



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

Appeal Number: AA/03574/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 October 2014 and 29 January 2015**

**Decision and Reasons Promulgated  
On 10<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

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

**Appellant**

**and**

**AG**

**(ANONYMITY DIRECTION MADE)**

**Respondent**

**Representation:**

For the Appellant: On 1 October 2014, Mr S Kandola, and on 29 January 2015, Ms J Isherwood, both of the Specialist Appeals Team

For the Respondent: On both occasions, Ms A Pease of Counsel instructed by C K Solicitors

**DECISION AND REASONS**

**Direction regarding Anonymity**

Unless and until a Tribunal or Court directs otherwise, the Applicant 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 Applicant and to the Respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

### **The Respondent**

1. The Respondent, AG to whom I shall refer as the Applicant, is a national of Guinea born on 3 January 1995. She has two sons both born in the United Kingdom in October 2012 and August 2014.
2. On 12 March 2012 she arrived in the United Kingdom and on the same day claimed international surrogate protection at the Respondent's office in Croydon because on return to Guinea she feared persecution on account of the fact she had fled to avoid a forced marriage and subsequently had given birth to a child out of wedlock.
3. Her account is that in December 2011 her father who is an imam of her home village told her she was to marry an older man. She refused and her father assaulted her and then left her isolated in a room at home for three days without food or bathroom facilities. He then took her to meet the man he proposed she should marry. That night she was able to escape to her boyfriend's house with whom she had sexual intercourse for the first time and as a result of which she fell pregnant. He gave her money to travel to her maternal uncle in Conakry which she left by air on 11 March 2012, arriving via Morocco in the United Kingdom on the next day: see para.11 of her 27 May 2014 statement.

### **The Decision and Appeal**

4. On 15 May 2014 the Appellant (the SSHD) refused the Applicant's claim and proposed to make directions for her removal to Guinea. The reasons are as contained in the annex to a letter of 15 May 2014 (the reasons letter). The SSHD noted the Applicant had been fingerprinted in Calais on 30 October under a false name which she had admitted and claimed her date of birth was 31 January 1992 and she was a French citizen. The Respondent also noted the Applicant's first child had been born in the United Kingdom and at the time she was pregnant about which she and her partner were happy. The SSHD set out at some length the background evidence about forced marriage in Guinea but failed to make any credibility finding, positive or adverse, about the Applicant's account. She concluded her return to Guinea would not put the United Kingdom in breach of its obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 or the Refugee Convention or the European Convention.
5. On 2 June 2014 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). Omitting the formal and generic grounds, the grounds assert the Applicant's uncle does not know she has given birth to her first child out of wedlock or that she is pregnant with her second child, that on return she will be at risk of ill-treatment which will engage the United Kingdom's obligations under Article 3 of the European Convention and that such ill-treatment will also amount to persecution so as to engage a Refugee Convention reason or such as to entitle her to humanitarian protection under the

Qualifying Directive. The grounds also assert a claim that her right to a private and family life in the United Kingdom protected by Article 8 would be breached if she was forced to return to Guinea and she would be deprived of her liberty in breach of Article 5. The Statement of Additional Grounds asserts that on return her father would find her. She could not [be] supported by her uncle as that would put him at risk and she would become the victim of an honour killing, having brought shame on her family and the Muslim community.

### **The First-tier Tribunal's Determination**

6. By a determination sent by way of service on 15 July 2014 Judge of the First-tier Tribunal Chamberlain allowed the Applicant's appeal on asylum grounds and on human rights grounds.
7. The SSHD sought permission to appeal and on 29 July 2014 Judge of the First-tier Tribunal Nicholson granted permission to appeal because he found it arguable the Judge's finding that the Applicant was credible was perverse in the light of a chronology which was well evidenced. Her account of the circumstances which gave rise to her flight from Guinea commenced in December 2011 but she had been fingerprinted in France in October 2011.

### **The Upper Tribunal Error of Law Hearing**

8. The Applicant was present with a key worker. Ms Pease stated she had some English and the hearing could proceed without the presence of an interpreter. I explained the purpose of and the procedure to be adopted in the hearing and the Applicant confirmed she understood. Ms Pease acknowledged there had been no response under Procedure Rule 24 on behalf of the Applicant but she referred to the written submissions which she handed up at the start of the hearing.
9. Mr Kandola relied on the grounds for appeal which were succinctly summarised in the grant of permission to appeal. The Judge had failed to resolve the conflicts and the serious inconsistencies in the Applicant's evidence and to give adequate reasons for finding that, notwithstanding these inconsistencies, she was credible. He referred to paragraphs 11 and 14 of the determination. The finding at paragraph 30 that the Applicant was in France in October 2011, which was a date before the start of the events in Guinea which the Applicant claimed had caused her to flee, undermined the core of her claim and her credibility. In the following paragraph the Judge had found the inconsistencies in her accounts did not irretrievably damage her credibility. It was unsafe for the Judge to proceed to make a positive credibility finding in the face of such a conflict of evidence. The Judge had found the core of the Applicant's account to be credible but had not attempted to address the inconsistencies in that account.
10. The determination contained an error of law and should be set aside other than the finding that the Applicant had been fingerprinted in France in October 2011. The Applicant had been shown to have fabricated her evidence and there was only one

possible outcome, that her claim for international surrogate protection should be dismissed.

11. For the Applicant, Ms Pease relied on her written submissions. These noted the Judge had found that whether or not the Applicant had been in France was irrelevant to the core of her claim, namely that she feared her father because she had refused to accept a forced marriage and had given birth to a child out of wedlock. The Judge had heard the evidence and found the Applicant credible and was entitled to accept the Applicant's account overall despite the issue of the date on which she had been fingerprinted in France.
12. The Judge had gone on to consider at paragraph 43 the likely consequences for the Applicant and her child on return to Guinea. The Judge found at paragraph 44 that the Applicant had refused to enter into a forced marriage and as a result was beaten and imprisoned in a room for three days and that she subsequently escaped. The Judge was entitled to make these findings and whether the Applicant was in France in October 2011 was not material. Accordingly there was no error of law in his determination.
13. Ms Pease went on to submit that the Judge knew of the fingerprint evidence and had taken it into account and found it to be irrelevant. The claim rested on the background evidence about forced marriage in Guinea and the treatment of women with children born out of wedlock. He was entitled to reach his conclusions and consider that the claim overall was true. He had addressed the fingerprint evidence and its timing at paragraph 31 of his determination and gone on to find the core of her account to be credible and corroborated.
14. If an error of law were to be found in the determination than the appeal would need to be re-heard in full.
15. Mr Kandola responded that the Applicant knew about the fingerprint evidence because it was dealt with in the SSHD's Reasons for Refusal Letter. Ms Pease pointed out that the evidence to support the assertions about the fingerprinting in France was not served by the SSHD until the hearing in the First-tier Tribunal.

### **Error of Law Consideration**

16. I noted that the Applicant's account of what had happened in Guinea was clearly problematical and that there had been no challenge to the fact of and date when the Applicant had had her fingerprints taken in France. The Judge was bound to address directly the credibility of the Applicant's refugee claim and its basis. He had failed to focus on the timeline of her account and yet made a general positive credibility finding. He had failed to distinguish credibility findings in relation to the Applicant's account of events in Guinea and the undisputed fact that she had a child and was pregnant with her second. I commented it was not impossible to find an account false but nevertheless that a person was still entitled to be recognised as a refugee but in such circumstances any Judge would need fully and squarely to

address this issue. In this instance full consideration was required if only to enable the SSHD, as the “losing party”, to understand why the Judge had decided the Applicant was entitled to be recognised as a refugee.

