

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW IMMIGRATION COURT
FORT SNELLING, MINNESOTA**

File Numbers: A206-124-952 (Lead))
A206-124-953 (Rider))

Date: 3-4-2020

In the Matter of:)

_____ and)

_____)

Respondents.)

IN REMOVAL PROCEEDINGS

Charge:

INA § 237(a)(1)(B) of the Immigration and Nationality Act ("INA" or the "Act"), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, the Respondents have remained in the United States for a time longer than permitted.

Applications:

Asylum under INA § 208, Withholding of Removal under INA § 241(b)(3); and Relief under the Convention Against Torture.

ON BEHALF OF RESPONDENTS:

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ON BEHALF OF THE DHS:

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WRITTEN DECISION OF THE IMMIGRATION JUDGE

I. Background

_____, Respondent, is a 46-year-old female and a native and citizen of Djibouti. See Ex. 2. _____ Respondent, is a 48-year-old male

and a native and citizen of Djibouti.¹ Respondents entered the United States as B-2 nonimmigrant visitors on June 12, 2013. Ex. 1.

On October 31, 2013, Respondent submitted an affirmative Form I-598 Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture Act (“CAT”) to United States Citizenship and Immigration Services (“USCIS”). See Ex. 2. On December 23, 2013, the Department of Homeland Security (DHS) commenced removal proceedings with the filing of a Notice to Appear (“NTA”) after the Asylum Office referred her case to the Immigration Court. See Ex. 1.

On July 23, 2015, Immigration Judge Phillip T. Williams of the Baltimore Immigration Court found Respondent removable and denied Respondent’s application for asylum by way of written decision. Ex. 7. Respondent appealed to the Board of Immigration Appeals (“BIA”) and, in decision dated February 27, 2017, the BIA dismissed Respondent’s appeal. Ex. 9. In March of 2017, Respondent filed a motion to reconsider with the BIA. Ex. 10. On July 13, 2017, the BIA issued a decision denying Respondent’s Motion to Reconsider. Ex. 12. On August 11, 2017, Respondent filed a motion to reopen proceedings with the BIA based on an ineffective assistance of counsel claim, arguing that previous counsel failed to present evidence of Female Genital Mutilation (“FGM”).² Ex. 13. By decision dated December 1, 2017, the BIA *sua sponte* granted the motion and remanded Respondent’s removal proceedings to the Immigration Judge.³ Ex. 15. In February 2020, Respondent filed a motion for change of venue to the Fort Snelling Immigration Court, which was subsequently granted on March 3, 2019. See Ex. 17.

II. Evidence Presented

A. Testimony

The Court took additional testimony from Respondent on December 10, 2019. Respondent testified about her life in Djibouti, the harms she suffered as a child and adult, and her fears of returning to Djibouti.

B. Documentation

¹ All reference to Respondent concern the lead female Respondent (A206-124-953). The co-respondent (A206-124-953) is the lead Respondent’s husband and is a derivative of lead Respondent’s asylum application. The co-respondent does not seek relief separate from the lead respondent’s application.

² The Court takes administrative notice of the definition of FGM as one was not included in the record. Female genital mutilation, also known as female genital cutting, “refers to all procedures involving partial or total removal of female genitalia or other injury to female genital organs for any cultural, religious or otherwise nontherapeutic reasons.” *Refugee Health Guidelines: Female Genital Cutting*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/immigrantrefugeehealth/guidelines/domestic/general/discussion/female-genital-cutting.html>.

³ The undersigned Immigration Judge has familiarized himself with the record in this case pursuant to 8 C.F.R. § 1240.1(b).

