

**Upper Tribunal
(Immigration and Asylum
Chamber)
Appeal Number:
PA/00152/2017**



THE IMMIGRATION ACTS

**Heard at Field House
On 22 November 2017**

**Determination
Promulgated
On 19 December 2017**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MS M N
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bandegani
For the Respondent: Mr Nath

DECISION AND REASONS

1. The appellant is a citizen of Kenya born in 1963. She appeals against a decision of the respondent made on 20 December 2016 to refuse her claim for asylum.
2. The basis of her claim is that she was a former member of the Mungiki sect who defected after she had been tortured and subjected to female genital mutilation ('FGM'). If returned she would face mistreatment by the Mungiki and gender based violence as a lone woman.
3. The respondent accepted that the appellant had been subjected to FGM but not that this was carried out by the Mungiki or that she was tortured by them.
4. She appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 9 June 2017 Judge of the First-Tier NMK Lawrence dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. The appellant did not give evidence. The appeal was determined on the basis of oral submissions and several bundles lodged on behalf of the appellant.
7. Having noted that the starting point was a previous determination made in 2014, his findings are at paragraph [15]ff. In summary, the judge noted several differences in her written accounts and those given to various psychiatrists and psychologists who submitted reports in respect of her claim to have been raped, tortured and forced to undergo FGM.
8. The judge noted the opinion of a doctor that such discrepancies were the result of the 'significant dissociative disorder' brought about by the trauma she suffered during the circumcision ceremony. The judge rejected that opinion for the reasons he gave at [24].
9. He then (at [26]) went on to reject the psychological problems the appellant claims to suffer because 'the accounts she gives are not independently verifiable'. He added '[T]here is nothing preventing the appellant from complaining of symptoms which are self-serving. Psychologists and psychiatrists do not have the task of scrutinising the accounts given by the "patients" in the same way as a decision maker in the IAC has to'.
10. The judge concluded in respect of the asylum claim that her account was a fabrication. If she was the victim of FGM it was not in the manner claimed [27].
11. He then went on to consider and dismiss the claim on Article 8 grounds.
12. The appellant sought permission to appeal which was refused; however, on reapplication to the Upper Tribunal permission was granted on 15 September 2017.

Error of law hearing

13. At the error of law hearing before me Mr Bandegani made three points. First, the judge did not determine the claim in the context of the country information that was before him. Second, the appellant has been subject to FGM and, as such, is a vulnerable adult. However, the judge failed to consider or apply the 'Joint Presidential Guidance Note (No 2) of 2010: Child, vulnerable adult and sensitive appellant guidance'. Third, the judge's dismissal of the psychiatric evidence as being of no value because it was based on what the appellant told the doctors was not the correct approach to the assessment of such evidence.

14. Mr Nath's response was simply to rely on the rule 24 reply, namely, that the judge directed himself appropriately, and made findings which were open to him on the evidence looked at in the round. Further, although no reference had been made to the presidential guidance, he had, as the rule 24 reply put it, 'dealt head on with the issue of the appellant being a vulnerable witness'.

Consideration

15. I considered that the decision showed material error of law. On the first ground, as Mr Bandegani noted, the judge made no reference whatsoever to the considerable background material which was before him (appellant's bundle - Section D - pages 271-395). Such included an expert country report by Professor Nasong'o, a country guidance case and several background reports.
16. Credibility findings can only really be made on the basis of a complete understanding of the entire picture placing a claim into the context of the background information regarding the country of origin. In failing to engage with the background material as part of the credibility assessment the judge erred.
17. On the second issue as indicated it was not disputed that the appellant has been subjected to FGM (refusal letter para 32) although it is not accepted that such was at the hands of the Mungiki. It was also accepted that she has been diagnosed as displaying symptoms of PTSD (para 32). As such in terms of the Joint Presidential Guidance Note she is a 'vulnerable adult'. Unfortunately, (and contrary to the assertion in the rule 24 notice) there is no indication in the decision that the judge was alert to that matter and the possible consequences in respect of the carrying out of the credibility assessment (see para [13]-[15] of the Guidance) and ***AM (Afghanistan) v SSHD [2017] EWCA Civ 1123*** (particularly at [30]). I find that the judge's failure to follow the guidance was also a material error of law.
18. Finally, on the issue of the assessment of psychiatric/psychological evidence, the judge's dismissal of these because the appellant's claimed problems are based on the account she gave to the professionals and are not independently verifiable, was not the correct approach. Whilst the overall assessment of credibility is for the Tribunal, such reports may involve assessments of the compatibility of the appellant's account with physical marks or symptoms, or mental condition (see ***JL (medical reports-credibility) China [2013] UKUT 145***). Even where medical experts rely heavily on the account given by the person concerned that does not mean their reports lack or lose their status as independent evidence although it may reduce very considerably the weight that can be attached to them. There were several psychiatric/psychological reports before the judge. The professionals engaged in the appeal state that their opinions are based not just on what the appellant told them but on their qualifications, experience, expertise, observations and diagnostic

assessment tools (see e.g. Dr Walsh's report (21 December 2015) at para [70]).

19. In failing to give adequate consideration to material evidence the judge further erred.

Notice of Decision

20. The making of the decision of the First-Tier Tribunal involved the making of an error on a point of law. The decision is set aside. None of the findings are to stand.
21. The appeal is remitted to the First-Tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals Courts and Enforcement Act 2017 and Practice Statement 7.2 before any judge apart from Judge NMK Lawrence.

Anonymity

The First tier Tribunal did not make an anonymity order. As the asylum appeal is to be reheard I will make such an order to preserve the positions of the parties until the appeal is decided. Unless or until a court or tribunal directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or any member of her family. This order applies to the appellant and to the respondent. Failure to comply with this order may lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway