THE AMERICAN UNIVERSITY
WASHINGTON, D.C.

March 13, 1996

Board of Immigration Appeals
Department of Justice
Suite 2400
5107 Leesburg Pike
Falls Church, Virginia 22041

Re: Reply Brief, Fauziya Kasinga, A73 476 695

Dear Clerk of the Court:

Enclosed you will find the Reply Brief in the above-captioned matter. Pursuant to the Board's order it was due March 13, or alternatively ten days after receipt of the INS Brief in the matter, whichever was earliest. We received the INS Brief on March 4, 1996, thus March 13 is the earlier date, and consequently the due date.

Should you have any questions, you may contact me directly at 202/274-4227.

Sincerely,

Karen Musalo

Professor Karen Musalo

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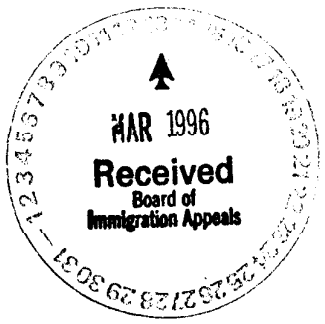
UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

File: A73 476 695	)	
	)	
In Re:	)	**IN EXCLUSION PROCEEDINGS**
Fauziya Kasinga	)	
Respondent	)	

REPLY BRIEF FOR RESPONDENT



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INTRODUCTION

This case involves the claim for political asylum and withholding of deportation of Respondent Fauziya Kasinga, a young woman who fled Togo to escape life in a forced polygamous marriage, and the imminent infliction of Female Genital Mutilation (FGM). On August 25, 1995, Immigration Judge Donald V. Ferlise (hereinafter "IJ") ruled that Ms. Kasinga was not credible, and that even if she were credible, she would not meet the statutory standard for the requested relief.

The Respondent appealed the Judge's ruling as being legally and factually erroneous, and submitted its Brief to the Board of Immigration Appeals (hereinafter "Board" or "BIA") on December 7, 1995. Three additional pieces of evidence were submitted with the Brief: Ms. Kasinga's detailed affidavit, the affidavit of expert witness Professor Emeritus Merrick Posnansky, and a translated copy of Ms. Kasinga's marriage certificate. The Respondent requested that the Board conduct a *de novo* review, and consider the additional evidence in reaching a decision in this case. Subsequent to submitting its Brief, Respondent learned through the results of a Freedom of Information Act Request, that a translated copy of the marriage certificate had already been submitted to the immigration court by previous counsel, Eric Bowman.[1]

The Immigration & Naturalization Service (hereinafter "INS") submitted its Response Brief to the Board on February 28, 1996. In its brief, the INS expressly rejects Judge Ferlise's ruling that even if Ms. Kasinga were credible she would not meet the statutory standard for relief. To the

[1] It appears that the marriage certificate was appended as an attachment to the I-589. The INS trial attorney did not object to any of the attachments to the I-589 (TR at 8-9), and the judge did not rule inadmissible any of the evidence submitted with the I-589. Therefore, it may be reasonably assumed that the marriage certificate was admitted into evidence.

contrary, the INS agrees with the Respondent that if the facts of her case are true, she has established a well-founded fear of persecution on account of membership in a particular social group.

Furthermore, the INS does not argue that Ms. Kasinga is not credible. In its Brief, the INS neither defends the rationale underlying the IJ's adverse credibility finding, nor does it advance an alternative rationale in support of the adverse credibility finding. The only argument the INS makes on credibility-related issues, is that it is inappropriate for the Board itself to consider new evidence and evaluate credibility on the basis of the entire record, including the new evidence, rather than remanding the case to Judge Ferlise.

Inexplicably, the INS does not offer a single reason why the IJ would be more competent than the Board to consider the additional evidence, and determine credibility, such that a remand would be appropriate. This request to remand to the IJ is especially puzzling in light of the fact that the INS has completely repudiated the IJ's legal analysis, and totally distanced itself from his credibility determination.

The Respondent has been detained since December of 1994, in a total of four detention centers, many times under appalling conditions which have had a severely negative impact on her physical and emotional health.[2] Ms. Kasinga spent the first six months of detention in the INS Esmor facility, where documented abuse and harassment of detainees took place. See, e.g., *An Uncertain Future, A Cruel Present: Women in INS Detention,* International Rescue Committee, Women's Commission for Refugee Women and Children (1995); INS Interim Report on Esmor, Executive Summary (July 20, 1995). As a result of the substandard conditions at Esmor, the inmates

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[2] Ms. Kasinga's affidavit, detailing the mistreatment and abuse she has suffered in detention is appended to this Brief as Exhibit 1.

rioted, and although Ms. Kasinga did not participate in the riot, she was beaten, kicked, and tear-gassed. In addition to the physical mistreatment she suffered during the riot at Esmor, she has been subject to regular mistreatment during the more than fifteen months of detention. She has been placed in extended periods of isolation without any explanation, she has been punished for attempting to follow the precepts of her religion, and she has been exposed to smoke to which she is allergic, causing her to become quite ill. In addition, she has been shackled, strip-searched, and subjected to other frightening and humiliating treatment. A recent psychological evaluation, conducted by Dr. Bijan Etemed, found Ms. Kasinga to be suffering from extreme depression as a result of detention under these conditions.[3]

On November 15, 1995, District Director J. Scott Blackman denied Ms. Kasinga's request for parole from detention. More recently, Mr. Blackman has rejected a request from the INS General Counsel's office that he reconsider his earlier denial of parole. On March 13, 1996, Ms. Kasinga, through counsel, filed a Petition for Writ of Habeas Corpus in U.S. District Court for the Middle District of Pennsylvania, requesting that the court find the District Director's denial of parole to be an abuse of discretion. However, given the fact that at this moment, Ms. Kasinga remains detained, the INS should be required to present a compelling rationale in favor of any procedural measure, i.e., a remand, that would delay a decision in Ms. Kasinga's case, and prolong her detention. The INS has simply failed to provide such a compelling rationale.

For all the reasons set forth in this Reply Brief, the Respondent requests that the Board reject the INS' request for a remand. It respectfully requests that the Board review the entire

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[3] A copy of Dr. Etemed's evaluation and *curriculum vitae* is attached to this Brief as Exhibit 2.

record, and find that the IJ's credibility finding is baseless. Furthermore, the Respondent urges the Board to accept her position, and the position of the INS, that she qualifies for the requested relief.

LEGAL ARGUMENT

I. There is no basis for a remand for a further evidentiary hearing

A. The Board is fully competent to consider the new evidence submitted with Ms. Kasinga's Brief

The Respondent submitted three additional pieces of evidence to the Board with its opening Brief. The evidence submitted was Ms. Kasinga's detailed affidavit, the affidavit of expert witness Professor Emeritus Merrick Posnansky, and a translated copy of Ms. Kasinga's marriage certificate. The INS argues that it is inappropriate for the Board to consider this evidence in evaluating the Respondent's credibility, rather than remanding to the IJ.

It is beyond dispute that the Board has full power to make both factual and legal determinations, and in the exercise of this power "it may consider new evidence not presented to the Immigration Judge[.]" *Hazzard v. INS*, 951 F.2d 435, 440 (1st Cir. 1981). The Board's authority to conduct *de novo* review extends to issues of credibility. *Castillo Rodriguez v. INS*, 929 F.2d 181 (5th Cir. 1991). In arguing that it is inappropriate for the Board to consider this evidence, the INS cites *Matter of Guevara*, Int. Dec. 3143 (BIA 1991). *Matter of Guevara* is totally inapposite to the present case.

