Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06765/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated:**
On 7 December 2018	**On 8 January 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MISS PRINCESS [D]

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person
For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. The claimant is a national of the Ivory Coast and was born on 5 October 1997. She applied for asylum in the United Kingdom (UK) on 5 January 2017. On 3 July 2017 the Secretary of State refused to grant her international protection. She appealed. In a decision which was sent to the parties on 14 November 2017, the First-tier Tribunal dismissed her appeal. In a decision dated

28 June 2018, I set aside the decision of the First-tier Tribunal and directed that there should be a complete rehearing of the appeal, before me, in the Upper Tribunal. I did so because I thought the adverse credibility assessment made by the First-tier Tribunal was tainted by legal error. The rehearing took place on 7 December 2018. The claimant was not represented at that hearing and I will say more about that below. She did have with her two McKenzie Friends who were, as they made clear to me, principally in attendance in order to provide her with moral support. They did not actually play a role in the hearing and did not seek to do so. The Secretary of State was represented by Mr McVeety who is a Senior Home Presenting Officer. At the hearing I heard oral evidence from the claimant herself and also from her mother [AT], who is also from the Ivory Coast but who resides lawfully in the UK. Both gave their evidence with the assistance of a French speaking interpreter whom they appeared to understand throughout the course of the proceedings. After the evidence had been given I received oral submissions from Mr McVeety and then, after a short break to enable her to martial her thoughts and speak to her McKenzie Friends, the claimant herself. I attempted to ensure, throughout the proceedings, that the claimant was not disadvantaged in consequence of her lack of legal representation.

2. What follows is an explanation as to why, in remaking the decision, I have decided to dismiss the claimant's appeal from the Secretary of State's decision of 3 July 2017.

3. I have not directed anonymity in this case. Such had not been directed by the First-tier Tribunal nor, does it appear, had it been requested by those then representing her. Such was not requested at a hearing before me which was concerned with the question of whether the First-tier Tribunal had erred in law or not, and which took place on 8 June 2018 at a time when the claimant was still represented. No such direction was subsequently sought.

An adjournment?

4. There was, as I say, a hearing before the Upper Tribunal (before me) on 8 June 2018 after which I made my decision of 28 June 2018 setting aside the First-tier Tribunal's decision. The claimant had legal representation at that hearing. However, when the matter next came before me which it did on 5 October 2018, she was no longer represented. It became apparent that her former solicitors had ceased to trade on 14 September 2018. She explained to me that she had made attempts to obtain alternative representation but had not been successful. I decided, therefore, to adjourn the proceedings rather than, at that stage, to hold the full rehearing of her appeal. I expressed the hope that she would be able to find alternative representation.

5. The case was, once again, listed for a full rehearing to take place on 7 December 2018. The claimant, however, was still unrepresented. She explained, and I accept, that she had made appropriate and determined efforts to secure alternative representation but had not been successful. She asked me if I would consider a further adjournment to enable her further time to do so. I gave the matter consideration but I decided not to adjourn. In considering the application I took into account principles of fairness and natural justice and the content of rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the overriding objective). I decided not to adjourn because it was not apparent to me that, if I were to do so, the claimant would be able to secure alternative representation given her unsuccessful efforts to date. I also took into account the fact that her appeal was not one which was legally complex and I took into account what I thought would be my ability to conduct the proceedings in such a way as to ensure or significantly reduce any disadvantage. There was also some force in the view that it would be in nobody's interests for matters to drag on with ensuing uncertainty for the parties. I explained my decision to the claimant and she indicated that, in those circumstances, she was ready to proceed.

The law in brief

6. In order to demonstrate entitlement to international protection (which is what she seeks) the claimant must show that, upon return to her home country, she would be at real risk of:

(a) being persecuted for one of the five reasons set out in the 1951 Refugee Convention;

(b) being treated in such a way as to give rise to entitlement to a grant of humanitarian protection;

(c) be treated in such a way as to bring about a breach of Article 3 of the European Convention on Human Rights (ECHR).

7. Matters are to be assessed on the basis of how they stand at the date of the rehearing before me.

The claimant's case

8. The claimant's account of the events underpinning her claim for asylum may be found in the record of her substantive asylum interview (the date of it is not entirely clear from the documentation in front of me); a written statement of 8 August 2017; a written statement of 4 October 2018 and, of course, her oral evidence to me. She told me that she could not, in fact, recall the content of her earlier written statement but I have, nevertheless, taken it into account because it had been prepared by her then legal representatives, had been signed by her with an accompanying indication that its content had been interpreted to her in French, and it had been submitted by her then representatives on her behalf for the purposes of her appeal before the First-tier Tribunal. I shall now summarise the claimant's account below.

9. The claimant previously lived with her father and her stepmother, (who at one time she thought was her natural mother) in Abidjan. At some point during her later childhood she learnt that, in fact, her real mother had left the family home when she was a very young child and had gone to Europe. She says that, prior to coming to the UK, she really did not know anything more than that about her mother or her mother's location. When she was aged 17 years she was informed that, once she attained the age of 18, she was to be married. She was not given a choice about that. Her father explained to her that he had made the decision and he was not to be dissuaded. She subsequently learnt that, in consequence of her being forced to marry, she would also be required to undergo female genital mutilation (FGM). Her then intended husband was an older man and was a wealthy plantation owner. He was based in Bondoukou which is a city located in the north-eastern part of the Ivory Coast, some 420 kilometres north-east of Abidjan. He had two other wives. She was taken there and was kept in a room in his family compound pending the intended FGM. But before that took place she went through a marriage ceremony. She says, though, that she was then able to flee and that, having done so, she travelled back to Abidjan. She did not return to her family but, instead, obtained assistance from a Non-Governmental Organisation (NGO) known as the Don't Forget Them Association which was located in a district of Abidjan known as Abobo. Her family were located in a different district of Abidjan. She says that the NGO provided assistance to and accommodation for homeless persons and victims of a range of unfortunate circumstances. She explains that she lived at the NGO's premises in Abobo, along with others who had also been homeless, and that whilst there she was at least partially trained as a seamstress. She also began to play football. She became adept at football to the extent that, to her credit, she was selected to play

in an international tournament known as the Homeless World Cup which was held in Glasgow in July 2016.

10. In order for the claimant to go to Glasgow to participate in that tournament it was, of course, necessary for her to obtain a Visa. She was, indeed, granted a Visa as a sportsperson. She claims that the Visa Application Form (VAF) was completed by a member of the NGO's staff and that she had no involvement in its completion. In any event, she came to the UK and she says that she did play in various football matches. However, she decided she would not leave the UK and return to the Ivory Coast. That was, she says, because she feared being subjected to FGM and feared being harmed by her husband and her father. She met a woman who lived in Sheffield and that woman was able to trace her mother who had, in fact, been living in London. Having entered the UK on 10 July 2016 the claimant made her claim for asylum on 5 January 2017 (as indicated above). She says that if she is returned she will be harmed by her father or her husband or both; that she would not be able to obtain protection from the authorities in the Ivory Coast and that, as a single woman, she would not be able to take advantage of an internal flight alternative within the Ivory Coast. So, she asserts, she is a refugee.

The respondent's position

11. The respondent, as was made clear in a lengthy decision letter of 3 July 2017, did not believe that the claimant had given a truthful account of events. So, it was concluded that she was not at risk of being subjected to FGM or otherwise being harmed by anyone in the Ivory Coast. Further, even if her account was accepted as being truthful, it was thought the authorities in the Ivory Coast would be willing and able to protect her. Further still, even if that were not so, she would be able to relocate safely to a different part of the Ivory Coast and it would not be unreasonable or unduly harsh to expect her to do so. Before me, Mr McVeety said all that was accepted as being truthful in the account was that she had come to the UK in order to participate in a football tournament (though nationality has never been disputed). He did not address me as to sufficiency of protection or internal flight and that is because his view was simply that there was no risk because the account was not true.

