



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-002249;
UI-2023-002252

First-tier Tribunal No:
PA/54928/2022; PA/54929/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 September 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

(1) K K K

(2) S I K

(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION MADE WITHOUT A HEARING PURSUANT TO
RULE 34 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES
2008

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellants, likely to lead members of the public to identify the Appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants appeal against the decision of First-tier Tribunal Judge Abebrese dated 12 May 2023 (“the Decision”) dismissing the Appellants’

appeals against the Respondent's decision dated 25 October 2022 refusing their protection and human rights claims.

2. The Appellants are from Sierra Leone. They are a mother and minor daughter. The protection claim centres on the Appellants' assertion that the Second Appellant will be subjected to FGM on return to Sierra Leone. Judge Abebrese rejected that claim as not credible and found that in any event the Appellants could return to another part of Sierra Leone away from the family members who they claim to fear. He also rejected the human rights claim based on the Appellants' Article 8 rights.
3. The Appellants appeal on various grounds relating to the findings made by the Judge which are said to be inadequately reasoned or are based on misdirection in law. However, the primary ground is that the Judge has made an error of fact amounting to an error of law in stating that the Appellants were not legally represented at the hearing and were willing to proceed without a legal representative at that hearing. There is a witness statement from the solicitor who represented them at the appeal hearing.
4. Permission to appeal was granted by First-tier Tribunal Judge Mills on 22 June 2023 in the following terms:

“..4. It is arguable that procedural unfairness has arisen for the reasons stated, and that this amounts to a potentially material error given that the Judge makes no reference at all to the detailed submissions made by the solicitor at the hearing. It cannot be said that his conclusions as to the credibility of the account would not have been different had those submissions been taken into account.”
5. The Respondent has filed a Rule 24 response dated 13 July 2023. She accepts that the Appellants were legally represented at the hearing. She also accepts that the error made by the Judge in this regard is capable of giving rise to procedural unfairness as the Judge may have misremembered the cases in other material respects. Although that Rule 24 Reply is filed only in the First Appellant's appeal, since the appeals are linked and do not raise any different issues, I have assumed that the concession made relates to both appeals.
6. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, permits the Tribunal to make a decision without a hearing. Whilst rule 34(2) requires the Tribunal to have regard to “any view expressed by a party” when deciding whether to hold a hearing and the form of such hearing, there is no requirement for the Tribunal to seek such views before determining whether a hearing is necessary. It would be a waste of judicial time and resources and the resources of the parties for a hearing to be listed in order to deal with the error which is conceded.
7. I am therefore satisfied that this is a case in which it is appropriate to determine the error of law issue without a hearing. Whilst the error

might on its face appear minimal, I accept that it is capable of giving rise to a more significant error in the context of the other grounds which challenge the Judge's recording of the evidence and adverse credibility findings.

8. For those reasons, I accept the Respondent's concession. Since the error is one of procedural unfairness, and the error which is conceded may impact on a determination of the credibility of the Appellants' claim, I am satisfied that it is appropriate to set aside the Decision. I do not consider it appropriate to preserve any findings. The Appellants' claims need to be considered entirely afresh. All issues need to be redetermined. I am therefore satisfied that it is appropriate to remit the appeal to the First-tier Tribunal as the Respondent suggests. I therefore remit the appeals for re-hearing before a Judge other than Judge Abebrese

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Abebrese dated 12 May 2023 contains an error of fact amounting to an error of law. I set aside the Decision and remit the appeal for re-hearing before a Judge other than Judge Abebrese.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 August 2023