In *Matter of Guevara*, the IJ had ruled that the respondent's alienage and deportability had been established simply on the basis of his maintenance of silence and refusal to answer any

question other than his name. After finding the respondent deportable, the IJ continued the proceedings to provide him with the opportunity to apply for relief. *Matter of Guevara*, slip op. at 3-4. Prior to the continuation of the case, the respondent filed an interlocutory appeal to the Board. The Board reversed the IJ, holding that silence alone, without other evidence, was insufficient to meet the INS' burden to establish alienage and prove deportability by clear, unequivocal and convincing evidence. *Id.* at 10. The Board terminated proceedings, reasoning that since the continuance was for the purpose of considering relief from deportation, and deportability had not been established, there was no basis for additional immigration court proceedings. *Ibid.*

The INS in *Guevara* then filed a motion to reconsider with the Board. The INS argued that it had additional evidence on deportability, and that the Board's termination precluded the introduction of this evidence. The INS made various arguments, including that: 1) it was unfair to take away its opportunity to present evidence, *Id.* at 12; 2) the Board lacked "contextual foundation" for its decision because it did not have the transcript of proceedings, *Id.* at 13; 3) the Board's termination was a hindrance to proper administration of immigration laws, *Id.* at 13-14; 4) the regulations allow the Service to introduce additional factual allegations, *Id.* at 14-15; and 5) the failure to reopen destroyed its opportunity to present its case. *Id.* at 15-16. The Board rejected the Service's arguments in *Guevara* in their entirety, and denied its motion to reconsider. The Board was especially critical because the evidence which the Service sought to introduce was evidence it had all along, but had not attempted to introduce during the course of the deportation

proceedings or interlocutory appeal. On these facts, the Board found that the "Service. . .made a conscious choice not to introduce additional evidence." *Id.* at 16.

The facts in *Guevara* are not even remotely similar to those of Ms. Kasinga's case. Ms. Kasinga did not make a conscious choice not to introduce at her hearing the additional evidence which she subsequently submitted to the Board with her Brief. To the contrary, the need to introduce additional evidence was the result of the poor quality of representation provided by her prior counsel. More significantly, the central issue in *Guevara* was not whether the Board *could* or *should* consider new evidence, but whether it could appropriately terminate proceedings upon the failure of the Service to establish deportability. It is a far stretch to rely upon *Guevara* for the proposition that it is inappropriate for the Board to consider evidence not submitted to the Immigration Judge.

In the instant case there are three pieces of evidence at issue: Ms. Kasinga's and Professor Posnansky's affidavits, and the marriage certificate. If the Board agrees that the marriage certificate was already admitted into evidence, the two affidavits are the only pieces of evidence at issue. Although there might be limited circumstances under which a remand to consider evidence might be valid, they don't exist in regard to either Ms. Kasinga's or Professor Posnansky's affidavits.

As regards Ms. Kasinga's affidavit, a remand would be appropriate if demeanor had been a particularly significant factor in the Judge's credibility determination, or if the Respondent had submitted an affidavit changing her story, such that cross-examination would be in order. Neither of these situations exist. Demeanor had nothing whatsoever to do with the judge's adverse credibility finding. Furthermore, Ms. Kasinga's detailed affidavit is entirely consistent with her

asylum application and hearing testimony. The affidavit was simply submitted to provide the Board with a coherent narration of her claim, in light of the woefully inadequate transcription of the proceedings, and the poor quality of her asylum application.

As regards Professor Posnansky's affidavit, a remand might be appropriate if there were legitimate questions regarding the professor's credentials and expertise, or if his opinions had been lacking proper foundation, necessitating an inquiry into the basis for his expert opinion. However, Professor Posnansky, whose *curriculum vitae* accompanied his affidavit, is clearly an eminent scholar, with impressive credentials. He is not personally acquainted with Ms. Kasinga, but analyzed her case on the basis of her affidavit. Professor Posnansky was meticulous in explaining the facts and reasoning underlying each of his conclusions.

B. The INS' request for a remand for further fact-finding borders on the frivolous when the areas of proposed fact-finding are irrelevant and immaterial

In addition to arguing for a remand to consider the new evidence, the INS argues that a remand would be appropriate so that the "IJ [could] conduct further inquiry into specific aspects of the applicant's credibility that are not addressed by the new evidence." INS Brief, at 22. The INS' proposed areas of inquiry are to address: 1) Ms. Kasinga's encounter with Rudina Gergs in Germany, which the INS argues should be substantiated by an affidavit from Ms. Gergs; and, 2) purported inconsistencies in Ms. Kasinga's story regarding: a) "whether she [Ms. Kasinga] is already married or would be forced to marry if returned to Togo" and b) who performs FGM in her tribe. INS Brief, at 22, n.5.

The INS' request for a remand to inquire into these areas, and to secure the affidavit of Ms. Gergs, is borderline frivolous.[4] Regarding Ms. Gergs' affidavit, it is well-established that corroboration is not necessary where the applicant has provided credible testimony. *Matter of Mogharrabi,* 19 I&N Dec. 3028, at 439 (BIA 1987); *Matter of Villalta*, Int. Dec. 3126, slip op. at 8-9 (BIA 1990). Ms. Kasinga provided a credible and detailed account of how she met Ms. Gergs, and how Ms. Gergs helped her out. The IJ simply had no legitimate basis for finding Ms. Kasinga's account to be implausible, other than his own ethnic and racial stereotypes[5] and jaded

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[4] The Board should also take note of the fact that the INS itself is responsible for the fact that Ms. Kasinga has no proof of her relationship with Ms. Gergs. During the riot at Esmor, Ms. Kasinga tried to hold on to small personal belongings, such as letters, including a letter from Ms. Gergs, her address book, and I.D. cards from Togo. Ms. Kasinga grabbed them as she was running out of the facility, and stuffed them into her bra. A guard later asked if she had any materials with her, and asked her to turn them over, saying they would be returned later. Ms. Kasinga never saw them again. Exhibit 1 to this brief, p.5-6.

[5] The judge's own words make it clear that he considered the ethnicity and color of Ms. Gergs' skin relevant in assessing the credibility of the encounter.

> Judge to Ms. Kasinga:
> Q. Well, why did you approach this woman?
> A. I just want to ask her --
> Q. Alright, you got off the plane, right?
> A. Mm hmm.
> Q. You went through immigration--
> A. Yes.
> Q. And then what happened?
> A. I was allowed to enter.
> Q. And you stayed in the airport?
> A. Yes.
> Q. And you see a lot of people in the airport?
> A. Yes.
> Q. And you just asked her [Rudina Gergs]?
> A. I just ask her. I just approach her and I ask her.
> Q. *Was she Black or White?* [emphasis added]
> A. She was a White lady.
> Q. *Was she German?* [emphasis added]
> A. German, Yes.

perceptions about the willingness of human beings to assist other human beings in time of need.

Furthermore, neither the IJ, nor the INS has once explained how Ms. Kasinga's encounter with Rudina Gergs is relevant or material to her claim. The INS cites *Matter of Dass,* Int. Dec. 3122 (BIA 1989) for the proposition that supporting evidence should be provided if reasonably available. However, the evidence at issue in *Matter of Dass* went to material issues of the respondent's case regarding country conditions upon which the plausibility of his claim could be evaluated. This is not the case here. Ms. Kasinga has submitted evidence regarding country conditions. Furthermore, she has documented those issues central to her case. As detailed in Respondent's opening Brief, the heart of Ms. Kasinga's claim is her forced marriage and impending mutilation, which has been documented to the fullest extent possible. Ms. Kasinga has submitted her marriage certificate, as well as letters from her mother corroborating these facts. To require an affidavit of Ms. Gergs is simply preposterous, especially where the IJ and the INS have failed to argue how or why it has bearing on her case.[6]

The INS also argues that a remand is appropriate to inquire into inconsistencies regarding the identity of the person who performs FGM in her society, and whether Ms. Kasinga was

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[6] In absence of any explanation, counsel is left to speculate regarding the relevancy of Ms. Kasinga's encounter with Ms. Gergs. One can speculate that if counsel for the INS do not believe that Ms. Kasinga had a chance meeting with Ms. Gergs, they perhaps believe that: 1) Ms. Kasinga did not know anyone in Germany, and simply got by on her own; or 2) Ms. Kasinga had a friend or friends in Germany, and these friends, rather than a chance acquaintance, helped her out. However, neither of these scenarios would preclude her from the requested relief in the United States. Ms. Kasinga would only be precluded from relief if she were firmly resettled in Germany. 8 C.F.R. 208.15. There is simply no evidence to support a finding of firm resettlement.

already married, or would be forced to marry upon return to Togo. Neither of these are legitimate bases for a remand.