My credibility assessment

12. Since the account is disputed and since I cannot properly decide this appeal without my making relevant factual findings, it has been necessary for me to consider whether or not I am able to accept the claimant's evidence as being truthful. In undertaking that assessment, I have taken into account the oral evidence I have heard and the written statements referred to above. I have also taken into account the various other documents which have been provided to me and which comprises the Secretary of State's bundle prepared for the First-tier Tribunal hearing; a bundle and a supplementary bundle prepared by the claimant's then representatives for the purposes of the First-tier Tribunal hearing; a document listing persons selected for the Ivory Coast Homeless World Cup women's team (the claimant is named in that list); a report prepared by the Immigration and Refugee Board of Canada which deals with the question of whether women are able to live alone in the Ivory Coast; and a bundle prepared by the claimant herself and which she had submitted to the Upper Tribunal. I have considered all of that evidence as one composite whole. I have reminded myself that I should be cautious in rejecting as incredible an account offered by an inexperienced and anxious asylum seeker. I have reminded myself of the lower standard of proof (sometimes called "the real risk test") which is applicable in cases where international protection is sought. I have given anxious scrutiny to all issues before me. But having done so I have felt compelled to

conclude that I am not able to accept the claimant as a credible witness. What follows is my reasoning as to why I am unable to do so.

13. The claimant came to the UK, as noted, on 10 July 2016. She did not claim asylum until 5 January 2017. The delay in claiming is, on the face of it, extensive. Delay in claiming is sometimes said to fall within the scope of section 8 of the Asylum and Immigration (Treatment of Claimants, Etc) Act 2008. That section requires certain specific considerations to be taken into account when assessing credibility but it does not necessarily require disbelief. But irrespective of what that section says, delay on the part of a person who claims to be at risk if returned is capable of damaging credibility in circumstances where it is not properly explained. The claimant was asked about delay in her substantive asylum interview (see questions 106, 107, 108, 109, 110 and her answers). She relies, in effect, upon a combination of her not being in London where it was necessary to go to make the claim, her not knowing London, her having been mistakenly told to go to the Immigration Authorities in Sheffield, and an appointment for her to attend at Croydon to make her claim being secured for her but not until 5 January 2017. She gave what seemed to me to be largely similar indications in her oral evidence. But I do not find that to be persuasive. It seems to me that if she were genuinely in fear of persecution the imperative to seek protection in a country which she knew had the power to give her such protection, would have effectively compelled her to have acted more determinedly and more speedily than she did. The delay is not my primary credibility concern but it is a concern of some substance. The delay does, in my view, cause some damage to her credibility.

14. The claimant asserts that after she fled from her husband's home she went to the NGO in Abidjan. She says that she lived at the NGO for a period of one year (see question 72 of the substantive asylum interview and her answer). She confirmed, when cross-examined before me, that she had been living at the NGO's premises for one year prior to coming to the UK. In her VAF (there is a copy of it in the respondent's bundle which was prepared for the purposes of the First-tier Tribunal hearing) it is indicated that she had been living at her current address, that is the NGO address, for some two years and five months. That is potentially significant because if she had indeed been with the NGO for that length of time prior to the Homeless Word Cup, then she could not have been taken to her husband's home and effectively forced to marry when she says she was. Her account is to the effect that the forced marriage and her subsequent escape from her husband's family would all have taken place shortly prior to her commencing to live at the NGO's premises. So, as McVeety puts it, the time line does not work. The claimant does not say that the timings she has given are wrong. What she says is that she had nothing to do with the completion of the VAF and that a factually incorrect indication as to how long she had been living at those premises has been given. I am afraid I do not believe her. It seems to me most unlikely that a VAF would be completed on behalf of the claimant without some check or verification being carried out with her as to the accuracy of the information contained within it. After all, she would have been readily at hand for such a check to have been made. It also seems to me unlikely that if a member of the NGO's staff was completing that form, that a mistake about such a basic detail as the length of time the claimant had been living there would have been made. It seems unlikely such an organisation would not at least keep basic records of that sort and, even failing that, one might expect the staff to know such details or, indeed even failing that, to check with the claimant herself. I think the claimant has created her account and has then been taken by surprise at what from her perspective would have been the unexpected production of a copy of the VAF. That has caused her, through necessity if she wishes to maintain her claim, to attempt to falsely distance herself from the content of the VAF.

