



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07081/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 10 March 2016

Decision and Reasons Promulgated  
On 5 April 2016

Before

Deputy Upper Tribunal Judge Pickup  
Between

FK  
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Ms N Braganza, instructed by Migrant

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, FK, date of birth [ ] 1986, is a citizen of Sierra Leon.
2. This is her appeal against the decision of First-tier Tribunal Judge Grimshaw promulgated 30.10.14, dismissing her appeal against the decision of the Secretary of State to refuse her asylum, humanitarian protection and human rights claims, and to remove her from the United Kingdom. The Judge heard the appeal on 20.10.14.

3. First-tier Tribunal Judge McCarthy refused permission to appeal on 26.11.14. Permission was also refused in the Upper Tribunal. However, on application for Judicial Review the Administrative Court quashed the refusal of permission, on the basis that it was “strongly arguable” that there was deficient consideration of the best interests of the appellant’s daughters and had they been properly and fully considered the appeal should have been allowed. In consequence, the Vice President granted permission to appeal on 19.11.15.
4. Thus the matter came before me on 10.3.16 as an appeal in the Upper Tribunal.

### **Error of Law**

5. For the reasons briefly set out below I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Grimshaw to be set aside and remade in the First-tier Tribunal, in accordance with the attached directions.
6. At §13 of the decision the judge recognised the appellant’s claimed fear that if returned to Sierra Leone she and her daughters will be forced to undergo FGM. It is obvious that the refusal decision will impact not only the appellant but also her two young daughters. However, whilst the judge addressed the risk of FGM, she did so from the perspective of the appellant and there was scant reference to her two female children. The decision contains no real assessment of their individual best interests and the risks they might face as children in Sierra Leone, whether from FGM or other risks, which were matters specifically addressed in the expert report of Dr Marks, beginning at A21. The decision of the First-tier Tribunal contains but the briefest of reference to that expert report at §27. The judge decided to place no significant weight on the expert report because, in the judge’s view, the assertion that the police would be unlikely to help those seeking to avoid involuntary circumcision was unsourced, with no detail of the location and numbers of such incidents. Whether or not that criticism was justified, the judge made no reference to that part of the report specifically addressing the challenges and risks faced by children in Sierra Leone, including child abuse, forced and early marriage, sexual exploitation, and displacement of children.
7. In addition, reliance was placed on the children’s social and educational provision and stability, as well as the length of their residence in the UK. The only treatment of best interests is at §41 where the judge expressed the view that their best interests would be to remain with the appellant as a family unit.
8. In summary, the decision of the First-tier Tribunal inadequately addressed the best interests of the two children. I cannot say that had the judge done so the outcome would have necessarily been the same. In the circumstances, the decision must be set aside to be remade.

**Conclusions:**

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the making of the decision to be made afresh in the First-tier Tribunal.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated** **7 March 2017**

Deputy Upper Tribunal Judge Pickup

**Consequential Directions**

- 1) The appeal is remitted to the First-tier Tribunal at Bradford;
- 2) The appeal is to be reheard afresh, with no findings of fact preserved;
- 3) The estimated length of hearing is 3 hours;
- 4) No interpreter will be required;
- 5) The appellant will be the only witness;
- 6) Not later than 10 working days before the appeal hearing the appellant must serve on the respondent and lodge with the Tribunal a single indexed, paginated bundle comprising all subjective and objective material to be relied on, together with any skeleton argument and copies of case authorities to be relied on. The Tribunal will not accept evidence submitted on the day of the hearing.

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order.

Given the circumstances, I continue the anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**7 March 2017**