



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06845/2019**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 5 August 2022**

**Decision & Reasons Promulgated
On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**MM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, solicitor advocate instructed on behalf of the appellant

For the Respondent: Ms Young, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction:

1. This is the remaking of the appellant's appeal. The First-tier Tribunal (hereinafter referred to as the "FtTJ") dismissed the appellant's protection and human rights appeal in a decision promulgated on the 20 February 2020.
2. Permission to appeal that decision was sought and on 29 April 2020 permission was refused by FtTJ Foudy but upon renewal was granted by Upper Tribunal Judge Perkins on the 4 March 2022.
3. At the appeal hearing, it was conceded on behalf of the respondent that the FtTJ's decision involved the making of an error on a point of law. In a decision promulgated on 10 June 2022 the Upper Tribunal set out its reasons for accepting that concession and set the order aside. That decision should be read alongside this decision.

The background:

4. The appellant is a citizen of Sierra Leone. The basis of her claim is set out in the decision letters in the respondent's bundle and summarised in the decision of the FtTJ.
5. The appellant is a citizen of Sierra Leone; her family are Muslim, and her father is from the Mandingo ethnic group and her mother from the Loko ethnic group. She was brought up in a village near Freetown. Her mother was a member of the Bondo secret society which is widespread throughout Sierra Leone. She was also a soweï (a cutter) who performed female genital mutilation ("FGM") on girls and women as part of initiation into the Bondo society.
6. The appellant realised that she would be expected to undergo that procedure and at about the age of 8 she ran away from home with the help of the family doctor. She was informally adopted by a couple who were Christian Krio who were opposed to FGM. The appellant became a Christian was baptised and was able to attend school. Her father died when she was 17.
7. When the appellant returned to her village she would talk about a Christian faith and would speak out against FGM which led to friction with her mother and many of the other villagers. It was said that she would be taken to the chief and that she would be fined. She was not subjected to FGM.
8. In or about 1986 she started a business and began a relationship with a man who was from Liberia. They married in 1988 and went to live in Liberia where she worked as a teacher and Pentecostal pastor. They became caught up in the civil war and had to move to Ivory Coast. The appellant taught in refugee camps. In 2004 her husband was forced to join the rebel fighters and she was seriously assaulted with their home being destroyed. Her husband died in 2005. She had 4 children who she took

back to Sierra Leone. The appellant and the children receive some help and support from her adoptive parents but there was no work for her.

9. The appellant went back to the village where she would continue to preach against FGM, and this led her into further conflict with her mother and with the villagers and the chief. Although she and the children stayed at her mother's house, her mother rejected her as did the other villagers. She was intimidated and told to go back to Liberia. She could not go there because a husband's relatives were against due to her coming from Sierra Leone and not Liberia; they had threatened to kill her and took her land from.
10. The appellant continued to refuse to join the Bondo society or to allow her daughter to undergo FGM. She would lead a Sunday school and would speak out against FGM. The children moved out of the village with friends.
11. The appellant stated that if they returned to the village and spoke out against the Bondo society in FGM the chief would fine them.
12. In December 2009, the appellant was granted entry clearance to come to the United Kingdom as a visitor to stay with her sister and she arrived on 12 January 2010. She did not return to Sierra Leone when her leave to enter expired on 4 October 2010. She stayed with her sister for about 3 years, and it is said it was very difficult during that time. The appellant moved out stayed with friends that she had made through the church. She stayed with different friends and the last person she stayed with had a disabled child whom she looked after. The appellant describes a very difficult situation at that time which she stated led to the social services and the police becoming involved. After seeking help from migrant and refugee support organisations she made a claim for asylum on 4 January 2018. The appellant's 4 children are all living in Freetown (they are all adults) and are in frequent contact with the appellant by telephone.
13. In relation to 1 of her children, her daughter J was attacked in their home village when she was visiting in December 2017 by members of the Bondo society who wanted to initiate her into that society. She was beaten but managed to escape and sought help at police station.
14. The appellant's mother has died as has another sister of hers who lived there and would help her when she was in the country. Her adoptive parents have also died.
15. The appellant fears that if returned to Sierra Leone she would face further serious problems from members of the Bondo society because of her opposition to the society and FGM. She would still wish to speak out against the practice.
16. The chronology of the decision letters of the respondent is not entirely clear. It is plain from reading the decision of the FtTJ that there had been a lack of preparation on their behalf and a failure to provide a comprehensive bundle of documents. When the bundle had been provided

it did not enclose the unpublished documents referred to in the 1st decision letter. However copies were later made.

17. For the purposes of the appeal, the decision taken to refuse the appellant's protection claim was contained in a letter dated 27 June 2019. The FtTJ referred to this as the "current refusal letter." The letter incorporated large parts of an earlier notice of decision (1st refusal letter dated 5 July 2018). The judge recorded that the respondent had refused the application broadly speaking on the basis that the appellant was not at risk of persecution for a Convention reason, did not require humanitarian protection and also refused the claim on human rights grounds.
18. Reading the decision of the FtTJ, he felt it necessary to undertake an assessment of what issues had been raised in the decision letter due to the lack of clarity.
19. As far as is relevant, the appellant made a claim for asylum on 4 January 2018. It was refused on 5 July 2018 in a 1st refusal letter which was certified under the 2002 Act as "clearly unfounded". The appellant did not leave the United Kingdom but fresh submissions on her behalf were sent to the respondent on 22 November 2018. The judge recorded at paragraph [27] that the current refusal letter referred to further submissions being made on 10 January 2019, which was then refused on 12 June 2019, a pre-action protocol letter dated 25 March 2019 was submitted which is accepted and that further submissions dated 10 January 2019 were being reconsidered in the current refusal letter.
20. The FtTJ could not see how those statements made any sense and there were no copies of any further submissions from 10 January 2019 or of refusal letter dated 12 June 2019 or a pre-action protocol letter. As a result he did not take those into account.
21. As to the current refusal decision, it was not a certified decision and thus the appellant had a right of appeal in country which she exercised.

