



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

Appeal Number: PA/05345/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 June 2017**

**Decision & Reasons  
Promulgated  
On 22 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ZAA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms U. Dirie of Counsel, instructed by Wilson Solicitors LLP  
For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Stewart, promulgated on 16 January 2017, in which he allowed the Appellant's appeal against the Respondent's decision to refuse her claim on human rights grounds, but did not fully address the issue of the Appellant's appeal on asylum grounds.

2. As this is an asylum appeal, I make an anonymity direction.
3. Permission to appeal was granted as follows:

“The appeal was allowed on human rights grounds because the Tribunal accepted that were the Appellant and her daughter to be returned to Somalia, “it is extremely likely that her daughter would be required by society to undergo FGM” and that this was contrary to the child’s best interests.

It is arguable that the Tribunal may have erred in not allowing the appeal on asylum grounds.”

4. The Appellant attended the hearing. In the Rule 24 response the Respondent stated that she did not oppose the Appellant’s application for permission to appeal, and invited the Tribunal to determine the appeal in relation to whether the Appellant could establish that she qualified for asylum. I heard submissions from Ms Dirie and Mr Bramble on this issue.

### **Error of Law**

5. As accepted by the Respondent, I find that the decision involves the making of a material error of law. In paragraph 25 the judge rejected the Appellant’s appeal on asylum grounds, but then in paragraph 27 found that it was “extremely likely that her daughter would be required by society to undergo FGM”. However, he then failed to consider whether the Appellant qualified for asylum on this basis. I therefore set aside the decision not to allow the Appellant’s appeal on asylum grounds, and turn to consider whether she qualifies for asylum on the basis that her daughter is extremely likely to be subjected to FGM on return to Somalia.

### **Remaking**

6. The facts before me are not in dispute. It was agreed by the representatives that the issue before me was whether the Appellant, who herself had undergone FGM, and who had a young daughter who was extremely likely to be subjected to FGM on return to Somalia, fell within a particular social group.
7. The relevant country guidance case is the case of AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC). The headnote states:

“(16) The incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the ‘pharaonic’, categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised,

unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

(17) The risk will be greatest in cases where both parents are in favour of FGM. Where both are opposed, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her."

8. Paragraphs 547 to 567 of AMM deal with FGM in more detail. I was also referred by Mr. Bramble to part H of the decision, referred to at [561], although he accepted that it might not be relevant. Paragraph 561 states:

"At this point, it is necessary to say something more about the issue discussed in Part H of this determination, regarding the entitlement to international protection of a mother whose claim to be opposed to FGM has been disbelieved."

9. At paragraph 16 of the decision the judge sets out that the Appellant herself had to undergo FGM, despite the fact that her parents were "enlightened people" who were not happy for her to be circumcised. The Appellant's three sisters were all circumcised [17]. It was accepted that the Appellant could not have mentioned her concern about her daughter having to undergo FGM at her screening interview given that she was still pregnant at the time and did not know the sex of her child [18]. The judge also refers to the fact that the Appellant did not mention her concern about her daughter at her substantive interview, but explained that she had been thinking of her own predicament, and should have spoken more about her concerns regarding her daughter.
10. I was referred to the Appellant's witness statement provided to the Respondent prior to the decision being made but after the birth of her daughter. This states at paragraph 33:

"I am very worried about female genital mutilation (FGM) in Somalia now I have given birth to a girl. It would be known that I had given birth in a country where FGM is not carried out and as a result we would be at risk of being attacked so that FGM could be carried out by force."

11. I was also referred to the Appellant's witness statement where the Appellant states:

"I do not want my daughter to experience FGM in Somalia and this is one of the main concerns that I have about a return to Somalia in regards to

our safety. There will be heavy pressure from people in the local community in Somalia to make my daughter undergo FGM. There is no way I would be able to stop it and I believe this is what would happen anywhere I would be returned to in Somalia. [62]

Before I gave birth I went to the FGM clinic at the hospital in January 2016 as I feared the pain that the circumcision would cause during me giving birth. I was confirmed to have undergone Type 3 FGM and was referred by the FGM Clinic to a social worker from Hammersmith and Fulham Council. FGM was enforced on me by the community in Somalia. I am strongly against it. It is still believed that a female will not find a husband without undergoing FGM. The pressure is great and a woman who has not undergone FGM is likely to be ostracised. It would be known that I had given birth in a country where FGM is not carried out and as a result would be at risk. It would also be carried by force. [63]”

