Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02895/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Sent**
On 9 January 2014	**On 10 February 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S S
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Ms L Fenney of NLS Solicitors

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Archer) which allowed the claimant's appeal against the Secretary of State's decision taken on 14 March 2013 to refuse to grant her asylum under para 336 of the Immigration Rules (HC 395 as amended) and to remove her to the Ivory Coast by way of directions under s.10 of the Immigration and Asylum Act 1999.

3. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

4. The appellant is a citizen of the Ivory Coast who was born on 22 July 1993. She arrived in the United Kingdom on 12 December 2009 and claimed asylum. Her claim was refused on 21 May 2010 but she was granted discretionary leave until 22 January 2011. On 12 January 2011 she applied for further leave and that was refused on 26 July 2012. Thereafter, the appellant made further submissions on 12 August 2012 and 13 February 2013. Those submissions were made on the basis of a claimed risk to the appellant's daughter who had been born in the UK in 2012. The appellant claimed that her daughter was in danger of being forced into marriage and undergoing female genital mutilation (FGM). The appellant's claim for asylum based upon the risk to her daughter was refused by the Secretary of State on 14 March 2013. The appellant appealed to the First-tier Tribunal. Judge Archer found that the appellant's daughter would be at risk of FGM on return to the Ivory Coast and there would not be a sufficiency of state protection and internal relocation was not open to the Appellant and her daughter. Consequently, he allowed the appeal on asylum grounds and also under Art 3 of the ECHR but made no decision under Art 8 of the ECHR.

The Appeal to the Upper Tribunal

5. On 24 May 2013, the Secretary of State was granted permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge Fisher). The grant of permission was on the basis that the judge had arguably erred in law in applying the Country Guidance case of MD (Women) Ivory Coast CG [2010] UKUT 00215 (IAC) and, without any evidential basis, finding that the appellant's daughter was at risk of abduction in order to undergo FGM.

6. The appeal was initially listed before me on 25 October 2013. In a decision dated 13 November 2013, I concluded that Judge Archer had erred in law in reaching his finding that the appellant's daughter was at risk of FGM if returned to the Ivory Coast. My reasons are set out in full in that decision and it is not necessary to repeat them here. Consequently, I set aside the judge's finding and directed that the appeal be listed for a resumed hearing in order for the Upper Tribunal to remake the decision in respect of the appellant's asylum claim and under Art 3 of the ECHR. Thus, the appeal again came before me on 9 January 2014.

7. Ms Fenney, who represented the appellant, relied only on the Refugee Convention and Art 3 of the ECHR on the basis that the appellant's daughter was at risk of FGM on return to the Ivory Coast.

8. At the earlier hearing, the (then) Presenting Officer (Mr Hibbs) had indicated that the respondent would wish to argue that the appellant could not succeed in her asylum or Art 3 claim solely on the basis of a risk to her daughter but not directly to herself. At the outset of this hearing, Mr Richards, who now represented the respondent, indicated that he did not rely on that point and he accepted that the appellant could succeed in her claim under the Refugee Convention and Art 3 if there was a real risk to her daughter of undergoing FGM on return to the Ivory Coast.

The Evidence

9. At the hearing, the appellant briefly gave oral evidence before me. In her evidence-in-chief, the appellant said that if she returned to the Ivory Coast she would have to work as that was the only way for her to survive. She said that if she went to work she did not know who would look after her daughter. There was no one she could give her daughter to and nobody she could leave her with. She said that she did not trust anyone. When she was asked why she did not trust anyone, the appellant said it was because she remembered that she had been left at home by her mother and that, as a result, she had undergone FGM and she did not want that to happen to her daughter. She said that she thought this would happen because of the culture. They had to do circumcision because it was what they believed in in their religion.

10. In cross-examination, the appellant confirmed that her daughter was 1½ years old. She was not sure when her daughter would go to school in the Ivory Coast. The appellant confirmed that she was 7 years old when she underwent FGM. She told me that only her father wanted her to undergo FGM and not her mother. The appellant said that it was likely that her father had arranged for her to undergo FGM. The appellant was asked who would arrange for her daughter to undergo FGM; the appellant replied, "anyone", a "family friend" or "head of the family"; it could be anyone. She was asked why, if she had to go to work, the appellant could not ask someone who looked after her daughter whether they agreed with FGM. The appellant said that she could ask but they might lie to her. In any event, the appellant said that even if the person did not agree with FGM, she might be convinced to release her daughter. When asked who "they" were, the appellant said that it could be anyone.