In Ms. Kasinga's testimony, she variously identified the ritual mutilator as an "older man," an "older lady," "her aunt" or an "official circumcisor." INS Brief at 8. Ms. Kasinga has not presented herself as an expert regarding the cruel practice which she fled to escape. In fact, in light of the fact that her parents attempted to protect her from FGM, it is entirely normal that she would have limited or contradictory knowledge about the identity of the ritual mutilators. Her lack of knowledge on this point has no bearing on her credibility, and a request to remand to ask her further questions about it would be pointless.

An equally insufficient reason for a remand would be to inquire into purported inconsistencies regarding Ms. Kasinga's marital state. The INS argues in its brief that Ms. Kasinga has contradicted herself, stating in her application that she will be forced to marry if she returns to Togo, but submitting a marriage certificate and testifying that she already has been married. There is no inconsistency in Ms. Kasinga's application and testimony on this point in light of Ms. Kasinga's attitude towards the forced marriage and the prevailing cultural norms.

Ms. Kasinga testified that she was sold into the marriage (Aff. submitted with Respondent's opening Brief, hereinafter "Aff.1," at p.5), that the marriage actually took place with the groom and spouse in different locations (Aff. 1, at p.5-6), and that she refused to sign the marriage contract (Aff. 1,, at p.6). She also testified that according to custom, her husband would not commence sexual relations with her until 40 days after the ritual mutilation. Under these circumstances there is no contradiction between her statement that if she returns she will be forced to marry an old man (i.e., be mutilated and have the consummation forced on her), and her

testimony that she had already married the old man (i.e., the ceremony had already taken place). Furthermore, any ambiguity regarding Ms. Kasinga's marital state should certainly be resolved by the fact that she has presented a marriage contract, that letters from her mother refer to forced marriage to an "old man," and that she mentioned the forced marriage immediately upon her arrival to the United States.[7]

Finally, the INS suggests a remand so that Judge Ferlise could reconsider his earlier finding that Ms. Kasinga could have relocated within Togo, or could have sought state protection. In his affidavit Professor Posnansky addressed these two issues, and emphatically rejected the judge's findings. There is no reason to remand for the judge to reconsider these elements of his decision, when the Board is fully competent to review the record and decide these issues. There is even less reason to do so in this case, given that a remand will cause delay and prolong the cruel detention of Ms. Kasinga.

II. The evidence overwhelmingly establishes Ms. Kasinga's credibility

The immigration judge's adverse credibility finding is against the weight of the evidence. The record evidence in Ms. Kasinga's case overwhelmingly establishes her credibility. She has not only given credible testimony, but she has provided corroboration of the essential facts of her claim. Significantly, the INS' itself does not argue that Ms. Kasinga is not credible. It simply

[7] Through its FOIA request, counsel has obtained a copy of the INS Memo to the file, dated 12/17/94. The memo states in relevant part: "Subject...stated that she was coming here to seek asylum because she is being forced to marry."

argues for a remand to allow the IJ to evaluate the new evidence and revisit the issue of credibility.

The record contains more than enough evidence to establish Ms. Kasinga's credibility. She has provided credible testimony regarding her father's beliefs regarding cultural practices, his death, her aunt's orchestration of a forced marriage and mutilation, and her flight from Togo to Ghana, to Germany, and to the United States. Her testimony on these points has been consistent; there is not one instance in which she contradicted herself in her recounting of these key issues. Furthermore, her testimony was sufficiently detailed, and believable in light of conditions in Togo. Credible testimony, such as this, meets the burden of proof of an asylum applicant without corroboration. 8 C.F.R. 208.13(a).

Ms. Kasinga, however, has provided corroboration of a nature accepted by the courts in asylum and withholding cases. She has submitted a copy of her marriage contract, which corroborates not only the fact of her marriage, but the age of her husband, and the fact that she refused to sign the contract, in protest of this marriage against her will. The contract also identifies the Respondent as a "student" corroborating the fact that she had been able to study far past the level of most girl-children in Togo. In addition, Ms. Kasinga has submitted copies of two letters from her mother (Group Exhibit 4) which refer to the efforts of the deceased father's family to have her circumcised and married to an "old man," as well as the fact that the police are searching for her. Although Judge Ferlise took issue with the fact that the letters were dictated by Ms. Kasinga's mother, rather than written by her own hand, there is no serious challenge to their authenticity, nor to the authenticity of the marriage contract.

It is remarkable that Ms. Kasinga has been able to provide this much corroborative

evidence, given the circumstances under which she fled, as well as her misfortune to be detained at Esmor, where all her personal papers were taken from her during the riot, and never returned. Ms. Kasinga's consistent testimony, supported by corroborating documentary evidence, overwhelmingly establish her credibility. There was simply no basis for the immigration judge's adverse credibility finding, which must be reversed, because it is against the weight of the evidence.

III. Although Ms. Kasinga's case is of first impression before the Board, existing precedent clearly supports a grant of political asylum and withholding of deportation

The INS cautions the Board that in deciding Ms. Kasinga's case it is entering into a "new and difficult territory..." INS Brief, at 12. Although it is true that the Board has not yet decided a case under the Refugee Act which involves FGM or forced polygamy, ample guidance is provided by existing precedent. As detailed in Respondent's opening Brief, the rationale and holding in the Third Circuit decision *Fatin v. INS*, 12 F.3d 1233 (3rd Cir. 1993) compels a decision in Ms. Kasinga's favor.

Fatin involved the claim of an Iranian woman who had the choice of complying with fundamentalist Muslim norms or suffering the penalty, which could include whippings, imprisonment up to a year, or even brutal rape and death. *Id.* at 1241. The Third Circuit held that the penalty for resisting would certainly constitute persecution ("we agree with the petitioner that the indicated consequences of non-compliance would constitute persecution." *Id.* at 1242.) Furthermore, this persecution would be on account of membership in the particular social group composed of women whose "opposition to the Iranian laws in question is so profound that [they]

would choose to suffer the consequences of non-compliance." *Id.* at 1241. However, the court denied relief because it found that Fatin's opposition was not so profound that she would refuse to comply. Therefore, she could avoid persecution by complying, and her compliance would not constitute persecution because it did not require her to engage in conduct which was "physically painful or harmful" or abhorrent to her "deepest beliefs." *Id.* at 1241.

The precedent of *Fatin* compels the conclusion that FGM and forced polygamy do constitute persecution[8] as to Ms. Kasinga. As discussed at length in her opening Brief, FGM is physically painful and harmful. Forced polygamy is abhorrent to her deepest held beliefs regarding the right of a woman to enter into a consensual relationship with a man. Furthermore, this persecution is on account of social group membership as defined by the court in *Fatin*. Because Ms. Kasinga's case arises in the Third Circuit, the Board has guiding precedent, which it is required to apply to her claim.

Although *Fatin* is one of the most relevant precedent decisions, because it addresses a social group membership claim where gender is a group attribute, traditional asylum jurisprudence squarely supports a decision in favor of the Respondent. Under traditional asylum jurisprudence, an individual must establish: 1) a type of harm which constitutes persecution (for asylum) or a threat to life or freedom (for withholding); 2) past occurrence of the harm or prospective likelihood (well-founded fear for asylum, clear probability for withholding), and; 3) a nexus between the feared harm and one of the five enumerated grounds.

As discussed in detail in Respondent's opening Brief, an analysis under traditional asylum

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[8] As argued in Respondent's opening Brief, they also constitute a threat to life or freedom.

jurisprudence must result in a finding of eligibility. The type of harm clearly rises to the level of a threat to life or freedom, and therefore necessarily constitutes persecution. Given the power and influence of her "husband" it is more likely than not that the harm will befall Ms. Kasinga. And lastly, there is a clear nexus between the feared harm and her membership in the social group of women of the Tchamba-Kunsuntu tribe who resist FGM and polygamy, and who do not have protection against it. Thus, although the Board is deciding the first case addressing FGM and forced polygamy, it may rely upon traditional jurisprudential principles, as well as recent trends in the asylum area.

