



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07962/2013
AA/07963/3012
AA/07964/2013
AA/07965/2013

THE IMMIGRATION ACTS

**Heard at Newport
on 23rd May 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SATJ

AJ

MTK

JJJ

(Anonymity order in force)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Fenney of NLS Solicitors.

For the Respondent: Mr Richards - Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Page promulgated following a hearing at Newport on 21st October 2013 in which he dismissed the appeals of this family group against

the removal direction to Gambia which accompanied the refusal of their claims for asylum.

2. Having considered the evidence the Judge set out his conclusions from paragraph 30 of the determination, the key points of which can be summarised as follows:

- i. That FGM is practised in Gambia [30].
- ii. The determinative issue in the appeal is the credibility of the first appellant. His wife, the second appellant, has been conspicuously absent in the appeal with there being no witness statement from her either, notwithstanding the claimed risk to their daughter [30].
- iii. Having considered all the evidence it was found: "that I can safely discount any possibility of the appellant's evidence being true" [32].
- iv. The appellant is not a credible witness. He did not claim asylum because he feared return but to regularise his status in the United Kingdom and obtain an immigration status for his family [33].
- v. The appellants evidence he has a brother and sister-in-law in the United Kingdom who have been granted refugee status was not accepted for the reasons set out in paragraph 34 of the determination. Evidence of such relatives may have been crucial but the decision was not made to call them and no witness statements were obtained from them [35].
- vi. There has been no witness statement from the appellant's wife which was found conspicuous given the claimed risk of FGM was to her daughter J born in February 2012 [36].
- vii. The evidence regarding the appellant's brother and sister-in-law and their refugee status has been invented to bolster the asylum claim [37].
- viii. The Judge was not satisfied that the appellant has more than 12 sisters in the Gambia as a result of a contradiction in his evidence [38].
- ix. The Judge was not satisfied the appellant had come from a family in a tribe where his daughter will be at risk of FGM upon return [39].
- x. The appellant showed a lack of knowledge about the Fula tribe in his asylum interview yet there has been a conspicuous

improvement in statements since the that he showed this found the appellant must order to give more informed his knowledge demonstrated in his witness asylum claim was refused on the grounds conspicuous lack of knowledge. It was have researched the Fula tribe in evidence in his appeal [40].

status take been so he would should [41]. xi. The first appellant claimed asylum to obtain lawful working after 12 years in the UK working illegally. The claim did not place until long after the birth of his daughter. If he had been aware of the practice of FGM in the Gambia, as he claimed, he would have immediately been aware that his daughter faced a risk they be returned and he would have claimed asylum earlier [41].

where His retired upper Kingdom xii. The Judge was not satisfied the appellant comes from a tribe either his wife or daughter will be at risk upon return of FGM. His father had been a company director in the Gambia before he and the likelihood is the appellant came from a family in the echelons of society in the Gambia. He came to the United Kingdom as a student but chose to remain and worked illegally [42].

true Gambia with claiming asylum on xiii. The appellant has put forward an invented story against a objective background about the practice of FGM in the a view to obtaining an immigration status, and this basis [42].

him to falsely status in the finding any [43]. xiv. The appellant has not discharged the burden of proof upon show that he faces a genuine risk of persecution. He has claimed asylum as a means of obtaining an immigration United Kingdom. There is no alternative ground for entitlement to a grant of humanitarian protection [43].

him to would xv. The appellant has not discharged the burden of proof upon show a real risk or that his removal from the United Kingdom cause a breach of his protected human rights [44].

3. Permission to appeal was sought and eventually granted on a renewed application to the Upper Tribunal.

Discussion

4. The grounds of appeal assert legal error on the basis the Judge failed to find that the appellants are members of the Fula tribe which practices FGM in the Gambia. It is stated to be of importance that the surname of the appellants is [J] which is said to be a Fula name. The grounds allege that notwithstanding the fact the appellants have a less than perfect immigration history this must not be allowed to

detract from the fact there is a real risk for the female children should the family be returned to Gambia.

5. I accept that the surname of the appellants is as stated in the appeal papers which I shall not set out in full in the determination as a result of the anonymity direction to protect the identity of the two minor children.

