U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted], T[redacted] **A[redacted]**

Date of this notice: 4/21/2008

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
MILLER, NEIL P.

Files: A[redacted] - Philadelphia, PA
A[redacted]
A[redacted]

Date: APR 21 2008

In re: T[redacted] B[redacted]
[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Dennis Mulligan, Esquire

ON BEHALF OF DHS: Jean L. Celestin
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, a mother ("lead respondent") and her two minor daughters, are all natives and citizens of Guinea. By a decision dated August 2, 2007, an Immigration Judge granted the two co-respondents' asylum pursuant to section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158.[1] In that same opinion, the Immigration Judge pretermitted the lead respondent's asylum application, but granted her application for withholding of removal under 241(b)(3) of the Act ("withholding of removal"), 8 U.S.C. § 1231(b)(3). The Department of Homeland Security ("DHS") has filed a timely appeal of the Immigration Judge's decision. The lead respondent has also filed a cross-appeal. The request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e). We adopt and affirm the decision of the Immigration Judge, except as described below, and the record will be remanded to the Immigration Court for the sole purpose of updating the background checks for the respondents. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

Initially, we shall address the timeliness of the respondents' applications for asylum.[2] Every applicant for asylum bears the burden of demonstrating by clear and convincing evidence either that her application was filed within 1 year of her arrival to the United States or that she qualifies for an exception to the filing requirement. *See* section 208(a)(2)(D) of the Act; 8 C.F.R. § 1208.4(a)(2). On appeal, the lead respondent argues that she merits an exception to the filing requirement. We agree. Specifically, we find the public expression of the lead respondent's opposition to the practice

[1] This opinion amended a decision issued by the Immigration Judge on March 19, 2007.

[2] We find no clear error in the Immigration Judge's findings of fact. *See* 8 C.F.R. § 1003.1(d)(3).

of female genital mutilation ("FGM") that resulted from her daughters' removal from Guinea after their victimization had an impact upon the objective reasonableness of her fear of future harm and, as such, constitutes a changed circumstance within the meaning of 8 C.F.R. § 1208.4(a)(4)(i)(B). *See* Tr. at 46-47, 49-50, 60-62, 91. Furthermore, insofar as record establishes that the lead respondent requested asylum approximately 6 months after the co-respondents' arrival to the United States, we conclude that she submitted her application within a reasonable period of the "changed circumstances." *See* I.J. at 3 (Aug. 2, 2007); Exh. 1B; Exh. 1C; Exh. 2; *see also* 8 C.F.R. § 1208.4(a)(4)(ii). Accordingly, we find that the respondents are all eligible to seek asylum. We will now consider whether the Immigration Judge erred in granting the respondents applications for relief.

If an applicant is able to establish that she has been persecuted in the past on account of a protected ground, such a showing will give rise to a rebuttable presumption that she is entitled to asylum. *See* 8 C.F.R. § 1208.13(b)(1). However, this presumption is still rebuttable. *See* 8 C.F.R. §§ 1208.16(b)(1)(i), (ii). In this case, we find that the past harm suffered the respondents rises to the level of past persecution. *See* Tr. at 44, 46-50, 60-62, 64, 77-83; Exh 6A; Exh. 6B; Exh. 6C; Exh. 9; Exh. 10 at 11; *see also* Exh. 2; Exh. 2A; Exh. 3; Exh. 3A; Exh. 4AExh. 4B; *see generally* Exh. 11; Exh. 15. Moreover, although the record indicates that the respondents may no longer possess a well-founded fear of future persecution, we find that they are nonetheless eligible for a grant of asylum based on humanitarian grounds. *See* 8 C.F.R § 1208.13(b)(1)(iii)(A); *Matter of S-A-K- and H-A-H-*, 24 I&N Dec. 464 (BIA 2008); *see also Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007); *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007). All three of the respondents have suffered an atrocious form of persecution and, in view of the aggravating circumstances presented here, they should not be expected to return to Guinea. We further find no discretionary grounds on which to deny them asylum.

Based on these considerations, the following orders will be entered.

ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: The lead respondent's appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD