



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/35360/2013

Appeal Numbers:

IA/35378/2013  
IA/35365/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8<sup>th</sup> October 2014**

**Determination  
Promulgated**

**On 16<sup>th</sup> October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

**Between:**

**NMS  
FMMS  
AMMS**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants:  
For the Respondent:  
Officer

Ms K Cronin, instructed by Gherson & Co  
Mr L Tarlow, Senior Home Office Presenting

**DETERMINATION AND REASONS**

1. The Appellants are citizens of Sudan born on 8<sup>th</sup> October 1966, 21<sup>st</sup> June 1994 and 30<sup>th</sup> September 1997 respectively. Their appeals against the Respondent's decisions, dated 12<sup>th</sup> August 2013, to refuse leave to remain and to remove them to Sudan were allowed by the First-tier Tribunal on 29<sup>th</sup> July 2014 under paragraph 276ADE in relation to the

Second Appellant, and on Article 8 grounds in relation to the other Appellants. The Secretary of State appealed and the Appellants cross-appealed.

2. I shall refer to the First Appellant as the Appellant and the Second and Third Appellants as F and A respectively. The Appellant was granted leave to enter the UK as a student from 14<sup>th</sup> October 2006 to 31<sup>st</sup> January 2008. F and A were granted leave to enter as her dependants. The Appellants arrived in the UK on 2<sup>nd</sup> July 2007 and were granted leave to remain until 28<sup>th</sup> February 2009, which was extended to 30<sup>th</sup> June 2013. On 6<sup>th</sup> July 2012, the Appellants applied to vary their leave to remain. Their applications were refused under Appendix FM, 276ADE and Article 8 on 12<sup>th</sup> August 2013.
3. First-tier Tribunal Judge Samimi found the Appellant to be a credible witness. She found that the Appellant had not lived in Sudan for most of her life and she had no family connections there. Her parents and ex-husband lived in Saudi Arabia. The Judge found that the Appellants had strong family ties in the UK and they were financially supported by the Appellant's brothers. She found that although F was over the age of 18 the family bond between her, her mother, her brother and her uncle, went beyond normal family ties. F and A were not born in Sudan and had no social or cultural ties there, having only visited on several occasions. The Judge found that F would not be at risk of FGM if returned to Sudan.
4. The Judge found that F satisfied paragraph 276ADE (vi) and the Respondent's decision to remove the Appellants to Sudan, where they would be socially and culturally isolated and effectively deprived of the benefit of family life, would amount to a disproportionate interference with their family life. The Judge went on to consider the five stage test set out in Razgar [2004] UKHL 24. She found that the Appellants had established family and private life over the past seven years and they had developed roots and connections to the UK. The Judge took into account the expert evidence of societal discrimination against divorced women and the prospect of the Appellant and F being subjected to abuse and harm on account of their westernised behaviour. She found that the Respondent failed to have regard to the best interests of A and found that the Appellants removal would be unjustifiably harsh following Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC).
5. The Respondent applied for permission to appeal on the grounds that the Judge had failed to consider whether or not it would be reasonable to expect the Third Appellant to leave the UK under paragraph 276ADE (iv) [Ground 1] and the Judge had failed to follow the approach in Gulshan:

“After applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them was it necessary for Article 8 purposes to go on and consider whether there are compelling circumstances not sufficiently recognised under them.”  
[Ground 2]

Permission to appeal was granted by First-tier Tribunal Judge Mc Dade on 19<sup>th</sup> August 2014.

6. The Appellants cross-appealed on the grounds that the Judge had erred in law in failing to allow F’s appeal under Article 3 and in failing to allow the Appellant’s and A’s appeals under paragraph 276ADE and section 117A and 117B of the Nationality, Immigration and Asylum Act 2002 [NIA] (as amended).
7. Permission was granted by First-tier Tribunal Judge Grimmett on 25<sup>th</sup> September 2014 on the grounds that it was arguable that the Judge should have considered Article 3 and it was not clear why A did not meet the requirements of paragraph 276ADE (iv); sections 117A and 117B NIA Act 2002 did not apply.
8. Mr Tarlow submitted that the Judge erred in law in failing to consider whether there were exceptional and compelling reasons to consider Article 8 outside the Immigration Rules. The Judge had failed to properly apply Gulshan and the only reference to it was at the end of the determination.
9. I indicated that I was not persuaded by this submission because the Judge had clearly identified compelling circumstances that justified considering the case outside the Immigration Rules. The failure to state that this was the case was not a material error of law.
10. Ms Cronin submitted that Ground 1 of the Respondent’s grounds of appeal was misconceived because at the time of the application there was no requirement to show that it would not be reasonable to expect the applicant to leave the UK under paragraph 276ADE (iv). The change in the Immigration Rules did not apply to applications before 12<sup>th</sup> December 2012.
11. There was no challenge to the Judge’s decision to allow F’s appeal under the Immigration Rules. I indicated that I was of the view that there was no error of law in allowing F’s appeal under paragraph 276ADE(vi). However, the Judge had erred in law in failing to allow A’s appeal under paragraph 276ADE (iv) having found that he came to the UK when he was nine years old and had been living in the UK for a continuous period of seven years at the date of the hearing.
12. Ms Cronin submitted that F’s appeal should also have been allowed under Article 3. She referred to the expert report of Peter Verney and relied on FM (FGM) Sudan CG [2007] UKAIT 00060. F’s case was similar