IV. The INS' Appeal to the Board to Rule on Issues Not Presented by the Case Before it Is Improper

The INS agrees that a successful claim for relief may be premised upon a prospective fear of FGM. However, it appears to want the Board to foreclose relief in a variety of other fact patterns involving FGM.[9] The INS' arguments on this count are highly improper. Any decision the Board might make regarding hypothetical cases put forth by the INS would be pure dicta.[10] Under the venerable tradition of U.S. law, decisions are to be made upon the basis of real cases and controversies. The hypothetical scenarios posed by the INS are not before the Board, and thus are not ripe for decision. The only case before the Board is Ms. Kasinga's case. The only

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[9] For example, on p.18 of its Brief, the INS argues that FGM inflicted upon a child is not persecution, because the child "consented or at least acquiesced..." From this premise it argues that past FGM does not constitute past persecution. The INS also argues that "merely being subjected to social or family pressure or to reduced wages" for refusal to submit to FGM is not persecution. *Id.* On p.19 of its Brief, the INS contends that a society doesn't "necessarily persecute if it simply subjects such persons [who resist FGM] to ostracism or economic pressures."

[10] Dicta has been defined as: "Expressions in court's opinion which go beyond the facts before court and therefore are individual views of author of opinion and not binding in subsequent cases." BLACK'S LAW DICTIONARY, p.408 (Fifth Ed. 1979).

decision the Board is asked to make is whether a person who establishes the requisite likelihood of FGM and forced polygamy is eligible for relief.

CONCLUSION

The INS agrees that if Ms. Kasinga is credible she is eligible for the relief requested under the Refugee Act. The evidence in this case overwhelmingly establishes the Respondent's credibility. Furthermore, there is no legitimate basis for a remand for a further evidentiary hearing. A remand, which would delay a decision in her case would be especially inappropriate, given the harsh conditions of detention she has suffered, and the District Director's refusal to parole her.

Therefore, the Respondent requests that the Board review the record *de novo,* find Ms. Kasinga credible, and grant her relief on the basis of the clear probability and well-founded fear that she will suffer the egregious harms of FGM and life in a forced polygamous marriage.

Dated: March 13, 1996

Respectfully submitted,

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

AFFIDAVIT OF FAUZIYA KASINGA
A 73 476 695

I, Fauzia Kasinga, do hereby declare:

I am 19 years old. I fled my home in Togo when I was 17 to escape a forced polygamous marriage and female genital mutilation. My father had previously protected me from these atrocious practices but when he died on January 16, 1993, my father's sister became the head of the household. She sold me to a man who was more than twice my age and who already had three wives and would force me to undergo female genital mutilation. I managed to escape and am now seeking political asylum in the United States. I am submitting this affidavit to describe the conditions that I have endured in various detention centers since I entered the United States.

NEWARK INTERNATIONAL AIRPORT

I arrived in the United States on December 17, 1994 at around 4:30 pm. I was 17 years old. At the airport, I immediately told the authorities that I was seeking political asylum. The customs officer told me to wait in a small room until she had time to speak with me. When she returned, I explained that I was seeking asylum. She told me that I might go to jail. When I responded that I did not want to go to jail, she replied that I could either go to jail or back to Germany, where I stayed briefly before my arrival in the United States. After I told her that I did not want to go back to Germany, she told me that I would see an immigration counselor on Monday and that then I would be able to stay with my family. After I gave the officer my statement, she moved me into a small room with a bench, a toilet and a sink. There, the officer requested that I give her my sneakers, my belt and my jacket because, as she explained, the laces, the belt and the zippers on my jacket could be used to kill myself. Soon after, a supervisor read the story the first officer had taken from me and told me that this was no reason to be granted asylum. At around 10:00 pm that night, I was handcuffed and shackled. I began to cry. I was told that I was going to jail. I did not understand, why, if I came here for protection and did nothing wrong, I was going to jail and being punished.

ESMOR IMMIGRATION DETENTION CENTER

From the airport, I was taken to Esmor Immigration Detention Center (Esmor) in handcuffs and shackles. When I arrived, I was put in a very big room with two toilets, two sinks and a bench which wrapped around the room. The room was very cold. There were no windows except a small one in the metal door. I was told to take off all of my clothes. This was the first time in my life that I had to undress in front of a complete stranger. I was menstruating so I asked the guard if I could keep on my underwear. The guard said no. I asked if I could throw away my sanitary napkin. The guard appeared angry and told me that she did not have time for me, that she wanted to go home and that, for all she cared, I could

eat the napkin. I could see my clothes lying on the floor outside the room through the small window in the door. I was freezing. I was scared. There was nothing I could do. I sat over the toilet and shivered in the cold while I waited for whatever was to happen next.

A male officer stood at the door, looking in through the glass. I was still naked and sitting on the toilet. I was so embarrassed that I put my head on my knees to cover myself up. He brought me two slices of bread and some milk. I was very hungry since I had not eaten since the trip on the airplane. However, after I drank the milk, I felt ill, and vomited in the toilet. A female officer then came in and took me to the next room, where she told me to shower. The water was so cold that I jumped out of the shower. The officer said that she would force me to shower if I did not do it on my own. So, I showered in the cold water.

The female officer brought me some clothes. She brought me underwear that were much too big for me. The only way to keep them from falling down was to tuck them into the belt from Togo which I wear around my waist called a beas. I could tell that the underwear was used since it was stained. The officer also brought me a bra. The bra was too small. I could not even fit it around my chest. The hooks to fasten the back together were broken so that even if it had fit, I could not have closed it. I just held the bra in my fist since I could not wear it. I was given a blue uniform and used, dirty socks. The guard handed me two plastic sandals which were too big for me and were both for the right foot. When I asked for a shoe for the left foot, the guard said that those were all she had. I had to wear the sandals both made for the right foot during my entire stay at Esmor. I still had not received a sanitary napkin.

The officer then tried to put an ID bracelet around my wrist using pliers. When she stuck my skin with the pliers, I screamed from the pain and told the officer that she had hurt me. I was crying. The officer could not even apologize. All she could say was let's try that again. When I asked why the guard could not even say she was sorry for hurting me, she replied that she did not feel like apologizing and if I didn't like it I could try to beat her up. I was so surprised at her reaction, and I did not understand why she was being so mean when I had only asked her to apologize. I had been crying since I was first handcuffed and shackled. I was so scared. I had no idea what was happening to me. I just wanted to be protected, but instead, I felt like I was being punished when I had done nothing wrong.

I was taken to a cell with six beds. The officer told me that this was my new home. It was very late so everyone was asleep when I entered. Before the officer left, she gave me one sheet, one blanket, one pillowcase and a towel. A woman in my cell from Ghana, Cynthia Brown, woke up and helped me make my bed. She was the one who finally provided me with a sanitary napkin. She was the one who tried to help me and explain what was happening to me. She explained that I should call my family in the U.S. to get an attorney. When I told her that the officer who took my statement at the airport told me I would see an immigration counselor on Monday and that then I would be able to stay with my family, the woman told me that that was a lie and that they had told her the same thing. She had been there for four months.

There were many problems at Esmor, but one that was very hard on me was the difficulty I had following my religious practice. I am a Muslim, and in order to pray I need to rise before sunrise, wash my hands and feet and cover my entire body. The only part of my body that is permitted to show is my face. During Ramadan I only eat before sunrise and after sunset. During the rest of the day we must fast.

First of all I had difficulty obtaining something to cover myself when I prayed. Although I did have a sheet on my bed, the sheet I use to cover my body from head to toe needs to be clean and just for praying. Since Cynthia worked in the laundry room, I asked her if she could get me an extra sheet so that I could pray properly. She was very kind and got me one. When the officer found out I had an extra sheet, she took it away from me and Cynthia was no longer permitted to work in the laundry room.

