

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
PHILADELPHIA, PENNSYLVANIA

File No.: A 73 476 695

August 25, 1995

In the Matter of)
FAUZIYA KASINGA,) IN EXCLUSION Proceedings
Respondent)
)
)
)

CHARGES: (1) Section 212(a)(6)(C)(i);
(2) Section 212(a)(7)(A)(i)(1)

APPLICATION: (1) Asylum

ON BEHALF OF APPLICANT:

Eric Bowman, Esq.

ON BEHALF OF SERVICE:

Shirley Tang, Esq.

ORAL DECISION OF THE IMMIGRATION JUDGE

The applicant is an 18-year-old female, native and citizen of Togo, who last arrived in the United States on December the 17th, 1994. At that time, she did

not appear to be admissible to this country by an Immigration Inspector and therefore, was placed in exclusion proceedings with the issuance of a Form I-122.

At a prior exclusion hearing, the applicant through her attorney, denied the charge of inadmissibility through fraud, under Section 212(a)(6)(C)(i), admitting that she was an intended immigration without an immigrant visa under Section 212(a)(7)(A)(i)(1).

Applicant, today, has admitted under oath that she used a false document to attempt entry into the United States. She stated that when she arrived at the airport, however, she immediately told the Immigration Officer that the passport was not hers, the name of the passport was not hers, and that she wished to file for political asylum. When asked as to whether or not she would have continued on her way, had the Immigration Inspector allowed her to pass, the applicant said no, she just wished to apply for political asylum.

The Court is governed by the Matter of Y-G-, and based on the Matter of Y-G-, I find that the applicant did not attempt to commit a fraudulent entry in the United States, notwithstanding the fact that she was in possession of fraudulent documents.

The applicant now seeks asylum pursuant to Section 208 of the Act and withholding of deportation pursuant to Section 243(h) of the Act. In accordance with 8 C.F.R. 208.11 the applicant's request for asylum has been submitted to the Department of State's Bureau of Human Rights Democracy and Labor, the DRL. In a report dated April of 1995, the State Department has provided this Court with a profile of asylum claims and country conditions in the country of Togo.

Beside considering this document, the Judge also the credibility of the information that an alien presents in her request for asylum and determines any discretionary aspects, which may exist in the alien's case.

The alien bears the evidentiary burdens of proof and persuasion in applications for withholding of deportation or asylum. An alien who is seeking withholding of deportation from any country must show that such alien's life or freedom would be threatened in such a country on account of race, religion, nationality, membership in a particular social group or political opinion. In order to make this showing the alien must establish a clear probability of persecution on account of one of those enumerated grounds. This clear

probability standard requires a showing that it is more likely than not that the alien would be subject to persecution.

Under the Refugee Act of 1980, withholding of deportation is mandatory, thus, once an alien has established qualification for that relief and if he or she is not ineligible under provisions of Section 243(h)(2) of the Act, the relief must be granted and that individual cannot then be returned to the country where he or she would face persecution.

The alien may, however, be deported to another country under certain circumstances. In this regard withholding of deportation differs from asylum, the granting of which is discretionary.

An alien who is seeking such a discretionary grant of asylum must demonstrate status as refugee as defined by Section 101(a)(42) of the Act. That definition includes the requirement that the alien demonstrate unwillingness or inability to return to his or her country because of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion. The requirement is met by a showing of circumstances under which a reasonable person would fear

such persecution.

Accordingly, in determining whether the alien is eligible for asylum, the alien's subjective mental state, must be considered against the background of circumstances prevailing in the alien's home country. The objective reasonableness of the alien's fear can be based on what happened to others similarly situated as reported in current Department of State reports or other reliable sources. In some cases, the only available evidence of the alien's subjective fears may be the alien's own testimony itself. It can suffice where the alien's testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of the alien's fears.

This does not mean, however, that introduction of supporting evidence is merely at the alien's option. Generally, such evidence must be presented when available. This is particularly true when the basis of the alien's asylum claim is based on allegations of general conditions in that person's country of origin. In such cases corroborate background evidence may well be essential.

Finally, not just any fear of persecution will suffice to sustain the alien's burden. The objectively

reasonable possibility of persecution on account of the grounds specified in Section 101(a)(42)(A) of the Act, and the alien's subjectively reasonable fear of experiencing that persecution both must be established.

