion that she was able to avoid a forced polygamous marriage while her father was still alive is credible. His antipathy towards the practices of polygamy and FGM is evident in that he gave his daughters freedom to pursue lives free of these rituals. Furthermore, the fact that his four daughters are currently in monogamous marriages and are not circumcised, attests to his willingness to violate ingrained Tchamba traditions. After Mr. Kasinga's death, the decision regarding Ms. Kasinga's future was taken, according to tradition, by Mr. Kasinga's sister.

Patriarchy

Togo is a very patriarchal society. This is also the case in the Tchamba- Kunsuntu ethnic groups. According to tradition, the father's family is able to dictate the behavior of all family members, including the father's wife. This is particularly true in the Tchamba ethnic group. The family members on the father's side are able to make decisions even if the mother is not in agreement. Therefore, when Mr. Kasinga died, it is very likely that, due to his sister's role in the family hierarchy, she was able to assume control of Ms. Kasinga's actions. Ms. Kasinga's assertion that her aunt banished her mother from the family and home conforms with Tchamba tradition. Additionally, it is highly probable that due to the fact that Ms. Kasinga was taught to show great deference to her father's family, Ms. Kasinga refrained from questioning her aunt's authority.

In the Tchamba-Kunsuntu ethnic group, the father's family always has control when the father dies. When this happens, the wife is typically banished from the family home and often loses authority over and responsibility for her children. The death of the

patriarch often means that his side of the family takes over the assets and general control of the family. When a wife becomes a widow it is very common, no matter what the ethnic group, for the wife to lose everything, including her home and assets, to the family of her now deceased spouse. The home is not considered a personal asset of the nuclear family but as the property of the patriarchy's family.

As in Ms. Kasinga's case, the aunt became the dowager comptroller of the estate. Having been evicted, Ms. Kasinga's mother would be afraid to contact her daughter at the family house. The power of the curse could also have been invoked. I have come across many examples in which higher status wives, wives in public prominence, have been kept away from the family home. I have even known expatriate's wives forced out of Africa by such tactics.

Ms. Kasinga states that she lived in the Zongo quarter of Kpalime. This region is where the foreigners, mostly Muslims live. Ms. Kasinga would have had limited exposure to people of other ethnic groups and she certainly could not receive help from them.

In West Africa, it is extremely difficult for a woman to leave her ethnic group and move to another part of the country. In general, it is very difficult for a young woman to live on her own. If Ms. Kasinga would have gone to Ghana in order to escape her family, it is very likely that she would have drifted into prostitution. She would have been without the protection of her family and would have found it necessary to find the protection of a man. Because schooling is different in West Africa she probably only has the equivalent of a junior high school education. She probably does not any marketable skills.

Being that Ms. Kasinga is already married, her husband could have eventually located her in Ghana. The border between Ghana and Togo is very porous and a passport is not needed to cross into Ghana. Because Ms. Kasinga is a member of a small minority ethnic group, it is very likely that Mr. Isaka, her husband, would be able to consult with another Tchamba ethnic group member and find her easily. However, it would be even easier for him to locate her in Northern Togo because that is where the majority of the Tchamba live. This would facilitate Mr. Isaka's search and eventual location of Ms. Kasinga.

I know this because of my own experience in locating people in both Togo and Benin. Without an address or phone number, it is still quite easy to contact people. Taxi drivers, market women and others have a web of contacts. Families live in close contact, strangers are noticed. There are numerous police check points in Togo and if her husband made an effort and was willing to pay a bribe or give out rewards for information, he could rapidly make contact.

Police and Political Instability

I am certain that the police in Togo would not protect Ms Kasinga from undergoing FGM or a forced polygamous marriage. Being that they are both demoralized and underpaid, and therefore very susceptible to bribes, they would probably be willing to accept money for locating Ms. Kasinga. They have gone to her sister's place of residence in Lome several times to investigate her whereabouts. These actions indicate that perhaps the husband has pressured or paid them.

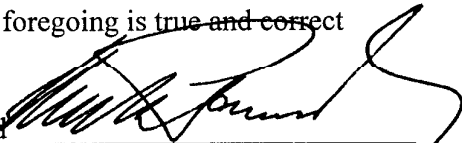
The political instability during recent years in Togo has seriously weakened the social services that might have existed. Though there is a small group of women working against FGM in Lome, the capital of Togo, in the past few years the political struggle in Togo seriously debilitated the women's movement. For example, the leader of the women's political party, Mme. Aduayom was dragged out of a television studio and severely beaten by the military and has since taken refuge in France. I was made aware of this particular incident through both newspaper articles and communications with friends living in Togo and also Mme. Aduayom's husband. Furthermore, it is very unlikely that the present political structure would be able to protect Ms. Kasinga from future persecution caused by female genital mutilation and a forced polygamous marriage.

