

Immigration Court: BIA**Case:** *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633 (BIA 2008) **Date:** Oct. 6, 2008**Adjudicated by:** Filppu, Cole, Pauley**Opinion:** Cole**Tags:** Asylum, population control, China, IUD, persecution, resistance**Question Presented:** What constitutes resistance to family planning policy?

- Does the insertion of an IUD rise to the level of “persecution”?

Holdings: Removing an IUD or failing to go to a gyn appointment can constitute “resistance” to population control measures, but insertion of an IUD does not rise to the level of persecution.**Rationale:** Resistance = anything that thwarts the goals of China’s family planning policy; hard to prove that insertion of IUD was because of respondent’s resistance.**Facts:** Citizen of China had a son in 1990. Officials had an IUD inserted which caused pain, but she was told she could not have the device removed. Hired a private doctor to remove it in 1992, and missed several gyn checkups because it was removed. This was discovered at a checkup in 1993. She refused to have another, and was detained for 3 days. Eventually submitted to another one. 1998 caught trying to leave China and for missing gyn exams. Arrived in U.S. in 2000, got IUD removed, had second child in 2002.**Procedural History:**

- **2002: IJ:** Denied applications for asylum / WH / CAT because respondent failed to establish a well-founded fear of sterilization after having a second child in U.S.
- **2003 BIA:** Affirmed.
- **2006 2nd Cir:** remanded to BIA: “to explain why an alien who is subject to the forcible insertion of an IUD, and any attendant pain or discomfort, does not fall within the definition of a refugee.” 634

Appeals to Statute & Precedent:

- **INA §101(a)(42) / IIRIRA:** Added language re. forced family planning to definition of refugee.

Discussion:

- The IIRIRA amendment doesn’t apply to this respondent: “It is clear that having to use an IUD does not amount to being forced to abort a pregnancy.” 636
- Dictionary definition of “sterilize” means it’s permanent. Congress did not mean anything less than permanent (like an IUD).

- “Other resistance” = requires evidence that she resisted planning policy and has been persecuted (or has a well-founded fear of it) BECAUSE of her resistance to the policy.
- Should involve **refusing** to let something happen—abortion, IUD.
- Punishment for resistance has to be more than just minor fines.
- “While having an IUD inserted involuntarily is certainly intrusive and hinders a person’s ability to control procreation, the temporary nature of its effects persuade us that such a procedure does not constitute persecution per se.” 640
- “We note also that our conclusion regarding these less coercive forms of forcible birth control is supported by the fact that when Congress amended the definition of a ‘refugee’ to include persecution based on China’s family planning policy, it focused on sterilization and abortion. It is harm of this magnitude and permanency that Congress treated as automatically amounting to qualifying persecution.” 641
- “We do not intend to imply that having an IUD inserted can never be found to be persecutive. However, to rise to the level of harm necessary to constitute ‘persecution,’ the insertion of an IUD must involve aggravating circumstances.” 642
- **Nexus: persecution FOR resisting population control measures.**
- “Nevertheless, the respondent’s case is not one in which the pain rose to the level of persecution, and she has not reasonably established that the second IUD insertion was on account of other resistance.” 644