

Immigration Court: BIA**Case:** Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996) **Date:** June 13, 1996**Adjudicated by:** En Banc Board **Opinion:** Schmidt**Tags:** Asylum, PSG, FGM, persecution, Tchamba-Kunsuntu Tribe, Togo, credibility**Question Presented:** Are young women of the Tchamba-Kunsuntu tribe who oppose FGM a PSG that can claim persecution on a protected ground?**Holdings:** FGM constitutes persecution, and applicant is member of a PSG. Asylum granted without remand.**Rationale:**

- A “subjective ‘punitive’ or ‘malignant’ intent is not required for harm to constitute persecution.” (365)
- The PSG is “young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice.” (365)
 - “The characteristic of having intact genitalia is one that is so fundamental to the individual identity of a young woman that she should not be required to change it.” (366)
- Togo is so small that she could not safely relocate; therefore she has a reasonable country-wide fear of persecution on account of her PSG.

Facts: 19-year-old native of Togo, a member of the Tchamba-Kunsuntu Tribe. Young women typically undergo FGM at age 15. She did not, and was protected at the time by her father. Father died, and applicant was forced into marriage by other family members and was facing FGM. She fled to Ghana, then Germany, then purchased a fraudulent passport to get to U.S.**History of the Case:**

- **IJ (1995):** denied application for asylum (because did not think the testimony credible) and ordered applicant deported.
- **BIA (1996):** de novo review, testimony was plenty credible; application sustained, asylum granted.

Appeals to Statute & Precedent:

- **Matter of B-, 21 I&N Dec. 66 (BIA 1995):** re. applicant’s credibility: plausible, detailed, internally consistent.
- **Matter of Guevara, 20 I&N Dec. 238, 249 (BIA 1991):** If INS does not raise an issue in the immigration court, can’t raise it on appeal.

- ***Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)**: immutable characteristic
- ***Matter of Chang*, 20 I&N Dec. 38 (BIA 1989)**: China's population control policy is not persecution; this case does not control here.

Commentary: So totally sympathetic to what this young women went through to get to the U.S. The IJ apparently thought her story incredible, because it was so remarkable.