- Ex. 1: Notice to Appear, [REDACTED], dated December 24, 2013;
Ex. 1A: Notice to Appear, [REDACTED] Abdi, dated December 24, 2013;
Ex. 2: Respondent [REDACTED] Form I-589 Application for Asylum and Withholding of Removal;
Ex. 2A: Affidavit of [REDACTED];
Ex. 3: Respondent's Documents in Support of Asylum Application, Tabbed A-F, filed January 15, 2014;
Ex. 4: Respondent's Additional Documents in Support of Asylum Application, Tabbed A-B, Filed March 14, 2014;
Ex. 5: Respondent's Additional Documents in Support of Asylum Application, filed April 7, 2014;
Ex. 6: Transcript of Proceedings, 181 pages;
Ex. 7: July, 23, 2017 Memorandum of Decision and Order of the Immigration Judge (IJ) denying Respondent's applications for Asylum, Withholding of Removal, and Protection under CAT, and removing Respondent to Djibouti;
Ex. 8: Respondent's Appellate Brief, filed October 23, 2015;
Ex. 9: BIA Decision and Order, dismissing appeal, dated February, 27, 2017;
Ex. 10: Respondent's Motion to Reconsider, filed March 29, 2017;
Ex. 11: DHS's Opposition to Motion to Consider, April 5, 2017;
Ex. 12: BIA Decision and Order, dismissing motion to reconsider, dated July 13, 2017;
Ex. 13: Respondent's Motion to Reopen, filed August 11, 2017;
Ex. 14: Respondent's Exhibits in Support of Motion to Reopen, August 11, 2017;
Ex. 15: BIA Order Granting Motion to Reopen, dated December 1, 2017;
Ex. 16: Motion for Change of Venue, filed February 7, 2019;
Ex. 17: Order Granting Change of Venue, dated March 7, 2019;
Ex. 18: Revised I-589 Application, filed November 11, 2019;
Ex. 19: Proposed Exhibit List and Exhibits in Support of Respondent's Pre-Hearing Brief, filed November 11, 2019;
Ex. 20: Respondent's Pre-Hearing Brief, filed November 12, 2019.

III. Credibility

Respondent filed her applications for relief after May 11, 2005, and thus, the REAL ID Act credibility standards apply. INA § 208(b)(1)(B). Under this standard there is no presumption of credibility and the Court considers the totality of the circumstances in making its determination. *Id.*; see *Fesehay v. Holder*, 607 F.3d 523, 526 (8th Cir. 2010). Relevant factors include:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . , the

internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim

INA § 208(b)(1)(B)(iii); see also Matter of J-Y-C-, 24 I&N Dec. 260, 262-63 (BIA 2007). While minor and isolated discrepancies in the applicant's testimony are not necessarily fatal to credibility, omission of key events coupled with numerous inconsistencies may lead to a finding that the applicant is not credible. Matter of A-S-, 21 I&N Dec. 1106, 1109-10 (BIA 1998). Testimony is not considered credible when it is inconsistent, contradictory with current country conditions, or inherently improbable. Matter of S-M-J, 21 I&N Dec. 722, 729 (BIA 1997). An adverse credibility finding must be supported by "specific and cogent" reasons that have a legitimate nexus to the finding in the case. A-S, 21 I&N Dec. at 1109-10. Specific, cogent reasons include presenting testimony that does not match the alien's application or the testimony of other witnesses. Litvinov v. Holder, 605 F.3d 548, 555 (8th Cir. 2010).

In the instant case, the court finds Respondent's testimony regarding her FGM claim to be credible. Respondent presented testimony that was generally consistent with her written submissions and was corroborated by evidence in the record including country condition reports. See Ex. 19. Respondent submitted medical evidence corroborating her testimony that she was subject to Type III FGM. Id. at 4, 6.

The Court recognizes that the previous Immigration Judge found Respondent incredible in her first proceedings. However, Respondent's critical history of FGM was omitted from the prior claim. Respondent stated in her affidavit that her previous attorney did not explore either her childhood or whether she was circumcised. Ex. 19 at 2. Thus, the previous Immigration Judge addressed credibility as to claims other than FGM. The Eighth Circuit has accepted partial findings of credibility in similar circumstances. See Hassan v. Gonzalez, 484 F.3d 513, 518 (8th Cir. 2007) (rejecting the government's argument that the respondent's FGM claim must fail based on the IJ's adverse credibility determination with respect to a different claim based on interclan marriage, and proceeding to find past persecution in the form of FGM based on a letter from respondent's physician, country reports, and the respondent's own testimony). As the Court does not doubt the credibility of Respondent's FGM claim, it will now proceed to address that claim on the merits.

