Female Genital Mutilation (FGM) is a practice that has been globally condemned due to its severe consequences on the physical and mental health of affected women and girls. It involves the partial or total removal of external female genitalia for non–medical reasons and is considered a violation of human rights and an extreme form of gender discrimination.

In many countries where FGM is practiced, women and girls are exposed to conditions of violence, discrimination, and gender inequality. FGM is carried out for various reasons such as cultural traditions, misguided religious beliefs, control of female sexuality, and preservation of virginity until marriage, among others. However, its consequences are devastating and include extreme physical pain, long-term health problems, complications during childbirth, psychological trauma, and difficulties in sexual relationships.

Understanding Female Genital Mutilation and Asylum Claims

In the context of seeking asylum in the United States, many women and girls have sought protection due to persecution and danger related to FGM in their countries of origin. FGM is considered an act of persecution in many cases, as women and girls who oppose this practice face severe repercussions, including threats, physical and emotional violence, social exclusion, and more. Therefore, the asylum request based on FGM seeks to protect these individuals from irreparable harm and ensure a safe environment where they can live free from violence and discrimination.

To substantiate an asylum claim based on FGM, an applicant must demonstrate that they have been subjected to or have a

well-founded fear of future persecution due to their status as a member of a particular social group, such as women or girls from specific cultural or ethnic backgrounds where FGM is practiced. Additionally, the applicant must establish that the government of their home country is unable or unwilling to protect them from such persecution.

FGM is recognized by most federal circuits and the Board of Immigrations Appeals (BIA) as a form of persecution. The BIA, for example, has characterized FGM as a form of “sexual oppression … to ensure male dominance and exploitation,” practiced in order to “overcome sexual characteristics of young women … who have not been, and do not wish to be, subjected to FGM.” Therefore, if an asylum applicant successfully shows a well- founded fear of FGM if she returns to her home country, that alone would satisfy the well- founded fear element of an asylum claim.

However, because female genital mutilation (“FGM”) is a type of harm that generally is inflicted only once, the BIA argued that the procedure itself will normally constitute a “fundamental change in circumstances” such that an asylum applicant no longer has a well-founded fear of persecution based on the fear that she will again be subjected to FGM. Therefore, during many years, many women could not qualify for asylum protection.

In 2008, the U.S. Attorney General (AG) vacated that decision from the BIA in which it denied protection (here, withholding of removal) to a woman from Mali who had suffered past female genital cutting. In 2009, the BIA clarified in a new ruling that women who have suffered past female genital cutting may qualify for refugee protection.

In any event, it should be noted that an asylum applicant who has established past persecution but no longer has a well-

founded fear of persecution may nevertheless warrant a discretionary grant of humanitarian asylum based not only on compelling reasons arising out of the severity of the past persecution, but also on a “reasonable possibility that he or she may suffer other serious harm” upon removal to his or her country. The humanitarian asylum is therefore a useful tool for asylum based on FGM.

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