In addition to establishing eligibility for a grant of asylum, an applicant for asylum has the burden of establishing that the favorable exercise of discretion is warranted. To meet that burden, the alien should present evidence on any positive factors that the alien believes will support the favorable exercise of discretion.

Assuming eligibility for asylum has been established, another factor to be considered in the exercise of discretion is whether the alien has relatives legally in the United States or other personal ties to this country which would motivate her to seek asylum here rather than elsewhere. The extent of the alien's ties to other countries in which the alien does not fear persecution should also be examined.

In the instant case the applicant has testified that she's age 18, and a member of the Pchumba Kunsuntu tribe which is in the Northern part of Togo. The applicant states that her mother is member of Bandi tribe which is from the Northern part of Benin.

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Applicant states that her mother lives in Togo, however, does not know exactly where.

Applicant states that after her father passed away, her aunt and other members of her family drove her mother away from the family house, because this is the tradition of the tribe.

Applicant states that she has four sisters in Togo and also two brothers. Four sisters are all married; none of them have been circumcised and all have various professions.

Applicant states that her father did not allow any of her sisters, including herself, to be circumcised. Applicant further submitted that her sisters were not circumcised because they married men outside of their tribe. The applicant stated initially, that no man of her tribe would ever marry a woman who has not been circumcised.

The applicant states that she has come to the United States because women in Togo when they reach the age of 15 are circumcised. Her father was able to prevent the circumcision, and now that he is dead there is no one to save her from a fate that she does not wish to endure.

In June of 1994, the applicant returned for

Summer vacations from her studies in school in Ghana, where she had spent approximately 12 years, ~~Her~~ aunt told her that she did not think it was a wise idea that she continue her studies, and her aunt wanted her to be circumcised.

The applicant testified that her aunt sought out her mother who she had previously chased out of her household, and told her mother that she wanted her daughter, the applicant, to drop out of school; and that she, the aunt, wanted the applicant to marry an individual who was 45 years of age. Apparently, her mother showed no opposition to both of these wishes.

The applicant states that she was married on October 17th, 1994. The applicant states that the tribe made an exception in her case, allowing her to marry an individual without first being circumcised. Initially, the applicant said that this was an impossibility, that all men from her tribe would only marry an individual who was already circumcised. Why this exception was given to the applicant really was not ^{ADDRESSED} in the entire *TESTIMONY*. ^{AND}, does not make too much sense to this Court.

Applicant stated that she was supposed to be circumcised after her marriage. She did not want to go

through the circumcision, so her sister, on October the 19th, took her by car to Acra, Ghana, across the border. She flew from Acra to Germany. In the airport the applicant states she asked a question of a complete stranger, the question being, "Where^{do} African people live in Germany," or in ~~what~~ town in Germany, and the applicant fortuitously was asked by the~~s~~ stranger whether or not the applicant wanted to live with this German individual in her home. Applicant stayed with this individual by the name of Regina Gorges for approximately two months.

Applicant then testified that while on a train going to a shopping area, she then, fortuitously, met an individual by the name of Charlie. She told the story of her plight to Charlie. Charlie arranged to get her a passport which he said was his sister's passport^{for} which the applicant paid \$600. The applicant used the passport to come to the United States and to apply for political asylum.

Applicant states that she cannot go back to Togo for fear of circumcision. The applicant also states that she never asked for refugee status in either Ghana or Germany. And she was not able to give any reason for not doing so.

The credibility of the applicant is of extreme importance in assessing the alien's claim. I have taken into account the lack of rationality, the lack of internal consistency and the lack of inherent persuasiveness in her testimony, and have determined that this alien is not credible.

The applicant testified that her mother was driven out of her house by her aunt and relatives as per tribal custom, at death of the applicant's father. The applicant stated that her mother disappeared ~~to~~ parts unknown. Then, the applicant states that her aunt, the person who drove her mother out of her house, consults with her mother, arranges for a rendezvous with her mother and tells her mother that she is not going to allow the applicant to continue school. ^{SHE TOLD HER} that she ~~was~~ arranging a marriage for the applicant with a man who is 45 years of age.

The Court wonders why would an aunt who has just dispossessed an individual from the house, seeks such counsel of ~~the~~ individual. It just doesn't make sense.

Applicant also states ^{THAT} she doesn't know the whereabouts of her mother. Her aunt, who dispossessed the mother, does know where she is. Her sister knows where she is. And the applicant stated that she never

inquired of either of these people as to where her mother is located.

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 can this tribal law be with so many exceptions being allowed for that rule.

The applicant's fortuitous meeting of a German lady at the airport who allowed her to live for two months in her house, again, is beyond belief. Likewise the chance encounter with Charlie on the train who provided the documentation to leave the country is incredible.

Eligibility for asylum may be established by a showing of past persecution coupled with either a showing of likelihood of present or future persecution or for humanitarian reasons.

In the instant case, assuming that I believe the applicant's story, which I do not, the record before me today does not reveal any past or future or present

persecution if the applicant were returned to Togo.

The applicant cannot be characterized as being persecuted for being a member of a particular social group. Apparently, all tribal women from certain Northern tribes, allow themselves to be circumcised. This is part of the tribal culture for a few ethnic groups. The State Department shows that even though only a few ethnic groups participate in this ritual, fifty percent of women from Togo are circumcised.

The applicant did not ask for any help from the government to prevent the circumcision. There's no evidence that the police could^{NOT} or would not have stepped in if the applicant adamantly stated that she would not be circumcised^{AND} that she would not be married to this man. She's not being singled out for circumcision. Apparently all members of her ethnic^{TRIBAL} group are being pressured into being circumcised.

I would put this case in the same category as the forced sterilization of Chinese woman, with the China, one couple/one child policy. In that case, *HOWEVER* the government dictated that the sterilization be carried out. In the instant case the government of Togo has nothing to do with the circumcision.

The applicant could have left her tribe; she

could have relocated with her mother who is of a different tribe. No testimony has been given today whether or not the mother's tribe believes in circumcision. The applicant could have gone to Ghana and asked for political asylum, a safe refuge. The applicant could have likewise asked for asylum or their equivalent of asylum in Germany. She did none of this.

Therefore, for those reasons I find that the applicant has not perfected a prima facie case for the grant of asylum.

An applicant for asylum has established a well-founded fear of persecution where she can show that her fear is both subjectively genuine and objectively reasonable. The latter requires a showing by credible, direct and specific evidence that would support a reasonable fear that the alien faces persecution. In view of this standard of proof she must demonstrate: (1) that she possesses a belief or characteristic the persecutor seeks to overcome in others by means of punishment of some sort; (2) that the persecutor is aware or could become aware that she possesses this belief or characteristic; (3) that the persecutor has the capability of punishing her; (4) that the persecutor has the inclination to punish her.

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Therefore, I find that the applicant has not established a well-founded fear of persecution, as defined, if the applicant were returned to Togo.

Accordingly, her application for asylum will be denied. Because the applicant has failed to establish a well-founded fear of persecution as is necessary in order to be statutorily eligible for asylum, it is unnecessary to consider whether the applicant merits such relief as a matter of discretion.

Furthermore, because she has failed to establish eligibility for asylum she has moreover, failed to meet the higher standard of proof necessary for withholding of deportation to Togo.

Accordingly, the following orders will be entered:

ORDER:

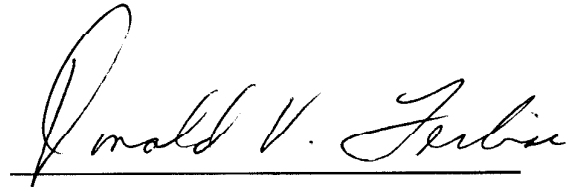
IT IS ORDERED that the applicant's request for asylum under Section 208 of the Immigration and Nationality Act be and is hereby denied.

IT IS FURTHER ORDERED that the applicant's application for withholding of deportation to Togo under Section 243(h) of the Immigration and Nationality Act be

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and is hereby denied.

IT IS FURTHER ORDERED that the applicant be
excluded and deported from the United States.

A handwritten signature in cursive script, reading "Donald V. Ferlise", is written over a solid horizontal line.

Donald V. Ferlise
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE DONALD VINCENT FERLISE, in the matter of:

FAUZIYA KASINGA

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Philadelphia, PA

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office of
Immigration Review.



Lisa G. Lyne
(Transcriber)

Deposition Services, Inc.
600 East Jefferson Street
Suite 103
Rockville, Maryland 20852
(301) 738-1042

September 22, 1995

(Completion Date)