

5. The Immigration Judge Robert Newberry denied my application for asylum, withholding of removal and protection under the Convention Against Torture on August 16, 2006.
6. I filed a timely appeal to BIA on August 18, 2006. BIA dismissed my appeal on June 24, 2008.
7. On March 26, 2009, I filed with BIA my first motion to reopen, which BIA denied on October 29, 2009.
8. The matter was reviewed by the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) on my petition to review BIA's dismissal of my application for asylum, withholding of removal and protection under the Convention Against Torture. The Sixth Circuit refused to overturn BIA decision on June 1, 2010.
9. The Sixth Circuit's decision made the Associated Press wire. *See* Kenyan Who Attended Hope College Can't Stay in US, Exhibit 13, Tab B and Kenyan Man Must Exit U.S., The Grand Rapids Press, June 3, 2010, Exhibit 14, Tab B.
10. Muslims around the world jumped on the story. One Muslim website, Talk Islam, which has over three thousand Twitter followers, even tweeted the Sixth Circuit's decision. *See* Talk Islam Screenshot, Exhibit 20, Tab E.
11. The media frenzy led the Sixth Circuit to redact names of individuals who were still in Kenya from the decision. Sixth Circuit granted my emergency motion, making an exception for me to file it via fax because my attorney was out of town and it was an urgent matter. My motion was received on June 3, 2010, and names were redacted the same day. *See* Petition to Redact Names Exhibit 4 & Case No. 08-3860, Wario Hussein v. Eric Holder, Jr. Originating Case No. : A95 599 461, Exhibit 5, Tab A.
12. The Associated Press story was national and international news. The AP wire appeared in

print and/or online in the USA Today, Detroit Free Press, Chicago Tribune, Huffington Post, AOL News, Orlando Sentinel, Baltimore Sun, Iran Book News Agency, among others; TV and radio broadcasts outlets as well. The news story appeared in the media in at least six other countries, including, Australia, Ghana, India, Iran, New Zealand and Kenya.

13. I worked on Cracks in the Crescent for several years before its publication in February 2009. I still write on Islam because of my religious and personal convictions and not out of any desire to manufacture additional grounds for an asylum claim. I am always cautious when it comes to my safety and that of my wife and others. I eschew publicizing my appearances at churches or colleges. I don't even allow my church to put out our church bulletin online, lest our safety is compromised.

14. xxxxxxxx apprises me of what goes on in Kenya. Since he is concerned for his own life, he has xxxxxxxxxxxx. The Sixth Circuit redacted his name along with that of xxxxx who still lives in Kenya. Xxxxxxxxxx xxx xxxxxxxx xxxxx. Xxx xxxx xxxxxxx xxxxxxxxxxx xxx xxx xxxxxxxxxxxxxxxxxxx xxxxx xxxxxx xxx xxxxxx xx xxxxxxxxxxx xxxxxx xxxxxxx xxxxxxxxxxxxxx xxxxxx xxxxxxx xxxxxx xxxxxxxxxxx xxx xxxxxxx xxxxxxxxxxxxxxxxxxx Now that even people in my native Tana River District can access excerpts of the book on their mobile phones, xxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxx. One Kenyan Muslim wrote twice days xxxxx xxxxxx xxxxxxx and xxxxxxx xxxxxxxxxxx, asking where Cracks in the Crescent was sold in Kenya. See Customer Contact Message, Screenshot Exhibits 18 & 19 in Tab E.

15. I have never committed any crimes in the United States or abroad nor is there any derogatory information or other violations of the law that would bar me from adjusting my status. See Criminal Records in Tab D & my FBI file number is xxxxxxxxxxx. United

States Citizenship and Immigration Services (USCIS) granted my United States citizen wife's Petition for Alien Relative (Form I-130, Receipt No. xxx-xxxxxxxx) on October 26, 2010. *See* Exhibit 21 in Tab F.