6. It is submitted on the appellant's behalf that the material before the Judge showed that the surname is a Fula surname and therefore persons with that name will be identified as such. In paragraph 18 of the determination it is claimed such a finding is made, but if one looks at paragraph 18 it is in fact an assessment of the evidence given by the appellant in which the Judge states:

18. He showed more knowledge about the Fula tribe during his evidence and accepted, in answer to questions by Mr Edwards, that he had ample time to research the Fula tribe since the respondent's refusal letter on 5 August 2013. The appellant had showed a conspicuous lack of knowledge about the Fula tribe when interviewed. He said he is Fulani by birth. His name is a clear indication of his ethnicity. [J] is one of the most common Fulani surname. This is supported by the objective evidence of page 11 of the appellants bundle in an article entitled "Behind the Name".

7. There are two references to the name in the appellant's appeal bundle the first of which is at page 11 and the second at page 28. The latter referring to common Fula surnames while the document at page 11 is from a website dealing with the etymology and history of surnames and refers to the surname [J], which is said to be the surname one of the four main branches of the Fula people.

8. The Judge does not challenge the assertion contained in the objective material and indeed refers to it in paragraph 18 as supporting the appellant's submission. The issue the grounds fail to properly deal with, however, is that the material does not suggest that anybody with the surname [J] is of Fula ethnicity. In addition, the appellant's material does not support an argument that anybody with this surname belongs to a branch of the Fula tribe who practise FGM. In the country guidance case of K and others [2013] UKUT 62 there is a statistical analysis of the prevalence of FGM in the Gambia as follows:

Mandinka	FGM may be as high as 80-100%
Fula (Overall)	FGM prevalence 30%
Hobobehs (sub group of Fula)	FGM prevalence 0%
Jama (sub group of Fula)	FGM prevalence 0%
Toranks, Peuls, Futas, Tukuleurs, Jawarinkas, Lorbehs,	

Ngalunkas and Daliankos (sub groups of Fula) FGM prevalence 0%	FGM practiced: prevalence N/K FGM may be as high as 80-100%
Njefenjefe (within the Serehule ethnic grouping)	FGM practiced: prevalence N/K
Jola & Karonikas	FGM prevalence 80-100%
Jola Funi	FGM practiced: prevalence N/K
Jola Casa	FGM prevalence 0%
Others	Variable
Wolof - those who migrated from Senegal Oriental	FGM prevalence 0%
Wolof - those who migrated from Sine Saloum	FGM practiced: prevalence N/K

9. The material demonstrates a variation of practice between different tribal groups within the Gambia and a 30% of prevalence amongst the Fula tribe. The case sets out guidance on the correct approach to be taken by judges when assessing such questions and in paragraph 30 of the determination the Judge acknowledges the guidance provided in this case as being his starting point for his assessment of the merits of the claim. The evidence, as at November 2012, fell short of demonstrating that intact females in The Gambia are, as such, at real risk of FGM. The assessment of risk of FGM is a fact sensitive exercise, which is likely to involve ethnic group, (whether parental or marital), the attitudes of parents, husband and wider family and socio-economic milieu.
10. As with all similar matters, the burden of proof lies upon the appellant and the Judge found for the sustainable reasons that the appellant had not proved that he was from the Fula tribe as he alleged. It was his case that as a result of his affiliation to this tribe group his daughters were risk of FGM on return.
11. It also appears to be the case in relation to this matter that both parents appear to be in opposition to FGM although the Judge properly noted the absence of the children's mother, the first appellant's wife, in support of the appeal and made a sustainable adverse inference from this.
12. I find the grounds fail to establish any arguable legal error in the Judge's determination as the evidence does not established that all those with the surname [J] are from the Fula tribe or even if they were, that they are from a subdivision of that tribe which would give rise to a real risk of FGM for the children on return. I find the Judge considered all the evidence with the required degree of anxious scrutiny, including the background material relied upon by the appellants, and made findings that are properly open to him on the evidence and which are adequately reasoned.

13. Having considered the submissions made to the Tribunal with care, in light of the fact that the alleged risk is only to the children, and accepting that the surname [J] may indicate a connection with the Gambia, I do not find it substantiated that the Judge has committed legal error material to his decision to dismiss the appeal.

Decision

14. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....
Upper Tribunal Judge Hanson

Dated the 17th July 2014