



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

Appeal Number: PA/09534/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15th October 2018**

**Decision & Reasons Promulgated
On 22nd October 2018**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**OJ
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Toora, (instructed by Duncan Lewis & Co, Solicitors)
For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant in relation to a Decision and Reasons of Judge Cox in the First-tier Tribunal, promulgated on 28th March 2018, by which she dismissed the appeal. It relates to an asylum application by a Gambian woman, born on 20th January 1989 and her dependant daughter born in the UK on 2nd March 2017.
2. The Appellant left The Gambia on 11th November 2016, arriving in the UK using a visit visa which had been issued on 26th October 2016 valid until 26th April 2017.

3. She claimed asylum on 9th March 2017 with her daughter as her dependent.
4. The basis of her claim is that her daughter would be at risk of FGM in Gambia.
5. The Secretary of State accepted that women in Gambia form a particular social group and parents in Gambia who oppose their children being forced to undergo FGM also form a particular social group. So much was established by the country guidance case of K and others (FGM) Gambia CG [2013] UKUT 62 (IAC). The Secretary of State rejected the claim on the basis that the family did not support FGM and the Appellant and her husband could protect their daughter.
6. The Appellant's husband, she claimed was in the United States of America and she has two sons who remain in Gambia.
7. The Appellant says that she is a member of the Fula tribe. She is a qualified nurse having attended college and qualified in Gambia. The Appellant claimed not to know her husband's circumstances in the USA and claimed that her husband did not support her concerning the issue of their daughters FGM. The Judge noted inconsistencies in her claims about her husband's attitude which differed between her asylum interview and her oral evidence.
8. The Appellant claimed not to realise there was a risk or that she should claim asylum until told by social workers in the UK after her baby was born.
9. She said that her husband had been twice to the United Kingdom prior to going to the USA but she was unable to recall when.
10. The First-tier Tribunal Judge acknowledged the gravity of FGM but found the Appellant's claims to be without credibility. The Judge did accept the Appellant was a member of the Fula tribe. However, she did not accept that there was a rigidity of gender roles within the Appellant's family, particularly as she is a working woman educated to college standard. The Appellant's husband played a role in caring for their twin sons and the Appellant was able to travel on holiday away from the family leaving her children. All of this led to the Judge finding that the strict gender roles did not apply within the Appellant's family in Gambia. That was not the family's own departure from their tribal culture; the family did not cut their faces with tribal markings.
11. However, the finding that the Appellant is a member of the Fula tribe is where the positive credibility findings end. The Judge did not find it credible that being a nurse, already the mother of two children and having had three scans on the child when pregnant, she was unaware of the gender of the baby.

12. The Judge did not find it credible that a woman due to give birth in February 2017 would have chosen to holiday in the UK in November 2016.
13. While the Appellant had given evidence that she only intended to visit UK for three weeks, her return ticket costs for 6th January 2017, considerably more than the three-week period she suggested. The Judge found it not credible that the Appellant was unaware of the significance of pregnancy on foreign travel given that she is educated and a nurse.
14. Coming from the culture that the Appellant does, the Judge also found it not credible that she did not know of the risks of FGM for a female child, if as she claimed both her own and her husband's family were in favour of it and her niece had been subjected to it. She did not find it credible that the Appellant was ignorant of the risk until told of it by the midwives and social workers after she gave birth.
15. The Appellant has a sister in the UK but there was no evidence from her which the Judge found to be striking. The Home Office Presenting Officer had made a submission that her husband had entered the UK in April 2017 which was not challenged by the Appellant. That meant he had been in the UK since his daughter was born. She therefore found the Appellant's claim that her husband had never seen his daughter was untrue and that the Appellant was not a witness of truth.
16. The Judge also did not accept the Appellant's claim about the nature of her relationship with her husband and lack of knowledge of his life and employment in the USA. She said that she had been vague and inconsistent in that area. She did not accept that men in Gambia do not tell their wives what is happening in their lives and specifically that it was not the case for the Appellant.
17. The Judge did not find it credible that the Appellant had not discussed with her husband the possibility of the family being united in either the USA or the UK.
18. The Judge noted that while the Appellant tried to persuade her that her relationship with her husband was distant, the emails provided disclosed a great deal of affection.
19. With regard to letters from the husband suggesting there would be a risk in the Gambia, the Judge found those were plainly designed to bolster the claim as they concentrated almost solely on the law and the issues before her and lacked any natural content. She noted there were no references to natural events such as asking for photographs, commenting on the same or passing on any other news.
20. The Judge found that a letter claiming to be from the Appellant's sister in Gambia carried little weight. The claims in that letter that the sister could not take her own daughter to a health facility following FGM for fear of prosecution and sentencing was at odds with the Appellant's husband's

assertion that the family do not care about being sentenced for undertaking FGM

21. The Judge also notes that the letter indicates the sister's child, the Appellant's niece was subjected to FGM in February 2016, more than a year before the birth of the Appellant's daughter. On that basis the Judge could not accept the Appellant and her husband had not thought about the prospect of FGM before her child was born.
22. The Judge found the Appellant's claims that her daughter was at risk was not credible.
23. Furthermore, she found there was no satisfactory evidence to suggest that the maternal and paternal grandparents were insisting upon FGM, an illegal act.
24. She found that the young niece of the Appellant had not been a victim of FGM, there being no satisfactory evidence even to the low standard about that and she was not satisfied the extended family were determined to carry out the procedure.
25. The Judge found that the couple lived in an urban area and were both highly educated, professional people who travelled widely and would be able to protect their daughter if indeed there was any risk which she found there was not.
26. She noted the Appellant had an independent life visiting the UK alone whilst pregnant and she found that the husband opposes FGM and did not find it credible that he would be unable to protect his daughter from any risk that might exist.
27. Given the paucity of evidence coming from the Appellant about her husband's whereabouts the Judge found she was not satisfied that he was even in the USA. Nevertheless, the Judge found that even if he were not in Gambia he could return to protect his daughter.
28. The Judge noted there was no evidence in the form of the husband's passport to suggest the terms of his visa for the USA.
29. The Judge found the Appellant, her husband and two sisters all opposed FGM and that the family clearly did not follow all the traditions of the tribe as they had not made tribal markings to their faces.
30. The grounds seeking permission to appeal argued only in inadequacy of reasoning in the Judge's decision. The Judge who granted permission thought that the reasons were based on plausibility rather than credibility.
31. The Decision and Reasons as I have set out above, is a detailed and careful assessment of all of the evidence and reaches reasoned conclusions based on the evidence. It cannot be said that there is inadequacy of reasoning in the decision.

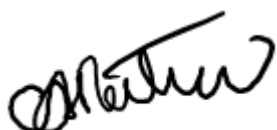
32. Neither can it be said that the findings are based on plausibility not credibility. I can see no reference anywhere to plausibility in the Decision and Reasons and indeed the Judge refers to the lack of credibility repeatedly.
33. The Decision and Reasons of the First-tier Tribunal does not contain an error of law material or otherwise and the appeal to the Upper Tribunal is therefore dismissed.

Notice of Decision

The appeal to the Upper Tribunal is dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 16th October 2018

Upper Tribunal Judge Martin