17. The Applicant’s account of events which happened in Guinea appeared to be a fabrication because even before the claimed events she had been fingerprinted in France and so could not have been in Guinea at any relevant time. The Judge therefore needed to explain why he accepted her account that she had been threatened with the cultural institution of “forced marriage” and there are many types of marriage which in Western liberal society are described as “forced” but are not, for instance arranged marriages where the parties willingly enter into the marriage. Given that the Applicant’s account of what she said happened in Guinea was a complete fabrication, it was an error of law to find on the basis of the background evidence that the Applicant would be at risk of forced marriage and because of her child or children born out of wedlock without any reference to her particular circumstances. The consequence is to suggest that every unmarried young woman in Guinea is at risk of forced marriage and that every single mother is at risk of persecution. The background evidence referred to by the Judge did not support such a conclusion.
18. The Applicant’s position since the hearing before the Judge had changed in that she had now given birth to her second child. I was informed the birth was sudden and quick and took place at home and that mother and baby were now fine.
19. Ms Pease pointed out the Applicant had claimed asylum but had not been interviewed by the SSHD. It was acknowledged there had been difficulties in arranging this interview and also interpreter problems. Mr Kandola went to take instructions whether the SSHD would be making further efforts to interview the Applicant and returned to confirm it was not intended to interview the Applicant in view of the difficulties previously experienced.
20. I gave directions that the remitted appeal was to be heard before me at Field House in November and that a Susu interpreter would be required. I noted the Applicant claimed she had had difficulties with a previous Susu interpreter and the interpreter who had attended the hearing in the First-tier Tribunal was acceptable. Mr Kandola confirmed for the SSHD that there would be no objection to the same interpreter being used. I remarked that the Applicant should consider whether any additional background evidence will need to be submitted, bearing in mind there was very little background evidence before the Judge.

### **The Resumed Substantive Hearing**

21. Following the hearing on 1 October 2014, I issued directions that the Applicant was to file a further statement addressing the credibility issues raised by the SSHD in the Reasons for Refusal Letter and those canvassed in the First-tier Tribunal’s determination, giving personal details with supporting documentation of her second child’s father, his immigration status, his current circumstances and involvement in

his child's life, and to supply details with supporting documentation of her current circumstances and those of her first child, with details of any medical conditions either child may have. Further, the Applicant was to file an expert country report from Professor Lawrence Junior and an expert fingerprint report addressing the SSHD's evidence that the Applicant had been fingerprinted in France. Such documents were to be filed not less than five working days before the resumed hearing on 29 January.

22. In the event, the Applicant filed no additional material other than to produce two photographs of a man whom she stated to be her father. These were produced in the course of the resumed hearing. There was no explanation for the absence of any of the other documentation referred to in the directions.
23. The SSHD filed a witness statement by a Higher Scientific Officer signed on 22 December 2014 to confirm that he had compared the fingerprints held on file for the Applicant taken on 12 March 2012 at Croydon and for an individual bearing a different surname taken at Calais on 30 October 2011 and that he had "found such a number of ridge characteristics in agreement to leave me in no doubt that they were both made by the same person". The SSHD also filed a copy of its guidance on applications for leave to remain on account of the Ebola outbreak in West Africa including a statement that returns to Guinea have not been suspended. It included a comment at paragraph 1.1.14 made by the World Health Organisation in an assessment of September 2014 that:-

The risk of a traveller becoming infected with Ebola virus during a visit to the affected areas and developing disease after returning is extremely low, even if the visit included travel to areas where primary cases have been reported. ... The risk for travellers visiting family and friends in affected areas is similarly low, unless the traveller has direct physical contact with a sick or dead person or animal infected with Ebola virus. ...

### **Adjournment Requests**

24. On 22 January 2015 the Applicant's solicitors requested an adjournment because Professor Lawrence had not been able to provide a report but that the solicitors had received an expert fingerprint report and statement by the father of the Applicant's second child. It is noted from the copy email submitted by the solicitors to support the adjournment application that they had not contacted Professor Lawrence until some three weeks after the directions had been issued. The adjournment application was refused by Upper Tribunal Judge O'Connor because the application had failed to identify when Professor Lawrence's report would be available.
25. On 27 January the SSHD wrote to the Upper Tribunal stating that she was aware of the Applicant's request for an adjournment and that the Applicant's solicitors were only then serving their bundle. She required time to consider the bundle. This request was refused by Upper Tribunal Judge Eshun and after the opening formalities Ms Isherwood requested, and was given, time to finish reading the file.

### **The Standard and Burden of Proof**

26. The standard and burden of proof in relation to claims under the Refugee Convention, for humanitarian protection under the Qualification Directive and under the European Convention are for all material purposes one and the same; that is the Applicant must show that there are substantial grounds for believing that if returned to her country of origin she would be persecuted for a Refugee Convention reason or if removed from the United Kingdom will be subjected to treatment which for the purposes of humanitarian protection as defined by paragraph 339C of the Immigration Rules will amount to serious harm or will be subjected to treatment which will violate her rights under the European Convention. This is known as the lower standard of proof. The effective date for assessment of the evidence in support of each claim is the date of the hearing. In the case of a free-standing claim that Article 8 of the European Convention is engaged based on circumstances arising in the United Kingdom, the standard of proof is the civil standard; that is on the balance of probabilities. The burden of proof remains on the Applicant.