15. The claimant says that she knew virtually nothing in terms of detail about her natural mother until the two were reunited in the UK. She maintained that that was the position under cross-examination. The claimant's mother confirmed in oral evidence that she had been born on 10 July 1974. In the VAF her date of birth is given as 7 July 1974. That is, of course, not quite correct but it is almost so. Given the claimant's consistent insistence that she knew no detail about her mother it is difficult to see how it could be that the VAF recorded her mother's date of birth in a way which was so close to being correct. The claimant was unable to explain this. But she maintained her position that she had had nothing to do with the VAF. If she is telling the truth about that it means the person who did complete the VAF had either guessed her mother's date of birth and happened to very nearly get it right or had accessed the information from some other source. But I cannot think what that source might have been. It seems most unlikely the NGO would have contacted her father to get the information if the claimant fears him and did not, as she claims, want him to discover her whereabouts. I prefer the view that the information was obtained from the claimant herself (albeit that she got it slightly wrong) but that she does not wish to acknowledge this because she realises it creates difficulties with respect to her credibility and contradicts her claim she had nothing to do with the VAF's completion.

16. The claimant has said that, even whilst living at the NGO's premises in Abobo, she was fearful that her father, who was living in the same city, might find her. She told me, at the hearing, that the NGO does have other branches in other parts of Ivory Coast. But she also said she had not asked to be transferred. When I enquired as to why not, she said that her husband might be able to find her elsewhere because he has plantations and has links with a lot of people who cultivate land throughout Ivory Coast. If the claimant was truly fearful of encountering her father I believe that she would have asked the NGO to transfer her to another of its sites away from Abidjan. I do not find her rather vague contentions regarding her husband's connections to constitute a plausible explanation as to why she would not think it worth do that if what she says about her fear of her father is true.

17. When I set aside the First-tier Tribunal's decision I suggested, in my decision of 28 June 2018, that the parties might wish to consider trying to obtain some evidence from the NGO for the rehearing. The claimant told me that she had not made such an attempt because the NGO would regard her as having betrayed them by not returning to the Ivory Coast. Perhaps the NGO might take that view. Perhaps not. But if what the claimant says is true about the VAF not having been completed by her, it is something that the NGO might be in a position to verify. It might also be in a position to verify that she was, if this is true, only living at its premises for one year rather than two years and five months. Perhaps an attempt to obtain evidence from the NGO would have been unsuccessful. But I am concerned that the claimant has not even tried, seemingly, at any stage throughout these proceedings. I believe that that is because her account is not true in a number of material respects and she fears that information from the NGO, if obtained, might confirm that. So, she has decided to leave well alone.

18. The claimant says the woman from Sheffield was able to trace her mother and that, prior to her having done so, she did not even know that her mother was in the UK. Of course, coincidences do happen. But it does seem surprising that the claimant would happen to end up in the UK where her mother also just happened to be. Another possible interpretation of events might be, I suppose, that the claimant having got the opportunity to participate in the football tournament, and who already knew of her mother's presence in the UK, took an informed decision to stay here not because she fears persecution but because (entirely understandably) she wishes to live with her mother. The link between the two is said to be the woman from Sheffield. But that person was not before me, was not before the First-tier Tribunal and, it appears, has not been asked to provide any

form of letter or witness statement addressing her role in uniting the two of them. At least, no such letter or witness statement has been provided. The claimant does not have solicitors now but she has had solicitors in the past. I think if this part of her account were true then there would have been some evidence from the woman from Sheffield or at least some attempt (which I would have been told about) to get it.

19. I do accept that the background country material demonstrates that FGM is something which is sometimes inflicted upon women and girls in the Ivory Coast. It is, of course, a most appalling practice. But that material (and I do not think this has ever been disputed) does tend to suggest that, for the most part, if such is to be performed at all it is done at a very young age indeed. As such, the claimant's contention that she was to be subjected to the practice at the age of 18 years would not seem to reflect the usual way of things. I do not take that as a point against the claimant with respect to credibility but it is, perhaps, something which limits any credit her account gets from the mere fact that FGM is sometimes carried out in her home country.