The decision of the FtTJ:

22. The appeal came before the FtTJ on 19 December 2019. In a decision promulgated on 20 February 2020, the FtTJ dismissed the appeal on asylum grounds and on human rights grounds.
23. The FtTJ set out his factual findings at [22]-[74] and his analysis of the claim at paragraphs [75]-[93].
24. Between paragraphs [34 - 74] the FtTJ undertook an assessment of credibility and did so in the context of the decision letters issued by the respondent. It appeared to be the submission on behalf of the appellant that the 1st refusal letter had not raised any credibility issues concerning events in Sierra Leone, Liberia and the Ivory Coast.

25. When assessing the 1st refusal letter, he found that it was “implicit at paragraph 39 - 41 that her account of events is accepted and at paragraph 43 in particular that she had experienced ill-treatment (although not amounting to persecution) by members of the Bondo society. At its highest all the respondent had said at paragraph 35 was that she was vague, and at paragraph 42 that she came to help assist her sister in this country rather than to escape persecution (at[46]).
26. The judge found there was no challenge in the 1st refusal letter to the appellant’s account of her upbringing of the difficulties she had with the Bondo society, of their reaction to when she spoke against FGM and about the events in Liberia and Ivory Coast. Paragraph 44 of the 1st refusal letter of the respondent explicitly accepted the appellant had a genuine subjective fear on return to Sierra Leone (at [47]).
27. The current refusal letter largely adopted the observations and conclusions of the 1st refusal letter. Paragraphs 18 - 25 of the refusal letter went entirely to the question of risk facing her in Sierra Leone and whether there was sufficiency of protection. Thus he found the only point raised in the current refusal letter about the credibility of the appellant was “rather oblique” and were set out at paragraph 26 - 33 and deals with 2 documents dated 3/9/18 from Sierra Leone police sent with the further submissions (at [48 - 49]).
28. The FtTJ therefore recorded that there was no direct challenge to the credibility of the appellant, and that it was implicit again that her credibility was accepted in the current decision letter.
29. At [51] the FtTJ set out the circumstances of 2 documents from the Sierra Leone police made by J on 22 December 2017 in connection with an attack on her in the early evening at the family home in x village. Members of the Bondo society tried to initiate into the society; she was seriously beaten before being abandoned. She then went to the police station and reported the incident. One document stated that the police have had similar cases that had been unable to bring those responsible to justice because the Bondo society was the custom and tradition of the people. The police advised J to stay in hiding far away from the Bondo society people.
30. At paragraphs [59 - 62] the FtTJ made reference to the submissions made on behalf of the presenting officer that the appellant had been inconsistent at different stages of the asylum application appeal process about preaching against the Bondo society and that there had been an element of embellishment.
31. At [63] the judge found that “I consider that the appellant has been very consistent in saying that she has been against the Bondo society and indeed against FGM when she was living in Sierra Leone. At best there might be some confusion if it was not appreciated that her saying that she had spoken against the Bondo society or that she had preached against FGM are in reality and in substance the same thing.”

32. As to the police documents, the judge recorded at [67] that the respondent had not provided the originals or the copies that were supplied with the submissions letter and thus was not in a position to agree that there was cause for considering that they should not be relied upon. In any event as spelling states concerned, it should not necessarily be assumed that English was the first language or to a standard that might be expected in official documents as in the United Kingdom.
33. Against that general background the FtTJ set out his factual findings at paragraphs [72]-[74] and found that it was reasonably likely that the appellant has been telling the truth in the essentials of her claim that she has a subjective fear of ill-treatment from the Bondo society because of her opposition to them and to FGM (at [72]). Her daughter has not been subjected to FGM, but she was attacked by Bondo society members in December 2017. The appellant feared that she would face ill-treatment from the Bondo society whether in the village or elsewhere in the country because she would continue to speak out against FGM (all at [74]).
34. Having made those findings of fact the FtTJ went on to consider whether the subjective fear of serious ill-treatment that he accepted the appellant had in relation to opposition to the Bondo society and to FGM was objectively well-founded but found that she would not bear risk of harm on return. On the basis of background evidence, the FtTJ also found that as a result of her age she fell out with the age range of women and girls subjected to FGM and therefore would not face the kind of physical pressure in order to have that procedure on her. He dismissed the appeal.
35. Permission to appeal that decision was sought and on 29 April 2020 permission was refused by FtTJ Foudy but upon renewal was granted by Upper Tribunal Judge Perkins on the 4 March 2022.
36. At the appeal hearing before the UT, it was conceded on behalf of the respondent that the FtTJ's decision involved the making of an error on a point of law. In a decision promulgated on 10 June 2022 the Upper Tribunal set out its reasons for accepting that concession and set the order aside. That decision should be read alongside this decision.

The hearing before the Upper Tribunal:

37. At the error of law hearing it was also agreed that the appeal should be retained in the Upper Tribunal for remaking. The grounds did not challenge the factual findings set out by the FtTJ set out at paragraph [74] of his decision. Nor was there any challenge to the assessment of past persecution summarised in the decision and those factual findings were preserved findings for the remaking of the decision.
38. Other relevant issues identified by Ms Brakaj related to the country materials, internal relocation, and it follows sufficiency of protection which also will form part of the issues under consideration concerning risk on return.

