



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00326/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 21 August 2020

Decision & Reasons Promulgated
On 25 August 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

RBC

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham. Instructed by Fadiga & Co,
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 17 December 2019, I found that the First-tier Tribunal had erred in law such that its decision felt to be set aside. My reasons were as follows:

1. The appellant was born in 1986 and is a female citizen of Ghana. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 31 December 2018 refusing her claim for international protection. The First-tier Tribunal, in a decision promulgated on 31 May 2019, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing before the Upper Tribunal, Mr Diwnycz, who appeared for the Secretary of State, did not seek to defend the First-tier Tribunal decision. I shall, therefore, be brief. I find that the judge erred in law such that his decision falls to be set aside.

3. First, I find that the judge was wrong to attach limited weight to the expert report in the appeal because he considered that the expert had not considered that the appellant and her children (whom the appellant considers to be at risk of FGM in Ghana) would be joining the appellant's husband in relocating to a part of Ghana other than her home area, where all parties are agreed the appellant and her children are at risk. Contrary to the judge's assertion, the expert had considered the likely risk to the appellant/children if they sought relocation together with the husband/father. Moreover, the judge did not consider whether or not the children would be at risk from third parties within the family and the wider community even whilst living with the father or whether the family would be at risk if, for example, the father were to be away from home working. Secondly, I find that the judge has given inadequate reasons for concluding that the family would have the benefit of protection from the Ghanaian state. There was background material before the judge, which he does not address in any detail, which indicates that the state is incapable or unwilling to provide adequate protection from FGM. Thirdly, the appellant gave evidence before the First-tier Tribunal and there was evidence also from the expert that, in order to survive in Ghana, the appellant and/or her husband would need to obtain work. The expert considered that the family may need to move around Ghana frequently in order to obviate risk to the children from FGM. The judge at [37] found that the family would be able to move around undetected within Ghana and the adults 'both seek employment in the larger cities... without their extended families being able to discover their whereabouts...' The judge has failed to consider whether this form of relocation, involving constant movement within Ghana, may prove to be unduly harsh for the family.

4. In the light of what I say above, I set aside the decision of the First-tier Tribunal. The decision will be remade in the Upper Tribunal following a resumed hearing at Bradford on a date to be fixed.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand, save that it is accepted by both parties that children of the appellant are at risk of FGM from their family's tribe in their home area of Ghana. The decision will be remade in the Upper Tribunal (Upper Tribunal Judge Lane) following a hearing in Bradford on a date to be fixed.

2. At the resumed hearing at Bradford on 21 August 2020, there is no additional oral evidence. The hearing was attended by the appellant and her husband. Having heard the oral submissions of both representatives, I reserved my decision.
3. Mr Diwnycz, who appeared for the Secretary of State, told me briefly that the appeal turned on the weight to be given to the expert report of Professor Hodžić. Both parties agree that the appellant and her family are at risk in their home area of Ghana and that the appellant is the member of a particular social group. The only question is that concerning the possibility of internal flight. The expert had concluded that, 'based on the information I have about this case, on my knowledge of similar cases of family conflicts over FGM in Ghana, and my knowledge of country conditions described above, it is my expert opinion that [the appellant's] daughters' health and life would indeed be in danger should they be returned to Ghana, and that the

government of Ghana would be unable and unwilling to provide them with needed protection.’ She considered that, ‘The children would be at a particularly high risk whenever their father was absent from the homestead’ an issue which had troubled the previous tribunal. Significantly, she considered that the family would be located anywhere within Ghana on account of the social structures existing there:

...family members as well as her husband’s would find out that she has returned to Ghana in a matter of months even if she were to conceal her identity and abstain from contacting anyone she knew. Ghanaians are very socially alert and curious about anyone new in their environment...[the appellant] would be readily identified as Sissala with a recent migration history. The word about her as a newcomer would spread quickly, and in a matter of weeks or months it would reach someone who knew her or her family and who would alert her extended family to her whereabouts...It also needs to be noted that one cannot obtain employment in Ghana without relying on social networks. Hence, to survive economically, [the appellant] would have to rely on the connections with friends and family members. However, reaching out to these networks would place her at a very high risk of being located by her extended family...To survive in Ghana, a person needs the protection not only of law and the state, but of people, primarily one’s natal family. [the appellant] would not be able to access that support without compromising her anonymity.

