

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BALTIMORE, MARYLAND

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IN THE MATTER OF

IN REMOVAL PROCEEDINGS

[REDACTED]

Case # [REDACTED]

RESPONDENT

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**CHARGE:**

**Immigration and Nationality Act (“INA”) § 237(a)(1)(C)(i)**, as amended, in that after admission as a nonimmigrant, the Respondent failed to maintain the nonimmigrant status in which she was admitted or to comply with the conditions of such status.

**APPLICATIONS:**

Withholding of Removal pursuant to INA § 241(b)(3); Voluntary Departure pursuant to INA § 240B(b).<sup>1</sup>

**APPEARANCES**

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<sup>1</sup>At her hearing on December 22, 2010, the Respondent requested that her application for asylum also be considered in light of changed circumstances that arose during the course of proceedings. However, by the terms of the remand from the Board of Immigration Appeals (“BIA” or “Board”), the Court was instructed to consider only the Respondent’s application for withholding of removal. As a result, the Court declined to reconsider the Respondent’s eligibility for asylum.

<sup>2</sup>The Court also acknowledges the assistance of Bryan Lonagan, Esq. and Sarah L. Cave, Esq., who acted as of counsel on behalf of the Respondent.

## MEMORANDUM OF DECISION AND ORDER

### I. Procedural History

The Respondent is a thirty-two-year-old female, native and citizen of Mali. She entered the United States on October 4, 2000 as a nonimmigrant visitor. She subsequently received permission to attend the Lado International College in Silver Spring, Maryland, and on July 2, 2001, she changed her immigration status from visitor to student. She then enrolled in Montgomery College in Rockville, Maryland, but did not receive authorization to do so. She also engaged in unauthorized employment in violation of the conditions of her student visa.

On September 17, 2003, the Respondent was served with a Notice to Appear (“NTA”) which charged her with removability pursuant to **INA § 237(a)(1)(C)(i)**. The Respondent appeared before the Court and conceded all the allegations contained in the NTA as well as the charge of removability. On May 12, 2004, the Respondent filed an application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) before the Court. In the alternative, the Respondent requested voluntary departure. The Respondent appeared before the Court again on January 19, 2005 and provided testimony in support of her application for relief. The Respondent’s uncle also provided testimony on her behalf. At the close of the hearing, the Court issued a decision denying the Respondent’s claims for asylum, withholding of removal, and protection under the CAT and granting the Respondent’s alternative request for voluntary departure.

The Respondent filed a timely appeal before the Board of Immigration Appeals (“BIA” or “Board”). In a published decision issued on September 27, 2007, the Board affirmed the conclusions and reasoning of the Court and dismissed the Respondent’s appeal. **Matter of A-T**, 24 I&N Dec. 296 (BIA 2007). The Respondent filed a motion for reconsideration before the Board, which was denied in an unpublished order on April 18, 2008. However, on September 22, 2008, the Attorney General vacated the decision of the BIA. **Matter of A-T**, 24 I&N Dec. 617 (AG 2008). The Attorney General did not disturb the Board’s conclusions that the Respondent was not eligible for asylum and protection under the CAT, **id.** at n.1, but he remanded the record to the BIA for reconsideration of the Respondent’s eligibility for

withholding of removal. The Board requested briefing from the parties regarding their positions on remand. At the request of both parties, the Board then issued a decision remanding the Respondent's case to the Court for further fact-finding and the entry of a new decision regarding the Respondent's eligibility for withholding of removal. Matter of A-T-, 25 I&N Dec. 4 (BIA 2009). In particular, the Board emphasized the necessity for the Respondent to "clearly indicate what enumerated ground(s) she is relying upon in making her claim, including the exact delineation of any particular social group(s) to which she claims to belong." Id. at 10. The Board also observed that the Respondent should "identify, to the extent possible, who was responsible for her past persecution and, if necessary, from whom she fears future harm." Id.

On December 22, 2010, the Respondent appeared before the Court and provided additional testimony in support of her eligibility for withholding of removal.<sup>3</sup> At the close of the hearing, the Court reserved its decision to further review the testimony and evidence presented. After having an opportunity to do so, and with the benefit of written closing statements from both parties, the Court's decision and order now follow.

## **II. Evidence Presented**

### **A. Testimonial Evidence**

Although not repeated below, the Court has considered the testimony of the Respondent and her uncle, as summarized in the Court's January 19, 2005 decision. On remand, the Respondent testified as follows: She was born in Bamako, the capitol of Mali. She is a member of the Bambara tribe, and her family adheres to the Wahabi faith. The Wahabi are Muslims who have very strict beliefs, especially with regard to women.