IV. Findings of Fact

Respondent was born on October 25, 1973 in Djibouti, Djibouti and is a member of the Samaroon tribe. Respondent is Muslim. Respondent's father passed away when she was very young and her mother was unable to care for her due to her mental illness. When she was seven years old, Respondent was sent to live with distant relatives who were members

of a different tribe. The distant relatives forced Respondent perform household chores like cooking over gas a gas stove, cleaning the home, washing clothes, and carrying heavy water and flour. Respondent suffered domestic abuse by the distant relatives—they beat her and hit her face daily. One beating was so severe that Respondent required stitches. Respondent attempted to run away from the family, but a dog chased and bit her. Due to these injuries, Respondent cannot walk for long distances or stand for a prolonged period of time.

Respondent married Rider Respondent on February 16, 2001. The family expected Respondent to work for them even after she married. Because she was afraid to say no, Respondent continue to work for the family without pay.

Furthermore, the family subjected Respondent to Female Genital Mutilation (“FGM” or “circumcision”) when she was eight years old. Examinations by medical professionals find that Respondent’s circumcision is consistent with a Type III female genital mutilation. The circumcision was performed without pain medication or anesthetic. Respondent’s legs were bound after the procedure, as is customary of Type III FGM. During the time that her legs were bound, Respondent fell while attempting to use the bathroom and the fall resulted in her stitches ripping. Because of this, Respondent underwent a second procedure. In 2001, when Respondent married her husband, Rider Respondent, she underwent a third procedure in order to slightly open the circumcision. The circumcision was very painful, and Respondent still suffers complications with her menstrual cycle as well as a loss of sensation. Memories from the procedures are greatly distressing to Respondent.

Respondent and Rider Respondent have one daughter, Oulmalkaire Abdourahman Omar, who was born on February 22, 2003 in Djibouti, Djibouti. Oulmalkaire currently resides in Djibouti with Rider Respondent’s parents. Respondent denounces the practice of FGM and continues to make it known that she does not want her daughter to undergo FGM. At the time Respondent fled Djibouti, her daughter had not been circumcised. Respondent does not believe her daughter has been circumcised since she left, but she is uncertain. Respondent is fearful that family members in Djibouti will seek to have her daughter circumcised.

V. Relief

A. Asylum

i. Legal Standard

The applicant carries the initial burden of proof to establish his or her eligibility for asylum. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a). To establish eligibility, an applicant must meet the definition of a “refugee,” defined as an individual who is unwilling or unable to return to his or her country of nationality because of past persecution or because he or she has a well-founded fear of future persecution on account of his or her race, religion, nationality,

membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). The harm must also be inflicted by the government or actors the government is “unwilling or unable to control.” Cubillos v. Holder, 565 F.3d 1054, 1057 (8th Cir. 2009) (citing Flores-Calderon v. Gonzalez, 472 F.3d 1040, 1043 (8th Cir. 2007)). If the applicant can establish that he or she suffered past persecution, then he or she is entitled to rebuttable presumption that his or her fear of future persecution is “well-founded.” 8 C.F.R. § 1208.13(b)(1). The government can rebut this presumption if a preponderance of the evidence shows either: (a) that there has been a “fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” in his or her native country; or (2) that he or she “could avoid persecution by relocating to another part” of the country and that “it would be reasonable to expect the applicant to do so.” 8 C.F.R. § 1208.13(b)(1)(i)-(ii); see also Bushira v. Gonzales, 442 F.3d 626, 631 (8th Cir. 2006); Matter of D-I-M-, 24 I&N Dec. 448, 450-51 (BIA 2008).