As I have made clear, it is my opinion that Ms. Fauziya Kasinga's assertions are both true and credible. My opinion is based on my years of working and living in Togo. Furthermore, my extensive research on various aspects of Togolese society has afforded me profound insights regarding traditions and cultural practices. As I mentioned before, the strong patriarchal culture leads quite often to the banishment of the wife from the home after the death of her spouse, all of her familial rights can be taken away from her. Women are forced into polygamous marriages against their will and are forced to undergo the inhumane ritual of female genital mutilation. If Ms. Fauziya Kasinga were deported and returned to Togo, it is very likely that her husband would be able to locate her and take her back to Kpalime, where she would be forced to undergo female genital mutilation. Once Ms Kasinga is returned she would have virtually no protection in Togo, certainly as a minor she would be returned initially to her family, in this case her aunt. The pressures of an extended family would be impossible to resist.

I swear under penalty of perjury that the foregoing is true and correct

Dated: Dec. 5 1995

Signed


Professor Merrick Posnansky

Merrick Posnansky

Professor Emeritus, History and Anthropology UCLA

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Department of History
University of California
Los Angeles, CA 90095-1473
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born Bolton, England 1931, Citizenship American, SS# 552 80 4274

Education : BA Nottingham, History and Geography, Open Scholar, 1952
Diploma in Prehistoric Archaeology, Peterhouse, Cambridge, 1953
Ph.D. University of Nottingham, 1956, Gertrude Cropper Research Scholar

Employment • Warden, Prehistoric Sites of the Royal National Parks of Kenya 56-58
• Curator, Uganda Museum, Kampala, 1958-62 (Founder President of the Museums Association of Middle Africa 1959)
• Assistant Director, British Institute in Eastern Africa, Kampala 1962-64
• Director of African Studies and Chairman Joint Board of Graduate Studies, Makerere University College, Kampala, Uganda 1964-67 (taught first regular courses in archaeology in tropical Africa, chaired first MA and Ph.D degrees in archaeology)
• Professor and head of the Department of Archaeology, University of Ghana, 1967-76 (introduced first full degree and graduate program in archaeology in tropical Africa)
• Professor of History and Anthropology, University of California, Los Angeles, 1976-94 (Chair, Archaeology Program, 1979-81, Director, Institute of Archaeology, 1984-87, Director, James S. Coleman African Studies Center, 1988-92, Director Education Abroad Programs in Togo 1981, 1986 and 92, Ghana 1988-89 and 1994-95)

Honors and Professional Committees etc

Fellow of Society of Antiquaries of London
Hon. Fellow British Institute in Eastern Africa
President, The Uganda Society 1964, Editor, *Uganda Journal*, 1962-67
Founder Chairman, Uganda Ancient and Historical Monuments Board, 1964-67
Visiting Fellow, Clare hall, Cambridge, 1974

 12/4/95

President, Society of Africanist Archaeologists, 1990-92

Member of Editorial Boards, *Journal of African History*, (80-88), *Antiquity*, (88-92)

Co-coordinator, American-Japanese Cooperation in Africa 1990-

1992, Honored with a special volume of essays as vol.11 of *African Arch.Review*.

Research awards from UNESCO, Nuffield Foundation, National Geographic, Wenner-Gren, Valco Trust Fund, Japan Foundation, President's international Youth Exchange, British Academy

Fulbright Fellow and International Teaching Fellow, Rotary International, Ghana 1998-89

Consultancies, UNESCO (Somalia 1978), USIA (Togo and West Africa), World Bank

Research and Publications

Excavations and Field research in England, Kenya, Uganda, Tanzania, Ghana, Togo, Benin and Jamaica. Major projects, Palaeolithic of Middle Trent valley 1953-56, Interlacustrine Kingdoms with excavations at Bigo 1958-62, Lolui Island 1964, West African trade Project with excavations at Begho, Ghana 1970-79, Notse town 1981, Ethnoarchaeology of Hani, Ghana 1970-95

Published/edited 7 volumes, 135 papers/book chapters, 44 reviews including:-

ed. *Proc. Japanese/American Workshop for Cooperation In Africa*, UCLA 1994

Coping with Collapse in the 1990's: West african Museums, Universities, and national

Patrimonies, in *Plundering Africa's past*, ed. Roderick McIntosh and Peter Schmidt, Indiana,

1996; Traditional Cloth from the Ewe Heartland, in *History, Design and Craft in West African*

Strip-Woven cloth, Smithsonian, 1992; How Ghana's crisis affects a village, *West Africa*,

1980 ; with C.Ehret, *Archaeological and Linguistic Reconstruction of African History*, UC

Press, Berkeley, 1982; Towards an Archaeology of the Black Diaspora, *J.Black Studies*,

1984; African Archaeology Comes of Age, *World Archaeology*, 1982; with Chris DeCorse,

Historical Archaeology in Sub-saharan Africa: a review, *Historical archaeology* 1986

Prelude to East African History, Oxford 1966; *The Nile Quest*, Kampala, 1962.