20. Despite my general misgivings about the claimant's credibility, I am minded to accept that she has had support from an NGO as she claims. She was not challenged as to that particular matter before me. Her being selected to play in the Homeless World Cup does tend to suggest that she has been or was once homeless which, in turn, supports the contention that she has been assisted by the NGO and accommodated by them. But the mere fact that she has been homeless or at least threatened with homelessness such as to cause an NGO to take her in, does not mean that the account she has offered with respect to her claim for international protection is true. There are many reasons other than those connected with a risk of being subjected to FGM or being forced into a marriage, which might lead to a person becoming homeless or threatened with homelessness.

21. I have also had to assess the credibility of the claimant's mother who gave evidence before me and who provided a letter on the claimant's behalf. Since she was not and does not claim to have been in the Ivory Coast when the events underpinning the claimant's claim for international protection were said to have taken place, the value of her evidence is, for that reason, limited in any event. But she did say, in oral evidence, that she had received a call from the Ivory Coast Embassy in London to say that the woman in Sheffield had contacted them and that they, in turn, had contacted her (that is the Embassy had contacted the claimant's mother). But, as I say, nothing has been heard from the claimed woman in Sheffield and, on the material before me, I do not accept that she exists. So, I think that the claimant's mother, in saying that, was, for understandable reasons since she would no doubt wish to support her daughter, attempting to mislead. I believe that, in fact, the claimant's mother would have known that the claimant was arriving in Glasgow and that the two had made their own arrangements to stay together in the UK without being linked by the woman in Sheffield.

22. It follows, from the above, that I have not been able to accept very much at all of the evidence upon which the claimant has sought to rely. I shall now set out my relevant factual findings.

Findings of fact

23. I make these findings:

(a) The claimant is a national of the Ivory Coast.

(b) The claimant has previously been supported and housed by an NGO in Abidjan.

(c) Whatever the reasons why the claimant found it necessary to be supported by the NGO, it was not linked to forced marriage or to any threat of having FGM inflicted upon her.

(d) I find that the claimant is a footballer and was selected to play for the Ivory Coast Women's Team in the 2016 Homeless World Cup which took place in Glasgow.

(e) I find that she did, indeed, participate in that tournament.

(f) I find that at the time arrangements were being made to bring her to the UK to participate in the tournament, she was in touch with her mother in the UK.

(g) I find that the claimant decided to remain in the UK, after the tournament, not, through fear of persecution, ill-treatment or serious harm but through a desire to settle in the UK with her mother. I make no criticism of her for that. Her wish to do that is understandable.

(h) I find that the claimant was not forced to enter into a marriage in Ivory Coast as claimed or at all.

(i) I find that the claimant was not threatened with being subjected to FGM as claimed or at all.

Conclusion

24. I have, I am afraid to say, comprehensively disbelieved the account offered by the claimant. In those circumstances I conclude that she has failed to show that, if returned to the Ivory Coast, she would be persecuted for any 1951 Refugee Convention reason. Since I have disbelieved the account I also conclude that she has not demonstrated she is entitled to humanitarian protection or that, if returned, she would be subjected to treatment which would breach Article 3 of the ECHR. That being so, it is not necessary for me to go on to consider sufficiency of protection or internal flight. On my findings she does not need protection and does not need to attempt to relocate.

25. I have not dealt with Article 8 of the ECHR. Article 8 was not raised by the claimant when she sought to appeal the Secretary of State's decision. It has not subsequently been raised at any stage. I do not regard it as being before me. It may be that, in those circumstances, particularly if she feels that for some reason her relationship with her mother is of unusual depth, that she might care to consider making an application based upon Article 8 outside of the Immigration Rules. But that, of course, is entirely a matter for her or for any advisors she might obtain in the future. I would simply add that I do not think there is anything in my findings or conclusions which would mean any such application cannot succeed.

26. In remaking this decision, then, I dismiss the claimant's appeal from the Secretary of State's decision of 3 July 2017.

Decision:

The claimant's appeal is dismissed.

I make no anonymity direction.

Signed: Date: 18 December 2018

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

Since no fee is paid and since no fee is payable, there can be no fee award.

Signed: Date: 18 December 2018

Upper Tribunal Judge Hemingway