11. There was no re-examination.

The Law

12. The burden of proof is upon the appellant to establish that there is a real risk that her daughter will be subject to FGM on return to the Ivory Coast so that the appellant will establish a real risk of persecution for a Convention Reason (namely as a member of a particular social group) or serious ill-treatment contrary to Art 3 of the ECHR.

The Submissions

13. Mr Richards submitted that, taking into account the Country Guidance case of MD, there was no general risk of FGM in Abidjan which was the city in the Ivory Coast to which the appellant would return. He submitted that there was no real risk to the appellant's daughter where a parent or parents who have care of that child do not consent to the practice of FGM. Here, he submitted that the appellant did not consent and, it was common ground, that the father of the appellant's child was not a factor. Mr Richards submitted that the appellant had failed to identify anybody who was a threat to the child. It was only speculation, he submitted, that someone such as a neighbour or friend or family member might abduct the child. He accepted that the possibility could not be entirely ruled out but, given the Country Guidance in MD, it could not be said that there was a real likelihood or real risk of FGM being carried out on the appellant's child in Abidjan.

14. On behalf of the appellant, Ms Fenney submitted that each case must be decided on its own facts. It was accepted that the appellant had, herself, undergone FGM and she would be returning to the same home area where that had taken place. Ms Fenney submitted that the appellant was not wealthy and she would be part of the "urban poor" and would have to work. As a result, her daughter would need to be looked after. In relation to MD, Ms Fenney drew my attention to [269] that FGM was still a problem and to [270] and [276], that there was social pressure to conform to the local *mores* including FGM and there was an insufficiency of protection offered in the Ivory Coast. Ms Fenney submitted, although MD concluded that there was no evidence of children being abducted from their parents (see [269]), this was not a case concerned with abduction but rather where the appellant's child would be left with a neighbour or someone else in an area where FGM was the norm and there was a real risk that such a person would hand the child over.

Discussion and Findings

15. I begin with the background evidence relevant to the practice of FGM in the Ivory Coast contained in the Country Guidance case of MD. I set out this material in my earlier decision but it is helpful to set it out in full again here.

16. At [269], the Upper Tribunal said this about the practice of FGM in the Ivory Coast:

> "269. In some areas of the Ivory Coast, the practice of FGM is almost universal. In contrast, it cannot be said that all women in the urban areas face FGM. Once again we do not say that there will be no-one at risk in an urban area because this will depend on the specific dynamics of the community in which an applicant finds herself. It is unlikely that the pressure is anything like as great amongst well-educated sections of society or among the well-off. Where the parents of a child are against the practice, we see no mechanism by which their wishes will not determine the issue. No evidence of physical coercion against parents in order to effect circumcision on their daughters was produced before us. In other words there is no evidence that the non-circumcised are abducted in order to effect FGM in the face of parental opposition."

17. It is, in effect, the final sentence of this paragraph which is relied upon by Mr Richards in this appeal.

18. At [270] the Tribunal went on to consider the extent of "social pressure" to conform to the local *mores* including FGM:

> "270 The most we can say is that amongst a traditional community there is likely to be social pressure exerted to conform to the *mores* of the community and, depending on the attitude and fortitude of the individuals concerned, the pressure may or may not be capable of being withstood. In practice, this will not arise in the majority of cases in a traditional community because most will willingly adopt the practice as a rite of passage for whatever reasons they may have. Social pressure to conform, however, does not inevitably lead to parents succumbing to it if they are set against the practice."

19. At [277] the Upper Tribunal considered the possibility of internal relocation, in particular to Abidjan and the reasonableness of, for example, a single woman returning there (whether with or without a child):

> "277. If a person who has been found to be a refugee in her home area seeks to relocate to another part of the Ivory Coast, the normal destination will be Abidjan but it may also be one of several urban centres. Abidjan will be able to offer opportunities for a returning refugee by way of accommodation, work and a variety of ethnic cultures. A single woman will be confronted with the difficulties attendant upon her status but she will not be at risk of persecution or serious harm for that reason alone. As a matter of common sense, the difficulties will be greater for a single woman with a child but we are satisfied Abidjan is able to provide an environment where those without a network of male or family support are able to lead a relatively normal life without the risk of destitution or being forced, through want, into beggary of prostitution. Nevertheless, such cases will require consideration on a case-by-case basis, paying particular attention to the support mechanisms that are likely to exist in a mixed urban area without significant evidence of fierce racial or ethnic divides."