12. The judge accepted the Appellant’s account of the pressure placed on Somalian girls to be circumcised. He also accepted her account of the wishes of her parents that she should not undergo this procedure being overridden by community pressure. He found that her evidence accorded with the country guidance set out in AMM.
13. Taking all of the above into account, I find that the Appellant does not fall within the class of those referred to in paragraph 361, those whose claim to be opposed to FGM has been disbelieved. I find that the Appellant is opposed to FGM. In further support of this Ms Dirie submitted that the Appellant had been assessed by the local authority owing to the fact that she was the mother to a daughter, and that she herself had undergone FGM. The fact that she had been deemed not to be a threat to her child was further evidence that she was opposed to FGM.
14. I therefore find that I need to consider whether the Appellant falls within the country guidance case of AMM as someone who is at risk on return on account of the fact that her daughter would be required to undergo FGM. Although the Appellant is herself opposed to FGM, in accordance with paragraph 17 of the headnote to AMM, the fact of parental opposition may be incapable of eliminating the real risk to her daughter from others.
15. I find that the Appellant is a single mother. She is a member of a minority clan, as accepted in the Reasons for Refusal Letter, where it was accepted that she was in the Ashraaf clan.
16. I was referred to paragraphs 32 to 34 of the Appellant’s witness statement prepared for the appeal regarding the Appellant’s socio-economic group.

“I fled when I did because I finally got the resources together to be able to. I owned traditional jewellery (which I received after getting married) and this was sold along with the family home for the purposes of financing my journey out of Somalia. The latter provided more capital. [32]

Even though I wanted to flee earlier for the sake of my life, I could not. I did not have any money and my father was responsible for me. He therefore made the final decision when it was the right time for me to leave and it was thus decided that I should leave for my own and my family's safety once I had the money and documents together in November 2015." [33]

17. In paragraph [34] she states that "The arrangement with the agents who brought me to the UK was to take me to a safe country and then my father would give up his house for them." She goes on to state that documents were handed over to put the house into the name of the agents and that her family had fled to Kenya.
18. I find that this evidence shows that the Appellant is not from a rich socio-economic background in Somalia. Her parents had to sell the family home in order that she could flee to the United Kingdom.
19. In relation to the question of whether the Appellant, on the basis of her daughter suffering FGM, may herself suffer persecution, paragraph 558 of AMM states that "Likewise, we have no difficulty in finding that a Somali mother may face persecution and treatment in breach of her own Article 3/15(b) rights if her daughter is subjected to FGM against the mother's wishes."
20. Paragraph 559 refers to the UNHCR Guidance Note on refugee claims relating to FGM:

The parent could nevertheless be considered a principal applicant where he or she is found to have a claim in his or her own right. This includes cases where the parent will be forced to witness the pain and suffering of the child, or risk persecution for being opposed to the practice."
21. Paragraph 567 states:

"Accordingly, we consider that it would be open to a judicial fact-finder, in such circumstances, to find the Refugee Convention engaged in the case of a mother who was genuinely strongly opposed to inflicting or procuring FGM on her daughter but who, on the evidence, was reasonably likely, sooner or later, to countenance it, as the lesser of two evils."
22. I find that the fact that even though the Appellant is opposed to FGM, as a single mother, who is not from a wealthy background, and who is from a minority clan, she will be "incapable of eliminating the real risk" to her daughter of having FGM inflicted on her. I find therefore that the Appellant falls within the country guidance case of AMM and her claim succeeds on asylum grounds.

**Notice of Decision**

- 23. The appeal is allowed on asylum grounds.
- 24. The appeal is allowed under Articles 2, 3 and 8 of the ECHR.

**Direction Regarding Anonymity - Rule 14 of 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 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 of court proceedings.

Signed

Date 21 June 2017

**Deputy Upper Tribunal Judge Chamberlain**

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 21 June 2017

**Deputy Upper Tribunal Judge Chamberlain**