Current Research Interests and Activities

Archaeology of the slave trade in west Africa; Ethnoarchaeological research on processes of change in Ghana; Cultural conservation and museum development in West Africa;

Marketing systems in Togo; Problems of Higher Education in African and outreach on Africa in the educational community; writing up research from fieldwork in Africa.

TOGO RELATED ITEMS.

TRANSLATION

Number: G1118

Certificate of Marriage Contract

Date: 10/7/1994 Gregorian

1. Name of Husband: Ibrahim Ishaq Date of Birth: 1950 Gregorian Place of Birth: Sukurah
Occupation: Merchant Place of Residence: Kpalime Street: Thenu
2. Name of Wife: Fawzia Date of Birth: 1977 Gregorian Place of Birth: Kpalime
Occupation: Student Place of Residence: Kpalime Street: Al-Hamad
3. Parent/Guardian for the Place of Residence: Kpalime Occupation: Merchant
Husband: Al-Hajj Mahmoud
Parent/Guardian for the Place of Residence: Kpalime Occupation: Transportation
Wife: Kasanga Mohammed
4. Permanent Address of the Husband: P.O. Box 113 Kpalime, Togo
5. Signature of the Husband: (Signature) Signature of the Wife: (none)
Signature of the Witness: (Signature) Signature of the Witness: (Signature)

Name and Signature of the Imam: Mohammed Ishaq
(Signature)

Note: Arabic is written from right to left. In order to translate this document according to its meaning, I have converted the translation to the left to right format of English.

CERTIFICATION

I, Mohab Khattab, do hereby certify that I am fluent in both English and Arabic and that I have translated this document and certify the translation to be true and accurate.

 Dec. 4, 1995

Exhibit C

الرقم ١١١٨
التاريخ ١٧/٨/١٩٩٤

إستمارة عقد الزواج

FORMULAIRE D'ACTE DU MARIAGE

١- إسم الزوج: إبراهيم إسحاق تاريخ الميلاد: ٢١٩٥٥ محل الميلاد: سوكوندي
NOM DE L'ÉPOUX DATE DE NAIS. LIEU DE NAIS.

المهنة: التاجر محل الإقامة: بالبي Rue FONCTION DOMICILE

٢- إسم الزوجة: فوزية تاريخ الميلاد: ٢١٩٧٧ محل الميلاد: بالبي
NOM DE L'ÉPOUSE DATE DE NAIS. LIEU DE NAIS.

المهنة: الطالبة محل الإقامة: بالبي Rue FONCTION DOMICILE

٣- إسم ولي الزوج: الحاج محمود محل الإقامة: بالبي المهنة: التاجر
NOM DU TUTEUR DE L'ÉPOUX LIEU DE NAIS. FONCTION DOMICILE

إسم ولي الزوجة: كسبجا محل الإقامة: بالبي المهنة: السوق
NOM DU TUTEUR DE L'ÉPOUSE LIEU DE NAIS. FONCTION DOMICILE

٤- العنوان الدائم للزوج: ص - ب ١١٣ بالبي - تونس

ADRESSE USUELLE DE L'ÉPOUX

٥- توقيع الزوجة:

توقيع الزوج:

SIGNATURE DE L'ÉPOUSE

SIGNATURE DE L'ÉPOUX

توقيع الشاهد:

توقيع الشاهد:



CERTIFICATION

I hereby certify that this photocopy is a true and accurate copy of the original certificate of marriage contract between F.K. and I.I.

Signed Karen Musalo

Dated 12/6/95

Prof. Karen Musalo

Washington College of Law
Practicing Law Center
International Human Rights Law Clinic

4400 Massachusetts Avenue, N.W., Washington, D.C. 20016-8086 (202) 885-1520

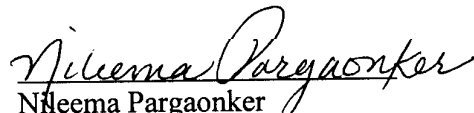
CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of November, 1995, I hereby caused to be served the enclosed cover letter and Respondent's Brief to the Board of Immigration Appeals in the Matter of Fauziya Kasinga, A 73-476-695, by placing a true copy thereof in a sealed envelope, with postage thereon fully prepaid and causing the same to be mailed by Federal Express mail to the persons at the address set forth below:

INS Trial Attorney's Office
625 Evans Street
Elizabeth, NJ 07201

The Honorable Judge Donald Ferlise
Office of the Immigration Judge
Executive Office of Immigration Review
970 Broad Street, Rm 1135
Newark, NJ 07102

I hereby declare under penalty of perjury that the following is true and correct.


Niteema Pargaonker
Student Attorney
International Human Rights Law Clinic
The Washington College of Law
The American University
Cassell Annex
4400 Massachusetts Avenue, N.W.
Washington, DC 20016
202/ 885-1520