16. I am a person of good moral character. I xxxxxxxx xxxxxxxxxx with my wife, Rita Wario, at xx xxxxxxxx and have recently been xxxxx xxx xxx xxxxxxxxxx xxxx xxxxxxxx, xxx xxxxx xxxxx xxxxx. *See* Affidavit of xxxx xxxx xxxxxxxx, Exhibit 6, Affidavit (Letter) of xxxx xxxxx, Exhibit 7, and xxxxxxxx xxxxxxxxxx xxxx xxxxxxxxxx xxxxx xxxxx xxxx, Exhibit 8, in Tab C.

17. Muslims who have apostatized live in grave conditions in Kenya. My friend xxxx xxxx says in her affidavit, "Like Wario, I converted to Christianity in Kenya. After my conversion, fearing for my own life, I lived as a secret Christian until I moved to the United States." Xxxxx further says, "I know more than 40 Muslim converts to Christianity in Kenya who live in hiding because they have been attacked. I know a Muslim man, a convert to Christianity, who was attacked in Nairobi in January 2008. He sustained a deep cut to his forehead. He is still in Kenya but in hiding. I know another Muslim convert to Christianity, a girl, who was attacked by Muslims in Kenya. She now lives in the United States. Another Muslim convert to Christianity I know, a 21-year-old man, was not so lucky. He was attacked and killed in Kenya in February 2010." *See* Affidavit of xxxx xxx, Exhibit 1, in Tab A.

18. US State Department's report on Kenya, which was released on November 17, 2010, states, "Local Christian organizations reported that individuals who converted to Christianity from Islam, particularly individuals of Somali ethnic origin, were often threatened with violence or death by Muslim religious leaders and their families. These

threats prompted some individuals to go into hiding.” See International Religious Freedom Report 2010, Exhibit 2, in Tab A.

Xxxxx’s affidavit and US State Department’s International Religious Freedom Report 2010 are evidence that lucidly demonstrate change in country conditions. IJ based his ruling on Country Reports, which indicated that I could return to Kenya without any harm provided I relocated. BIA concurred with the IJ’s ruling stating I had “not provided any objective evidence of current country conditions in Kenya in support of this motion.” See Matter of Hussein (BIA 2009) in Tab H.

New evidence clearly shows if I return to Kenya and even live in a different part of the country, I will be persecuted, tortured or killed. Xxxxx’s affidavit and US State Department International Religious Freedom report clearly show the Kenyan government is unable or unwilling to protect Muslims who have converted to Christianity. If the Kenyan government accorded Muslim converts to Christianity protection, these individuals would not have gone “into hiding.”

Xxxx’s affidavit and US State Department report not only shows change in country conditions but also “a pattern or practice” in my “country of nationality” of persecution against people “similarly situated” to me. 8 C.F.R. § 1208.13(b)(2)(iii)(A).

The IJ ruled if I moved to a different part of Kenya, I would be safe. On the contrary, both Xxxxx’s affidavit and US State Department report show these converts moved away but still lived in hiding.

The following events further show a pattern of persecution of Muslims who convert to Christianity in Kenya. On May 12, 2006, three months before the IJ denied my application for asylum, withholding of removal and protection under the Convention Against Torture, a Christian radio station of a denomination I was affiliated with in Kenya was firebombed, one

person was killed and three were injured. My attorney even included the Associated Press and Daily Nation (Kenya's leading newspaper) articles in the supporting documents filed with the Immigration Judge. The radio station at that time of the bombing was airing "a program yesu niye njia (Jesus is the way) where Muslims who have converted to Christianity were talking about their past experiences." See 1 Dead in Kenya Religious Station Attack and Kenya: Radio Station Under Attack, Exhibits 9 and 10 respectively, in Tab B.

US State Department's International Religious Freedom Reports on Kenya for both 2006 and 2007 show the Kenyan government did not prosecute the case even when the assailants had called into the radio station prior to their attack. Both reports show the Kenya Police had not yet "concluded whether the attack was motivated by religious intolerance." Only in Kenya where an investigation would be "ongoing" two years later even when there was enough forensic evidence (telephone records). The Kenyan Police have not cracked this case to date. IJ mentioned this incident and the news articles on page 18 of his oral decision saying, "There is only one series of articles in here that talks about the bombing of a radio station after it broadcasted a program with respect to conversion between the Muslims and the Christians." Both these articles show the program was about Muslims who had converted to Christianity but the IJ left it ambiguous. He continued to say, "Of course, one incident does not make a pattern or practice."