39. The applicant attended the hearing and gave evidence. The applicant was treated as a vulnerable participant within the meaning of the Joint Presidential Guidance note number 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance and the proceedings featured regular breaks and the appellant was addressed with concern to ensure that she understood and was comfortable with the proceedings. The applicant was accompanied throughout by two friends. The advocates confirmed that they had discussed the issues prior to the hearing and that there would be little oral evidence and that the respondent did not seek to cross examine the appellant.
40. In evidence, the appellant was asked about her present mental health and current treatment. She stated that she attended a place called X in her local area for counselling dealing with trauma and attended this alongside a further group session. She went to counselling once a week each Wednesday. She confirmed that she could alternate between that and the group sessions which started at 9 and finished at 12 PM. She was given assistance with dealing with trauma and managing her mental health.
41. No questions were asked by the presenting officer.
42. At the conclusion of the short oral evidence, the advocates gave their submissions. Both had provided written submissions prior to the hearing.
43. The respondent provided a skeleton argument. It set out the following:
- (1) As outlined in the hearing referred to above, the Tribunal and respondent were aware the CG decision in **GW (FGM and FGMPOs) Sierra Leone CG [2021] UKUT 108 (IAC)** which post-dated the FTT decision, and the respondent's own decisions, the refusal of which became the substance of this remaking hearing at the UT.
 - (2) It must be acknowledged that the ratio in GW has a serious revisory effect on the respondent's refusal decision, dated 26 06 2019, to the extent that some of the reasoning within it, and by which the respondent's SPO is bound at the remaking hearing, will no longer be sustainable in the light of the CG. It is accepted in the light of GW that the appellant falls to be treated as a member of a particular social group as per Fornah, and from headnote 18 of GW:- *"18) Women who are not compliant with or are perceived as rejecting cultural norms for women in Sierra Leone, including rejecting the Bondo society and refusing to be cut are a 'particular social group'."*
 - (3) While it is not conceded that the appellant herself falls into the part of the age spectrum which puts her at risk of FGM herself, it is accepted that her resistance to, and criticism of FGM renders her a member of a PSG. It is also acknowledged that headnote 17 of GW may have some overtones as to the Tribunal's treatment of the appellant (reproduced below).

- (4) It is accepted that the appellant has had mental health issues (suicidal ideation), and once again, while not conceding that she herself is at serious risk of FGM, an adumbration of the putative effect of potential stigmatization and discrimination as a result of resistance to Bondo society seem to be a necessary facet of the forthcoming hearing.

17) Those at risk of FGM with mental health problems are likely to experience stigma and discrimination and lack of appropriate treatment. Mental illness is extremely stigmatized, and the one psychiatric hospital continues to suffer from stigmatizing and severe underfunding. However, this is only the case, if the stigma results from the subject's family/ethnic and social support system. And if as a result of deciding not to be initiated to the Bondo Society, the subject is marginalised to the extent that they would be unable to avail themselves of adequate access to such medical facilities by virtue of their lack of access to work, economic destitution, and their inhibited ability to secure support from their community. There are only two psychiatrists, two Clinical Psychologists and 19 Mental Health Nurses in a country of seven million people"

- (5) The respondent does not propose to adduce any further but recognises the existence of background evidence which ought to be considered by the Tribunal.

44. In her oral submissions Ms Young submitted that she acknowledged the country guidance decision of GW and how it affects the position of the respondent and did not seek to depart from that decision. She referred the tribunal to the appellant's skeleton argument which set out the decision of GW at paragraph 9. She submitted that it was for the appellant to show that she would be at risk on return, and it would amount to persecution. She acknowledged the previous findings that she had a subjective fear of facing ill-treatment on return. She further acknowledged that there was no dispute that the appellant fell within a Convention ground of a particular social group.
45. In terms of the evidence she submitted it did not demonstrate a well-founded fear of persecution and general overview did not show a level of persecution.
46. In terms of internal relocation and sufficiency of protection Ms Young submitted that she did not seek to depart from country guidance decision of GW and acknowledged what had been said in that decision about internal relocation and sufficiency of protection. It was accepted that the appellant had mental health issues.
47. Ms Brakaj relied upon her written submissions. She identified the 3 issues for consideration as follows:
- (i) Would the Appellant be at risk of harm on return to Sierra Leone?

- (ii) If the Appellant is at risk of harm on return to Sierra Leone would she be able to obtain sufficient protection?
- (iii) If the Appellant is at risk of harm on return to Sierra Leone would she be able to reasonably internally relocate?

48. In relation to the issue of risk on return reliance Ms. Brakaj placed on the objective evidence placed before the First Tier Tribunal and in particular that evidence highlighted in the schedule of essential reading.
49. Particular reliance is placed on the extract found at page 158 of the Appellants bundle which states:

Consequences for refusing to become a practitioner

*A 2008 study on the profile of FGM **practitioners in Sierra Leone indicates that practitioners generally inherit their profession from their mother or grandmother (IAC June 2008, 14, 16).** Information on the consequences for refusing to become a practitioner, or the consequences for a daughter of a practitioner who refuses to succeed her mother, could not be found among the sources consulted by the Research Directorate. However, the following information may be of interest. **FGM practitioners in Sierra Leone are "very powerful and influential" both politically and socially (IAC June 2008, 18; see also Women's eNews 7 Sept. 2007).** According to the 2007 Writenet report, **"people who speak out against the societies risk violent confrontation and forced initiation"** (Fanthorpe Aug. 2007, 16). **Other sources consulted similarly indicate that those who oppose the practice may face "hostility" (IPS 19 Apr. 2005) and be subjected to "harassment and threats" (Women's eNews 7 Sept. 2007).** In February 2009, Bondo Society members kidnapped four women journalists in the city of Kenema [Eastern Sierra Leone] who were conducting interviews to mark the 6 February International Day of Zero Tolerance of Female Genital Mutilation (Reuters 11 Feb. 2009; RSF 10 Feb. 2009). The Bondo members stripped the journalists of their clothing and forced one of them to walk naked through Kenema (ibid.; Reuters 11 Feb. 2009). It is reported that the Bondo members believed the journalists' questioning and comments were disrespectful to their traditions (RSF 10 Feb. 2009; see also Reuters 11 Feb. 2009).*

50. Reliance is placed on the country materials found at page 154 of the Appellants bundle. Reliance is also placed on the head note of GW (FGM and FGMPs) Sierra Leone CG [2021] UKUT 00108 (IAC) and that this decision post-dates the First Tier Tribunal decision.

51. In relation to risk on return Ms Brakaj relied upon the following extracts from the head note:

9) Sierra Leonean women are today among the most marginalized in the world, socially, economically and politically.

13) *Girls and women are expected to have undergone the Bondo initiation ceremony before marriage, and are ostracized, called names, and even abused, if they do not. It is a cultural norm in Sierra Leone. If a young woman has not been "cut" before the age of 18, she can still be subjected to the process, either forcibly or by choice. She is still expected to undergo the initiation and FGM in order to be eligible for marriage.*

18) *Women who are not compliant with or are perceived as rejecting cultural norms for women in Sierra Leone, including rejecting the Bondo society and refusing to be cut are a 'particular social group'.*

52. It is submitted that the above demonstrates that the Bondo Society remain powerful in Sierra Leone and that they continue to persecute those who speak out against them. Given that it has been accepted that the Appellant would continue to speak out against the Bondo Society on return to Sierra Leone it is submitted that she would be at risk of harm amounting to persecution.

53. Dealing with the second issue of sufficiency of protection, it is submitted that there would not be sufficient protection against the Bondo Society for the appellant and that they remain powerful and influential in Sierra Leone. Again in this regard reliance is placed on the new Country Guidance case GW (FGM and FGMPOs) Sierra Leone CG [2021] UKUT 00108 (IAC) the head note of which states:

10) *The Bondo society, which is extremely powerful and influential in Sierra Leone, has an entrenched role in tribal and political life in the country, and membership confers social status and respect, even opening doors to tribal chief posts and government jobs. It continues to play a leading role in the social, religious and political life of communities. It is an integral part of life in Sierra Leone. Politicians are at pains to gain the support of Bondo societies and thereby the votes of those under their influence. The power of the Bondo society and relationship between the Bondo society and politicians ensures that the authorities typically do not get involved in the issue of FGM. Male interference in Bondo Society matters is 'known' to have terrible consequences - like disease and death or developing an extended ('female') scrotum, or "elephantiasis of the testicles." Neither state courts nor members of the police are likely to intervene in cases involving initiation into Bondo which has its own laws that are more effective and inescapable than state law.*

15) *The overall effectiveness of the police in providing protection is limited by endemic corruption and a lack of resources. A number of NGOs campaign for the abolition of FGM, but these generally work in advocacy, and would not be able to provide protection. There are women's organisations in Sierra Leone making efforts to improve women's position in society, but they*

do not function as shelters. With millions of Sierra Leonean women suffering violence these NGOs are unable to protect women from domestic and sexual violence perpetuated against them within their own families and communities.

54. As regards internal relocation, it submitted that the Appellant would not be able to relocate reasonably.
55. Again reliance is placed on the Country Guidance case of GW (FGM and FGMPs) Sierra Leone CG [2021] UKUT 00108 (IAC) which states:

11) Bondo societies exist in every village and town across Sierra Leone and are a vital communications link between politicians and rural communities. Whether a girl/woman is a Christian or a Muslim has little influence on her risk of being subjected to FGM and initiated into the Bondo society. Rather, this will depend on her ethnic identity/identities and on the traditions and customs of the ethnic and local group/s she and her parents belong to. Where marriages between Fula women and Krio men are concerned, the Fula wife will often insist on maintaining her Fula traditions and customs because as a dispersed diaspora, the Fula are particularly keen on upholding their traditions also in interethnic marriages which are less common among the Fula than among other groups.

16) A young single woman without family support is at high risk of destitution, exploitation and abuse resulting from her unwillingness to adhere to the customs of the Bondo Society, which result in her marginalisation. Single women in particular are in need of family support and a male companion in order to be able to live a relatively secure life away from home, which may be impacted by the lack of initiation by way of undergoing FGM. This is true for towns and villages alike, the latter being even less accessible because people tend to live a more traditional life there than in towns. They live in clans and extended families which would have no access to, and which do not let strangers become members. Whether in urban or rural areas, it is not possible for a single young woman to find protection and accommodation without a reliable kin/ethnic/social network if as a result of her decision to reject initiating to the Bondo society, thus undergoing FGM, would lead to them being marginalised by their family members and their ethnic/social network. There is an efficient civil registration system. The National Civil Registration Act 2016 establishes the National Civil Registration Authority and requires every Sierra Leonean to register. This makes it easier for people to be traced.