I also had problems, rising and washing myself to pray before sunrise. I have a calendar that I keep which tells me what time the sun will rise each day. I woke up each morning before sunrise so that I could wash and pray. One day, the officers found out that some of the women had been waking up in the middle of the night to shower. The officers then announced a rule that people could not shower before 6:00 am. The morning after the rule was made, I woke up to pray before sunrise at around 5:00 am or 5:30 am and turned on the water to wash my face, my hands and my feet like I did every morning. An officer told me I could not use the shower until 6:00 am.. However, according to my faith, I need to pray before sunrise, which was earlier than that. The next morning, I again woke up before sunrise, at about the same time as the previous morning. When I turned on the water to wash my face, hands and feet, the officer again told me I could not use the shower until 6:00 am. I tried to explain that I was not showering and that I was just washing myself off so that I could pray. I even had my clothes on. I told her that I was following the rules of my religion. The officer, however, reported me to the supervisor. That morning, I was put into isolation, which the people at Esmor called BAU. I stayed alone in a small cell with only a toilet, a sink and a bed for five days. I could not shower while I was there. Food was pushed under the door to my cell. After four days in isolation, I was finally taken before a judge at Esmor. The judge explained that I was told not to use the water before 6:00. Since I did it again, I would need to stay in isolation for a total of five days. I was never given a chance to explain my side of the story. I was locked up alone when all I was doing was trying to pray.

I also had problems following my religious practice during Ramadan. I would try to save some food from breakfast, so I would have something to eat in the evening when I would break my day-long fast. One morning, I saved my egg from breakfast. The officer saw that my plate was full and asked me why I had not eaten. When I explained that I was fasting for Ramadan, she asked me where my egg was. I told her that I was saving it. The guard then she forced me to give the egg to her and stepped on it right in front of me. Luckily, the prison commissary sold soup so I had something to eat after sunset.

The food at Esmor was terrible and barely edible. As a Muslim, I am not allowed to eat pork. The workers at the prison would never tell us what type of food they were serving. Once, when I asked an officer if the meat they were serving was pork, I was told they did not serve pork. The immigrants disagreed and said that it was pork. We knew the guards often lied to us, so to be sure I did not eat pork, I never ate the meat.

I received medical assistance a few times while I was at Esmor. Once I saw the doctor because I had huge boils all over my legs and my buttocks. I went to the doctor and he drained them. One was very big and painful and I was given tylenol for that one. Another time, I saw the doctor because every time after I showered, my skin would itch so badly that I often could not sleep. When I asked the doctor what could be done to stop the itching, he told me to only shower once a week. When I told him it itched so much that I often could not sleep at night, he told me to just read my Bible when that happened. He told me that any medicine he could give me which would stop the itching would cost too much and that he would be fired for giving it to me.

Soon after I arrived at Esmor, I called my cousin who lives in Virginia. He hired an attorney for me. When my attorney came to visit me, the officer chained my right leg to the table. I cried because I felt helpless and completely under someone else's control. I had never tried to escape so I did not understand why I had to be chained to the table. When my attorney asked the officer why my leg had to be chained, the guard responded that he was just doing his job. When I finished speaking to my attorney, I left the visiting room and walked back to the dormitory. A female officer stopped me on my way back. I was subjected to a strip search. The officer made me take of all of my clothes, squat and cough. This was also very humiliating to me since before I arrived in the U.S., I never would undress before strangers.

The riot at Esmor was one of the most frightening things that occurred to me there. It occurred on June 18, 1995. The female dormitory where I slept at Esmor was next to the male dormitory. Very early in the morning on June 18, I heard loud noises coming from the male dormitory through the wall separating the female dormitory from the male dormitory. The noises became very loud. I heard windows breaking. A woman in my cell, who had previously been in another jail for three-and-a-half years, said that the noises sounded like a riot and that we should pray since this could be the end of our lives. We held each other and cried. I was very scared.

The fire alarms went off. We saw men running into the female wing. I did not know what they would do. I was scared that they might rape us. All the lights had been turned off so the dormitory was very dark. I could barely see. The men had broken the pipes and water from the pipes above our dormitory was pouring out over everything. The men yelled for us to come out. I grabbed my student ID and my Togo ID cards, my address book and some letters I received during my stay at Esmor -- from my sister in Togo, from Rudina Gergs, the woman I stayed with in Germany and from Cynthia Brown, the woman who helped me when I first arrived at Esmor, after she had been sent home. I stuffed them all into my bra

and ran to the recreation room with the other women.

From the recreation room we could see police walking on the roof holding guns. When some of the men opened the door to try to leave the facility, the police were standing there and used hoses to spray water at us to keep us inside. When we were in the hallway running back to the recreation room, we heard two gun shots coming from the recreation room. I was so scared. I thought the police were going to kill me. I was only eighteen years old and I thought I was going to die.

I ran into the commissary room with a few other people. The police were hitting people with sticks and ordering everyone to sit down. I covered my head with my arms because I was scared that they would hit my head. When a policeman tried to hit me with his stick, he struck my wrist. The police sprayed gas into the room and shut the door. I started coughing and my eyes were watering. I could not see anything. The police opened the door and began ordering people to come out of the room one-by-one. When the policeman ordered me to leave the room, he hit me again with his stick, this time on the shoulder. I tried to stand up but I slipped and fell to the ground. The officer then kicked me in my lower back. I had to crawl outside the room where I lay face down on the floor. I still could not see anything because of the gas. My hands were restrained behind my back with rubber handcuffs. The policeman helped me up and yelled to a woman that another one was coming. A woman came towards me and brought me outside. There, a female guard wiped my eyes. As I looked around, I saw many people standing outside, including immigration officers wearing green uniforms, Esmor guards and police officers. I stood outside, crying, for more than an hour.

One female police officer announced that if we had any materials with us, we should give them to her. I told her that I had put some of my belongings in my bra. Since I was handcuffed, the officer reached into my bra and took them out. She said that she would return them later. The officer took my name, but my identification, my letters from family and friends and my address book have never been returned.

Twelve immigrants were put into a van. I was very frightened. I thought that I would be brought to the airport and be sent back to Togo where I would be forced to undergo female genital mutilation and live with the man twice my age who my aunt forced me to marry. All of the women in the van were crying and screaming. A man who I could tell was an immigration officer by his green suit was driving the van. He yelled: "[y]ou fucking people, you are going back to your fucking country." I was so scared. We were not sent home, but instead were taken to Huston County Correctional Facility, a state prison in Hackensack, New Jersey.

HUSTON COUNTY CORRECTIONAL FACILITY

When we arrived at Huston County Correctional Facility on June 18, 1995, an officer said to us "[y]ou stupid people, you want to spoil our country." It was such a hateful way to talk to

us. The officers took watches from everyone who had them. When I tried to take off my watch, I realized that mine had been broken when the police officer beat my wrist with his stick during the riot at Esmor.

In this jail, we were mixed in with tough criminals. The people were always fighting and the guards rarely tried to stop them. I was even too scared to call my lawyer. Most people slept in their cells. One woman, however, slept on her mattress without blankets or sheets next to the phone. She continuously talked to herself. When other people were talking, she would curse at them because she thought that they were talking about her. One time, she beat a woman who was trying to use the phone over the head with a bucket. Finally, that woman was moved into isolation and I got up the courage to use the phone to call my attorney.

The food at Huston County Correctional Facility was very bad, and there was barely anything there I could eat. One day they served apples. I took two of them back to my cell and left them on the table overnight. When I woke up, one was gone so I hid the other one. A woman later walked into my cell and ordered me to give her my apple. When I protested, she told me that I could give her the apple or sleep with her. I was not quite sure what she meant by sleep with her. I thought that she wanted to make my roommate leave and then she would sleep in her bed. I know understand that she had sexual intentions. This woman told me that if I told the officer on her she would do what she wanted to do to me.

YORK COUNTY PRISON

From Huston we were moved to York County Prison. On Friday, June 23, 1995, twelve of us were all chained together at our feet, our hands and our waist. An officer incorrectly told us that we were going to Atlanta. I asked if that was close to Virginia since my cousin Jabar lives there. The officer told me it was a 24-hour flight from Virginia to Atlanta. I was scared. I was moving farther and farther away from my family. I felt so helpless and all alone.

We never went to Atlanta. Instead, we were moved to York County Prison, where I was put in maximum security. Upon our arrival, we were all subjected to a strip search in front of each other. I was taken to the medical room where I was allowed to shower. I was still wearing the same shoes that I was given at Esmor that were much too big and were both for the same foot.