As a child, the Respondent was only allowed to attend school and help her mother with the housekeeping. Her father would not permit her to have friends or leave the home, and she was required to cover her entire body, including her face. In contrast, the Respondent's brothers

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<sup>3</sup>As noted supra at note 1, the Respondent also argued that her circumstances had changed following the Board's decision to remand her case to the Court. As a result, she contended that she was eligible for asylum in addition to withholding of removal. However, because the Board's order confined the scope of inquiry before the Court to the Respondent's eligibility for withholding of removal, the Court declined to reconsider the Respondent's eligibility for asylum. As a result, the Court did not accept testimony from the Respondent relating to changed circumstances that might render her eligible for asylum.

were allowed to “almost do whatever they want[ed],” including beating the Respondent. Her father believed that a woman should stay at home, practice her husband’s faith, take care of her children, and submit to her husband in all matters. She testified that not all Bambara families in Mali held such restrictive views about women, but that most Bambara families, especially the Wahabi, shared her father’s beliefs. She stated that a stranger would know that her father held restrictive views about women because she and her mother were not allowed to leave the house even for special occasions like weddings or the birth of a child. She does not know how many Bambara families would similarly prohibit women from attending such celebrations. She testified that most women in Mali have to cover their whole bodies and that all of the women in her tribe did so. When the Respondent was growing up, she always obeyed her father because she was afraid that if she did not she would be beaten.

When the Respondent was an infant, she was subjected to female genital mutilation (“FGM”). Her mother told her that her father decided to have her undergo the FGM ritual. She stated that FGM is very common in Mali and is practiced outside the Bambara tribe. The Respondent testified that FGM is performed in an effort to control women and to ensure that they are faithful in marriage. She is opposed to FGM because of the continuing pain and suffering FGM has caused her. She experiences severe pain when she has her period or when she has intercourse, and she had difficulty giving birth to her children.

The Respondent is single. She has two sons and one daughter, all of whom were born in the United States. At the time of the hearing, the Respondent’s eldest son was four years old, her middle son was three years old, and her daughter was ten months old. The Respondent’s daughter has not been subjected to FGM, but she fears that if she returns, her father will order her daughter’s circumcision. The Respondent’s brother has two daughters, both of whom were circumcised when they were very young even though the Respondent’s brother opposed FGM. If the Respondent told her father that she did not want to have her daughter circumcised, the Respondent believes that she would be ignored and ostracized by the entire community, including people outside her family. She also believes that she might be beaten or jailed and that her father would separate her from her daughter permanently by sending the Respondent to his village, Sands, which is a one-day journey from her father’s current house. If her daughter were

not taken away from her, her daughter would also be ostracized. She stated that she would not be able to take her daughter and hide, since Mali is small and almost everyone knows each other, so her family would be able to find her. She has told her mother that she opposes FGM, but she believes that she would ultimately be powerless to prevent her family from performing FGM on her daughter. As a result, if she were returned to Mali, she would not voice her opposition to her daughter's circumcision.

The Respondent also fears that if she were returned to Mali, she would be forced to marry her first cousin. Her father arranged the marriage years ago and would force the Respondent to marry her cousin, despite the fact that she has already had three children with another man. She does not believe that he would change his mind if she married her boyfriend, who is the father of her children. If she returned to Mali unmarried, she would not be allowed to marry her boyfriend, and if she married him in the United States, her father would not consider the marriage to be valid. The Respondent's father has given his word that she will marry her cousin, and he wants the Respondent to obey his wishes. She stated that her father arranged the marriage in order to keep her in the family so he can continue to control her life. The Respondent testified that in her culture it is considered shameful to have children out of wedlock, but her mother told her that her cousin is still willing to marry her. The Respondent's father sent her mother to the United States to bring the Respondent back to Mali in 2007, but the Respondent refused to go to Mali and told her mother that she opposed the marriage. Her mother told her that it was not her decision and that she had to marry her cousin, but returned to Mali without the Respondent.

The Respondent is opposed to marrying her cousin because she believes that a woman should be able to choose her own husband. She does not believe that close blood relations should marry each other and is concerned that if she had children with her cousin, they would have birth defects. She also grew up in the same house as her cousin and thinks of him as a brother. As a result, the idea of marrying him is repulsive to her. If she were married to her cousin, she testified that she would have no choice in how to live her life. She could not use birth control without his permission, choose the names of her children, or choose her religion. If she refused to have sex with him, he could beat her, and the police would refuse to intervene because they do not interfere in "family business." She would not be an equal in the relationship

and would not be allowed to work without her husband's permission. She believes that her cousin would not want her to work because most men believe that women should be at home to take care of the children. She could not continue her studies or decide where to live. Her cousin would also be free to take other wives, since in the Muslim religion, men "are supposed to have four wives." She could not seek divorce because women who divorce their husbands are ostracized. If she refused to marry her cousin, she could be beaten and would be ostracized to such an extent that she would be unable to make a living.