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an applicant who establishes statutory eligibility for relief. See INS v. Cardoza-Fonseca, 480 U.S. 421, 441 (1987); Matter of Mogharrabi, 19 I&N Dec. 439, 447 (BIA 1987).

ii. Past Persecution

a. Level of Harm

The Eighth Circuit has defined past persecution as “the infliction or threat of death, torture, or injury to one’s person or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion.” Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010) (quoting Davila-Mejia v. Mukasey, 531 F.3d 624, 628 (8th Cir. 2008)). The protected ground must be “at least one central reason” for the persecution in cases governed by the REAL ID Act. INA § 208(b)(1)(B)(i). Respondent must show more than just some link between the persecution and the protected characteristic, but rather provide evidence—either direct or circumstantial—that the persecutor was motivated to harm the applicant because of her possession of a protected characteristic. INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992).

Persecution within the meaning of the INA “does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional.” Matter of V-T-S-, 21 I&N Dec. 792, 798 (BIA 1997). Rather, “persecution is an extreme concept.” Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004). The Eighth Circuit and the BIA have held that the range of procedures collectively known as female genital mutilation rises to the level of persecution and so may be the basis for an asylum, withholding of removal, or CAT claim. See Hassan v. Gonzales, 484 F.3d 513, 517 (8th Cir. 2007); Matter of Kasinga, 21 I&N Dec. 357, 365 (BIA 1996); see also Fesehay v. Holder, 607 F.3d 523, 528 (8th Cir. 2010).

Respondent submitted medical evidence showing she underwent FGM. Ex. 19 at 4, 6. Specifically, Dr. Amina. M. Warfa, MD, stated Respondent's physical exam was "consistent with Type [III] female genital mutilation, per World Health Organization (WHO) classification." *Id.* at 6. Additionally, certified nurse-midwife, Christine Rangen, stated Respondent's physical exam was "consistent with a Type IIIb⁴ female circumcision according to the ... [WHO] classification system." *Id.* at 4. The WHO describes FGM as comprising of procedures that "intentionally alter or cause injury to the female genital organs for non-medical reasons." Ex. 19 at 77. According to the WHO, of the four major categories of FGM, Type III, also known as infibulation, is the most severe alteration of the genitalia. Ex. 19 at 77. The U.S. Department of State describes Type III as "the excision (removal) of part or all of the external genitalia (clitoris, labia minora and labia majora) and stitching or narrowing of the vaginal opening leaving a very small opening, about the diameter of a matchstick, to allow for the flow of urine and menstrual blood." *Id.* at 74. Respondent testified to receiving this procedure as an eight-year-old child. According to Respondent's affidavit, the circumcision was conducted without any pain medication or anesthetic. Ex. 19 at 1. Respondent testified her feet were bound together after the initial circumcision. *Id.* Respondent further testified that she fell and ripped her stitches which lead her to undergo a second procedure. *Id.* According to the affidavit, after her marriage, Respondent underwent another procedure "to open the circumcision slightly." *Id.* Respondent continues to suffer from the impact of FGM in the form of menstrual complications and loss of feeling in that area of her body. *Id.* Therefore, the Court finds that the harm Respondent suffered as a young girl in Djibouti in the form of FGM rises to the level of persecution in accordance with Eighth Circuit precedent. *See Hassan*, 484 F.3d at 517; *see also Fesehay*, 607 F.3d at 528.

b. Particular Social Group

The Court must now determine whether the harm was inflicted on account of a protected ground. An applicant who suffered FGM in the past must show that she was persecuted on account of her membership in a particular social group. *See Hassan*, 484 F.3d at 518; *see also Matter of A-T-*, 24 I&N Dec. 617, 623 n. 7 (A.G. 2008) (Deciding [this] issue – and defining the particular social group of which the applicant is a part is fundamental to the analysis which bears the burden of proof and what the nature of that burden is."). Suffering FGM in the past does not *per se* establish the elements of past persecution. *See Fesehaye v. Holder*, 607 F.3d 523, 528 (8th Cir. 2010) (denying asylum despite uncontroverted evidence that the respondent had been subject to FGM because the respondent failed to prove her identity and nationality and thus could not establish membership in a particular social group).