to that of FM and in fact stronger on the basis that there was a risk F would be married into a religious conservative family. The Judge's finding that F's father would exercise legal custodial rights in Sudan, depriving F of her maternal family, which would be detrimental to her psychological and emotional well being, was unchallenged. F's father and her extended paternal family would have influence over her marriage that would result in F being subjected to FGM. F's Article 3 case was compelling. The Appellant would be able to meet the requirements of Appendix FM in due course.

### Discussion and conclusions

13. F was born in Saudi Arabia and has never lived in Sudan. She has visited Sudan on a few occasions to see her now deceased grandmother. The Judge's finding that F had so little connection with Sudan that the consequences of establishing private life there would be unjustifiably harsh was open to her on the evidence. I find that there was no error of law in the Judge's decision to allow F's appeal under paragraph 276ADE (vi).
14. For the reasons set out at paragraph 11 above, I find that the Judge erred in law in failing to find that A satisfied the requirements of paragraph 276(iv) of the Immigration Rules. I allow A's appeal under the Immigration Rules.
15. I find that there was no error of law in the Judge's consideration of Article 8. The application was made on 6<sup>th</sup> July 2012 and the Judge properly directed herself following Razgar. In any event, the Judge identified compelling circumstances not sufficiently recognised under the Immigration Rules. I find that the Judge's finding, that the Appellants' removal would be disproportionate in all the circumstances of the case, was open to her on the evidence before her and she gave cogent reasons for her conclusions. There was no error of law in the Judge's decision to allow the appeal under Article 8.
16. For the sake of completeness, I find that sections 117A and 117B do not apply because the appeal was heard before 28<sup>th</sup> July 2014. The appeal was heard on the 10<sup>th</sup> July 2014 and the decision was promulgated on 29<sup>th</sup> July 2014. Sections 117A and 117B NIA Act 2012 did not require the Judge to reconvene the hearing. In any event, any failure to consider the matters referred to in these sections was not material to the decision to allow the appeals under Article 8.
17. The remaining issue is whether the Judge erred in law in failing to consider whether F's removal to Sudan would breach Article 3. The Judge found that there was insufficient evidence before her to justify the conclusion that F's father would be able to use his family and political connections to trace the Appellants and force F to undergo FGM. The Judge found that there was insufficient evidence to show that F would

be at risk of being subject to FGM by her father or her father's relatives in Sudan, who had never met her. On the evidence before the Judge, F's father had made no mention of FGM either to the Appellants, the Appellant's brothers or in the report by Ms Jackson, in relation to F's and A's experiences with their father.

18. I have considered the case of FM (FGM) Sudan CG, in particular, the passages to which I was specifically referred. The risk of FGM by extended family members depends on a variety of factors including the attitude and whereabouts of the parents and the location and reach of the extended family members. F's father lived in Saudi Arabia. I find that there was insufficient evidence before the Judge to show that her father was in favour of FGM or that he would be able to use his family connections to force F to undergo FGM.
19. Ms Cronin submitted that F would be at risk of FGM because her father would marry her into a religious conservative family. I am of the view that there was insufficient evidence before the Judge to support this submission. The Judge considered the risk of FGM and her findings were open to her on the evidence before her. I find that there was no error of law in relation to Article 3.
20. Accordingly, I find that that Judge erred in law in failing to allow A's appeal under paragraph 276ADE of the Immigration Rules. There was no error of law in the decision to allow F's appeal under the Immigration Rules and in allowing the appeals of all three Appellants under Article 8. The Respondent's appeal to the Upper Tribunal is dismissed. The cross-appeal of A, the Third Appellant, is allowed.
21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. There was no application to vary or discharge the anonymity order. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Deputy Upper Tribunal Judge Frances  
15<sup>th</sup> October 2014