20. At [278]-[279], the Upper Tribunal noted a "strong contrast" between the traditional rural communities particularly in the north or central regions in contrast to Abidjan which it described as a "relatively cosmopolitan city of mixed ethnicity along with other urban cities".

21. At [279] the Upper Tribunal noted:

> "279. This attitude impacts upon the risk faced by women of FGM, forced marriage, domestic violence, the effects of adultery and discrimination."

22. At [280], the Upper Tribunal noted that:

> "280. If ..., a woman faces one of those risks, the state is unlikely to offer a sufficiency of protection in that area, in which case internal relocation may be possible without undue hardship."

23. At [281], the Upper Tribunal noted that:

> "281. We have said that there is a big variation from place to place and that a decision-maker must look at, on a case by case basis, the specific community from which the appellant comes to make an assessment of risk in the home area."

24. At [282], the Upper Tribunal concluded as follows:

> "282. We have concluded that women in the Ivory Coast are capable of being members of a Particular Social Group and that the risk that they may suffer from FGM, domestic violence and forced marriage is sufficiently serious to amount to persecutory treatment in the absence of a sufficiency of protection, but the risk is not universal and in particular is very much less likely in an urban area such as Abidjan."

25. The appellant will be returning to Abidjan. That is an urban centre which, as the Upper Tribunal points out in MD, is an area where the social *mores*, including social pressure to undergo FGM is less strong than in a more "traditional community". I accept that the appellant will return to Abidjan and will probably need to work in order to support herself. As a consequence, at least until her daughter attends school, but even thereafter out of school time, the appellant is likely to need to find someone to look after her daughter whilst she is working.

26. The appellant is opposed to FGM. In MD, the Upper Tribunal stated at [269] that:

> "No evidence of physical coercion against parents in order to effect circumcision of their daughters was produced before us. In other words there is no evidence that the non-circumcised are abducted in order to effect FGM in the face of parental opposition."

27. Whilst I have no reason to doubt the sincerity of the appellant's fears, they are not, in my judgment, well-founded so as to establish a real risk to her daughter. It is pure speculation who may wish to carry out FGM on the appellant's daughter. There is no evidence that children are abducted against their parents' wishes in order to undergo FGM. It is open to the appellant, as a practical matter, to seek to leave her daughter in the care of someone whom she can trust to respect her views that her daughter should not undergo FGM. In my view, that is a practical option open to the appellant.

28. The appellant was not specific as to who might wish to carry out FGM on her daughter. She did not, for example, suggest that her own father (the child's grandfather) would wish to do so. In any event, there is no evidence that this would occur against the appellant's wishes and that her daughter would be "taken" from the care of an individual whom the appellant could identify as someone she could trust to respect her views opposing FGM. The appellant's own position was different: her father favoured FGM.

29. Taking into account all the evidence including that set out above from MD, it is in my judgment no more than speculation that persons unknown will "take" the appellant's daughter and subject her to FGM, in effect, against the wishes of the appellant. Indeed, the very notion of "taking" the appellant's daughter against the

appellant's wishes is contrary to the Upper Tribunal's assessment in MD of the situation in the Ivory Coast. I do not accept that the appellant will be unable to find suitable (and safe) carers for her daughter whilst she is at work. Consequently, I am not satisfied that there is a real risk that the appellant's daughter will be subject to FGM on return to the Ivory Coast. For these reasons, the appellant has failed to establish her claim under the Refugee Convention and Art 3 of the ECHR.

30. As I have already indicated, the appellant does not rely upon any other basis to remain in the UK. Thus, the appellant's appeal is dismissed on all grounds.

Decision

31. The decision of the First-tier Tribunal to allow the appellant's appeal under the Refugee Convention and Art 3 involved the making of an error of law. That decision is set aside.

32. I remake the decision, dismissing the appellant's appeal on all grounds.

Signed

A Grubb
Judge of the Upper Tribunal