



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01255/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On July 3, 2018

Decision & Reasons Promulgated
On July 5, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS E S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Aboni , Senior Home Office Presenting Officer
For the Respondent: Mr Jagadesham, Counsel, instructed by Duncan Lewis & Co
Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.
2. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so

that, for example, reference to the respondent is a reference to the Entry Clearance Officer.

3. The appellant is a national of Sierra Leone. The appellant entered the United Kingdom on August 6, 2014 using her own passport which was endorsed with a three-month visit visa. On September 1, 2014 she applied for asylum but this was refused by the respondent on September 10, 2014. Her appeal was heard by the First-tier Tribunal on September 23, 2014 but her appeal was dismissed and her appeal rights were deemed exhausted on September 25, 2014. Further submissions were lodged in October 2014 but these were refused on November 18, 2014. Applications for judicial review were submitted and the respondent subsequently conceded the judicial review on July 12, 2016 and agreed to reconsider the decision of October 7, 2015 in which the respondent had refused the appellant a right of appeal.
4. The respondent refused her protection and human rights claims on January 17, 2017 under paragraphs 336 and 33F HC 395.
5. The appellant lodged grounds of appeal on February 3, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal A Davies (hereinafter called "the Judge") on January 2, 2018 and in a decision promulgated on January 15, 2018 the Judge allowed her appeal on protection grounds.
6. The respondent appealed this decision on January 29, 2018. The respondent argued that the Judge's decision was flawed because he had gone behind the findings of an earlier Tribunal which had rejected the appellant's claim and the new evidence was not sufficient to allow him to depart from that decision. The respondent further argued that the Judge had erred because even if the appellant did form part of a particular social group there had not been any clear identification of any persecutor and therefore no clearly identifiable risk. The appellant did not believe her own father would consider FGM and her mother did not wish to be circumcised and the mere fact FGM is practised was not a reason to find this particular appellant would be at risk.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Kinnell on February 8, 2018 on a limited basis, finding it arguable the Judge had arguably erred in finding the appellant was at risk of FGM because no clear identification of any persecutor had been made and the fact FGM was practised in Sierra Leone arguably, on its own, was not a sufficient reason for finding the appellant would be at risk.
8. What is purported to be a rule 24 response was filed extremely late on July 2, 2018 at 16:42. In it the appellant's representative submitted there had been no error in law.
9. I raised with Ms Aboni the scope of the appeal, mindful of the decision of Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304(IAC).
10. I indicated that in my view the Judge had limited the permission to the issue outlined in the final paragraph of the permission and after considering her position, Ms Aboni indicated she would only be making submissions on this issue and she would seek to

persuade me the Judge had erred by allowing the appeal despite there being no obvious risk.

SUBMISSIONS

11. Ms Aboni submitted the appellant feared her father rather than anybody else but had stated she did not believe her father would force her to undergo FGM. She submitted there was no evidence that the appellant's mother or sister had been subjected to FGM and even if the Judge felt the appellant was at risk it was neither unduly harsh nor unreasonable for her to internally relocate.
12. Mr Jagadeshm relied on the "Rule 24" response and submitted that the Judge's decision did not contain a material error and the grounds, at best, amounted to a mere disagreement.
13. The permission suggested the Judge had found there were no identifiable persecutors but Mr Jagadeshm submitted the Judge granting permission has misread/misunderstood the evidence as the appellant had stated both in her screening (Q4.1) and substantive interviews (Q29) that she feared her father would force her to undergo FGM and paragraphs 23 and 24 of the decision letter repeated her evidence. The appellant had identified a persecutor (her father) and the expert reports also highlighted the power of the Bundu and the fact they enforced the practice of FGM as did any possible future husband. Dr Knorr's report confirmed that the appellant's mother would be unable to provide any protection especially as she herself had also been subject to FGM. The expert report made clear that internal relocation was not an option and he invited me to dismiss the grounds of appeal.

FINDINGS

14. The appellant claimed asylum on September 1, 2014 and after Judge Grant refused her appeal on September 29, 2014 she lodged further submissions which ultimately led to her having a fresh right of appeal.
15. Judge Davies heard her appeal and concluded that based on the expert evidence he felt able to depart from Judge Grant's finding that her account did not fit in with the country evidence about FGM. Although grounds of appeal were lodged against this aspect of the Judge's decision, Judge of the First-tier Tribunal Kinnell found the Judge had given adequate reasons for departing from Judge Grant's decision. I found no reason to go behind this part of the decision as I agree the Judge's decision is well-reasoned.
16. The only issue for this Tribunal was whether the appellant was at risk of persecution because of the threat of FGM.
17. The appellant had previously told Judge Grant that her mother had been subjected to FGM and when she was interviewed she made it clear that prior to April 2014 she had not had any reason to believe her father would force FGM on her but since April 2014 her position had changed. Her reasons for this were given in both her interview and her subsequent evidence.

18. In giving permission, Judge Kinnell suggested that the Judge had not identified anyone the appellant would be at risk from in Sierra Leone but Judge Davies clearly reviewed the evidence and concluded, based on the evidence that was now before him, that the appellant would be at risk and her original account was consistent with the expert evidence. The expert evidence made it clear that she would face a real risk of persecution were she to be returned.
19. Ms Aboni suggested that the appellant's mother or sister could provide protection but the Judge noted at paragraph 59 of his decision that the expert evidence suggested that female family members could not provide protection. The appellant would only be safe if there is a suitable male member in the family to protect her otherwise she would face a real risk of persecution wherever she lived in Sierra Leone.
20. The Judge gave his reasons for this in paragraph 59 of his decision noting FGM was practised widely in Sierra Leone and taking into account the power of the Bundu and the fact she was a single mother and lone woman. I accept the Judge was entitled to make this finding.
21. The Judge found the appellant was a member of a particular social group. Having examined the material he concluded she would be at risk and having considered the same evidence I find that the Judge was entitled to reach the conclusion he did and accordingly there is no error in law.

DECISION

22. There is no error in law and the original decision shall stand.

Signed

Date 03/07/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

FEE AWARD

I make no fee award as no fee was payable.

Signed

Date 03/07/2018



Deputy Upper Tribunal Judge Alis