UNITED STATES DEPARTMENT OF HOMELAND SECURITY

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

ASYLUM OFFICE

LYNDHURST, NJ

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In the Matter of:

Susan SMITH File No. XXX

Asylum applicant.

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AMENDED BRIEF IN SUPPORT OF

SUSAN SMITH’S APPLICATION FOR ASYLUM

[Attorney]

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Susan Smith (hereinafter “Ms. Smith”) by and through pro bono counsel, respectfully submits this Brief in support of her request for asylum. This application is based on Ms. Smith’s I-589 Application for Asylum and Withholding of Removal, this Brief, and the accompanying supplemental exhibits.

1. **SUMMARY OF CLAIM**

Ms. Smith is a \_\_ year old citizen and national of Cote d’Ivoire. She is Muslim and member of the Malinke ethnic group. Ms. Smith qualifies for asylum based on past persecution on account of her membership in the particular social groups of 1) Muslim Malinke Women from Cote d’Ivoire and 2) Married Women from Cote d’Ivoire. As a result of her membership in these particular social groups, she was forcibly married at the age of fifteen, suffered from severe domestic violence including kidnapping, physical assaults, starvation, rape, and emotional abuse at the hands of her husband. Ms. Smith continues to experience long-term physical and psychological complications. Further, Ms. Smith is eligible for asylum based on her well-founded fear of future persecution due to her membership in those groups, as well as her membership in the particular social group of Women from Cote d’Ivoire living with HIV/AIDS.

Ms. Smith is additionally eligible for humanitarian asylum for three reasons. First, based on the severity of the past persecution. Second, Ms. Smith will suffer other serious harm if she is returned to Cote d’Ivoire because she will be unable to protect her two daughters from FGM and forced marriage. And third, she will be unable to receive life-sustaining medical care for her HIV/AIDS and will face extreme stigma and discrimination once her diagnosis becomes known in her community. For the reasons explained in further detail below, Ms. Smith should be granted asylum.

1. **STATEMENT OF FACTS PARTICULAR TO MS. SMITH’S CLAIMS**

Ms. Smith was born on [Date] in [City], Cote d’Ivoire.[[1]](#footnote-1) As part of her Malinke ethnic group’s tradition, the women in her family were victims of Female Genital Mutilation (“FGM”).[[2]](#footnote-2) Ms. Smith’s father, Axx Smith, opposed this practice and tried to protect his daughters. When he was out of the village traveling for work, Ms. Smith’s eldest sister, Mxx, was taken by family members and forcibly circumcised. She was nine years old and died as a result. Mr. Smith took Ms. Smith and her younger sister, Kxx Smith, to [City] to hide them from the family.

When Ms. Smith was fifteen years old, her father’s family wanted her to marry her paternal uncle, Ed Brown. Mr. Brown was between fifty and sixty years old and had three other wives. The family came to [City] and demanded Mr. Smith disclose the whereabouts of Ms. Smith. Mr. Smith refused. The family returned one month later when Mr. Smith was not home. The family beat and kidnapped Ms. Smith and brought her back to her village. She was beaten for one week and married to Mr. Brown. The night of their marriage, Ms. Smith was informed it was her duty to consummate the marriage. Her husband beat her and tried to rape her. She was able to fight him off that night. However, the next day, he beat and raped her. He threatened, beat, and raped Ms. Smith on a near constant basis for the next two decades. Ms. Smith witnessed him beat his other wives as well. She became pregnant one year into their marriage and suffered a miscarriage due to the abuse.

During the course of her abusive marriage, Ms. Smith met Mr. Tom Green in or around [Year]. They began a secret relationship. However, he did not live in her village and she was not able to see him often. The abuse at the hands of her husband worsened over the years, and in or around [Date], Mr. Green helped Ms. Smith escape to [City], Cote d’Ivoire and then to [City], Cote d’Ivoire. Ms. Smith became pregnant with Mr. Green’s child and gave birth to their son, Will Green, on [Date]. Ms. Smith’s husband searched for her while she was in hiding. He threatened her father and other family members, “I will kill you if you don’t tell me where she is. I will kill her. I will kill her children.” Using his power and connections, Ms. Smith’s husband located her in or around [Date] or [Date] when she was in [City] for a wedding. She was kidnapped, thrown into a car, and returned to their village. Her husband beat her worse than before and raped her using his fist to cause maximum pain and suffering.

Ms. Smith became pregnant as a result of these rapes in [Date]. She traveled to [City]A with her husband for one week and received treatment at the hospital because she felt ill. She underwent blood work and learned she had HIV/AIDS. She was afraid she would die, transmit it to her baby, or be beaten by her husband as a punishment. She was provided with a small supply of medication, hid it from her husband, and returned to their village. Ms. Smith gave birth to their daughter, Jane Brown, at the beginning of [Date]. She does not know the exact date as the birth was at home and she does not have a birth certificate. When Jane was about three months old, Ms. Smith’s husband and women from his family took her from Ms. Smith. Over Ms. Smith’s cries and protests, they brought her to be circumcised. That night, Mr. Brown returned without Jane and told Ms. Smith, “God gives and God takes away. It’s too late, the child has died. It didn’t work for her.” Ms. Smith hit her husband in anger and sadness. He beat her until she lost consciousness. She never saw her baby again.

Ms. Smith knew she needed to escape her husband. Her father, Mr. Green, and her friend Oxx helped her flee to [City]. She hid with Mr. Green and became pregnant with their daughter, Susan Green, born in [Date]. While Ms. Smith was in hiding between [City] and [City], her husband searched for her. He again threatened her family with death, and the death of her and her children. Ms. Smith rarely left the house, and when she did, it was always with Mr. Green. In [Date], when her father refused to disclose her location, he ordered that her father be beaten so badly that he fell into a coma for five days. In [Date], when her father again refused to disclose her location, her husband again ordered that her father beaten. After this attack, Mr. Smith and Mr. Green made plans for Ms. Smith to escape. They paid someone to help her obtain a passport and a visa to the United States. She entered the United States on [Date].

When she first arrived in the U.S., she was depressed, scared, and worried about obtaining medication for HIV/AIDS. Further, she became pregnant in or around [Date]. She was afraid that she would transmit the virus to her baby. In [Date], she learned about asylum and a community member recommended a “broker” to help her with the application. She applied for asylum on [Date].