⁴ The Court takes administrative notice of FGM Type IIIb definition as one was not included in the record. FGM Type IIIb is a subdivision of Type III which the WHO describes as the "[r]emoval and repositioning of the labia majora." *Types of Female Genital Mutilation*, WORLD HEALTH ORGANIZATION, <https://www.who.int/sexual-and-reproductive-health/types-of-female-genital-mutilation>.

In assessing whether an applicant has met her burden to show that she suffered FGM on account of her membership in a particular social group, the Court looks not to the size of the proposed group but rather to the level of its cohesion. See Malonga v. Mukasey, 546 F.3d 546, 554 (8th Cir. 2008). In FGM cases, gender alone may be legally cognizable as a social group if the prevalence of FGM among women nationwide indicates a high level of cohesion. See Mohammed v. Gonzalez, 400 F.3d 785, 797 (9th Cir. 2005) (finding that “Somali females” constitute a particular social group “[b]ecause the practice of female genital mutilation in Somalia is not clan specific, but rather is deeply embedded in the culture throughout the nation” as evidenced by the fact that 98% of Somali females suffer FGM); accord Hassan, 484 F.3d at 518 (finding that “all Somali females have a well-founded fear of persecution based solely on gender given the prevalence of FGM.”). Both the Eighth Circuit and the BIA have held that FGM is practiced in large part to overcome female sexual characteristics. See Hassan, 484 F.3d at 518 (citing Mohammed, 400 F.3d at 797); Kasinga, 21 I&N Dec. at 367.

Respondent claims asylum on account of her membership to three proposed particular social groups: (1) Djiboutian women; (2) female members of Samaroon tribe; and (3) Djiboutian females who lack nuclear family. Ex. 20 at 11. The Court finds that Respondent suffered past persecution on account of her status as a member of the first proposed particular group, Djiboutian women. Because gender is an immutable characteristic, the gender-based social group of Djiboutian women can be cognizable for asylum. Acosta, 19 I&N Dec. at 233. This group is particular and socially distinct because women in Djibouti are easily recognized as a discrete class of persons, and the limits of the group are clearly defined. See Hassan, 484 F.3d at 518 (relying on the high prevalence of FGM in Somali women to hold that “Somali females” could be a particular social group and would not be overboard). The same reasoning used in Hassan applies in the present case, due to the high rate of FGM that persists in Djibouti. The United States Department of State 2018 Human Rights Report for Djibouti found, though a Ministry of Health Survey, “78 percent of women between the age of 15 and 49 had undergone FGM/C.” Ex. 19 at 97. Therefore, the Court finds Respondent was persecuted in the past on account of her membership in a particular social group, women in Djibouti.

The court need not address the other particular social groups claimed by Respondent as it finds the first group viable. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach).

c. Government Unwilling or Unable to Protect

In order to qualify for asylum, the persecution must be inflicted by the government of a country or by persons or an organization that the government is unwilling to enable or unable to control. Quinteros v. Holder, 707 F.3d 1006, 1009 (8th Cir. 2013). To establish persecution by private behavior, the applicant must show more than just that the

government has difficulty controlling private behavior, rather she must demonstrate that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims. Salam v. Holder, 687 F3d 991, 995 (8th Cir. 2012).

Respondent's country condition report submissions indicate that the Djiboutian government is unwilling or unable to stop the practice of FGM. The United States Department of State acknowledges that there is a law prohibiting FGM in Djibouti, "but it was a problem." Ex. 19 at 97.

