



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

Appeal Number: AA/00373/2015

THE IMMIGRATION ACTS

Heard at North Shields

On 23rd February 2016

**Decision & Reasons
Promulgated**

On 11th March 2016

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms C Warren, instructed by Halliday Reeves Law Firm

For the Respondent: Mr J Kingham, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sierra Leone, born in 1975. The First-tier Tribunal made an anonymity order. The matter was not addressed in the Upper Tribunal. In view of the nature of the case and as it involves young children, a further anonymity order is made below.
2. The appellant is a Christian from the Temne tribe. She was subjected to FGM when aged about 7. Her husband is a Muslim from the Mende tribe. They have two daughters, born in 2009 and 2012. The appellant says that her husband and his family may force the children to be initiated into the Bondo secret society and to have FGM performed upon them.

3. The respondent refused the appellant's claim for reasons explained in a letter dated 12th December 2014.
4. First-tier Tribunal Judge Cope dismissed her appeal for reasons explained in his decision promulgated on 2nd November 2015.
5. The appellant's grounds of appeal to the Upper Tribunal are, in summary, as follows:-
 - (i) failure to treat the children's best interests as a primary consideration;
 - (ii) failure to consider the children as members of a particular social group, namely "intact women in Sierra Leone";
 - (iii) erroneous conclusions about sufficiency of protection - the judge held that protection might come from one or both parents, but he ought to have considered whether the authorities would offer protection, which they do not;
 - (iv) internal relocation - failure to consider exactly where the appellant and her daughters would be expected to live, and whether this would be unduly harsh; and
 - (v) credibility errors, including a fundamental misunderstanding of the nature of different societies and the notion of respect for elders within the family, and wrongly applying section 8 of the 2004 Act as if it *obliged* the judge to draw an adverse inference.

Submissions for appellant.

6. Ms Warren (who was not the author of the grounds) said that the essence of the appellant's challenge was that the judge overemphasised the question of credibility, and paid inadequate attention to the situation of the children. Whatever conclusions were reached on credibility, the judge was bound to consider the risk that the children might be subjected to FGM, both from their family and from the wider society. This had to be considered in the context of background evidence that the incidence of FGM is around 95% in the appellant's tribe, and around 90% in the tribe of the children's father. When dealing with the best interests of the children the judge also had to take into account the situation for intact women in such a society.
7. There is no sufficiency of protection from the state in Sierra Leone, and no possibility of internal relocation. Grounds (3) and (4) on their own would support the challenge, although the credibility matters in ground (5) were also to be pursued.
8. The judge at paragraphs 133 to 135 found a high degree of implausibility in the appellant's claim, but did not explain that conclusion. He had to look at such matters in the context of the social pressures in Sierra Leone.

The accepted evidence is that female societies apply pressure which leads to high levels of FGM in most of the country, and in particular among the tribes of both sides of the family. The absence of credibility in the appellant's evidence regarding her husband was not an answer to the rest of the case.

9. As brought out in the grounds, it is striking that the judge stressed throughout his determination that there does exist a small minority of women who avoid FGM. The small size of that minority should have demonstrated to the judge that there had to be very strong reasons to conclude that there might be an ability to resist in any individual case. The judge failed to consider that on the evidence it was most likely the children would be subject to FGM, even if both their mother and their father were against it.
10. The judge did not turn his mind to the difficulties for intact women in living in Sierra Leone. The judge said regarding the best interests of the children and section 55 of the 2009 Act that there was a noticeable absence of evidence about what their best interests might require (paragraph 197). He should not have taken that as the end of the matter, given the whole tenor of the evidence regarding the requirement to undergo FGM not only as a precursor to marriage, but as a means of initiation into secret societies of women which dominate the country. The expert report stressed women's needs for membership of these societies. The judge said he noted the background including the expert report, but he did not discuss in that context how the children might have to live their lives.
11. The judge appeared to have accepted that the paternal grandmother, who is still alive and lives in Sierra Leone, is an advocate of FGM. That would be the most obvious source of pressure, even if her father were to be against the practice. There were pressures from female power structures. These matters were also relevant to internal relocation. The judge had not examined the question where they might go, either in a rural area or in Freetown.
12. It was insufficient to say that the father might be a source of protection. The judge was bound to look at the availability of *state* protection, and there was no evidence that there is any. The judge noted at paragraph 73 that what the appellant said about pressure from her husband's family was consistent with background evidence. That had to be contrasted with paragraph 83 where he was not able to accept that the appellant's mother [living in the UK] was able to influence her husband as claimed, as opposed to his changing his mind under influence from his own mother [living in Sierra Leone] after the appellant's mother died. There was no good basis for that finding.
13. The judge went wrong in applying section 8, which does not say that adverse inferences "must" be drawn from delay.

14. The judge failed to give the appellant credit for the high degree of consistency among her five accounts of events, which he should have balanced with the minor nature of the inconsistencies to be found, and the broad consistency of her account with background evidence.
15. For all these reasons, the case should be remitted to the First-tier Tribunal.

Submissions for respondent.