1. **EVIDENCE IN SUPPORT OF MS. SMITH’S CLAIM**

Ms. Smith suffered past persecution due to her membership in the particular social groups of 1) Muslim Malinke Women from Cote d’Ivoire; and 2) Married Women from Cote d’Ivoire. She has a well-founded fear of future persecution due to her membership in those particular social groups, as well as her membership in the particular social group of Cote d’Ivorian Women living with HIV/AIDS.

1. **Ms. Smith Has Suffered Past Persecution on Account of Her Membership in the Particular Social Groups of Muslim Malinke Women from Cote d’Ivoire and Married Women from Cote d’Ivoire**
2. Ms. Smith is a member of the particular social groups of “Muslim Malinke Women from Cote d’Ivoire” and “Married Women from Cote d’Ivoire”

In order to claim membership in a particular social group, an applicant must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.[[3]](#footnote-3) With regards to the definitions of each of these concepts, the Attorney General’s decision in Matter of A-B- cites to the standards set forth in Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014) and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014) and does not alter the underlying social group framework used in those decisions.[[4]](#footnote-4) The Second Circuit has further held that “petitioners’ gender-combined with their ethnicity, nationality, or tribal membership-satisfies the social group requirement”[[5]](#footnote-5)

An “immutable characteristic” is one that the proposed members “either cannot change, or should not be required to change because it is fundamental to their identities or consciences.”[[6]](#footnote-6) The characteristics of gender and nationality are immutable.[[7]](#footnote-7)

In order to be defined with particularity, the group must be “discrete and have definable boundaries – it must be not be amorphous, overbroad, diffuse, or subjective.”[[8]](#footnote-8) A social group is particular if “the proposed group 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.”[[9]](#footnote-9) Though they are large groups, the term “Muslim Malinke Women” and “Married Women from Cote d’Ivoire” have commonly accepted definitions in Cote d’Ivoire. In fact, Cote d’Ivoire has traditional patterns and practices of behavior that apply specifically to Muslim Malinke women and Married women suggesting that the terms are discrete, and has legally definable boundaries.[[10]](#footnote-10) Moreover, Muslim Malinke Women and Married Women from Cote d’Ivoire constitute a precise segment of society, and the term is neither vague nor amorphous.

Finally, the groups of Muslim Malinke women from Cote d’Ivoire and Married Women from Cote d’Ivoire are socially distinct. To establish social distinction, there must be “evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”[[11]](#footnote-11) This must be an individualized inquiry and to determine if the social group as distinction, it “must be considered in the context of the country of concern and the persecution feared.”[[12]](#footnote-12) The Board has held that women tend to be viewed as a group by society.[[13]](#footnote-13)

As seen in the attached country conditions and referenced throughout, Ms. Smith provides abundant evidence describing how Muslim Malinke Women and Married Women in Cote d’Ivoire are treated as a group, based on their gender, nationality, tribal membership, and marital status. During the time period in which Ms. Smith was forcibly married and endured this abuse by her husband, the U.S. Department of States reports that traditional marriages were performed on girls as young as fourteen[[14]](#footnote-14), nearly ninety percent of women had been beaten or struck by their husbands on at least one occasion[[15]](#footnote-15), that women who are victims of rape or domestic violence are often ignored when they attempt to bring the violence to the attention of the police[[16]](#footnote-16), the law does not penalize spousal rape[[17]](#footnote-17), and the fear of challenging male authority figures silenced most victims.[[18]](#footnote-18)

It is clear that Cote d’Ivoire is a country in which Muslim Malinke Women and Married Women as groups are subjected to persecution. Thus, it should be found that the groups of “Muslim Malinke Women” and “Married Women from Cote d’Ivoire” are immutable, particular, and socially distinct to form a cognizable particular social group.

1. Ms. Smith suffered past harm rising to the level of persecution on account of her membership in these particular social groups

There can be no question that the horrendous violence suffered by Ms. Smith constitutes persecution. While there is no universally accepted definition of “persecution,” the forms of mistreatment that she experienced are among those originally envisioned by the term.[[19]](#footnote-19) The term “persecution” has consistently been interpreted to include “threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom” as well as mental suffering and “governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual’s deepest beliefs.”[[20]](#footnote-20) Persecution has been described as the “infliction of suffering or harm on proscribed grounds.”[[21]](#footnote-21)

Ms. Smith was forced to marry her abusive older husband when she was only fifteen years old. He beat and raped her the day after their marriage, and this abuse continued for the next twenty years. The harm suffered by Ms. Smith as an adolescent must be assessed with regards to the context in which it occurred. When determining whether the harmful acts rise to the level of persecution, the question is whether the harmful acts constitute persecution *from the perspective of a child,* and thus what constitutes persecution of a child may be less than what constitutes persecution of an adult. The Asylum Officer Basic Training Course instructs:

“The harm a child fears or has suffered may still qualify as persecution despite appearing to be relatively less than that necessary for an adult to establish persecution. This is because children, dependent on others for their care, are prone to be more severely and potentially permanently affected by trauma than adults, particularly when their caretaker is harmed.”[[22]](#footnote-22)

Even without taking into consideration Ms. Smith’s young age at the time of these threats, verbal, physical, and sexual attacks, they clearly rise to the level of persecution.

Domestic violence and sexual violence may constitute persecution.[[23]](#footnote-23) In Matter of R-A-, cited with approval by the former Attorney General in Matter of A-B-,[[24]](#footnote-24) the Board stated that “the severe injuries sustained by the respondent rise to the level of harm sufficient (and more than sufficient) to constitute “persecution.”[[25]](#footnote-25) Further, the Board recognizes that “private violence may well satisfy” the requirement that the past persecution be “severe.”[[26]](#footnote-26)

Similar to the Respondent in Matter of R-A-, Ms. Smith suffered various forms of violence in the forms of physical harm, sexual abuse, death threats, and psychological abuse.[[27]](#footnote-27) In 1993, when Ms. Smith was fifteen years old, she was forced to become the fourth wife of her uncle, who was between fifty and sixty years old. For the next two decades, until she was able to escape to the United States, her husband displayed extremely violent behavior against her including death threats, emotional abuse, physical assaults, and rapes, on a near daily basis.[[28]](#footnote-28)

When evaluating whether harm qualifies as persecution, events must be considered cumulatively.[[29]](#footnote-29) A ‘minor beating’ or, for that matter, any physical degradation designed to cause pain, humiliation, or other suffering may rise to the level of persecution.” Here, the physical abuse that Ms. Smith suffered consisted of significantly more than a “minor beating.” Evidence of physical abuse provides “significant support” for a finding of past persecution.[[30]](#footnote-30) “[R]ape is sufficiently serious to constitute persecution.”[[31]](#footnote-31) Death threats may rise to the level of persecution.[[32]](#footnote-32)