According to a 2012 Ministry of Health survey, 78 percent of girls and women between the ages of 15 and 49 were subject to FGM/C. According to the UNFD, infibulation, the most extreme form of FGM/C, with a prevalence rate of 67.2, continued, although with declining frequency. The law sets punishment for conviction of FGM/C at five years' imprisonment and a fine of one million DJF (\$5,650), and NGOs may file charges on behalf of victims. The law also provides for up to one year's imprisonment and a fine of up to 100,000 DJF (\$565) for anyone convicted of failing to report a completed or planned FGM/C to the proper authorities; however, *the government had punished no one under this statute by year's end*.

Id. (emphasis added). The Report further states that there is "inadequate government action for prosecution and accountability" with regard to FGM. Id. It was also stated that "some small subsections of the population travel to surrounding countries to have FGM/C preformed." Id.

For the above reasons, the Court finds the Djiboutian government is unwilling or unable to protect Respondent from persecution she faces based on her membership in a particular social group.

iii. Well-Founded Fear of Future Persecution

Because Respondent has satisfied her burden of showing that she suffered past persecution on account of a protected ground, she is entitled to a presumption of a well-founded fear of future persecution on the basis of her claim. 8 C.F.R. § 1208.13(b)(1). To overcome this presumption, the DHS now bears the burden of showing either a "fundamental change in circumstances" or that she "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(i)-(ii). The Court finds the DHS has not rebutted that presumption by a preponderance of the evidence. See 8 C.F.R. § 1208.13(b)(1)(i).

a. Fundamental Change in Circumstances

The DHS has not established by a preponderance of the evidence that there has been a fundamental change in circumstances that undermines Respondent's presumption of a well-founded fear of future persecution based on her membership in the particular social group of "Djiboutian women." The DHS points to Respondent's 18-year-old daughter remaining uncircumcised in Djibouti as evidence of a fundamental change in circumstances. However, the DHS did not provide further evidence or argument related to this claim. The Court notes that reaching the age of 18 does not preclude the risk of future FGM. In fact, one recent estimate by the Department of State shows the percentage of females in Djibouti between the age of fifteen and forty-nine who have undergone female mutilation reaches 78 percent. Ex. 19 at 97. Therefore, Respondent's daughter could still be subject to FGM despite her age.

The Court also notes that it is not Respondent's daughter's asylum claim before the Court, but Respondent's asylum claim that is before the Court. The 8th Circuit has held that an applicant may not establish a derivative claim based upon the applicant's child's fear of persecution. Gumaneh v. Mukasey 535 F.3d 785 (8th Cir. 2008) (that case dealt with a Gambian mother who had been subject to FGM and who based her claim on fear that her children would be subject to FGM as well.) By the same logic, the fact that Respondent's daughter has not undergone FGM, does not necessarily mean Respondent will not undergo FGM again. Therefore, the claim must be evaluated based on Respondent's well-founded fear, not on her daughter's fear. The fact that Respondent's daughter remains in Djibouti is not entirely dispositive of Respondent's well-founded fear of future persecution, which is detailed above.

Moreover, the U.S. Department of State 2018 Human Rights Report for Djibouti continues to show serious and widespread problems for Djiboutian women such as: "discrimination in access to jobs, different (de facto) legal rights than men; inheriting less land than men; a secondary role for women in public life; *widespread FGM in girls*; lack of reporting of rape to police; lack of effective enforcement of rape laws; a lack of laws against spousal rape; and anecdotal evidence of widespread, seldom-reported sexual harassment." Ex. 19 at 96-98. As referenced above, Djibouti has a law against genital mutilation, but the government has not punished anyone under this statute. Id. at 97.