The Respondent testified that although her cousin is thirty-eight years old, he continues to live in a house with the Respondent's family. She stated that if she were returned to Mali, she would have to marry her cousin because there are no other options for single women. She believes that she would have to live with her family because she could not find employment to provide for herself and her children as a single woman. She works as a pharmacy technician in the United States, but stated that she could not obtain a similar job in Mali because there are no pharmacies; instead, there are open markets where people come to sell their goods. She does not believe she could find a job selling things because people usually sell their own goods. She also stated that selling items at market would not provide enough to support her family. The Respondent's father and two of her brothers work for the government, but she does not believe she could find a job with the government that would provide enough income to establish her own household. She stated that she could not live with a family member because her father is the firstborn. As a result, he has authority over all his siblings, including his brothers, and as a result her aunts and uncles would not be willing to cross his will, even if they disagreed with him. The Respondent has never seen or heard of any family member who refused to do what her father told them to do. She was not aware of any shelter or charity in Mali that could provide her with food and housing.

#### **B. Documentary Evidence**

The following exhibits were received and admitted into evidence prior to the Court's January 19, 2005 decision:

##### **Exhibit 1:**

- Notice to Appear, dated September 17, 2003

**Respondent's Group Exhibit 1:**

- Respondent's I-589 Application for Asylum and Personal Statement

**Respondent's Group Exhibit 2:**

- A. Respondent's Medical Report
- B. Letter from Respondent's Cousin and Fiancé
- C. Letter from Respondent's Mother
- D. Letter from Respondent's Father, dated January 2, 2004
- E. Letter from Respondent's Father, dated November 18, 2003
- F. Letter from CEO of Malian Association for the Monitoring and Orientation of Traditional Practices (AMSOPT)
- G. Birth Certificate of Respondent's Father
- H. Birth Certificate of Respondent's Aunt
- I. Birth Certificate of Respondent's Cousin and Fiancé
- J. Documents Addressing FGM in Mali
  - Nirit Ben-Ari, *Villagers Join Campaigns Against Female Genital Mutilation*, AFROL NEWS (June 7, 2004), <http://www.afrol.com/articles/12885>
  - UN Media IRIN, *FGM in Mali Connected to Pre-Islamic Traditions*, AFROL NEWS, <http://www.afrol.com/articles/13372>
  - Amnesty International, *Female Genital Mutilation: Information by Country*, <http://www.amnesty.org/ailib/intcam/femgen/fgm9.htm>
  - U.S. Department of State, *Mali: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) (2001)*
  - WHO, *Female Genital Mutilation (2000)*
- K. *Violence Against Women in Mali: A Report to the Human Rights Committee*
- L. A.B. Coulibaly & AMAP Dioila, *The Wife Did Not Agree*, L'ESSOR (Dec. 20, 2004), [http://www.essor.gov.ml/jour/cgi-bin/view\\_article.pl?id=8489](http://www.essor.gov.ml/jour/cgi-bin/view_article.pl?id=8489)
- M. Maimouna Danioko, *Love by 17 Stab Wound*, MALIKOUNDA (Dec. 23, 2004), <http://www.malikounda.com/forum/viewtopic.php?t=1133>
- N. Mh Traore, *Did H.S. Really Have a Choice?*, L'ESSOR (Feb. 16, 2004)
- O. Ilene R. Prusher, *Stuck in Afghan Jail, Prisoners of Tradition*, CHRISTIAN SCI. MONITOR, Apr. 28, 2004, at 15
- P. Djelika Togola, *Violence Against Women: A Challenge for Our Time*, Bamako Evening (Apr. 2, 2004), [http://www.maliweb.net/news/news\\_arc.php?postdate=2004-04-02](http://www.maliweb.net/news/news_arc.php?postdate=2004-04-02)
- Q. U.S. Department of State, 2003 Country Reports on Human Rights Practices: Mali

The following exhibits were received and admitted into evidence on remand:

**Respondent's Group Exhibit 1 on Remand:**

- R. Respondent's Amended I-589 Application for Asylum
- S. Respondent's Affidavit

- T. Affidavit of Mountaga Toure, Executive Director of the Malian Association for the Protection and Promotion of the Family
- U. Affidavit of Hanny Lightfoot-Klein, Expert on FGM
- V. Medical Examination of Respondent
- W. Psychological Evaluation of Respondent
- X. Affidavit of Heather Day
- Y. Affidavit of Laura Merriman
- Z. Letter from Respondent's Mother, dated November 15, 2010
- AA. U.S. Department of State, 2009 Country Reports on Human Rights Practices: Mali
- BB. U.S. Department of State, 2008 Country Reports on Human Rights Practices: Mali
- CC. U.S. Department of State, 2005 Country Reports on Human Rights Practices: Mali
- DD. Immigration and Refugee Board of Canada, Mali: Information on the Muslim Faith and Forced Marriage (Oct. 9, 1997)
- EE. Immigration and Refugee Board of Canada, Mali: Prevalence of Forced Marriages and the Consequences of Refusing (Mar. 12, 2007)
- FF. U.N. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations on Mali (May 3, 2007)
- GG. U.N. Committee on the Elimination of Discrimination Against Women, Concluding Comments: Mali (Feb. 3, 2006)
- HH. World Health Organization, Eliminating Female Genital Mutilation: An Interagency Statement (2008)
- II. World Health Organization, Female Genital Mutilation: Key Facts (May 2008)
- JJ. Center for Reproductive Rights, Laws and Policies Affecting Their Reproductive Rights: Mali (2003)
- KK. Center for Reproductive Rights, Reproductive Rights of Young Girls and Adolescents in Mali: A Shadow Report (1999)
- LL. Organisation Mondiale Contre la Torture, Mali - Violence Against Women (Mar. 25, 2003)
- MM. Journal of International Criminal Justice, Advancing International Criminal Law: the Special Court for Sierra Leone Recognizes Forced Marriage as a "New" Crime Against Humanity (2008)
- NN. Studies in Family Planning, Marriage Law and Practice in the Sahel (Nov.-Dec. 1991)
- OO. The Guttmacher Report on Public Policy, Delayed Marriage and Abstinence-Until-Marriage: On a Collision Course? (June 2004)
- PP. Equality Now Submission to the U.N. Human Rights Committee (March 2003)
- QQ. Organisation Mondiale Contre la Torture, Violence Against Women in Mali: A Report to the Human Rights Committee
- RR. Organization for Economic Cooperation and Development, Atlas of Gender and Social Development: How Social Norms Affect Gender Equality in Non-OECD Countries (2010)
- SS. Fatoumata Sire Diakite, Prostitution in Mali (Feb. 1999)



