



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

Appeal Number: PA/03026/2019

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**On 13 February 2020**

**Decision & Reasons**

**Promulgated**

**On 6 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**MK**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Ms E Gunn instructed by Migrant Legal Project

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

## **Introduction**

2. The appellant is a citizen of Sierra Leone who was born on 18 September 1963. She arrived in the United Kingdom in June 2006 as a visitor. At the expiry of her six months' leave, the appellant overstayed.
3. On 25 August 2011, she sought leave to remain on the basis of a relationship in the UK. That application was refused on 4 October 2011 with no right of appeal. A further application for leave to remain based upon Art 8 of the ECHR was made on 9 January 2012. Whilst that application was pending, on 29 October 2013 she was served with a notice that she was liable to be removed as an overstayer. On 11 December 2013, her application for leave based upon Art 8 was refused. A subsequent challenge to that decision by way of judicial review made on 31 October 2013, failed as the appellant had a right of appeal against the decision to refuse her leave under Art 8 made on 11 December 2013.
4. Thereafter, the appellant appealed against that decision but her appeal was dismissed on 29 July 2014 and she was refused permission to appeal by the First-tier Tribunal and Upper Tribunal on 26 August 2014 and 8 December 2014 respectively.
5. On 17 July 2015 the appellant made a further application for leave based upon her private and family life. On 1 October 2015, that application was refused and her claim was certified as clearly unfounded. On 11 December 2015, the appellant challenged, by way of judicial review proceedings, the decision to certify her human rights claim that had been made on 1 October 2015. On 4 February 2016, the certification decision was withdrawn and her claim was reconsidered on 17 July 2015.
6. On 8 April 2016, the appellant made further submissions and, on 5 May 2016, her application made on 17 July 2015 and her further submissions made on 8 April 2016 were considered and rejected in accordance with para 353 of the Immigration Rules (HC 395 as amended).
7. On 12 May 2016, a judicial review challenge to those decisions was conceded by the Secretary of State the decisions were subsequently maintained on 11 July 2016. A further judicial review claim was made on 2 August 2016 and was struck out on 23 August 2016 for failure to file a completed T485 form. On 21 September 2016 and 26 September 2016, further representations were made on the appellant's behalf. On 8 September 2017, her claim for asylum was refused and certified without a right of appeal. On 5 October 2017, that decision was withdrawn.
8. Finally, on 9 March 2019, the Secretary of State reconsidered the appellant's application for asylum, humanitarian protection and under Art 8 of the ECHR. In a decision on that date, the Secretary of State refused each of the appellant's claims. Principally, the Secretary of State rejected the appellant's claim to be at risk on return to Sierra Leone from her family and members of the Bondo Society.

### **The Appeal to the First-tier Tribunal**

9. The appellant appealed to the First-tier Tribunal. In a decision sent on 19 September 2019, Judge Lever dismissed the appellant's appeal on all grounds. He accepted, as had the Secretary of State, that the appellant had been subject to Female Genital Mutilation ("FGM") in or about 1981. He accepted that the appellant and her family were members of the Bondo Society, an all-female secret society that practices FGM in Sierra Leone. He also accepted that the appellant's aunt was a Soweï, a local leader of the Bondo Society. However, the judge rejected the appellant's claim that, since she had been in the UK, her estranged husband, whom she had discovered had bigamously married another woman in Sierra Leone, had informed her aunt that she (the appellant) had divulged the secrets of the Bondo Society in the UK and that, as a result, she was at risk on return, in particular from her aunt or any other family member.

### **The Appeal to the Upper Tribunal**

10. The appellant sought permission to appeal to the Upper Tribunal on five grounds. Grounds 1 - 4 challenge the judge's adverse finding in relation to the appellant's asylum claim. Ground 5 challenged the judge's decision to dismiss the appellant's Art 8 claim.
11. The grounds are detailed and do not necessarily raise single points by way of challenge. I will deal with the detail below.
12. Permission was initially refused by the First-tier Tribunal but on 27 November 2019, the Upper Tribunal (UTJ Smith) granted the appellant's permission, in particular upon Ground 5 that in dismissing the appellant's appeal under Art 8 the judge had failed to take into account the expert psychiatric evidence relevant to her capacity to reintegrate on return to Sierra Leone.
13. The respondent did not file a Rule 24 notice.
14. At the hearing before me, the appellant was represented by Ms Gunn who made submissions in support of the five grounds of appeal and the Secretary of State was represented by Mr Howells.

### **Discussion**

15. I will take each of the grounds in turn, although Ground 4 is (as became clear at the hearing) in effect subsumed within one of the points made in Ground 1.
16. On Ground 1, Ms Gunn submitted that the judge had failed to take into account the appellant's evidence and relevant background evidence in making two adverse findings. First, in para 30 of his determination he had rejected the appellant's account that, despite having lived for 25 years in

Sierra Leone, as FGM had been performed on her, it was only when she was in the UK that she came to fear her aunt, in particular that she would be forced to replace her as a Soweï and that “the pressure either began or escalated” when she was here. Ms Gunn submitted that the judge had failed to take into account the appellant’s evidence, given in her asylum interview at questions 52 and 54 where she pointed out that she was able to resist her aunt when she lived in Sierra Leone because she was a police officer. The evidence was that she had reached the rank of inspector before her departure to the UK. Her evidence was that “now the family knows I am no longer in the force, they try to get me”.

17. Ms Gunn also relied upon the fact that the appellant’s claim, as set out in her asylum interview and in her two witness statements, was that her estranged husband had told her aunt that she was divulging the secrets of the Bondo Society in the UK. In her witness statement, submitted with her claim, she had said:

“I threatened him over the phone and told him that when I return I will sue him for bigamy because we were legally married. As an act of retaliation he went and told my family that I was in the UK exposing the Bondo Society. I soon started receiving threats from my family and I knew that I could not return. I told [my partner in the UK] what was happening and he told me that I could stay with him.”

18. Ms Gunn relied upon the expert report of Ms M Conteh dated 15 August 2019 (at A8 – A48 of the appellant’s bundle which set out the secretive nature of the Bondo Society (see para 34) and the expert’s view that the Bondo Society’s likely reaction to the appellant was one of physical violence (see paras 45 – 47 and 49).
19. Mr Howells submitted that the judge had been entitled to reach his adverse finding on the basis of her continued residence in Sierra Leone for 25 years without any problems and in rejecting a letter from the appellant’s sister, supporting the appellant’s claimed threats from her family, as not being genuine.
20. I accept Ms Gunn’s submissions on this point. At para 28 of his determination, the judge first dealt with the expert report of Ms Conteh and, in effect, accepted that the secret nature of the Bondo Society might mean that they might not wish: “The details of the barbaric practices of FGM...to be made public in detail, not least by the local Soweï who would appear to derive income and local prestige from such a role.”
21. Then at para 29, the judge accepted that it was plausible that the appellant’s aunt had put pressure on the appellant to take over from her as Soweï.
22. Then at para 30, the judge dealt with the evidence and found the appellant’s account to lack credibility that she had experienced problems only since being in the UK. He said this:

“30. On the Appellant’s timeframe she would have had FGM performed upon her in about 1981. She remained in Sierra Leone until 2006 a period of

25 years. I accept her evidence that she moved at a young age from Port Loko her home area to the capital Freetown and thereafter began a career in the police force rising to the rank of inspector before her departure for the UK. I also accept as the expert states that because of various factors (paragraph 43) there may be a desire to recruit younger women for the role and pressure put on those regarded as suitable. I also accept that amongst some, belief in witchcraft exists and a belief that some women like a Soweï may have powers of witchcraft. I find that the Appellant was able to resist any potential pressure to replace her aunt as a Soweï for a significant period of time even though she lived and worked in relatively close proximity to her home area and would visit Port Loko. If the pressure from her aunt did exist it caused no problems for the Appellant and her refusal of the role during 25 years of local residence would have sent a clear signal. I find it highly unlikely the pressure continued. I also find it entirely lacking in credibility to suggest that the pressure either began or escalated when the Appellant came to the UK. There is no reason or logic for that fact. The letter the Appellant has produced from her sister, typed, within the Appellant's bundle, does not bear the hallmarks of a genuine letter and I do not accept its contents as being credible."