It was at York that I was put in a cell with someone who smoked, and I began coughing and vomiting blood. When I saw a nurse, she told me that this was a smoking facility and there was nothing she could do. When I explained to the officer how much the smoke was bothering me, she too said this was a smoking facility and that there was nothing she could do. York has a non-smoking dormitory but the officers would not move me there. From June 23 until August 2, 1995 when I was moved to Lehigh County Prison, I continued to suffer from this exposure to smoke.

LEHIGH COUNTY PRISON

Early in the morning of August 2, 1995, I was told to get ready to move again. I was taken to Lehigh County Prison. It was at Lehigh that I was put in isolation for close to three weeks without ever been told why. It was also at Lehigh that another inmate tried to push herself on me sexually, and the guards dismissed my appeals to them for some protection.

I was put in isolation almost as soon as I arrived at Lehigh. I saw a nurse who took blood, gave me a tuberculosis test and took my weight. The next day, my arm was swollen where the nurse had taken the blood the previous day. The nurse told me that I would have to come back another day to have x-rays taken of my chest. On my way back from the medical room to my cell in isolation, a male officer stopped me and gave me a mask to cover my nose and mouth. He told me that I needed to wear it whenever I spoke with anyone. No one had told me why I was in isolation, or why I needed to wear this mask. When I entered my cell, the officer shut and locked the door behind me. This was very unusual. The doors to the cells were usually only shut when the men were in the area bringing out the meals. I was told that I could not leave my cell when people were around.

My food was slid under the door. No one would do my laundry which was usually done every three days. I had to wash my clothes in the sink. I was not even permitted to shower while I was in isolation. When I asked an officer to bring me soap and toilet paper, she would make me stand back far away from the door. I felt so terrible because I had no idea what was wrong with me, and what people were afraid of. At one point, I told an officer that I wanted to call my attorney. When the guard opened the door, she announced "here comes the sick girl, go away if you do not want to get the disease." I became very sad, so sad that I no longer felt comfortable using the phone. I felt so desolate, frightened, and alone.

Finally, on August 20, after 18 days alone in isolation, an officer told me to pack my belongings because I was going to join the general population. After all these days in isolation, I looked and felt horrible. I had lost 30 pounds, and my skin was so dark from the dirt because I had not been able to shower the whole time I was in isolation. I hadn't slept much, and I had spent most of my time crying. To this day I have not been told what they thought was wrong with me, or the results of the x-rays, even though during the time I was in isolation I had made a written request for information about what was wrong with me. A doctor I saw after I got out of isolation said they had no record of my x-rays, so he couldn't tell me the results.

I was finally able to call my attorney after I was let out of isolation. My attorney told me that I had a hearing scheduled for August 25th. The morning of the hearing before the immigration judge, I was trying to be courageous. But before I even had a chance to enter the courtroom, the INS attorney asked which prison I would go to after the hearing. It was as if everyone already decided I was going to lose. I had lost my courage. It was not easy to stay hopeful any more. I could not even walk from the courtroom to where I would go on

break without being put in handcuffs. Everywhere I went, I was kept in handcuffs. I had never done anything wrong so I could not understand why I was being treated like a criminal. The INS attorney was right, I did lose my hearing. I traveled back to Lehigh, in handcuffs.

When I returned to Lehigh, a woman explained to me that another woman, Shannon, who worked in the laundry room thought that I was sexy and that she wanted me to be her special friend. When I said that everyone could be my friend, the woman explained that she liked me more than a friend. I was confused. I was not sure exactly what she meant. The woman in the laundry room called me names like sexy and told me that she knew that I liked her but I just did not want to admit it. Once, she even grabbed my breast. When I told an officer what happened, the officer just said that is her style, and I shouldn't show disrespect towards her. I did not think I was being disrespectful, I just did not like what she was doing to me.

During the time I was in Lehigh, the guards would threaten isolation constantly. For example, the officers had heard that people were bringing in drugs. Everyone was then locked in their cells for three days. Even our food was brought to the cells. The officers required that we give them urine samples. When I said I wanted to talk to my attorney before I gave her my urine, the guard threatened to put me in isolation if I did not give her the urine right away. Another time I was told that I was to switch from a lower bunk to an upper bunk. I did not want to do so because I had fallen out of the upper bunk, and was frightened of sleeping in it. The guard told me that if I didn't like it, I could go back to isolation where all of the bunks are low to the ground.

YORK COUNTY PRISON

On January 23, 1996, I was moved back to York County Prison, where I was housed in maximum security until two weeks ago. Although the authorities knew I was allergic to smoke, I was again put in a smoking area when I arrived at York. It took my attorney three days of constant calls to have me moved into a non-smoking area. At York, there were frequent strip searches, which are always very humiliating to me. Once when I asked why I had to be strip searched when I hadn't gone outside, the officer told me that if I didn't want to do it, I could go to isolation. I began crying and did what she asked.

Sometimes it seemed as if the officers were mean for no reason. For example, once, I was called to the phone while I was in the middle of praying. I knew that we were not allowed to leave the dormitory with anything on our heads, but I forgot and ran to get the phone leaving the scarf around my head. The officer saw me, grabbed the scarf off of my head and threw it in the garbage. Another time when I was on the phone, the officer told me that I couldn't gaze around while I was talking, but that I had to face the wall during my conversation.

Telephone access with my attorneys has also been difficult at York. It used to be that when my attorneys called to speak to me, I would be called out to a phone in a more private area to speak with them. This phone was a normal phone line, without any time limits or interruptions. Now, only the non-immigrants are called out to use that phone. When my attorneys call, I am given a message, and I have to call my attorneys back collect, from some special collect phones. The phones which I have to use automatically disconnect after ten minutes. Also, there are several pre-recorded interruptions that break in during the call. The phones are also in a noisy area, which is not private. It is difficult to talk under these conditions. Often when the phone automatically disconnects after ten minutes, we are still in the middle of our conversation. Although I try to call back when it disconnects, if there is a line of other girls waiting for the phone, I have to wait for my turn again. Sometimes my lawyer can't wait for my call when this happens, so it is difficult to talk.

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

Dated March 9th 1996

F. Kasinga

Fauziya Kasinga

MT. SINAI HOSPITAL
A Division of Graduate Health System

March 5, 1996

Karen Musalo, Esq.
Washington College of Law
American University Washington, D.C.
4400 Massachusetts Avenue
N.W. Washington, D.C. 20016-8086

RE: KASINGA, FAUZIYA

Dear Professor Musalo:

Thank you for the opportunity to visit and make a psychiatric assessment on your client, Ms. Kasinga, who is currently detained in the York County Prison.

I visited her on Sunday morning, March 3, 1996 and I spent approximately two hours with her, (routinely initial evaluation and consultation is 45-60 minutes, but in light of distance decided to spend more time and review all pertinent issues). She is a 19 year old young African woman who was alert and expecting a psychiatrist. She was pleasant, polite and cordial and was seen in a private room for the psychiatric evaluation and interview. She went into long detail, which lasted roughly about 15 to 20 minutes, to enumerate and explain events leading to her incarceration in the United States and all her specific details corroborated with the information that you had provided for my review and which gave me the impression that she has an excellent memory span, is oriented to all three spheres, (to person, time and place), is able to recall events in details, good faculty of retaining the information and recalling the information which pretty much speaks for the integrity of her brain function at this point.

Throughout the interview she cried repeatedly at times for an extended period of time. She appeared to be extremely depressed and repeatedly stated that she does not know why she has to be punished since she had never committed any crime, except defying the sexual mutilation, being steadfast to what she has believed all along which was to think independently, being able to decide her husband at her choosing and also refusing circumcision which has been the custom of the Tchamba-Kunsurtu tribe. She has spoken with considerable pride and appears to be a person with a sense of nobility, educated, speaks quietly and well, able to comprehend and simulate information, and to develop sequences of events and recall as she speaks.

EXHIBIT 2

RE: KASINGA, FAUZIYA

Clinically she appears to be extremely depressed. Affect is depressed. Her mood is depressed, tearful. She portrayed a sense of hopelessness and helplessness. She feels at the mercy of "injustice." Sees me and others pretty much "impotent," not able to help her and not able to do anything for her. She feels that she has only one option and that is to surrender to this process. She sees no hope, and wishes to be dead.

