



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

Appeal Number: PA/04050/2018

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 15<sup>th</sup> January 2019**

**Decision & Reasons  
Promulgated  
On 4<sup>th</sup> February 2019**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK**

**Between**

**ST  
ANONYMITY ORDER MADE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Coleman (Counsel)

For the Respondent: Mr C Avery (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Monson) ("FtT") promulgated on 17.5.2018 in which the appellant's appeal against refusal of her protection and human rights claim was dismissed.

## **Background**

2. The appellant is a citizen of Sierra Leone and her date of birth is 6.1.1981. She claimed that she faced a risk of persecution at the hands of her ex husband's family and/or that she faced very significant obstacles on return. She had been granted leave to remain as a dependent of her husband in the UK. They separated in 2012. She feared return to Sierra Leone because of the Ebola outbreak, and because her daughters were settled in the UK. The father of the children was a national from Nigeria and he had no status in the UK.

## **FtT decision**

3. The FtT found the appellant's main claim to be in fear of family in Sierra Leone to be lacking in credibility [22]. She made no reference to these fears in her witness statement dated 1.4.2015 nor in the substantive interview, despite the fact that she had been legally represented since 2011. The FtT found that her further claim, raised in her appeal grounds, that she feared that her daughter would be subjected to FGM and rape, was unfounded [25-26]. The FtT found that the appellant could return to Sierra Leone with her children and that their father would also be able to enter that country without difficulty. The FtT considered the issue of FGM at [25] and found that whilst WHO statistics showed that 88 % of women between the ages of 15-49 had suffered FGM, it had not been suggested that the appellant had undergone FGM. The FtT proceeded to dismiss the claim on that basis concluding that there was no evidence that the appellant moved in circles where FGM was practised and the risk for her daughter did not meet Article 3. In considering whether there were very significant obstacles to reintegration the FtT focused on Section 55 [34] and considered where the best interests of the children lay. The FtT found that the appellant could return to Sierra Leone with her children and that their father would also be able to enter that country without difficulty.

## **Grounds of appeal**

4. In grounds of appeal the appellant argued that the FtT erred by failing to give adequate weight to the appellant's asylum claim that she was subjected to domestic violence and rape during the civil war, and that at the time she was 15 years old (ground 1).
5. The FtT failed to consider the welfare of the child from the perspective that she was vulnerable to FGM given the traditions of her country (ground 2).

## **Permission to appeal**

6. Permission to appeal to the Upper Tribunal was granted on ground 2 only, by UTJ Coker who took the view that it was arguable that the FtT gave only a cursory consideration of the risk of FGM faced by the appellant's daughter in assessing her best interests.

## **Submissions**

7. At the hearing before me Mr Coleman, representing the appellant, argued that the position was that the appellant had in fact been subjected to FGM

at the age of 7 years. Although she had not given evidence to the FtT that this was the case. Her evidence focused on her fears for her daughter. The FtT ought to have been aware of this fact in reaching its decision and which was material. The FtT Judge was male and had based his decision by reference to the statistics only and which showed that there was a risk of FGM on the balance of probabilities, in any event. It was not open to the FtT to have found that the appellant had not suffered FGM given the background evidence. The FtT failed to give anxious scrutiny to this issue.

8. In response Mr Avery contended that the FtT was only able to make findings on the evidence adduced before it. There was no evidence from the appellant that she had suffered FGM. The case had been argued with reference to the statistics which had not been properly sourced and were somewhat thin evidentially. The FtT had properly made findings on the evidence before the Tribunal, which had not included any statement by the appellant that she had suffered FGM.
9. Mr Coleman responded that the statistics were from the WHO. The FtT proceeded on an assumption that the appellant had not suffered FGM, which was wrong.

### **Discussion and conclusion**

10. I find no material error of law in this decision and reasons, which is thorough and clearly reasoned. The FtT considered the evidence that was adduced as to the risk of FGM posed to the appellant's daughter. This consisted of a Guardian article dated 29.9.2016 which suggested that post the Ebola virus the official ban on FGM was no longer enforced. The second document was a WHO report dated 2001 which looked at the sexual violence during the civil war. There was no evidence given by the appellant in any of her statements, interviews or orally that she had been a victim of FGM. The appellant had the benefit of legal representation since 2011 and could have requested a female court if she had concerns about the nature of her evidence. The appellant has given no proper reason for why she did not raise this sooner or at all.
11. Having considered the bundle for the first tier hearing, the skeleton argument and the decision itself, it is manifestly clear that there was no evidence adduced that the appellant suffered FGM. The FtT was under no obligation to question the appellant further on this matter given her claim and having regard to the fact she was legally represented.
12. The statistic relied on that 88% of women in Sierra Leone suffered FGM was not considered in any context or time frame. In any event I am satisfied that it did not (without more) amount to evidence sufficient to establish a real risk of FGM. Indeed there had been no claim for asylum made on that ground for the appellant's daughter. The FtT referred to the statistics and then went on to find correctly that it was not suggested that

the appellant underwent FGM. That was an accurate reflection of the evidence. I am satisfied that the FtT properly considered the evidence adduced as to risk of FGM for the child on return to Sierra Leone under the Article 3 claim and rejected it. The FtT then considered all matters relevant to where the best interests of the child lay at [34] and it was not necessary to repeat the issues pertinent to FGM. It is of note that even the grounds of application for permission made no reference to the appellant having undergone FGM and put the case in terms that the child “may be subjected to FGM”. There was no evidence to support any claim that the fear was well founded.

**Decision**

13. There is no material error of law disclosed in the decision which shall stand. The appellant’s appeal is dismissed.

Signed

Date 21.1.2019

GA Black

Deputy Judge of the Upper Tribunal

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him 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.

NO FEE AWARD

Signed

Date 21.1.2019

GA Black

Deputy Judge of the Upper Tribunal