23. Whilst I accept Mr Howells's submission, and indeed it is not challenged, that the judge was entitled to reject the supporting letter from the appellant's sister, the judge's finding that there was "no reason or logic" for the pressure or threat to the appellant to begin or escalate when she has been in the UK does fail to take into account evidence that could provide an explanation for that pressure beginning or escalating in the UK.
24. The first is the evidence of the appellant herself that she was able to resist pressure from her aunt (and by implication the Bondo Society) whilst she lived in Sierra Leone because of her position in the police force. The judge does not grapple with that evidence and accept or reject it in his determination and before reaching his adverse conclusion in para 30. It is capable of providing a "reason" or a logical basis for why the appellant was able to resist the pressure to take over from her aunt whilst she lived in Sierra Leone but not since she has been in the UK, and if she were returned to Sierra Leone, because she would no longer be an officer in the Sierra Leone Police Force.
25. In addition, the appellant's case was that the risk to her had increased – i.e. escalated – since she had been in the UK because, in effect, her estranged husband had retaliated against her by alleging she had divulged secrets of the Bondo Society in the UK. The background evidence to which Ms Gunn referred me and the expert report undoubtedly recognised the secret nature of the Bondo Society and that it was plausible that a person would be at risk if they were perceived to be someone who had divulged the secrets of that society. The judge accepted, as much, in para 28 of his determination. Again, in finding that there was "no reason or logic" for the pressure to begin or for it to escalate in the UK, the judge failed in para 30 to grapple with the evidence concerning the added threat if her estranged husband had told her aunt that the appellant had divulged the secrets of the Bondo Society in the UK.

26. In fact, in para 33 of his determination, the judge went on to find that it was not credible that her estranged husband had done this. The judge said this:

“33. I do not find it credible that her estranged husband would have made any references in Sierra Leone to her divulging secrets of the Bondo society whilst in the UK. I find that for some years he has had no contact or interest in the Appellant.”

27. Raised under Ground 1 but also under Ground 4, Ms Gunn submitted that this finding failed to have regard to the appellant’s evidence that the reason why he had done this was by way of retaliation when she had threatened him that, on return to Sierra Leone, she would accuse him of bigamy as he had married another woman whilst he was still married to the appellant. That evidence is clearly in the appellant’s witness statement submitted with her asylum application at para 6 (see Annex C of the respondent’s bundle). It is also set out in para 13 of her witness statement dated 15 August 2019 in response to the respondent’s refusal letter. There she states:

“Two months after I came to the UK my husband married another woman. I started receiving threats from my aunt because my husband turned against me and told my family that while in the UK I was talking about the Bondo Society giving them a bad name.”

28. Whilst the judge made reference to this as part of her claim in para 25 of his determination, in reaching his finding in para 33 he failed to take that into account and reached any finding on whether or not he accepted that aspect of the appellant’s case. If he accepted her evidence, it provided a potential basis for why her estranged husband would retaliate in the way that she claimed and potentially found a basis for her fear to be at risk on return.

29. To this extent, therefore, I accept Ground 1 and Ground 4 and that the judge erred in law in reaching his adverse finding.

30. I will take Grounds 2 and 3 together. In respect of Ground 2, Ms Gunn submitted that the judge had failed to engage with the appellant’s claim that not only was she at risk from her family but also, as a result of her perceived disclosure of the secrets of the Bondo Society, she was more widely at risk from members of the society. Ms Gunn placed reliance upon the expert report of Ms Conteh at paras 30 and 45 – 48 recognising that there was a broader risk from members. Ms Gunn submitted that in para 31 the judge had focussed simply upon a risk from the appellant’s aunt and her family discounting any risk from her sisters whom he found “appear [to be] allies rather than people who would probably seek to kill or injure” the appellant.

31. Mr Howells pointed out that the judge was well-aware that the appellant was claiming not only a risk from her family but also from society members. At para 25 of his determination the judge had referred to: “this

double betrayal means, the appellant claims, that she fears death at the hands of her family and society members.”

32. Whilst I accept that the judge refers to the appellant’s claim as including a risk from society members in para 25, I accept Ms Gunn’s submission that despite this he failed to deal with this broader risk when reaching his findings, in particular at paras 28 – 33. Mr Howells did not contend that a broader risk could not exist if the appellant had, indeed, been accused of divulging secrets of the Bondo Society. However, of course, the judge found it not to be credible that the appellant’s estranged husband had told her aunt that she had done this. Any broader risk from members of the Bondo Society would, as a consequence, not arise. In itself, therefore, the judge’s failure to specifically deal with this issue was not material to his decision. However, of course, I have concluded that his adverse finding in relation to whether the appellant’s estranged husband had told her aunt about her divulging Bondo Society secrets in the UK is legally flawed and cannot stand. The broader risk will, therefore, be an issue when the decision is necessarily remade.
33. In relation to Ground 3, an aspect of the appellant’s claim was that she had left Sierra Leone following the death of three of her children, as a result, she believed, of witchcraft. The judge’s reasoning is at para 32 as follows:
  - “32. The Appellant has spoken of the death of her children. She accounts their death to witchcraft. I entirely reject that prognosis. Indeed this part of her case is unusual in the extreme. She makes almost no reference to how or in what circumstances they died. She produces no evidence concerning their deaths. She provides no clues as to whether they died together or separately. She claims those deaths occurred in 2004 leaving her with one surviving son and daughter. It is noteworthy that in her appeal hearing in 2014 she made no reference to the deaths of three children and a son-in-law but simply referred to having two children now estranged from her. I do not accept that aspect of her case as credible. Nor do I find it credible that her husband would suggest, that to ease her grief she would visit the UK to stay with a male friend of his. I find the Appellant simply left Sierra Leone for her own purposes leaving behind two children. She began living with a man in the UK. As a result of her leaving she lost her job with the Sierra Leone Police Force which is understandable.”
34. Ms Gunn submitted that the judge had been wrong to say that the appellant had produced “no evidence concerning their deaths”. She relied upon a brief news report at A91 of the bundle referring to her son-in-law and his wife (one of the appellant’s children) who together with five others had died on 2 September 2004. Ms Gunn relied upon para 8 of the appellant’s statement dated 15 August 2019 in which the appellant had set out the circumstances of the death of her daughter, two sons and her son-in-law who is the named individual in the brief news report.
35. Mr Howells accepted that the judge had been wrong to say that there was “no evidence” to support the appellant’s claim that three of her children had died. However, he submitted that that error was not material to the