56. In her oral submissions Ms Brakaj submitted that it was accepted that the appellant would speak out against the enforced practice of FGM and the Bondo society and that there was a reasonable likelihood that this would bring her to the attention of those she was in opposition to and that she

would be at risk of serious harm or persecution on return. The country material that she referred to at pages 158 and 133 demonstrated that those who speak out would be at risk of harm and that the level of persecution was consistent with the appellant's evidence of threats made to her.

57. In particular she highlighted pages 24 and 25AB and that "almost all of the women, belong to the Bondo" (page 24), that the Bondo society has "a very big influence even on the politicians but also the communities at large" and that "there have been also open threats, and verbal and physical attacks. For example four journalists who are openly criticising FGM were stripped naked and frogmarched through the streets, so that is one type of extreme violence. The Bondo societies want to maintain the practices at all means. So there tends to be a threat out there towards activists." It is also recorded "intimidation of anyone daring to break the taboo on the role that religion plays and gives meaning to the life of those opposing the challenge impact on behaviour changes."
58. She submitted that the appellant's views will be viewed as someone who threatened to break societal norms.
59. By reference to the material, she submitted that her subjective fear was objectively well-founded.
60. As to her particular characteristics, Ms Brakaj submitted that there is an expectation of those were family where a parent or mother was involved in the FGM process to continue as the appellant's mother had been. The appellant had not followed in her mother's footsteps but had continued to speak out against the process of FGM. She had not undergone that process and was against the aims of the Bondo society. Against that background it will be viewed as a challenge to society at large and an attempt to criticise their practices which would therefore lead to a risk of ill-treatment on return.
61. She submitted that there were particular concerns as to the mental health of the appellant which was accepted by the respondent. There were only 2 mental health practices in Sierra Leone and an adherence to the social norms of the Bondo society which would have an effect on whether mental health services could be accessed by the appellant. Therefore she fell into the category of someone who had a background of breaking the taboos and also the additional risk factor of not being able to access services for her mental health.
62. Ms Brakaj submitted that she would not be able to relocate to a different part of Sierra Leone as the risk would attract her wherever she lived given the prevalence of the Bondo society and that she would continue to speak out against the society and FGM.
63. I reserved my decision.

The legal framework:

64. It is for an Appellant to show that he/she is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
65. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that he falls within the definition of a refugee in Regulation 2 of the Qualification Regulations, as read with Article 1(A) of the Refugee Convention. In essence, the appellant has to show that there are substantial grounds for believing that he is outside his country of nationality by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country.
66. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.
67. Applications for asylum and humanitarian protection are addressed in part 11 of the Immigration Rules. Rule 3390, which is included in part 11, deals with the possibility of "Internal relocation". It states:
 - (i) The Secretary of State will not make:
 - (a) a grant of refugee status if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
 - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
 - (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
 - (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

68. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [2006] UKHL 5, [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

69. The House of Lords returned to the subject of internal relocation in *AH (Sudan) v Home Secretary* [2007] UKHL 49, [2008] 1 AC 678. It stressed that the test quoted in the previous paragraph provided the correct approach to the problem of internal relocation, and Lord Bingham observed in paragraph 5:

"The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is."

For her part, Baroness Hale explained at paragraph 21:

"By definition, if the claimant had a well-founded fear of persecution, not only in the place from which he has fled, but also in the place to which he might be returned, there can be no question of internal relocation. The question presupposes that there is some place within his country of origin to which he could be returned without fear of persecution. It asks whether, in all the circumstances, it would be unduly harsh to expect him/her to go there. If it is reasonable to expect him to go there, then he can no longer claim to be outside his country of origin because of his/her well-founded fear of persecution."

Discussion:

70. I start by setting out the preserved findings of fact none of which were challenged in the present proceedings.

71. They are summarised as follows:

- (1) It is reasonably likely that the appellant has been telling the truth in the essentials are claiming that she has a subjective fear of ill-treatment from the Bondo society because of her opposition to them and to FGM (at [72]).
- (2) The respondent at paragraph 44 of 1st refusal letter explicitly accepted that the appellant does have had such a subjective fear (at [73]).
- (3) The appellant is someone who came from a Muslim family in Sierra Leone that practised FGM;

- (4) her mother was a Soweï (“cutter) and a prominent member of the Bondo society.
 - (5) The appellant was able to escape being subjected to FGM because of the intervention of the Christian Krio people;
 - (6) that she would return to x village to see her family and that when she was there she would speak out against the Bondo society and against FGM;
 - (7) that there was conflict between her and a mother and the villagers with them accusing her of rejecting their ways;
 - (8) that she would be abused and sometimes fined by the chief;
 - (9) that there were threats of magic made against her;
 - (10) that she married and went to Liberia and that she had a husband became caught of the civil wars in both Liberia and Ivory Coast, that he was forced into assisting the rebels and that she was seriously assaulted and injured as a result which she gave birth to one of her sons and that a husband died in 2005.
 - (11) The appellant moved back with the children to Sierra Leone because of her husband’s family in Liberia rejecting her.
 - (12) Although she tried living at her mother’s house in X village, her mother and the villagers rejected her because she continued to speak out against the Bondo society against FGM.
 - (13) The children moved from X village to live with friends
 - (14) The appellant came to the United Kingdom and stayed with her sister until the domestic situation led her to move out.
 - (15) She has been able to live in the UK through the support and assistance of friends.
 - (16) Her daughter has not been subjected to FGM, but she was attacked by Bondo society members in December 2017.
 - (17) The appellant feared that she would face ill-treatment from the Bondo society whether in the village or elsewhere in the country because she would continue to speak out against FGM (all at [74]).
72. When looking at the issue of past persecution in Sierra Leone, the accepted background of the appellant is that she was subject to criticism for rejecting traditional beliefs whether of the Bondo society or FGM, that she would be verbally abused for her resistance and would on occasion be taken before the chief and told she would be fined. Threats of magic were made against her. In Sierra Leone she had not been the subject of any physical attack.
73. In relation to her daughter, the appellant had given evidence previously that her daughter was attacked in December 2017. In support of the treatment she received the appellant produced a police report dated 3/9/2018. Its contents set out that there had been an attempt to forcefully

initiate her into the Bondo society. The details of the incident was set out also in a police report of the same date that on 22 December 2017 during a visit to the family home, she was brutally attacked by members of the Bondo society. It states that she was “seriously beaten” and then abandoned. The letter sets out that they had similar cases and tried to bring the perpetrators to justice, but it was difficult to do so because the Bondo society has “become the custom and tradition of the people”.