- TT. World Health Organization, Female Genital Mutilation Fact Sheet (Feb. 2010)
- UU. World Health Organization, Female Genital Mutilation and Obstetric Outcome: WHO Collaborative Prospective Study in Six African Countries (2006)
- VV. World Health Organization, Measuring Sexual Health: Conceptual and Practical Considerations and Related Indicators (2010)
- WW. World Health Organization, A Systematic Review of the Health Complications of Female Genital Mutilation Including Sequelae in Childbirth (2000)
- XX. News Reports Addressing Forced Marriage in Mali
  - Voice of America News, *Mali Muslims Protest Increased Rights for Women* (Aug. 26, 2009)
  - IRIN, *West Africa: Cross-border FGM/C on the Rise* (Oct. 17, 2008)
  - IRIN, *Mali: Female Circumcision and Early Marriage Violate Human Rights, Women Activists Say* (June 14, 2005)

### III. Statement of Law

Withholding of removal, in contrast to asylum, confers only the right not to be deported to a particular country rather than the right to remain in the U.S. See INS v. Aguirre-Aguirre, 526 U.S. 415 (1999). To establish eligibility for withholding of removal from a country, an alien must demonstrate that her “life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” INA § 241(b)(3). Specifically, the alien must establish that it is more likely than not that she will be subject to persecution if returned to the country from which she claims protection. 8 C.F.R. § 1208.16(b)(1)(i); see also INS v. Stevic, 467 U.S. 407, 429-30 (1984); INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987). An alien cannot establish that her “life or freedom would be threatened” within the meaning of the Act if she could avoid the threat by relocating within her country and it would be reasonable for her to do so. 8 C.F.R. §1208.16(b)(2). In determining whether relocation is a reasonably available option, the Immigration Judge must consider all the circumstances, including “whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.” 8 C.F.R. § 1208.16(b)(3).

Where the alien shows that she suffered past persecution on the basis of her race, religion, nationality, membership in a particular social group, or political opinion, it is presumed that the alien is eligible for withholding of removal. 8 C.F.R. § 1208.16(b)(1)(i). However, this presumption may

be rebutted where the DHS demonstrates by a preponderance of the evidence that either there has been a fundamental change in circumstances such that the alien's life or freedom would no longer be threatened on account of one of the five protected grounds, or that the alien could reasonably avoid the threat by relocating within the country. 8 C.F.R. § 1208.16(b)(1)(i)(A)-(B). Moreover, if the alien's fear of future persecution "is unrelated to" her past persecution, the alien retains the burden of demonstrating that it is more likely than not that she would suffer future harm. 8 C.F.R. § 1208.16(b)(1)(iii). The BIA and Attorney General have suggested that any past persecution suffered by an alien is "related" to her fear of future persecution if the harm feared would be inflicted on account of the same statutory ground. See Matter of A-T-, 24 I&N Dec. 617, 622 (AG 2008); Matter of A-T-, 25 I&N Dec. 4, 7-8, n.6 (BIA 2009).

i. **Credibility and Corroboration**

An alien requesting withholding of removal bears the evidentiary burden of proof and persuasion. 8 C.F.R. § 1208.16(b). The Board has recognized the difficulties an applicant may face obtaining documentary or other corroborative evidence to support her claim of persecution. Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989). As such, unreasonable demands are not placed on the applicant to present evidence to corroborate particular experiences (e.g., corroboration from the persecutor). See Matter of S-M-J-, 21 I&N Dec. 722, 725 (BIA 1997). Uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for withholding of removal. 8 C.F.R. § 1208.16(b). However, where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence must be provided as long as the applicant has the evidence or can reasonably obtain it. see Matter of S-M-J-, 21 I. & N. Dec. at 725.