The expert witness is not confident that the Ghanaian state is capable of protecting the family, even in the light of recent strengthening of statutory provisions concerning FGM:

Notable here is that the Ghanaian government is very proud of having this law on books, but that it is not invested in its enforcement. There is a vast gap between the statements authorities make about FGM being unwanted and their actual practices of rule. The police are very reluctant to enforce this law, as are the civil servants in charge of cooperating with communities and facilitating arrests.

And again:

The Ghanaian state’s ability to protect girls from FGM is very limited and virtually non-existent. Only a few select circumcisers were punished, and the arrests occurred after the fact. Preventing FGM from happening is not possible by any legal means. In Ghana, restraining orders and injunction orders exist on paper but are nearly impossible to obtain and are not enforced. The state only acts occasionally after FGM has been performed and a case has been reported. While it is possible, although not at all likely, that the perpetrators would be arrested and tried in case FGM were performed on [the appellant’s] daughters, that would not protect them.

As Mr Jagadesham pointed out, the expert’s evidence is consistent with the most recent CPIN which dates from 2016:

9.1.2 An article in the Independent noted a statement made by the Ghanaian Association for Women’s Welfare that ‘There had been many instances too when cases of FGM have been reported to the police and the culprits were left to go free without being charged. A case that readily comes to mind occurred in 2008 when a 14 year old pupil in Walewale was taken away by her father under the pretence of attending her grandfather’s funeral. Instead, she was taken to a secluded community where she and twelve other girls had their genitals mutilated in an FGM rite. ‘On return to Walewale, she reported her ordeal to a teacher who is GAWW’s focal person in the district. We followed up the case and tracked down her father

to Goaso in the Brong Ahafo Region. However, no government intervention took place. This is a typical example of the lack of commitment of law enforcement agencies.

4. The expert witness, therefore, is unequivocal; the family cannot avail itself of internal flight in Ghana because those who wish to perpetrate FGM against their child irrespective of the wishes of the child and the family and that those individuals are reasonably likely to locate the family wherever it may move and that they have the will and means to carry out the procedure. The threat the family faces its home area pertains throughout the country whilst the willingness or ability of the Ghanaian state prevent FGM appears to be wholly inadequate. I have to say that I find the evidence of the expert compelling and, whilst it may be the case that she is not widely cited in other academic publications that may be an index the specialised area in which her research is concentrated. Certainly, the respondent has not indicated any other expert who may be better qualified or who has cast doubt upon the evidence of Professor Hodžić. I find that I should give considerable weight to her evidence and I accept fully what she says regarding the likely difficulties which this family would encounter when seeking to live and work outside their home area whilst avoiding detection by those would seek to harm them. I find that internal flight would be unduly harsh for this appellant and her family. It follows that the asylum/ Article 3 ECHR appeal of the appellant should be allowed.
5. I am aware that the child N is now a qualifying child having lived continuously in the United Kingdom for more than seven years. There is a strong Article 8 ECHR case given that family life cannot reasonably take place in Ghana for the reasons which I have detailed above. I refer to section 117B(6) of the 2002 Act and I find that it would not be reasonable to expect the child N to relocate to Ghana. As a consequence, there exists no public interest in the appellant's removal from the United Kingdom and her Article 8 appeal is also allowed.

Notice of Decision

I have remade the decision. The appeal is allowed on asylum and human rights (Article 3 ECHR and Article 8 ECHR) grounds.

Signed
Upper Tribunal Judge Lane



Date 21 August 2020

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family.

This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.