74. The FtTJ accepted that the letter was reliable evidence and that the incident had occurred. The details of the incident as set out indicate that the appellant’s daughter was beaten in an attempt to force her to be initiated into the Bondo society and a punishment. This type of treatment is consistent with the background evidence set out in the appellant’s bundle (page 113) that “there are a number of reports of forced initiations as punishment for speaking out against FGM”.
75. Dealing with the issue of convention ground, whilst in the original decision letter the respondent did not accept that the appellant fell within a “particular social group” (“PSG”), the FTT did find that to be the case for the reasons set out at paragraph [81]. He reached the conclusion that a woman who had not undergone FGM but opposed the practice should be regarded as a member of a PSG. In the case of the appellant her opposition to FGM is fundamental to her beliefs as a Christian so that she cannot be expected to change those beliefs.
76. In the written submissions, it is accepted by the respondent that in light of the recent CG decision of *GW(FGM and FGM PO’s) Sierra Leone CG [2021]UKUT 108*, a decision which postdates the FtT decision, that women who are not compliant with or are perceived as rejecting cultural norms for women in Sierra Leone, including rejecting the Bondo society and refusing to be cut are a “particular social group”. Whilst it is not accepted that the appellant falls into the age spectrum which puts her at risk of FGM herself, the respondent accepts that her resistance and criticism of FGM renders her a member of a PSG (see paragraph 4 of the written submissions by the respondent).
77. Against the factual background as set out above, it is necessary to address the issue of whether the appellant is at risk of persecution or serious harm on return to Sierra Leone.
78. Ms Young on behalf of the respondent acknowledged the findings made by the FtT which were not the subject of challenge and that the appellant had a subjective fear of facing ill-treatment on return. She submitted that it would be for the appellant to demonstrate that she would be at risk and that it would have to be objectively well-founded. She submitted that the material did not show a level of persecution. When asked if the respondent sought to make submissions about the material, Ms Young stated that she did not seek to point to any particular report or make any submissions about the country evidence.

79. Ms Brakaj on behalf of the appellant relied upon her written submissions and the references made to the country materials in that document and her oral submissions.
80. The CG decision in GW sets out the following in the headnote:

Country Guidance

9) *Sierra Leonean women are today among the most marginalized in the world, socially, economically and politically.*

10) *The Bondo society, which is extremely powerful and influential in Sierra Leone, has an entrenched role in tribal and political life in the country, and membership confers social status and respect, even opening doors to tribal chief posts and government jobs. It continues to play a leading role in the social, religious and political life of communities. It is an integral part of life in Sierra Leone. Politicians are at pains to gain the support of Bondo societies and thereby the votes of those under their influence. The power of the Bondo society and relationship between the Bondo society and politicians ensures that the authorities typically do not get involved in the issue of FGM. Male interference in Bondo Society matters is 'known' to have terrible consequences - like disease and death or developing an extended ('female') scrotum, or "elephantiasis of the testicles." Neither state courts nor members of the police are likely to intervene in cases involving initiation into Bondo which has its own laws that are more effective and inescapable than state law.*

11) *Bondo societies exist in every village and town across Sierra Leone and are a vital communications link between politicians and rural communities. Whether a girl/woman is a Christian or a Muslim has little influence on her risk of being subjected to FGM and initiated into the Bondo society. Rather, this will depend on her ethnic identity/identities and on the traditions and customs of the ethnic and local group/s she and her parents belong to. Where marriages between Fula women and Krio men are concerned, the Fula wife will often insist on maintaining her Fula traditions and customs because as a dispersed diaspora, the Fula are particularly keen on upholding their traditions also in interethnic marriages which are less common among the Fula than among other groups.*

12) *Excision takes place within the context of a secret society—the Bondo Society. Excised women and girls automatically become members of the Bondo, which is operated by "powerful" women called 'Digba' or 'Sowe' who have consistently laid claim to cultural expertise with regard to the practice.*

13) *Girls and women are expected to have undergone the Bondo initiation ceremony before marriage, and are ostracized, called names, and even abused, if they do not. It is a cultural norm in Sierra Leone. If a young woman has not been "cut" before the age of 18, she can still be subjected to the process, either forcibly or by choice. She is still expected to undergo the initiation and FGM in order to be eligible for marriage.*

14) *Soweship is often hereditary and handed down from generation to generation. The institution itself is synonymous with women's power,*

their political, economic, reproductive and ritual spheres of influence. Excision, or removal of the external clitoral glans and labia minora, in initiation is a symbolic representation of matriarchal power. The ban on FGM during the Ebola crisis is not continuing. Once the Ebola crisis was over in 2015 there was a return to 'business as usual'.