Therefore, as established above, Ms. Smith has experienced decades of extreme physical, sexual, emotional, and verbal abuse, all of which is undeniably persecution.[[33]](#footnote-33)

1. Ms. Smith’s membership in those particular social groups is the central reason for her past persecution

This past persecution was committed against Ms. Smith because of her membership in the particular social groups described above. In Matter of A-B- , the Attorney General quotes from a circuit case that misstates the statutory standard to imply that the presence of any reason apart from the protected characteristic will defeat nexus.[[34]](#footnote-34) The plain language of the Immigration and Nationality Act recognizes mixed motives and only requires the protected characteristic be *one* central motivation for the harm.[[35]](#footnote-35)

The Attorney General’s decision in Matter of A-B- is rooted in the antiquated concept that domestic violence is an individual, personal act, rather than one arising from unequal gender relations and societal norms and expectations about gender roles. Ms. Smith’s pre-existing relationship with her husband does not preclude a finding of nexus.[[36]](#footnote-36) There is no exception to asylum law for violence perpetrated by family members. “If the government is unable or unwilling to control persecution, it matters not who inflicts it.”[[37]](#footnote-37) Rather, circuit courts have found that a pre-existing personal relationship “was helpful to establishing nexus.”[[38]](#footnote-38)

The nexus inquiry is an inquiry into the *reasons* for inflicting the harm in the first place. Ms. Smith was threatened and physically, emotionally, and sexually abused by her husband. It would be nonsensical to argue that Mr. Brown was unaware that Ms. Smith was a Cote d’Ivorian, Malinke, Muslim woman who was married to him. There is no requirement that Mr. Brown was to be aware of this exact protected group as defined in this legal brief. Rather, the proper inquiry is whether Mr. Brown was aware of the underlying characteristics captured in these definitions.[[39]](#footnote-39) Mr. Brown was not likely to submit a declaration explaining what motivated him to act.[[40]](#footnote-40) Further, Mr. Brown persecuted his other wives too, wives who are similarly placed and belong to the same particular social groups as Ms. Smith. The evidence submitted clearly indicates that he did this on account of Ms. Smith’s membership in those particular social groups.[[41]](#footnote-41)

Ms. Smith’s experience is common throughout Cote d’Ivoire. Generally, only one or a few incidents are insufficient to show persecution on a wide enough scale.[[42]](#footnote-42) Conversely, showing many, repeated incidents of persecution are sufficient to demonstrate that it exists on a wide enough scale.[[43]](#footnote-43) In Kandaswamy v. Holder, the Second Circuit found that the Board’s conclusion that no pattern or practice of persecution had been demonstrated was undermined by documentary evidence that showed “a high level of violence,” against ethnic Tamils by “Sri Lankan government, government-supported paramilitary groups, and other actors.”[[44]](#footnote-44) In a similar ‘pattern or practice’ case the Second Circuit has reiterated that state department and UNHCR reports “do not simply demonstrate isolated incidents of violence against Tamils,” rather these reports demonstrate “widespread violence,” against the Tamil ethnic group in Sri Lanka.[[45]](#footnote-45)

Similarly to the respondent in Kandaswamy, Ms. Smith demonstrates that Muslim Malinke women in Cote d’Ivoire have been subject to many, repeated acts of persecution by the Cote d’Ivorian government, or by private actors the Cote d’Ivorian government is unwilling or unable to control. The motive for the harms inflicted against Ms. Smith must be “analyzed in light of the *context* in which the harm occurred."[[46]](#footnote-46) The pattern of harm against Cote d’Ivorian women, as described in further detail below, provides context for Ms. Smith’s claim of nexus and lends evidentiary support to a conclusion that individual incidents of harm were in fact "on account of" a ground protected by the Act, such as….social group membership.[[47]](#footnote-47)

1. The persecution was inflicted by non-government actors that the Cote d’Ivorian government is unable and unwilling to control

As argued *supra*, the government of Cote d’Ivoire allows men to abuse and rape their wives and partners with impunity. Despite undergoing the torture of being forcibly married to an older abusive husband, and being the victim of rape, beatings, and emotional abuse at the hands of her husband, Ms. Smith was unable to seek protection from the government of Cote d’Ivoire.

The Second Circuit has never held that direct governmental action is required to make out a claim of persecution. On the contrary, “it is well established that private acts may be persecution if the government has proved unwilling to control such actions.”[[48]](#footnote-48) Matter of A-B- states “[p]ersecution is something a government does, either directly or by abetting (and thus becoming responsible for) private discrimination by throwing in its lot with the deeds or by providing protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct.[[49]](#footnote-49) Furthermore, when the applicant is the victim of private criminal activity, the analysis must also “consider whether government protection is available, internal relocation is possible, and persecution exists countrywide.”[[50]](#footnote-50) Here, the Cote d’Ivorian government persecuted Ms. Smith by both condoning the private actions of her husband and demonstrated a complete helplessness to protect her.[[51]](#footnote-51)

An analysis of the facts of Ms. Smith’s case against the social and cultural context of Cote d’Ivorian society proves that the government and the police did not, and do not, investigate or prosecute crimes committed against women.[[52]](#footnote-52)

The practice of “forced marriage” is widespread among the Malinke.[[53]](#footnote-53) The women who are forcibly married are generally between the ages of fifteen and nineteen years old. The US Department of State confirms that although the law prohibits such child marriages, traditional marriages were performed with girls as young as fourteen.[[54]](#footnote-54) The Ministry of Employment, Social Affairs, and Professional Training; Ministry of Justice and Human Rights; Ministry of Women, Child Protection, and Social Affairs; and Ministry of Education are responsible for combating child abuse, but they remain were ineffective due to lack of coordination between the ministries and inadequate resources.[[55]](#footnote-55)