During the interview she talked about incidents of harassments, intimidations, humiliations and sensory deprivation when she was placed in isolation in solitary confinement. She was deprived of bathing, and washing her clothes, etc. She has such a difficult time seeing herself as a person who was raised in a respectable family with aspiration, family cohesion, sense of purpose and goals, who suddenly became a subject of ridicule, humiliations and disgrace, etc.

When she was asked whether or not she had written letters to her family regarding her imprisonment, she started to cry and stated "I cannot tell them I am in prison because it will kill my mother. They think that I am in detention until my immigration status is cleared up". She was asked what would happen if she were forced to return to her native land. She went into a long pause, staring into space and said nothing. When she was asked whether or not she would do anything to harm herself if she were forced to return and live under those circumstances and go through the rituals of sexual mutilation and circumcision she started to cry and appeared to be extremely depressed, quite despaired, helpless and feeling hopeless. She started mumbling to herself how much she despised the man who her Aunt forced her to be his fourth or fifth wife for a price and stated that she would do whatever means it would take to be free from that kind of engagement. She also expressed the severe despair, helplessness and depression in this prison system. She admits to repeated nightmares and daydreaming, developing a sense of suspiciousness about the process. Although there was no evidence of paranoid thinking or delusions nor was there any evidence of thought disorder, the severity of her depression was extreme, a period of pause, and staring into space, evidence of psychomotor retardation; i.e. long pauses before answering questions, slow movement, subdued, loss of agility.

RE: KASINGA, FAUZIYA

In summary, we are dealing with a 19 year old woman who had a type of upbringing which was full of optimism and self-respect and self determination that was fostered in the first 16 or 17 years of her life by her parents. This suddenly is shattered by a forceful wish of others through intimidation, being used and the threat of circumcision and genital mutilation which not only caused her intense fear, and fear of dying, but also set her apart from all other sisters, her mother and father's standards something which was quite foreign to her upbringing and her conviction about living a life of self respect. She subsequently sought refuge to a "promise land and democracy" where her nightmare continues. First in prison in Elizabeth, she was subjected to sexual harassment, and humiliation, assault and moved from there to Hackensack then to York County, to Lehigh County and back to York County in maximum security and today when I saw her she was in a minimal security prison. Also, the repeated experience of moving from prison to prison caused her instability in her sense of object relationship.

It is the story of a 19 year old woman in the prime time of her emotional development being shattered and fragmented - her ego boundary (i.e. ability to deal with life stressors in a manner that is more productive and able to solve crisis in a timely manner when the level of pressure and frequency increases and there is less time to recover the ego boundary before fragmented) had been constantly assaulted, her sense of self-respect downgraded and the question of fairness and justice at this stage of her emotional growth are all scrambled. This experience will leave her with deep and permanent scars of bitterness and shatter her self esteem, her aspirations in the future are at stake. Sexual harassment and assault will also have a permanent effect in her future relationships if not stopped immediately. She was quite depressed feeling hopeless and helpless. She will not benefit from antidepressants or hospitalization (psychiatric hospitalization will add insult to her already injured ego and ego boundaries and self-esteem). Medication also is not indicated since her depression is reactive to multiple issues surrounding her existence and is not biochemically based.

It is my recommendation that she be removed from the prison immediately before any further damage is sustained and that she be placed in a supportive, warm and loving home atmosphere either with

a friend or relative, with intensive counselling and psychotherapy to see how much of the damage can be repaired. It is also my opinion that any furtner delay in her urgent release will increase the severity of her depression, reducing her coping ability drastically and even may lead her to suicide attempt.

Again, thank you for the opportunity to examine Ms. Kasinga. If I can be of any further assistance, please do not hesitate.

Sincerely,

Bijan Etemad, M.D.
Chairman, Department of
Psychiatry

BE/as

Curriculum Vitae
Bijan Etemad, M.D.

EDUCATION AND TRAINING

1953 - 1955	Namazee College, Iran D.N.S. Degree
1955 - 1960	Pahlavi Medical School, Shiraz, Iran M.D. Degree
1960 - 1961	Rotating Internship, Pahlavi University Hospital
1962 - Jan. to Dec.	Rotating Internship, Hamot Hospital, Erie, Pa.
1963 - 1965 Jan. to Dec.	General Psychiatry Residency, Philadelphia General Hospital Philadelphia, Pa.
1966 - 1967 (2 years)	Fellowship in Child and Adolescent Psychiatry, Philadelphia General Hospital/Hahnemann Hospital Pavilion, Philadelphia, Pa.

LICENSED

1971	States of Pennsylvania and New Jersey
CERTIFICATION	American Board of Psychiatry & Neurology American Board of Geriatric Psychiatry
BOARD ELIGIBLE	American Board of Child & Adolescent Psychiatry

PROFESSIONAL APPOINTMENTS

<u>University</u>

1968 - 1970	Instructor in Child and Adolescent Psychiatry, Temple University School of Medicine
	Staff Psychiatrist at St. Christopher's Hospital for Children
	Supervision of Child Psychiatry Residents
	Supervision of Group Therapy Sessions
	Consultant to Family Services of Philadelphia. Administer responsibility to organize treatment programs, etc.

1973 - 1977	Professor of Psychiatry, Villanova University Villanova, Pa.
1979 - Present	Assistant Professor of Psychiatry, Temple University School of Medicine Philadelphia, Pa.

Hospital

1967 - 1970	Attending Psychiatrist St. Christopher's Hospital for Children Philadelphia, Pa.
1966 - Present	Attending Psychiatrist Northwestern Institute of Psychiatry Ft. Washington, Pa.
1973 - 1977	Active Attending Psychiatrist Fairmount Institute Philadelphia, Pa.
1974 - 1989	Attending Psychiatrist Horsham Hospital Ambler, Pa.
1981 - 1983	Director of Adult Services Horsham Clinic Horsham, Pa.
1983 - 1989	Private Practice - Attending Child and Adolescent Psychiatry - Hospital and office position
1989 - Present	Director Older Adult Psychiatry Mt. Sinai Hospital Philadelphia, Pa.
Nov. 1992 - 1993	Chairman Department of Psychiatry Quakertown Community Hospital Quakertown, Pa.
July 1994 - Present	Chairman and Medical Director Department of Psychiatry Mt. Sinai Hospital Philadelphia, Pa.
April 1994 - Present	Chairman Department of Psychiatry Graduate Hospital, City Avenue Hospital and Parkview Hospital Philadelphia, Pa.

Professional Society Memberships

1. American Orthopsychiatric Assoc., since 1964
2. American Psychiatric Assoc., since 1967
3. American Geriatric Society
4. Pennsylvania Psychiatric Assoc.
5. Regional Council of Child Psychiatry
6. Philadelphia Society for Adolescent Psychiatry
7. National Council for Comprehensive Community Mental Health Centers
8. Association of Mental Health Administration
9. National Association of Private Psychiatric Hospital, Committee on Services to the Aged since 1978

Professional Activities
(Not direct patient care)

Jan. 1975 - Dec. 1976	Chairman of Philadelphia Forum of Mental Health/Mental Retardation
1970 - 1980	Member of Executive Committee Philadelphia Forum for Mental Health/Mental Retardation, Board of Directors
1976	Director of Philadelphia Health System Agency, Inc.
1976 - 1977	Director of Philadelphia Health Management Corporation, Inc.
1975 - 1976	Chairman of the Conjoint Mental Health/Mental Retardation Board
1973 - 1974	Member of Advisory Board of Marriage Council of Pennsylvania

Specific Teaching Responsibilities

Jan. 1968 - July 1969	St. Christopher's Hospital Supervision of Child Psychiatry Residents Supervision of Group Therapy Sessions

Jan. 1968 - July 1969	Philadelphia General Hospital Staff Psychiatrist of Philadelphia General Hospital
	Child Psychiatry Consultant to Department of Pediatrics (In-Patient & Out-Patient)
	Supervision of Child Psychiatry Resident and Group Therapy Sessions
	Conducting and Supervision of Group Asmatic Children
	Supervision of Child Psychiatry Residents and Group Therapy Sessions at Philadelphia General Hospital
July 1968 - Dec. 1970	Northwestern Mental Health Center Active Staff & Child Psychiatry Consultant
	Assistant Director of Geriatric Unit and Geriatric Program for Development and Treatment Program, Disposition of After-care Planning

Hospital Committees

1968 - 1974	Director, Northwestern Mental Health Center, Inc.
	Member of Executive Committee, Northwestern Mental Health Center, Inc.
	Member of Mortality Review Committee, By-Law/Committee, Nominating Committee, Representative to Medical Staff on the Board of Directors, Northwestern Mental Health Center
1974 - 1984	Director of Governing Body, Horsham Clinic, Inc.
1976 - 1979	Chairman of Finance Committee
1976 - 1977	Chairman of Utilization Review Committee
1974 - 1984	Executive Committee of Board of Directors, Horsham Clinic, Inc.