15) The overall effectiveness of the police in providing protection is limited by endemic corruption and a lack of resources. A number of NGOs campaign for the abolition of FGM, but these generally work in advocacy, and would not be able to provide protection. There are women's organisations in Sierra Leone making efforts to improve women's position in society, but they do not function as shelters. With millions of Sierra Leonean women suffering violence these NGOs are unable to protect women from domestic and sexual violence perpetuated against them within their own families and communities.

16) A young single woman without family support is at high risk of destitution, exploitation and abuse resulting from her unwillingness to adhere to the customs of the Bondo Society, which result in her marginalisation. Single women in particular are in need of family support and a male companion in order to be able to live a relatively secure life away from home, which may be impacted by the lack of initiation by way of undergoing FGM. This is true for towns and villages alike, the latter being even less accessible because people tend to live a more traditional life there than in towns. They live in clans and extended families which would have no access to, and which do not let strangers become members. Whether in urban or rural areas, it is not possible for a single young woman to find protection and accommodation without a reliable kin/ethnic/social network if as a result of her decision to reject initiating to the Bondo society, thus undergoing FGM, would lead to them being marginalised by their family members and their ethnic/social network. There is an efficient civil registration system. The National Civil Registration Act 2016 establishes the National Civil Registration Authority and requires every Sierra Leonean to register. This makes it easier for people to be traced.

17) Those at risk of FGM with mental health problems are likely to experience stigma and discrimination and lack of appropriate treatment. Mental illness is extremely stigmatized, and the one psychiatric hospital continues to suffer from stigmatizing and severe underfunding. However, this is only the case, if the stigma results from the subject's family/ethnic and social support system. And if as a result of deciding not to be initiated to the Bondo Society, the subject is marginalised to the extent that they would be unable to avail themselves of adequate access to such medical facilities by virtue of their lack of access to work, economic destitution, and their inhibited ability to secure support from their community. There are only two psychiatrists, two Clinical Psychologists and 19 Mental Health Nurses in a country of seven million people.

18) Women who are not compliant with or are perceived as rejecting cultural norms for women in Sierra Leone, including rejecting the Bondo society and refusing to be cut are a 'particular social group'.

81. The country evidence relating to Sierra Leone and as reflected in the CG decision was agreed between both parties before the Upper Tribunal panel.

The material supports the submissions made by Ms Brakaj as to the role of the Bondo society in Sierra Leone and how entrenched it is in both tribal, political and social life in Sierra Leone. Importantly it plays a leading role in the social religious, political life and communities and hence it is described as an “integral part of life” in Sierra Leone. The power of the society is such that the authorities do not get involved in issues relating to FGM. Girls and women are expected to undergo the Bondo initiation ceremony before marriage and are ostracised, called names or even abuse if they do not and that this is the “cultural norm” in Sierra Leone.

82. The FtTJ did not consider that the appellant fell into the category of those who would be likely to be at risk of FGM due to her age. Ms Brakaj did not seek to argue that she fell into such a category but argued by reason of her own particular characteristics and background, mental health and her opposition to both the practice of FGM and the Bondo society and that she had properly spoken out against both FGM and the Bondo society and that she would continue to do so on return. It was argued that she had been in conflict with those in authority in the Bondo society and that her daughter had been the subject of physical assault in an attempt to initiate into that society and as a punishment. Therefore in the light of the country materials, there was a real risk that on return and upon engaging in such conduct she would be at risk of persecution or serious harm.
83. I have been taken to the country materials in the appellant’s bundle. No evidence was submitted on behalf of the respondent and no submissions were made by reference to that material. Having considered it, I am satisfied that it is consistent with the material considered in the CG decision as reflected in the headnote above. The material spans a period of time from 2008 onwards but in content it is consistent as to the influence and power the Bondo society has within Sierra Leone and how the society operates in the context of general life in that country with more recent country materials and as reflected in the headnote of GW. The 2008 study which cites the profile of FGM practitioners in Sierra Leone and indicates that they are “very powerful and influential” both physically and socially. The sphere of influence permeates all parts of the community. This is consistent with the report on the Bondo society (see page 9AB). It is recorded that they have their own body of rules that regulate the behaviour of both members and non-members alike and they articulate specific values about women in the roles they play in society, in addition to regulating and controlling their behaviour. They remain largely outside the domain of the state in terms of regulation and are widely revered, if not feared and rarely interfered with. It is recorded that “not even the chief will go uncensored if they are perceived to act contrary to what is generally regarded as a breach of Bondo society ‘laws’”. Part of the fear of Bondo is transgression of laws and mores can lead to spiritual imbalance. It is further noted that there is a close relationship between chiefs and secret society: both are more commonly on the side of tradition as this is in the interests of both their sources of power. The Chiefs financially benefit from the Bondo and receive income from marriage levies and licence fees. The

chiefs are enmeshed in reciprocal ties: support of Bondo in exchange for material and cultural support.