Ms. Smith’s narrative of abuse and inability to rely on the police is not unique. Rather, the evidence submitted reveals that violence against women at the time of Ms. Smith’s domestic violence was a significant problem. According to the U.S. Department of State from 1998,[[56]](#footnote-56) “spousal abuse occurs frequently” and that the “courts and police view domestic violence as a family issue….women who are the victims of rape or domestic violence are often ignored when they attempt to bring the violence to the attention of the police.”[[57]](#footnote-57) Further, the government has “no clear policy regarding spouse abuse.”[[58]](#footnote-58) The lack of protection continued throughout the course of Ms. Smith’s marriage. In [Date], when Ms. Smith first fled her abusive husband, the U.S. Department of State reported that “the law does not define domestic violence, which was a serious problem. Female victims of domestic violence suffered severe social stigma and as a result often did not report or discuss domestic violence.[[59]](#footnote-59) The courts and police viewed domestic violence as a problem to be addressed within the family.”[[60]](#footnote-60) The law did not specifically penalize spousal rape. Rape was a problem, although its extent was unknown because the government did not collect statistics on rape or other physical abuse of women.[[61]](#footnote-61) Women's advocacy groups continued to protest the indifference of authorities to female victims of violence; however, women who reported rape or domestic violence to the police were often ignored.[[62]](#footnote-62)

As of 2018, the Ivorian law still did not specifically penalize spouse rape.[[63]](#footnote-63) Local and international human rights groups reported rape remained widespread, and relatives, police, and traditional leaders often discouraged female survivors from pursuing a criminal case.[[64]](#footnote-64) Further, the law still does not specifically outlaw domestic violence, which remains a serious and widespread problem.[[65]](#footnote-65) Women who are victims seldom reported domestic violence due to cultural barriers and because police often ignored women who reported rape or domestic violence. Survivors stressed that although sexual and gender-based violence was an “everyday reality,” deeply ingrained taboos discouraged them from speaking out. Survivors were ostracized and advocates for survivors reported being threatened. Fear of challenging male authority figures silenced most victims.[[66]](#footnote-66)

Ms. Smith’s credible testimony and the country conditions clearly support a finding that the Cote d’Ivorian government is unwilling and unable to protect women from domestic violence and spousal rape.[[67]](#footnote-67)

1. **MS. SMITH HAS SUFFERED PAST PERSECUTION ON ACCOUNT OF HER PARTICULAR SOCIAL GROUPS AND POLITICAL OPINION CREATING A WELL-FOUNDED FEAR OF FUTURE PERSECUTION**

As Ms. Smith has demonstrated that she has suffered past persecution on account of her memberships in two particular social groups, she is entitled to a presumption of a well-founded fear of future persecution, unless DHS can show by a preponderance of the evidence that (1) circumstances have fundamentally changed within her country, or (2) the applicant could reasonably be expected to safely relocate within her country. 8 C.F.R. §208.13(b)(1). In this case, DHS cannot overcome its burden and Ms. Smith cannot be reasonably expected to relocate safely within Cote d’Ivoire and she is eligible for asylum based on her presumptive well-founded fear of future persecution.

1. DHS cannot overcome its burden in proving that country conditions have fundamentally changed in Cote d’Ivoire for Ms. Smith

As indicated *supra* and in the attached country conditions materials, the pervasive violence against women continues, the police do not investigate, and perpetrators are not brought to justice.

1. Ms. Smith cannot avoid persecution by relocating within Cote d’Ivoire nor would it be reasonable to expect her to do so

Where there is past persecution, as here, it is presumed that internal relocation is unreasonable unless DHS establishes by a preponderance of the evidence that relocation is reasonable.[[68]](#footnote-68) In the Matter of A-B, the attorney general’s language is dicta and conflates two separate prongs of the internal relocation inquiry, which under case law and regulations must be both safe and reasonable under totality of circumstances.[[69]](#footnote-69) The criteria for reasonableness of relocation includes - whether the applicant would face other serious harm in place of relocation; and social and cultural restraints such as age, gender, health, and social and familial ties.[[70]](#footnote-70)

Ms. Smith has previously attempted to escape the forced marriage and her abusive husband on three occasions. During these attempts, she has fled to the capital, [City], and another large city, [City]. Yet, Mr. Brown was able to find her through his powerful position and a network of family connections. The first time she was found at fifteen years old, she was beaten, bound, kidnapped and returned to her remote village where she was forced to marry and underwent decades of abuse. The second time she escaped, her husband relentlessly threatened her family to learn her whereabouts. When she was found, she was again kidnapped and brought back to the village. As a punishment, her husband beat her and raped her using his fist. When she escaped for a third time, Mr. Brown continued his tireless search and repeated death threats against her and her family. When her father refused to comply with his demands of her location, he was severely beaten on two occasions, one time leading to a coma for five days. Ms. Smith is definitively not safe anywhere within Cote d’Ivoire. Her abusive husband would quickly learn and be able to locate her and force her to return to him. He has threatened her life and the life of her children. Based upon his past abuse, these threats are credible.

Further, even if she could relocate to a more remote part of the country, she would face life-threatening hardships in obtaining her medication for her HIV/AIDS diagnosis and it would be unreasonable for her to face such harm.

1. **Ms. Smith Has a Well-Founded Fear of Future Persecution Based on Her Membership in the Particular Social Group of Women Living With HIV/AIDS in Cote d’Ivoire.**

1. Ms. Smith is a member of the particular social group of Women Living with HIV/AIDS in Cote d’Ivoire

Ms. Smith has an independent well-founded fear of future persecution due to her membership in the particular social group of women living with HIV/AIDS in Cote d’Ivoire. A diagnosis of HIV/AIDS meets the Acosta standard, as it is a characteristic that cannot be changed. This is no cure for HIV/AIDS. The legacy Immigration and Naturalization Service (“INS”) [[71]](#footnote-71) issued a memorandum directing the INS to recognize that persons with AIDS are a social category protected under the asylum law.[[72]](#footnote-72) The memorandum indicates, “[n]othing in existing law or practice precludes the recognition of ‘persons with AIDS’ as a particular social group, if the proof in the individual case supports such a conclusion.”[[73]](#footnote-73)

1. Ms. Smith’s Well Founded Fears are Subjectively and Objectively Reasonable

Where past persecution is not demonstrated or rebutted, the applicant nonetheless qualifies for asylum by showing a well-founded fear of future persecution,[[74]](#footnote-74) which requires both subjective and objective fear[[75]](#footnote-75) by “a reasonable person in the same circumstances.”[[76]](#footnote-76) To determine whether a fear is objectively well-founded, the fact finder must assess the likelihood of the applicant falling victim to persecution in her country of origin.[[77]](#footnote-77) “A fear is objectively reasonable ‘even if there is only a slight, though discernible, chance of persecution.”[[78]](#footnote-78) In Cardoza-Fonseca, the Supreme Court noted that future persecution must be a “reasonable possibility,” but so long as “an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution.”[[79]](#footnote-79) Indeed, the applicant need only demonstrate a ten percent chance they will face persecution.[[80]](#footnote-80). There is more than a “reasonable possibility” that Ms. Smith will be persecuted if returned to Cote d’Ivoire.