The Court also recognizes that FGM can be performed again in the future upon marriage and/or childbirth. The fact that Respondent had previously been the victim of FGM would not and should not, by itself, rebut the presumption of Respondent's well-founded fear of future persecution. Respondent could be subject to the practice again. Matter of A-T-, 24 I&N Dec. 617, 621 (A.G. 2008). The Respondent testified that she had undergone female genital mutilation on three different occasions. Ex. 19 at 1. Further FGM is not outside of the realm of possibilities if Respondent is returned to Djibouti. Indeed, Respondent testified that after partial reopening of FGM, there is a possibility the procedure will be conducted

again. Any argument that Respondent would unquestionably be spared from FGM for a fourth time because she has already been subject to the practice is unfounded. Since a well-founded fear may exist even where there is as little as a one-in-ten chance of future persecution, the Court finds that the Respondent has established this chance of future persecution and that the DHS has failed to rebut it. INS v. Cardozo-Fonseca, 480 U.S. 421, 431 (1987).

b. Internal Relocation

The DHS also has not met its burden to overcome the presumption that Respondent cannot reasonably relocate within Djibouti. There is no evidence in the record to overcome the presumption. The Court takes administrative notice that Djibouti is a small country of approximately 23,200 square kilometers, slightly smaller than the state of New Jersey, and has a population of approximately 921,800 people.⁵ In Re Kasinga, 21 I&N Dec. 357, 367 (BIA 1996) (comparing the size of Togo to West Virginia). The BIA has held that no internal relocation is possible where an individual has suffered persecution in the form of FGM in a small country where FGM is widely practiced. Id. at 357. The current country condition reports show a 78 percent prevalence of FGM among Djiboutian with a lack of appropriate government action to curb the wide practice of the procedure. Ex. 19 at 97. Altogether, the DHS has not shown enough evidence to overcome the presumption that relocation to Djibouti is impossible and unreasonable. 8 C.F.R. § 1208.13(b)(1)(i)(B). The Court finds Respondent cannot possibly or reasonably relocate within Djibouti. Based on the above, the DHS has failed to rebut the presumption of a well-founded fear. The Court finds Respondent has met her burden to show there is a reasonable possibility that she would suffer persecution if she were returned to Djibouti. 8 C.F.R. § 1208.13(b)(2)(i).

Given the above, the DHS has failed to rebut the presumption of a well-founded fear based on Respondent's membership in the particular social group of "women in Djibouti." Respondent has demonstrated that she suffered past persecution based on a protected ground and that she has a well-founded fear of future persecution if removed to Djibouti. The Court therefore grants Respondent's asylum application under INA § 208.

iv. Discretion

Finally, the Court finds Respondent merits asylum as a matter of discretion. She has no criminal history or other negative issues pertaining to her FGM claim that would preclude a favorable exercise of the Court's discretion. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987) ("The danger of persecution should generally outweigh all but the most egregious adverse factors). In light of all of the above, the Court concludes Respondent merits a grant of asylum under INA § 208.

⁵ Djibouti, The World Factbook 2020, CENTRAL INTELLIGENCE AGENCY, 2020, at <https://www.cia.gov/library/publications/the-world-factbook/geos/dj.html>.

B. Withholding of Removal⁶

Because the Court is granting Respondent's asylum application under INA § 208, the Court does not reach the issue of relief under withholding of removal under INA § 241(b)(3).

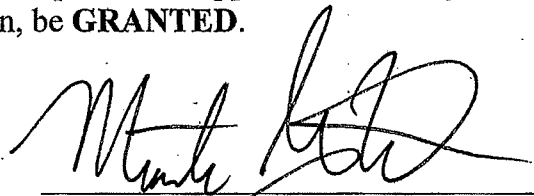
C. Convention Against Torture

Because the Court is granting Respondent's asylum application under INA § 208, the Court does not reach the issue of relief under Article III of the Convention Against Torture.

ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum under INA § 208 be **GRANTED**.

IT IS FURTHER ORDERED that Rider Respondent's application for asylum, as a derivative of Respondent's asylum application, be **GRANTED**.



Monte G. Miller

United States Immigration Judge

⁶ The Court notes that the DHS was unopposed to a grant of withholding of removal at the December 10, 2019 hearing. Nevertheless, the Court finds Respondent eligible for asylum.