In applications for withholding of removal, the Court generally must make a threshold determination of the alien's credibility. Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998); see also Matter of Pula, 19 I&N Dec. 467 (BIA 1987); Matter of Vigil, 19 I&N Dec. 572 (BIA 1988). The REAL ID Act of 2005 amended various sections of the Immigration and Nationality Act relating to the adjudication of applications for asylum and withholding of removal. Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005). For applications initially filed on or after May 11, 2005, credibility is determined based on the "totality of the circumstances and all relevant factors,"

including (1) demeanor, candor, or responsiveness, (2) the inherent plausibility of the testimony, (3) consistency between oral and written statements, (4) internal consistency of the testimony, (5) consistency with country conditions and other evidence of record, and (6) any other inaccuracies or falsehoods in the testimony. INA §§ 241(b)(3)(C), 208(b)(1)(B)(iii).

**ii. Persecution**

In order to establish a claim for withholding of removal, an applicant must demonstrate that the harm she fears constitutes persecution under the INA. The Board has interpreted “persecution” to include serious threats to an individual’s life or freedom, or the infliction of significant harm on the applicant, as a means of punishing that person for holding a characteristic that the persecutor seeks to overcome. Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Persecution is an “extreme concept” that involves the infliction or threat of death, torture, or injury to one’s person or freedom, Li v. Gonzales, 405 F.3d 171, 177 (4th Cir. 2005), and persecution within the INA does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993). Indeed, persecution “must rise above unpleasantness, harassment and even basic suffering.” Nelson v. INS, 232 F.3d 258, 263 (1st Cir. 2000). Nevertheless, instances of harm are considered in the aggregate, and even where an applicant only provides evidence of instances of discrimination and harassment, such instances may cumulatively rise to the level of persecution in rare cases. Matter of O-Z- & I-Z-, 22 I&N Dec. 23 (BIA 1998).

**iii. Particular Social Group and Nexus**

Membership in a particular social group is one of the five enumerated grounds upon which an applicant may base her claim for withholding of removal. 8 C.F.R. § 1208.16(b). The Supreme Court and BIA interpret the phrase “particular social group” to mean a group of persons who all share a common, immutable characteristic. See, e.g., INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of Acosta, 19 I&N at 211. This shared characteristic “must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” Matter of Acosta, 19 I&N Dec. at 233. The common characteristic may be as innate as sex, color, or kinship ties, or as subtle as a shared past experience and will be determined on a case-by-case basis. Id.

Furthermore, the Board has held that to qualify as a particular social group for purposes of asylum and withholding, the group in question must “have particular and well-defined boundaries[] and [] possess a recognized level of social visibility.” Matter of S-E-G-, 24 I&N Dec. 579, 582 (BIA 2008); see also Matter of A-M-E & J-G-U-, 24 I & N Dec. 69 (BIA 2007); Matter of C-A-, 23 I & N Dec. 951 (BIA 2006). To meet the social visibility requirement, a social group must be “perceived as a group by society,” taking into consideration the country of concern and the persecution feared. Matter of S-E-G-, 24 I&N Dec. at 586-87. The Board has also observed that social visibility will generally make members of a particular social group “readily identifiable to those who would be inclined to persecute them.” Matter of A-T-, 24 I&N Dec. 296 (BIA 2007). In essence, to meet the social visibility requirement, a proposed social group must possess traits which, if identified, would render members of the social group subject to persecution.

A social group must also meet the requirement of particularity in order to form a basis for protection under INA § 208. This requirement is met if the social group in question “can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” Matter of S-E-G-, 24 I&N Dec. at 584. While the size of the proposed group is a relevant factor, the central inquiry in determining whether the particularity requirement has been met is whether the description of the group is amorphous, indeterminate, subjective, or inchoate. Id. at 584-86. The Board has found a lack of particularity where members of a group “make up a potentially large and diffuse segment of society” and the motivations of the persecutor “could arise from motivations quite apart” from membership in that group. Id. at 585.

The Fourth Circuit Court of Appeals has recently held that “young, Americanized, well-off, Salvadoran male deportees with criminal histories who oppose gangs” do not constitute a particular social group because many of the characteristics that define the group are not immutable and do not provide a clear benchmark for determining group membership. Lizama v. Holder, No. 09-2027, 2011 WL 149874 (4th Cir. 2011) (citing Matter of A-M-E- & J-G-U-, 24 I&N Dec. at 75-76). In contrast, under Fourth Circuit precedent “family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses” constitute a viable particular social group. Crespin-Valladares v. Holder, No. 09-1423, 2011 WL 546531 (4th Cir. 2011). This is in part

because family membership is immutable, socially visible, and meets the particularity requirements of the BIA. Id.

An applicant for withholding of removal must demonstrate that the persecution she fears would be inflicted “on account of” her race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(b)(2)(i)(A); 8 C.F.R. § 1208.16(b). Even treatment that is regarded as “morally reprehensible” is not “persecution” within the meaning of the Act unless it occurs “on account of” one of the five enumerated grounds. Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997). Therefore, the applicant must demonstrate that her race, religion, nationality, particular social group, or political opinion would be “at least one central reason” for the persecutor’s actions against the applicant. INA § 208(b)(1)(B)(I); INS v. Elias-Zacarias, 502 U.S. 478 (1992). The persecutor’s motive is critical and the applicant “must provide *some* evidence of it, direct or circumstantial.” Elias-Zacarias, 502 U.S. at 483.

#### IV. Findings of the Court

As a preliminary matter, the Court finds that the Respondent was credible. Her testimony on remand was consistent with the testimony she provided in 2005 and with her written statements. Her account was also consistent with evidence in the record regarding country conditions, which confirms the prevalence of FGM and forced marriage in Mali. Moreover, she provided extensive corroboration in support of her account, including physical and psychological examinations. See Respondent’s Group Exhibit 1 on Remand Subexhibits V and W. Finally, she was responsive and candid, even when acknowledging facts detrimental to her claims. The Court thus has no reason to question the veracity of the Respondent’s account.

The Respondent argues that she is a member of a particular social group composed of “Bambaran women in families that subscribe to restrictive practices.” She contends that she suffered FGM on account of her membership in this group and she would be subjected to a forced marriage<sup>4</sup> in the future on account of her membership in this group. Moreover, because

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<sup>4</sup>Notably, the Respondent does not argue that she would be subject to recircumcision upon return to Mali. See Matter of A-T-, 24 I&N Dec. 617, 621 (AG 2008) (emphasizing that FGM is an act of persecution which may be repeated on the same woman). In addition, although the Respondent fears that her U.S. citizen daughter will be subjected to FGM if she returns to Mali with the Respondent, her fear for her daughter cannot form the basis for a

both harms ostensibly flow from membership in the same particular social group, the Respondent asserts that she is entitled to a presumption of future persecution based on her past persecution. See 8 C.F.R. § 1208.16(b)(1)(i); see also Matter of A-T-, 25 I&N Dec. 4, 7 (BIA 2009) (affirming that “an applicant could present a successful claim on the theory that FGM is a single type of harm in a series of injuries inflicted on account of one’s membership in a particular social group and that an applicant continues to have a well-founded fear based on the potential for related harm.”).

However, the Court shares the concern of the DHS that the Respondent has not identified a viable particular social group. The BIA has made clear that the characteristics that define a social group cannot be “too amorphous to provide an adequate benchmark for determining group membership.” Matter of A-M-E- & J-G-U-, 24 I&N Dec. at 76. For this reason, a group composed of “wealthy” individuals does not meet the requirements of particularity; the characteristic that defines group membership, “wealth,” is subjective, inchoate, and indeterminate. Id.; see also Matter of S-E-G-, 24 I&N Dec. at 584-86. Here, the Respondent argues that her family, among other Bambaran families, subscribes to “restrictive practices.” The term “restrictive practices,” as used by the Respondent, presumably encompasses FGM and forced marriage, but the Respondent has not clarified what other practices might qualify as “restrictive,” or how one might determine which practices qualify as “restrictive.” Nor has she explained whether a family that engaged in only one or two “restrictive” practices would nevertheless qualify as a “Bambaran family that subscribes to restrictive practices.” In order to meet the requirements of particularity, a social group must be defined by characteristics that provide a clear benchmark for determining group membership. Lizama v. Holder, No. 09-2027, 2011 WL 149874 (4th Cir. 2011) (citing Matter of A-M-E- & J-G-U-, 24 I&N Dec. at 75-76). The term “restrictive practices” does not provide such a benchmark. As a result, the Court concludes that the particular social group set forth by the Respondent is not viable under governing precedent.

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valid asylum or withholding of removal claim. See Matter of A-K-, 24 I&N Dec. 275 (BIA 2007); Niang v. Gonzales, 492 F.3d 505 (4th Cir. 2007).

Nevertheless, the Court is persuaded that the Respondent is a member of a different social group that meets the requirements of particularity and social visibility established by the BIA: “Bambaran women in families that practice the Wahabi religion.”<sup>5</sup> This social group meets the requirements of particularity, since ethnicity, gender, and religion are not subjective or amorphous characteristics, and these traits provide a clear benchmark for determining group membership. Furthermore, the Respondent’s credible testimony and evidence suggest that in Mali, it is well-known that Bambaran women in families that practice the Wahabi religion are not permitted to intermingle freely with other women at celebrations, are required to adopt a particular form of dress, and are often subjected to FGM and forced marriage. See Respondent’s Group Exhibit 1 on Remand at 56, 58, 117-18. Members of society in Mali are aware that while many families in Mali practice FGM and forced marriage, Bambaran families that practice Wahabism are particularly likely to adopt these practices as a result of their cultural and religious views. “Bambaran women in families that practice the Wahabi religion” are thus “perceived as a group by society” in Mali and therefore meet the requirements for social visibility established by the Board. See Matter of S-E-G-, 24 I&N Dec. at 586-87. Finally, the Respondent cannot change her gender, her ethnicity, or the her family’s religion. As a result, the characteristics that define her social group are immutable as required by precedent. See, e.g., Matter of Acosta, 19 I&N Dec. at 233.

According to the Respondent’s testimony, her father inflicted FGM on her because he believed that by doing so he could control her sexuality and render her more submissive. Evidence indicates that the Respondent’s father seeks to control the Respondent at least in part because he believes that as a woman in a Bambara family that practices Wahabism, the Respondent should be submissive to the wishes of her father or her husband in all regards, including sexuality. The Respondent’s father believes that men have complete control over women in the Respondent’s particular social group and that part of exercising appropriate control over the Respondent included subjecting her to FGM. As a result, the Court concludes that the

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<sup>5</sup>The Respondent has testified that her family practices the Wahabi religion, which is a sect of Islam. According to her testimony, adherents of this religion believe that women should be subservient to their husbands and fathers and that the scope of a father’s authority over her daughter is all but absolute.

Respondent's father inflicted FGM on her at least in part because of her membership in the particular social group of "Bambaran women in families that practice the Wahabi religion." See INA § 208(b)(1)(B)(I); INS v. Elias-Zacarias, 502 U.S. 478 (1992) (providing that an applicant must demonstrate that her race, religion, nationality, particular social group, or political opinion would be "at least one central reason" for the persecutor's actions against the applicant).

The Court recognizes that many families in Mali practice FGM even though they are not Bambara or Wahabist. Nevertheless, the same harm may be inflicted on different individuals for different reasons. For instance, a repressive regime might have differing motives for inflicting torture on different prisoners: one might be a political dissident, another might adhere to a disfavored religion, and yet another might be a common criminal. The Respondent does not bear the burden of establishing that all women who have undergone FGM in Mali were targeted for the same reason as the Respondent. Rather, she must demonstrate that she is a member of a particular social group and that she was persecuted on account of her membership in that group. See INA § 241(b)(3). The FGM suffered by the Respondent clearly rises to the level of persecution, Matter of A-T-, 25 I&N Dec. 4, 10-11 (BIA 2009), and the Respondent's father subjected her to FGM because she was a member of the particular social group of Bambaran women in families that practice the Wahabi religion.

Because the Respondent suffered past persecution on account of her membership in this particular social group, she benefits from a presumption of eligibility for withholding of removal. 8 C.F.R. § 1208.16(b)(1)(i). However, if her fear of future harm "is unrelated to" her past persecution, she retains the burden to demonstrate that she would more likely than not suffer persecution in the future. 8 C.F.R. § 1208.16(b)(1)(iii). The BIA and Attorney General have suggested that any past persecution suffered by an alien is "related" to her fear of future persecution if the harm feared would be inflicted on account of the same statutory ground. See Matter of A-T-, 24 I&N Dec. 617, 622 (AG 2008); Matter of A-T-, 25 I&N Dec. 4, 7-8, n.6 (BIA 2009). As a result, if the Respondent fears future persecution on account of her membership in the same particular social group, Bambaran women in families that practice the Wahabi religion, she benefits from a rebuttable presumption of eligibility for withholding of removal.



In this case, the Respondent fears that if she is returned to Mali, her father will force her to marry her first cousin against her will. The BIA has indicated that “arranged marriage between adults is not generally considered per se persecution,” particularly where the prospective spouses are of similar ages and backgrounds. Matter of A-T-, 24 I&N Dec. 296, 302 (BIA 2007). However, on remand the Respondent has presented testimony indicating that if she married her cousin, she would have no authority to make essential personal decisions, including whether to have sex with her husband, where to live, what religion to practice, whether to have children, or whether her husband could take another wife. She would also be unable to prevent her father from performing FGM on her infant daughter. Evidence supports the Respondent’s assertions; police very rarely intervene in “domestic disputes,” there is no law prohibiting spousal rape, and wives in Mali are obligated to submit to their husbands regardless of their personal preferences. See, e.g., Respondent’s Group Exhibit I on Remand Subexhibits T, U, X, Y, AA, DD, EE, FF, GG, JJ, KK, LL, NN, PP, QQ, RR, XX. Moreover, the Respondent has testified that if she refused to marry her cousin, she would be cast out on the streets, where she would be unable to find work, food, or shelter. She also fears she might be beaten. None of her relatives would be willing to take her in, since as the eldest son, her father has authority over all his siblings. Indeed, if the Respondent attempted to run away and hide in another area of Mali, she believes that her father and his family members would hunt for her and find her no matter where she went. In addition, she would be rejected by Malian society, since as a single mother who had rejected her father’s authority, she would be considered shameful and reprehensible. The Respondent was not aware of any shelters that could provide her or her children with food and housing, and she submitted evidence suggesting that none exist. See Respondent’s Group Exhibit I on Remand Subexhibits T, X, and Y.<sup>6</sup>