Ms. Smith is afraid of disclosing her HIV/AIDS diagnosis to anyone, even her father who has been such a support system to her. She had told her sister and Mr. Green of her diagnosis. Her sister continues to support her. However, Mr. Green, who has three children with her, helped her flee her violent marriage, and married her once safe in the U.S., refuses to be with her anymore. This rejection has caused Ms. Smith additionally emotional distress. She knows that if others in her community learn of her status, she will be stigmatized and discriminated against.

1. **IN THE ALTERNATIVE, MS. SMITH QUALIFIES FOR HUMANITARIAN ASYLUM**

An asylum applicant who has already shown past persecution may still be eligible for humanitarian asylum, even if the presumption of a well-founded fear of future persecution has been rebutted, if the applicant establishes either: (1) that she has “compelling reasons,” arising out of the severity of the past persecution, for being unable or unwilling to return to her country;[[81]](#footnote-81) or (2) that there is a “reasonable possibility” that she may suffer “other serious harm” upon removal to her country.[[82]](#footnote-82)

1. Ms. Smith is eligible for humanitarian asylum based on the severity of the past harm

Under this first form of humanitarian asylum, in order to establish that “compelling reasons” arise out of past persecution, reasons that are sufficiently severe, an applicant must demonstrate “long-lasting physical or mental effects of his persecution.”[[83]](#footnote-83) Here, Ms. Smith was the victim of severe, systematic, and long-lasting domestic violence and rape for over two decades. Dr. Amy Jones indicated that Ms. Smith continues to suffer from emotional harm as a result of these abuses.[[84]](#footnote-84) Dr. Jones reports that Ms. Smith currently meets the diagnostic criteria for Major Depressive Disorder and Post-Traumatic Stress Disorder (“PTSD”).[[85]](#footnote-85) It is Dr. Jones’s expert opinion that Ms. Smith “suffers from these illnesses as a result of the severe repetitive overwhelming abusive and traumatic experiences she reports. In addition to her diagnoses, I find the history of Ms. Smith’s signs and symptoms to follow a typical and expectable trajectory of an individual living in a chronically violent life-threatening environment.”[[86]](#footnote-86) Dr. Jones concluded that if Ms. Smith returned to Cote d’Ivoire, it would pose a “significant threat to her mental health, likely exacerbating her posttraumatic stress disorder and her depression.”[[87]](#footnote-87)

1. Ms. Smith is eligible for humanitarian asylum based on “other serious harm” that she will suffer

The second form of humanitarian asylum is to offer protection to individuals who have suffered persecution in the past and who are at risk of future harm that is not related to a protected ground.[[88]](#footnote-88) Ms. Smith faces such other serious harm for two distinct and independently sufficient reasons.

First, Ms. Smith is afraid that her daughters, Susan Green and Sara Green, her one year old U.S. Citizen daughter, will suffer from female genital mutilation, be forcibly married, and suffer from the same physical, psychological, and sexual abuse at the hands of their husband as Ms. Smith. Based on the country conditions detailed *supra*, Muslim Malinke girls continue to be victims of Female Genital Mutilation and forced marriage.

The Second Circuit considered whether “other serious harm” exists on account of the mental anguish suffered by a mother, who herself was a victim of FGM, and faces the choice of seeing her daughter suffer the same fate, or avoiding that outcome by separation from her child.[[89]](#footnote-89) In Kone, the respondent’s daughter was a United States Citizen and had the eligibility to remain in the U.S. if her mother was removed to Cote d’Ivoire. The Second Circuit remanded the case to the B.I.A. to consider whether this mental anguish may qualify as “other serious harm.” In making this determination, the Second Circuit cited decisions in the Fourth, Fifth, and Ninth Circuit. The Fourth Circuit has recognized that a “humanitarian grant of asylum may be warranted in circumstances where a mother, who has been subjected to [female genital mutilation], fears her daughter will be subjected to [such mutilation] if she accompanies her mother to the country of removal.”[[90]](#footnote-90) Although the facts in the present case differ slightly from the case presented in Kone, as herein Ms. Smith was saved from the brutal practice of FGM by her father, Ms. Smith has already lost a sister and a three month old daughter to FGM. She has already suffered through forced marriage and severe domestic violence and rape. The fear and mental anguish that will be suffered by Ms. Smith if Sara returns to Cote d’Ivoire with her, and if she is denied asylum and unable to petition to bring Susan to the United States, and both girls suffer from FGM, forced marriage, and domestic violence, remains the same.

Second, as detailed *supra*, there is a lack of appropriate anti-retroviral treatment in Cote d’Ivoire and individuals living with HIV/AIDS face extreme stigma, discrimination, and isolation once their diagnosis becomes known among their community. Therefore, Ms. Smith would face other serious harm through a lack of life-sustaining treatment and medication for her HIV/AIDS diagnosis.

1. **NO BARS TO ASYLUM APPLY IN THIS CASE**

Ms. Smith has never committed a crime, has never persecuted another person, has never been involved in terrorist activity, does not constitute a danger to the United States, was never firmly resettled in a third country, and has not committed a serious non-political crime outside the United States. INA § 208(b)(2)(A)(i)-(vi). Although Ms. Smith filed her asylum application beyond the one year filing deadline by one day, she qualifies for an exception due to the severe trauma that she has suffered, and she filed within a reasonable time given those exceptions.[[91]](#footnote-91) Under the regulations, the One Year Filing Deadline can be excused where the applicant can show “serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, including during the 1-year period after arrival.”[[92]](#footnote-92)

Ms. Smith qualifies for an exception to the One Year Filing Deadline and applied for asylum within a reasonable period given the extraordinary circumstances of her trauma.[[93]](#footnote-93) As seen in Dr. Jones’s attached expert psychological evaluation, Ms. Smith currently suffers from Major Depressive Disorder and PTSD as a result of the abuse she suffered for over two decades in Cote d’Ivoire. Dr. Jones opines that, “Ms. Smith likely delayed filing for asylum until recently due to the burden of these avoidance symptoms and a strong internal drive to avoid situations in which she would have to recount and relive her traumas. Similarly, intrinsic to Major Depressive Disorder is a sense of hopelessness about one’s life with a loss of energy and associated lack of motivation to meet one’s needs, even when the consequences of not acting are significant. In the face of such extreme hopelessness, it is not surprising that Ms. Smith had great difficulty in acting on applying for asylum in the United States.”[[94]](#footnote-94)