1974 - 1975	Member of Governor's Task Force, Commonwealth of Pennsylvania. Evaluating Psychiatric Services in State Psychiatric Facilities

Community Services

Active Member of the International Bahai Community and active involvement in Bahai activities both locally, nationally, and internationally and giving lectures and seminars regarding current copies of the world.

1975 - 1977	Chairman of the board of Directors of Sr. Adult Activity Center, Mont. City, Pa.

Administrative Duties

1967 - 1969	Assistant Director Geriatric Unit & Geriatric Program for Development & Treatment Program, Northwestern Institute of Psychiatry
1969 - 1980	Director of Psychiatric Affairs & Programming (Medical Director) of the Northwest Center for Community Mental Health and Mental Retardation, Philadelphia, Pa.
1968 - 1970	Director of Child Psychiatry Unit for the Handicapped Unit of St. Christopher's Hospital for Children Philadelphia, Pa.
1975 - 1981	Director of Older Adult Services, Horsham Clinic, Inc. Ambler, Pa.
1978 - Present	Medical Director, Institute on Aging Ambler, Pa.

Research Activities

Conducting an out-reach program (primary prevention for older adult) since 1968 with multiple presentation, national conventions such as American Board of Psychiatric Association.

Psychopharmacological Research with Dr. Karl Rickels, University of Pennsylvania, Philadelphia, Pa. 1964 - 1968.

Conducting Double Blind Study with Sandoz Pharmaceuticals Company on effectiveness of number of agents.

Researcher with Shering Pharmaceutical Company on new pharmacological agent.

Publications

"Frigidity" Shiraz Mental Health Journal, 1959

Drug Treatment and Depression (anti-depressant or tranquilizers?) August 28, 1967, Vol. 201, pp 675-681

"Aging" Current Psychiatric Therapy, Vol. 18, 1978, Grune & Stratton, Inc.

"Extrication from Cultisism", Current Psychiatric Therapies, Vol. 18, 1978.

"Pharmacology in Aged", Current Psychiatric Therapies, Vol. 19, 1980. Grune & Stratton.

"The Double Blind Parallel - Group Comparison of Single Bedtime Doses of Halazepam & Posebo", The Journal of International Medical Research, Vol. A, No. 5, 1980.

"An Organizational Model of a Psychiatric Hospital Program for the Elderly", The Psychiatric Hospital, Vol. 14, No. 2, 1983.

"The Role of Medicine In Psychiatry", July, 1978, Vol. 13, No. 7, pp 904-905. Archive of General Psychiatry.

National Presentations

Intensive work with autistic children and research in the autism and chromosome.

"The Role of a Child Psychiatrist with Dyslexic Children". Association for Services to Children, Tulsa, OK, 1969.

"Child Psychiatrists & Dyslexia", 1969. Trenton, N.J. National Assoc. of Opthomoligical Association.

"Community Mental Healthy Center & Community Participation". Presentation before National Association of Community Mental Health Centers, Dallas, Texas, 1970.

"An Invitation to Promton's Cocktail". The Gerontologist Vol. 17, Nov., 1977.

"Growing Old in America". American Author, Psychiatric Association, April, 1977.

"Aging Within Family & Society". A paper presentation, American Ortho Psychiatry 55th Annual Meeting, March, 1978.

"Our Searching Children", Greenacre School, Elliott, Maine, 8/10 to 8/13/78.

"Mental Health Problems of Aged in Middle Class Urban Communities" paper presentation, 11th International Congress of Journatology, Tokyo, Japan, August 20 to 25, 1978.

"Do Cults Brainwash our Children", paper presentation, American Association of Psychiatric Services for Children 1978 13th Annual Meeting, 11/8 to 11/12/78.

"Aging", Treatment paper presentation 56th Annual Meeting, American OrthoPsychiatric Association, 1979.

"Are Youths Brainwashed by Cults? Impact on American Youth and This Country's Future". 56th Annual Meeting, American Ortho Psychiatric Assoc. 1979.

"Do Cults Brainwash Out Youths", paper presentation American Psychiatric Association 132nd Annual Meeting, 1979.

"Mental Health Problems of Aging in Middle Class Urban Communities", paper presentation, 132nd Annual Meeting, American Psychiatric Assoc., 1979.

"Clinical Aspect of Cultism", paper presentation, 37th Annual Conference American Assoc. for Marriage & Family Therapy, Washington, D.C.

"Marital Health Needs of Aged in Middle Class Urban Communities, Economy of Mental Health Services", 57th Annual Meeting, American Ortho Psychiatric Assoc., paper presentation, 1980.

"Marital Therapy in Pre-Retirees", paper presentation, 37th Annual Conference American Association for Marriage &Family Therapy, Washington, D.C.

"Aging", Treatment Indications paper presentation, Ortho Psychiatric Assoc. 1979 Annual Meeting.

"Growing Old IN America", paper presentation, May 11, 1977.

"Sudden Losses Stir", Depression in the Elderly - International Association for Gerontology, paper presentation, Tokyo, Japan, 1978.

"Cultism", paper presentation. The American Assoc. of Psychiatric Services for Children, 31st Annual Meeting, 1979.

"Aging - Method of Coping", Yearly Symposium at Horsham Clinic, Ambler, Pa., Keynote Speaker and Major Presenter.

"Psychotherapy with Cult Members", Philadelphia Society for Clinical Psychologists, paper presentation, March, 1979.

"Growing Old In America", Crisis Intervention Outrage and Information of Social Network and Support System for Older Adults, a paper presentation, June, 1977.

"Do Cults Brainwash Our Youths?", paper presentation, American Assoc. of Psychiatric Services for Children 1980 32nd Annual Convention.

"Cultism - Brainwashing Our Children", paper presentation, American Assoc. of Psychiatric Services for Children, 1980 32nd Annual Convention.

"An Organizational Model Psychiatric Hospital Program for the Elderly", 48th Annual Meeting National Assoc. of Private Psychiatric Hospitals, 1981.

"Psychopharmacology and Aging", a paper presentation, International Congress of Psychiatry, 1980.

"Alcoholism & Aging", paper presentation 1982 Annual Convention, National Assoc. of Private Psychiatric Hospitals.

"Alternatives to Psychiatric Hospitalization", a paper presentation, 1983 American Ortho Psychiatric Association, Annual Convention.

Psychopharmacology and Aging", a paper presentation, International Congress of Journatology, Chech.

"Brainwashing & Cultism", a paper presentation, Chech., 1980.

"Alternative to Psychiatric Hospitalization for the Care of the Aged", a paper presentation, International Congress of Psychiatry, Vienna, Austria, 1983.

Social and Community Activities

Numerous television appearances; radio presentation such as AM Philadelphia and others on issues related to aging, cultism, private psychiatry, and public psychiatry.

Numerous newspaper articles and columns in the field of psychiatry and mental health covering a wide range of issues such as aging, cultism.

Numerous presentations at other psychiatric facilities within a 100 mile radius such as Enoch-Shepard Pratt, Carrier Foundation, Bryn Mawr College, Bryn Mawr Hospital, etc. Issues related to psychiatry.

Presentation, a Keynote Speaker at U.C.L.A. in Los Angeles, California, Department of Psychiatry "Colloquium" on Cultism and on Treatment of Cult Members, 1980.

PERSONAL DATA

Date of Birth	October 2, 1936
Citizenship	U.S.A.
Birthplace	Sari, Iran
Marital Status	Married, 3 children

REFERENCES Available upon request.