If the Respondent had alleged only that she was reluctant to marry her cousin but faced mild familial pressure to do so, the Court would find that the harm she feared did not amount to persecution. However, this is not the case. The Respondent has testified that if she were forced

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<sup>6</sup>The Court recognizes that there are nongovernmental organizations in Mali devoted to supporting women, including single women with children. See Respondent’s Group Exhibit I on Remand Subexhibits X and Y. However, there is no indication that these organizations are equipped to provide food, shelter, or other necessities to single women like the Respondent.

to marry her cousin, she would lose the freedom to choose whether to have sex and children, what religion to practice, and whether to perform FGM on her children, among other things. These are fundamental decisions that each individual should retain the ability to make, and losing the right to make such decisions constitutes a profound injury to the Respondent's freedom. See Li v. Gonzales, 405 F.3d at 177. Indeed, the prospect of being subject to repeated spousal rape would, standing alone, rise to the level of persecution. As a result, the Court finds that if the Respondent were forced to marry her cousin, the type of marriage to which she would be subjected constitutes persecution.

Moreover, the future harm the Respondent fears springs from her membership in a particular social group. The Respondent's father is motivated to force the Respondent to marry her cousin at least in part because she is a Bambaran woman in a Wahabi family. The Respondent testified that her father wants her to marry her cousin so that he can continue to control her life. Her father believes that as a daughter in a Bambaran, Wahabi family, the Respondent should remain under his control and authority and should submit to his decision. As a result, he has chosen a husband for her and demands that she acquiesce to his decision. Specifically, he intends to marry her to her cousin, a Wahabi, because the Respondent's cousin lives with the Respondent's parents, and as a result the Respondent would remain in her father's household after marriage. In light of this evidence, the Court finds that the Respondent's membership in the particular social group of Bambaran women in families that practice the Wahabi religion would be "at least one central reason" for the Respondent's father to force her into marriage. See INA § 208(b)(1)(B)(I); INS v. Elias-Zacarias, 502 U.S. 478 (1992). Because the harm the Respondent suffered in the past and the harm she fears in the future both stem from her membership in the same social group, the Respondent's fears are "related" and she benefits from a presumption of eligibility for withholding of removal. 8 C.F.R. §§ 1208.16(b)(1)(i), (b)(1)(iii).

Nor has the DHS rebutted the presumption. The Respondent asserts, and the DHS does not contend, that there has not been a fundamental change in circumstances such that the Respondent's freedom would no longer be threatened on account of her particular social group. However, the DHS argues that the Respondent could reasonably avoid forced marriage by


relocating within Mali. In assessing this argument, the Court has carefully considered all the circumstances in the Respondent's case, including "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. § 1208.16(b)(3). As discussed *supra*, there are serious social and cultural constraints that would prevent the Respondent from relocating to avoid marrying her cousin. She would be unable to find work as a single mother to sustain herself or her children. Although the Respondent's uncle testified in 2005 that single women are able to work in Mali, based on the evidence now before the Court it appears that most single women are forced to earn money through prostitution, since they are unable to find reputable employment. See, e.g., Respondent's Group Exhibit 1 on Remand Subexhibit Y at 118, Subexhibit EE at 158. The family structure is particularly important in Mali, and individuals who have no family support are often left destitute. See, e.g., Respondent's Group Exhibit 1 on Remand Subexhibit T. Based on this evidence, the Court concludes that even if the Respondent could relocate, it is not reasonable to require her to do so. See 8 C.F.R. §1208.16(b)(2).

Even if the Respondent did not benefit from a presumption of eligibility for withholding of removal, the Court's decision would remain the same. The Court finds that it is more likely than not that the Respondent would be subject to persecution on account of her membership in the particular social group of Bambaran women in Wahabi families. The Respondent has testified that in order to avoid the harsh consequences of objecting, she would go through with a forced marriage that would strip her of her independence and freedom. As a result, it is more likely than not that she would be subjected to a form of forced marriage that amounts to persecution. Of course, an alien cannot establish that her "life or freedom would be threatened" within the meaning of the Act if she could avoid the threat of persecution by relocating within her country and it would be reasonable for her to do so. 8 C.F.R. §1208.16(b)(2). However, for the reasons discussed *supra*, it would not be reasonable for the Respondent to relocate within Mali to avoid the threat of forced marriage. As a result, the Respondent's application for withholding of removal will be granted.

V. Conclusion

The Respondent is a member of a particular social group composed of "Bambaran women in families that practice the Wahabi religion." She has suffered past persecution on account of her membership in this group and fears future persecution that would also be inflicted on account of her group membership. As a result, she benefits from a presumption of eligibility for withholding of removal. The DHS has not rebutted the presumption by demonstrating that it would be reasonable for her to relocate within Mali. As a result, the Respondent's application for withholding of removal will be **GRANTED**. An appropriate order is attached.

April 10, 2011  
Date

  
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John F. Gossart, Jr.  
United States Immigration Judge  
Baltimore, Maryland