1. **CONCLUSION**

Ms. Smith was persecuted in Cote d’Ivoire on account of her membership in the social group of Muslim Malinke Women from Cote d’Ivoire, and Married Cote d’Ivorian Women. It is because of her membership in these groups that she was forcibly married, threatened, and physically, psychologically, and sexually abused. She continues to experience the permanent impact of this persecution in the form of physical and emotional trauma which she is now receiving treatment and support for in the United States. Ms. Smith’s physical well-being would be at great risk if she were returned to Cote d’Ivoire. She fears that her abusive husband will find her, further abuse her, and even kill her and her children. She also fears that she will not receive proper treatment for her HIV/AIDS. Further, Ms. Smith is afraid that her daughter in Cote d’Ivoire and her one year old U.S. Citizen daughter will be circumcised against their will and forcibly married to abusive men. Ms. Smith is not able to avail herself of protection from the authorities in Cote d’Ivoire, who continue to honor the cultural traditions of female genital mutilation and forced marriage, and their refusal to protect Cote d’Ivorian women from domestic violence. For these reasons, Ms. Smith respectfully requests asylum in the United States.

[Date]

Dated: New York, New York Respectfully submitted,

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*Pro Bono Counsel for Ms. Smith*

1. *See* Ms. Smith’s Passport *(*Vol. I, Ex. 9). [↑](#footnote-ref-1)
2. *See* Ms. Smith’s Declaration (hereinafter, “Smith Dec.”)(Vol. I, Ex. 2) at ¶5; *see also* Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Cote d’Ivoire Country Report on Human Rights Practices for 1998 (February 26, 1999), available at: <https://1997-2001.state.gov/global/human_rights/1998_hrp_report/cotedivo.html> (Vol. II, Ex. 1), confirming that FGM was a serious problem at this time. Until 1998, there was no law that prohibited it; as many as 60% of women had undergone FGM. [↑](#footnote-ref-2)
3. Matter of M-E-V-G-, 26 I. & N. Dec. 227, 227 (BIA 2014). [↑](#footnote-ref-3)
4. Matter of A-B- , 27 I&N Dec. 316, 319 (A.G. 2018) (“When confronted with asylum cases based on purported membership in a particular social group, the Board, immigration judges, and asylum officers must analyze the requirements as set forth in this opinion, which restates and where appropriate, elaborates upon, the requirements set forth in *M-E-V-G* and *W-G-R-*.) [↑](#footnote-ref-4)
5. Bah v. Mukasey, 529 F.3d 99, 112 (2d Cir. 2008); *See also,* Kone v. Holder, 596 F.3d141 (2d Cir.2010), “It is well-settled that a woman such as Kone who has undergone genital mutilation may have been persecuted through this experience on account of her membership in a particular social group.”; *See also* In re Kasinga, 21 I&N Dec. 357 (B.I.A. 1996) [↑](#footnote-ref-5)
6. Acosta 19 I&N Dec.at 233. [↑](#footnote-ref-6)
7. Matter of Acosta, 19 I&N Dec at 234 (BIA 1985)(listing sex as a paradigmatic example of a common, immutable characteristic); Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996); *see also* Matter of W-G-R- at 218; *See also* INA Section 101(2)(42)(listing nationality as a protected ground). [↑](#footnote-ref-7)
8. Matter of M-E-V-G-, 26 I&N Dec. 227, 239 (BIA 2004). [↑](#footnote-ref-8)
9. Matter of S-E-G-, 24 I&N Dec. 579, 582; 584 (BIA 2008). [↑](#footnote-ref-9)
10. *See generally,* Cote d’Ivoire country conditions submitted in Volume Two*.*  [↑](#footnote-ref-10)
11. W-G-R-, 26 I&N Dec. at 217. [↑](#footnote-ref-11)
12. W-G-R-, 26 I&N Dec. at 586-587. [↑](#footnote-ref-12)
13. M-E-V-G, 26 I&N Dec. at 246 (“Social groups based on innate characteristics such as sex…are generally easily recognizable and understood by others to constitute social groups.” (quoting Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006)). [↑](#footnote-ref-13)
14. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Country Reports on Human Rights for 2018- Cote d’Ivoire(2019)(Vol. II, Ex. 9). [↑](#footnote-ref-14)
15. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Cote d’Ivoire Country Report on Human Rights Practices for 1998(Vol. II, Ex. 11). [↑](#footnote-ref-15)
16. Id. [↑](#footnote-ref-16)
17. *See generally* Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Cote d’Ivoire Country Report on Human Rights Practices for years 1998, 2006, and 2018 at Vol. II, Ex. 11, 13, and 14. [↑](#footnote-ref-17)
18. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Country Reports on Human Rights for 2018- Cote d’Ivoire(2019)(Vol. II, Ex. 14). [↑](#footnote-ref-18)
19. *See* Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, ¶51, p. 14 (Geneva, January 1992) (“Handbook”). [↑](#footnote-ref-19)
20. *See* Matter of Acosta, 19 I. & N. Dec. 211, 222 (BIA 1985); Fatin v. INS, 12 F.3d 1233, 1242 (3d Cir. 1993). [↑](#footnote-ref-20)
21. Huo Qiang Chen v. Holder, 773 F.3d 396, (2d Cir. 2014). [↑](#footnote-ref-21)
22. U.S. Citizenship and Immigration Services, Asylum Officer Basic Training Course, *Guidelines for Children’s Asylum Claims* 37 (Sept. 1, 2009) (hereinafter “AOBTC Children’s Asylum Guidelines”). See Also Jorge-Tzoc v. Gonzales 435 F.3d 146, 150 (2d Cir. 2006)(finding that the harm a child fears or has suffered can be relatively less than the harm required to rise to the level of persecution for an adult, and still qualify as persecution) [↑](#footnote-ref-22)
23. *See* Matter of R-A-, 22 I & N Dec. 906 (BIA 1999). [↑](#footnote-ref-23)
24. Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018). [↑](#footnote-ref-24)
25. *See* Matter of R-A-, 22 I & N Dec. at 914 (BIA 1999). [↑](#footnote-ref-25)
26. Matter of A-B-, 271 I&N Dec. at 377 [↑](#footnote-ref-26)
27. In Matter of A-B-, although the A.G. overruled Matter of A-R-C-G, he held, “I do not question that A-R-C-G’s claims of repugnant abuse by her ex-husband were sufficiently severe.” Matter of A-B-27 I&N Dec. 316, 337 (A.G. 2018). He further noted that “private violence may well satisfies this standard [of severity].” [↑](#footnote-ref-27)
28. We have further stated that evidence of "physical abuse and violence at the hands of government agents or private actors who behave with impunity in the face of government reluctance to intervene. . . . [,] if credible, may preclude a finding that the conduct is mere harassment that does not as a matter of law rise to the level of persecution, for violent conduct generally goes beyond the mere annoyance and distress that characterize harassment." *Ivanishvili* [433 F.3d at 342](https://casetext.com/case/ivanishvili-v-us-dept-of-justice#p342). [↑](#footnote-ref-28)
29. Poradisova. Gonzales, 420 F. 3d 70, 79-80 (2d Cir. 2005); In re O-Z &I-Z-, the Board held that the three beatings suffered by Respondent, one beating suffered by Respondent’s son that necessitated surgery, and extreme humiliation suffered by Respondent’s son constituted “more than mere discrimination and harassment. In the aggregate, they rise to the level of persecution as contemplated by the Act.” [↑](#footnote-ref-29)
30. See Rizal v. Gonzales, 442 F.3d 84, 92 (2d Cir. 2006); Mei Fun Wong v. Holder, 633 F.3d 64, 76 (2d Cir. 2011) (internal quotations omitted). [↑](#footnote-ref-30)
31. Mei Fun Wong v. Holder, 633 F.3d 64, 76 (2d Cir. 2011) (internal quotations omitted) [↑](#footnote-ref-31)
32. See Gashi v. Holder, 702 F.3d 130, 138 (2d Cir. 2012) (an applicant suffered past persecution when he was “repeatedly warned, threatened with death, and attacked with deadly weapons including a knife and a metal knob”). [↑](#footnote-ref-32)
33. *See* Matter of H-, 21 I. & N. Dec. 337, 347-348 (BIA 1996) (citing Matter of Pula). [↑](#footnote-ref-33)
34. *Compare* Zoarab v. Mukasey, 523 F.3d 777, 780 (6th Cir. 2008) *with* 8 USC §1158(b)(1)(B)(i). [↑](#footnote-ref-34)
35. 8 USC §1158(b)(1)(B)(i). [↑](#footnote-ref-35)
36. *See* Faruk v. Ashcroft, 378 F.3d 940, 943 (9th Cir. 2004) [↑](#footnote-ref-36)
37. Faruk v. Ashcroft, 378 F.3d 940, 943 (9th Cir. 2004) [↑](#footnote-ref-37)
38. Castaneda-Castillo v. Holder, 638 F.3d 354, 365 (1st Cir. 2011) [↑](#footnote-ref-38)
39. Osorio v. I.N.S., 18 F.3d 1017, 1030 (2d Cir. 1994). [↑](#footnote-ref-39)
40. INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992). [↑](#footnote-ref-40)
41. Hernandez-Avalos v. Lynch, 784 F.3d 44, 950 (4th Cir. 2015)(emphasizing the focus on the motivation for harming the applicant herself). [↑](#footnote-ref-41)
42. See, e.g., Tjandra v. Holder, 462 Fed.Appx. 105 (2nd Cir. 2012); In Re A-M-, 3 I. & N. Dec. 737, 742 (BIA 2005). [↑](#footnote-ref-42)
43. See [Kandaswamy v. Holder](https://1.next.westlaw.com/Document/I21cfd3d069de11e1be29b2facdefeebe/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad705200000014460084bad41de5152%3FNav%3DCASE%26fragmentIdentifier%3DI21cfd3d069de11e1be29b2facdefeebe%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=12c17160447fc6a38ef99c7afe5bcefe&list=CASE&rank=13&grading=na&sessionScopeId=d7dbe3c5c90b652f991b2cea4cf7e47d&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29),466 Fed.Appx. 35, 38 (2nd Cir 2012). [↑](#footnote-ref-43)
44. [Kandaswamy v. Holder](https://1.next.westlaw.com/Document/I21cfd3d069de11e1be29b2facdefeebe/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad705200000014460084bad41de5152%3FNav%3DCASE%26fragmentIdentifier%3DI21cfd3d069de11e1be29b2facdefeebe%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=12c17160447fc6a38ef99c7afe5bcefe&list=CASE&rank=13&grading=na&sessionScopeId=d7dbe3c5c90b652f991b2cea4cf7e47d&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29). 466 Fed.Appx. at38. [↑](#footnote-ref-44)
45. [Siuabalasingam v. Holder](https://1.next.westlaw.com/Document/I19cbee8a8a4411e196ddf76f9be2cc49/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad705200000014460084bad41de5152%3FNav%3DCASE%26fragmentIdentifier%3DI19cbee8a8a4411e196ddf76f9be2cc49%26startIndex%3D81%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=12c17160447fc6a38ef99c7afe5bcefe&list=CASE&rank=86&grading=na&sessionScopeId=d7dbe3c5c90b652f991b2cea4cf7e47d&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29), 477 Fed.Appx. 757, 759 (2d Cir. 2012). [↑](#footnote-ref-45)
46. Matter of A-B-, citing Uwais v. U.S. Attorney General, 478 F.3d 513, 517 (2nd Cir.)(emphasis added) [↑](#footnote-ref-46)
47. Id. [↑](#footnote-ref-47)
48. Ivanishvili v. US. Department of Justice, 433 F.ed 322, 342 (2d. Cir. 2006). [↑](#footnote-ref-48)
49. Matter of A-B- at 337; Counsel notes for the record that the Matter of A-B- contains is simply extremely negative, non-binding dicta used to cast doubt on the viability of asylum claims involving non-state actors. [↑](#footnote-ref-49)
50. Matter of M-E-V-G-, 26 I&N Dec. at 243. Matter of A-B-, at 320 [↑](#footnote-ref-50)
51. Matter of A-B - , 27 I&N Dec. at 337. [↑](#footnote-ref-51)