84. As to the risk of harm, Ms Brakaj points to the material which states that “people who speak out against the societies risk violent confrontation and forced initiation”. Other reports refer to those who oppose the practice may face hostility and be subject to threats and harassment (see report in AB; the Immigration and Refugee Board of Canada Sierra Leone; 2009).
85. Reference is made in the same article of the kidnap of four women journalists who were conducting interviews. The Bondo members stripped journalists of clothing and forced 1 of them to walk naked through the area. They believed the journalist’s questions and comments to be disrespectful to their tradition (page 134AB).
86. The same report refers to a small but growing number of individuals who speak out against FGM. At page 154AB, it is recorded that:

“There are many challenges faced by anti-FGM initiatives and a number of activists have left Sierra Leone due to death threats. Four activists reportedly stopped working for the anti-FGM campaign group AIM after receiving death threats (Fanthorpe, 2007). Persecution for fighting FGM in Freetown remains prevalent, despite wide-spread anti-FGM campaigning. In March 2014, a CSO called Conscious Family launched a campaign called 'say no to Bondo'. Since then of the putative effect of potential stigmatisation and discrimination as a result of resistance to Bondo society seems to be a necessary facet of the forthcoming hero the organisation's leader has gone into hiding under threat from Bondo members (Standard Times Press, 2014). The often challenging environment makes it difficult for organisations working on FGM to declare their specific interest and advertise their work”.
87. The submissions on behalf of the respondent have not engaged with that material and the written submissions at paragraph 4 state that “it is also acknowledged that headnote 17 of GW may have some overtones as to the tribunal’s treatment of the appellant. It is accepted that the appellant has mental health issues and once again while not conceding that she herself is at serious risk of FGM, and adumbration of the putative effect of potential stigmatisation and discrimination as a result of resistance to Bondo society seem to be a necessary facet of the forthcoming hearing.”
88. Having considered the particular circumstances of this appellant and on the previous factual findings made by the FTT and recorded above, there is no dispute that the appellant has given a credible account of events in Sierra Leone. Her personal characteristics which are of relevance in an assessment of risk include that she came from a Muslim family which practised FGM and that her mother was a “Sowei” and prominent member of the Bondo society. She was able to escape FGM and has converted to Christianity. It is further accepted that the appellant has outspoken views both against the practice of FGM and the Bondo society and that she

would seek to continue to do so on return. In doing so she has been subjected to threats of harm, verbal abuse and threats of magic being made against her. Her daughter was subjected to violence from the Bondo society from which the police were unable or unwilling to further investigate or take steps to prevent.

89. As set out above, the country materials demonstrate that the Bondo society is influential in all spheres of society in Sierra Leone. The evidence also demonstrates that those who speak out or do not conform in supporting the Bondo society and their deep-rooted cultural and societal views as to FGM are seen as being in conflict with them and their aims. Whilst the appellant has suffered a level of harm whilst in Sierra Leone, the FtT did not find that it reached the necessary level of severity to constitute persecution. However, the issue to determine is the risk of harm in the future and that has to be assessed not only in the light of past events but also on the basis of a consideration of future risk and in the context of the country materials. The FtT did not have the advantage of the CG decision of GW. Furthermore the evidence as to the appellant's daughter demonstrates that serious violence can occur in such circumstances.
90. The appellant's personal characteristics are such that it is accepted on behalf of the respondent that she has mental health difficulties and as a result she is a vulnerable woman. Therefore in light of her past conduct in speaking out against the Bondo society and the practice of FGM, I am satisfied that she would be perceived as someone who seeks to undermine the core values espoused by the Bondo society and that there is a reasonable likelihood that she would be at risk of serious harm or persecution from members of the Bondo society. Her particular characteristics including her family background, that her daughter had not been the subject of FGM and had been beaten by the Bondo society as punishment and she is a vulnerable woman with no family support in her home area. Mental health is described as being "extremely stigmatised" in Sierra Leone.
91. In terms of sufficiency of protection, I accept the submissions made by Ms Brakaj that in light of the country materials summarised in the CG decision, and based on the power, influence and role that the Bondo have in Sierra Leone society that the relationship between them and politicians ensures that the authorities typically do not get involved in issues of FGM. The effectiveness of the police in providing protection is limited and on the facts of this particular appellant's case, the evidence in the police report demonstrates that while a complaint was made the police were unwilling or unable to take any further action or offer protection on a practical level of a level to demonstrate sufficiency of protection.
92. Consequently on the evidence in relation to the particular circumstances of this appellant I am satisfied that she would be at risk of persecution or harm that could properly be described as serious harm which would meet the minimum level of severity in her home area for which she would not receive sufficient protection. There is a reasonable likelihood that on return

to Sierra Leone her continuation of criticism against the Bondo society and against the practice of FGM is likely to be viewed in a negative and adverse way by them. While she does not fall into a category of a formal organisation which is anti-FGM, I do not consider that this makes any difference in relation to this particular appellant as her views on this long-standing and are set against her own particular family history which is reasonably likely to increase risk to her.

93. As to the issue of internal relocation, the risk of serious harm or persecution is likely to be replicated in other areas of relocation due to the influence and power of the Bondo society and how they operate in other parts of Sierra Leone. Whilst it is not reasonably likely that anyone would seek to trace the appellant to a different area, the appellant's conduct in speaking out against the practice of FGM and the Bondo society is reasonably likely to bring to the attention of those in any area of relocation.
94. If I were wrong in that assessment, it has not been submitted on behalf of the respondent that internal relocation would be reasonable or would not be unduly harsh in the light of this appellant's particular circumstances. Whilst the CG decision refers to "young single women" the appellant is accepted as having mental health problems which are likely to result in her marginalisation in society. She does not conform to the Bondo society's views and would not have any family support or assistance that she would be able to draw upon if returned to Sierra Leone. The appellant has no male companion and her mental health problems are likely to mean she would experience stigma and discrimination and lack of appropriate treatment. Mental illness is extremely stigmatised and there is one psychiatric hospital. Therefore internal relocation against that background and in the light of her personal characteristics and the country materials demonstrates internal relocation would not be reasonable and would be unduly harsh on the facts of her particular appeal.

Decision

95. The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside. It is remade as follows: the appeal is allowed on asylum grounds and human rights grounds (article 3).

Rule 14: 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. 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 Upper Tribunal Judge Reeds
Dated : 9 August 2022