16. The decision was a notably careful and thorough one [it runs to 209 paragraphs over 26 pages]. The judge was correct to note that there is a significant minority (around 10%) of women in Sierra Leone who live their lives without being subjected to FGM. A high prevalence of a practice does not correlate directly to the same degree of risk that it will be inflicted unwillingly on anyone who is against it, or whose family is against it. The judge was thoroughly aware of the background and of the small percentages of women in the relevant tribes who did not accept FGM or had not undergone it. He considered the position of the children and the wider pressure from society throughout his determination.
17. Based on the judge's findings on credibility and on absence of risk, there was no need to go into whether the state offered protection. That ground of appeal was misleading, because the respondent did not argue that there is state sufficiency of protection.
18. On credibility, the findings were open to the judge. He set out all the conflicting evidence and explained why he reached the conclusions he did. His treatment of section 8 was appropriate. Although he said at paragraph 122 that an adverse inference must be drawn, he went on to consider carefully the circumstances in which the appellant made a late disclosure of her claim before concluding at paragraph 129 that he had no alternative but to make an adverse credibility finding under the statute as a result of her behaviour. That properly reasoned out the amount of weight to be given to the delay, based on there being no good explanation for it. The judge did not weigh the point only on the obligatory wording of the statute.
19. The judge's essential finding was that there is a significant minority of women in Sierra Leone who do not risk persecution through the unwilling infliction of FGM. He was entitled to find that the children fell into that significant minority. That encompassed that aspect of their best interests, which was the main thrust of the case. The appellant had not produced evidence that life for all intact women in Sierra Leone involved such disadvantages as to justify the claim.

Response for appellant.

20. Even if the credibility findings were found to be sustainable, the other grounds were enough to make out the case, in the category of particular social group, identified along the lines of *Fornah* [2006] UKHL 46.

Conclusions.

21. The length of a decision does not necessarily correlate to its quality, but the judge did carry out a scrupulously thorough examination of this case.
22. The appellant says that the judge over-concentrated on the evidence regarding the minority of women in Sierra Leone not subject to FGM risk. I do not think that criticism is well taken. Obviously evidence of the prevalence of FGM in Sierra Leone and in the two tribes from which the children descend was very significant. Apart from credibility, it was the main point on which the appellant presented her case. The existence of a small minority which avoids the practice is simply the correlative of the large majority who participate (willingly or unwillingly, in various degrees).
23. The rate of prevalence of a practice does not directly correlate to a similar risk, expressed as likelihood in percentage terms, of such a practice being enforced upon an unwilling participant. The judge did not find that all intact females in Sierra Leone are at risk. I consider that he was entitled so to conclude. The evidence is of a very extensive practice, but not of a nature to justify such an overall finding.
24. After credibility, the main question for the judge was whether the children fell into the small but significant minority who are not at such risk. That is largely what his determination had to be about.
25. The credibility finding is not shown to be in any way legally flawed. The judge gives several sensible reasons for not accepting what the appellant said, including the delay in her claim, to which he attached no more weight than was appropriate. The grounds going to credibility amount to no more than insistence and disagreement.
26. The focus at the hearing was naturally to a large extent on credibility, but the judge did not fall into the error of thinking that was the beginning and the end of the case.
27. The ground based on legal sufficiency of protection is misleading. It was not the respondent's case that there is legal sufficiency of protection in Sierra Leone. It is, in effect, common ground that there is none. The judge correctly treated the question as whether there was shown to be a risk to these particular children. The case did not turn on the evidence of the availability of state protection.
28. The conclusion the judge drew from all the relevant background reports and from the expert evidence was that while the overwhelming majority of women and girls in Sierra Leone are subject to FGM, it does not apply to all – see paragraphs 64 to 67, in particular. He then noted the evidence of the consequences for girls and women who had not undergone FGM, being exclusion from decision making and other forms of participation in local society, in particular in rural areas – paragraph 69. He reached his conclusions in that context.

29. The ground relating to internal relocation is also rather misleading. The judge noted that there are areas where the prevalence of FGM is significantly lower, including the west of the country and Freetown. However, the evidence before him from the appellant was that her relationship with her husband had broken down, which he for good reasons did not accept. He thought it much more likely that the appellant and her daughters would be able to obtain “a very great deal of protection” from him (paragraph 169). As the judge did not accept the appellant’s account of the circumstances to which she would be returning, it was hardly open to him to explore the possibilities of internal relocation any further than he did. The appellant was hiding the true likely circumstances on return from the judge, so she is not in a strong position to complain. The judge’s fundamental finding was that risk was not established. He did not need to go any further into where it might be possible for the appellant and her children to re-establish themselves.
30. The judge found the background and expert evidence to fall short of justifying an overall conclusion that a risk of FGM extends to all intact women in Sierra Leone. He found that the appellant failed to establish her individual allegations, or the risks claimed in respect of her daughters. In none of these findings has any error of law been shown. The determination of the First-tier Tribunal shall stand.
31. 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 or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt proceedings.



2 March 2016
Upper Tribunal Judge Macleman