52. Matter of A-B-, at 337-338 (An applicant seeking to establish persecution based on violent conduct of a private actor “must show more than ‘difficulty . . . controlling’ private behavior.” Menjivar v. Gonzales, 416 F.3d 918, 921 (8th Cir. 2005) (quoting Matter of McMullen, 17 I&N Dec. 542, 546 (BIA 1980)). [↑](#footnote-ref-52)
53. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Country Reports on Human Rights for 2018- Cote d’Ivoire(2019), available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Vol. II, Ex. 9). [↑](#footnote-ref-53)
54. Id. [↑](#footnote-ref-54)
55. Id. [↑](#footnote-ref-55)
56. The earliest report available to demonstrate the conditions at the time of Ms. Smith’s forced marriage. [↑](#footnote-ref-56)
57. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Cote d’Ivoire Country Report on Human Rights Practices for 1998, (February 26, 1999), available at: <https://1997-2001.state.gov/global/human_rights/1998_hrp_report/cotedivo.html> (Vol. II, Ex. 11). [↑](#footnote-ref-57)
58. Id. [↑](#footnote-ref-58)
59. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Cote d’Ivoire Country Report on Human Rights Practices for 2006 (2007), available at <https://www.state.gov/j/drl/rls/hrrpt/2006/78730.htm> (Vol. II, Ex. 13). [↑](#footnote-ref-59)
60. Id. [↑](#footnote-ref-60)
61. Id. [↑](#footnote-ref-61)
62. Id. [↑](#footnote-ref-62)
63. Bureau of Democracy, Human Rights and Labor, U.S. Dept. of State, Country Reports on Human Rights for 2018- Cote d’Ivoire(2019), available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (Vol. II, Ex. 9). [↑](#footnote-ref-63)
64. Id. [↑](#footnote-ref-64)
65. Id. [↑](#footnote-ref-65)
66. Id. [↑](#footnote-ref-66)
67. Matter of A-B-, 337-338. [↑](#footnote-ref-67)
68. 8 CFR §208.13(b)(3)(ii). [↑](#footnote-ref-68)
69. 8 CFR 208.13(b); Matter of Acosta, 19 I&N Dc. 211 (BIA 1985). [↑](#footnote-ref-69)
70. 8 CFR §208.13(b)(3); Gao v. Gonzales, 440 F.3d 62, 71-72 (2d. Cir. 2006). [↑](#footnote-ref-70)
71. The Immigration and Naturalization Service (“INS”), an agency of the Department of Justice, was formally dissolved as of March 1, 2003. Its functions and authority were allocated to the new Department of Homeland Security. [↑](#footnote-ref-71)
72. David A. Martin, General Counsel, INS, Memorandum to All Regional Counsel, Legal Opinion: Seropositivity for HIV and Relief from Deportation (Feb. 16, 1996), reproduced in 73 INTERPRETER RELEASES 909 (July 8, 1996). [↑](#footnote-ref-72)
73. David A. Martin, General Counsel, INS, Memorandum to All Regional Counsel, Legal Opinion: Seropositivity for HIV and Relief from Deportation (Feb. 16, 1996), reproduced in 73 INTERPRETER RELEASES 909 (July 8, 1996). [↑](#footnote-ref-73)
74. 8 C.F.R. § 208.13(b); Matter of Acosta 19 I. &. N. Dec. 211, 221 (BIA 1995). [↑](#footnote-ref-74)
75. Melga de Torres v. Reno, 191 F.3d 307, 311 (2d. Cir. 1999) (requiring “proof or objective facts that lend support to the applicant's subjective fear”) [↑](#footnote-ref-75)
76. Abankwah v. INS, 185 F.3d 18, 22 (2d. Cir. 1999).  [↑](#footnote-ref-76)
77. *See* Carcamo-Flores v. INS, 805 F.2d 60, 64 (2d Cir. 1986). [↑](#footnote-ref-77)
78. Yang v. Gonzales, 478 F.3d 133, 141 (2d Cir. 2007). [↑](#footnote-ref-78)
79. Cardoza-Fonseca v. I.N.S., 107 S.Ct. 1207, 1217 (S.Ct. 1987). [↑](#footnote-ref-79)
80. Cardoza-Fonseca at 1217 [↑](#footnote-ref-80)
81. 8 C.F.R. [§ 1208.13(b)(1)(iii)(A)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=8CFRS1208.13&originatingDoc=I4d585cb45d3211e196ddf76f9be2cc49&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_101700009c331). *See also* Matter of Chen, 20 I&N Dec. 16 (BIA 1989) [↑](#footnote-ref-81)
82. 8 C.F.R. [§ 1208.13(b)(1)(iii)(B)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=8CFRS1208.13&originatingDoc=I4d585cb45d3211e196ddf76f9be2cc49&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_1bbc00007e7c3). *See also* Matter of L-S-, 25 I. & N. Dec. 705, 714 (BIA 2012). [↑](#footnote-ref-82)
83. Omaro Jalloh v. Gonzales, 498 F.3d 148, 152 (2d Cir. 2007); 8 C.F.R. 1208.13(b)(1)(iii)(A). [↑](#footnote-ref-83)
84. Counsel was retained to represent Ms. Smith on April 23, 2019, only one week prior to her initially scheduled interview. Despite counsel’s best attempts to secure a timely psychological evaluation, Dr. Joness indicated that she will not provide a final version to counsel until May 21, 2019 in time for the asylum interview. Upon receipt of the evaluation, counsel intends to appropriately update this brief. [↑](#footnote-ref-84)
85. Affidavit of Dr. Jones, (Vol. I, Ex. 4) at ¶58. [↑](#footnote-ref-85)
86. Id. at ¶69. [↑](#footnote-ref-86)
87. Id. at ¶72. [↑](#footnote-ref-87)
88. 8 C.F.R. §1208.13(b)(1)(iii)(B); Kone at 152. [↑](#footnote-ref-88)
89. Kone v. Holder, 596 F.3d 141, 153 (2d Cir. 2010). [↑](#footnote-ref-89)
90. Niang v. Gonzales*,* 492 F.3d 505, n. 4 (citing Osigwe v. Ashcroft*,* 77 Fed.Appx. 235, 235 (5th Cir.2003), which remanded to the BIA to consider both avenues of humanitarian asylum relief under similar circumstances); cf. Benyamin v. Holder*,* 579 F.3d 970, 977 (9th Cir.2009) (remanding for the BIA to consider in the first instance whether petitioner's daughter's genital mutilation qualifies petitioner for humanitarian asylum). Kone v. Holder at 153. [↑](#footnote-ref-90)
91. *See* INA § 208(a)(2)(B). [↑](#footnote-ref-91)
92. 8 CFR § 208.4(a)(5)(ii). [↑](#footnote-ref-92)
93. 8 C.F.R. §§208.4(a)(4)(ii), 1208.4(a)(4)(ii); 65 FR 76121, 76123-24 (Dec. 6, 2000). [↑](#footnote-ref-93)
94. Affidavit of Dr. Jones, at ¶72. [↑](#footnote-ref-94)