judge's finding that he did not accept she had left Sierra Leone following the death of her three children in the circumstance that she claimed. Mr Howells relied upon the fact, referred to by the judge in para 32, that the appellant had made no reference to these deaths which had occurred in 2004 in her appeal hearing in 2014.

36. In my judgment, it is not possible to say that the judge's finding would necessarily be the same if he had taken into account the evidence said to support her account that three of her children had died in the way that she claimed. The judge's failure to consider that evidence was undoubtedly an error of law and I am not satisfied that it was an immaterial error.
37. In respect of Ground 5, in finding that the appellant's removal would not breach Art 8 of the ECHR, Ms Gunn submitted that the judge had failed to consider the expert psychiatric report of Dr Battersby and also the impact upon the appellant (and her ability to reintegrate in Sierra Leone society) as a person who had been part of Bondo Society but was now, in effect, seeking to reject it.
38. As regards the former, Ms Gunn relied upon Dr Battersby's views that the appellant had symptoms of PTSD though she did not meet the threshold for full diagnosis; that she needed CBT and was currently prescribed with anti-depressants for PTSD and there was a moderate risk of suicide if she learned that she was to be returned to Sierra Leone. As regards the latter, Ms Gunn relied upon the expert report of Dr Conteh, in particular paras 32 and 65 highlighting the impact on return to the appellant and that a person, such as the appellant, was "unlikely to survive" without recourse to Bondo Society.
39. Mr Howells accepted that the judge had erred by not taking into account Dr Battersby's report. Indeed, the judge made no reference to it at all. However, he submitted that it was not material as the report demonstrated a relatively limited impact on the appellant's mental health. In particular, he relied on the fact that the appellant had not displayed the full PTSD symptoms and that her depressive disorder had resolved. Her mental health problems were "mild" in nature and that she had told Dr Battersby that she was functioning well and able to look after her partner. Mr Howell submitted that her mental health difficulties were not serious.
40. In substance, I accept Ms Gunn's submissions. The judge erred in law by failing to consider Dr Battersby's report and the background information relevant to the impact upon the appellant of returning to Sierra Leone given her involvement with Bondo Society. The assessment of her ability to integrate, relevant to para 276ADE(1)(vi) and more generally outside the Rules, required the judge to take into account all factors relevant to her capacity to effectively participate and be part of the community to which she was returning (see SSH D v Kamara [2016] EWCA Civ 813 at [14]). What weight should be given to these factors is, subject to a rationality challenge, a matter for the judge. I am not satisfied that taking all the circumstances together, including the factors which the judge failed



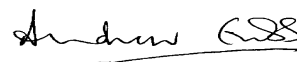
to take into account, it was inevitable that he would reach an adverse finding either under para 276ADE(1)(vi) or in applying Art 8 outside the Rules. His error was, in my judgment, material.

41. For these reasons, therefore, the judge materially erred in law in dismissing the appellant's appeal on asylum grounds and under Art 8 of the ECHR.

### **Decision**

42. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and I set it aside.
43. Both representatives agreed that if the judge's decision could not stand, the proper disposal of the appeal was to remit it to the First-tier Tribunal for a fresh hearing.
44. Having regard to the nature and extent of fact-finding and to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Lever.

Signed



A Grubb

Judge of the Upper Tribunal  
5 March 2020