Freedom House, an independent watchdog group that supports the expansion of freedom around the world, located in Washington, DC, had a report in 2006 that stated, "Vigilantes have killed, beaten, and threatened converts in Pakistan, Palestinian areas, Turkey, Nigeria, Indonesia, Somalia and Kenya." See Apostates from Islam, Exhibit 11, in Tab B. Again, IJ had this evidence but he did not even mention it. This report is further evidence there is a pattern of persecution and killings of Muslims who convert to Christianity in Kenya.

Rev. XXXXX x XXXXXXX, T.O.R., was my roommate in college. He testified at my individual hearing on August 16, 2006. Rev. XXXXXXX is a Franciscan friar and has done Catholic Christian missionary work in Kenya. He witnessed how corrupt the police were in Kenya. He states in his affidavit, “While in Kenya I also witnessed matatu drivers regularly paying bribes—appearing to be a type of toll—to either police or unidentified persons as they drove into various parts of town. The bribes appeared to be a regular expense and part of Kenyan life.” *Matatu* is a minibus in Swahili. Rev. XXXXX further says, “I am very concerned that Wario’s life may be in danger if he returned to Kenya [...] I believe that he could potentially be in more danger now that he has written a book, *Cracks in the Crescent*, which chronicles his journey to Christianity and offers critique of the Quran.” Reverend XXXXX quotes US State Department’s International Religious Freedom Report 2010 then continues; “The Bureau’s observation confirms my fears that Wario’s life would be in danger if he returned to Kenya, particularly because he is not only a convert from Islam, but a critic of the religion as well. Further, the U.S. Department of State’s Human Rights Report on Kenya from 2009 states that “(m)ob violence and vigilante action resulted in numerous deaths” that year. It also reported that “(t)here were numerous instances in which police failed to prevent societal violence.” It is quite reasonable to believe that Wario would be a potential target for an attack from Islamic radicals, and that the police would do little to keep him safe.” See Affidavit of Reverend XXXX x. XXXXXXX, T.O.R., Exhibit 3, in Tab A. Rev. XXXXX’s affidavit shows police corruption and ineptitude, which even the US government has documented.

US envoys in Kenya see Kenya as a “swamp of flourishing corruption.” See, US envoys see Kenya as a “swamp’ of corruption, Daily Nation, November 30, 2010, Exhibit 13, in Tab B. If I return to Kenya, I have to look to the police for protection. Even the US government has

shown Kenya Police's ineptitude due to chronic corruption. They have failed to protect Muslims who have converted to Christianity currently present in Kenya or Kenyans who are victims of violence; therefore they would not protect me. With corruption this rife, if I were removed to Kenya, Kenya police who know my whereabouts would possibly avail my information to Muslims in exchange for a bribe.

With all this new evidence I have demonstrated a clear probability that my life and freedom would be threatened in Kenya, the country directed for my removal, on account of my apostasy from Islam. (INS v. Stevic, 467 U.S. 407, 430 (1984)). My past persecution in Kenya and current country conditions, especially now under these circumstances which include the media attention to my case, it will be more likely than not that I will be tortured or killed if I am removed to Kenya. 8 C.F.R. § 208.16(c)(2). US State Department Religious Freedom report and Xxxxx Xxx's affidavit show grave conditions Muslim apostates who are currently in Kenya face.

Having stated these facts, I respectfully request the Board of Immigration Appeals to reopen my asylum claim on the basis of new and material evidence that was previously unavailable which show change in my country of nationality (Kenya) conditions and remand my case to the Immigration Court for consideration of the additional evidence. 8 U.S.C. § 1229a (c)(7)(B).

Respectfully submitted this 4th day of February 2011 by:

Wario Zachariah Abarufa Hussein
Respondent