### **Documentary evidence**

27. There was an Applicant's bundle filed on 27 January 2015 which included a statement signed by the Applicant on 22 January 2015 and Professor Lawrence's report dated 27 January 2015 (the expert report) as well as copies of the short birth certificate for the Applicant's elder child and the long birth certificate for her second child and correspondence from the National Health Service relating to the younger child's crypto orchidism. In addition, there was a very brief statement of 19 January 2015 from the second child's father and evidence that he had had discretionary leave to remain which had expired on 21 June 2010 together with a copy of the determination of Immigration Judge Afako promulgated in May 2011 dismissing his appeal against the SSHD's refusal to grant him further leave on asylum and human rights grounds. The Tribunal records show there was no application for permission to appeal and his appeal rights are now long exhausted.

### **The Resumed Hearing**

28. At the start Ms Isherwood for the SSHD said that an expert instructed for the Applicant had come to the Home Office to inspect the fingerprint evidence but no report had been served. Ms Pease for the Applicant did not challenge this and re-iterated there was no fingerprint report to support the Applicant's claim never to have been in France. I noted that a copy of the SSHD's expert report on the fingerprint evidence was in the Tribunal file and the Applicant had been served with a copy.
29. I noted there was no medical evidence for the Applicant about the medical conditions of the Applicant's two children other than hospital appointment letters. The older one is said to suffer from problems with his feet and the younger one has unilateral crypto orchidism. I confirmed to the parties that I had checked in the

Merck Manual (Professional Edition) on-line what the symptoms and signs, diagnosis and treatments for crypto orchidism are.

30. Ms Pease stated that the Applicant's partner was not present because he was looking after the children since the family was moving on the day of the hearing to new accommodation.
31. Ms Isherwood requested additional time to finish reading the Applicant's bundle which had been filed on 27 January 2015 and which she had not previously seen. The hearing resumed and the Applicant gave oral testimony.
32. The Applicant confirmed she was aware of the contents of her statements of 11 July 2012, 19 February, 27 May and 11 June 2014, and 22 January 2015. They were all true to the best of her knowledge and belief. There were no other questions put to the Applicant by way of examination-in-chief.
33. In cross-examination the Applicant said she had now completed a course in English and numeracy and wanted to learn how to look after children in a nursery.
34. She had not known she was pregnant with her first child until after she had arrived in the United Kingdom. She had felt unwell and had been taken to hospital while detained by the SSHD: see hearing replies 15-20. However, at hearing reply 22 she said that on arrival she was told she was only three months pregnant.
35. Her partner's immigration status in the United Kingdom was uncertain. He had been given a year's discretionary leave which had expired on 21 June 2010. He had subsequently appealed against refusal of further leave on asylum and human rights grounds. That appeal had been dismissed at the end of April 2011: see pages L2-8 of the Applicant's bundle of 27 January 2015. Ms Pease accepted the partner had no extant leave, even under Section 3C of the Immigration Act 1971.
36. The Applicant stated she did not live with her partner who is also a citizen of Guinea. They could not return to Guinea because of her children: see hearing replies 27-29.
37. The Applicant stated her last contact with her family had been with her mother in October 2014 by telephone. She did not have the telephone number of her uncle who had arranged her travel to the United Kingdom and in any event he had now returned to the family's home village, according to the Applicant's mother: see hearing replies 30-36.
38. The Applicant stated she had been in education until the age of 17 and could write a little and read. The reason why she could not return to Guinea was because of her father and the fact that she had now had two children out of wedlock: see hearing replies 144 and 149.
39. At paragraphs 3-7 of her statement of 26 June 2014 the Applicant described how her father forced her to enter into a marriage with a much older man. Her father was



said to be the village imam and a much respected figure: see her statement of 11 June 2014 and hearing replies 135-141. The Applicant said her father starved and beat her into submission: see paras.5-6 of her statement of 26 June 2014 and hearing replies 60-68. The Applicant said that her marriage took place simply by her being sent to the intended husband's house and without any religious ceremony: see hearing replies 45-47. She was asked why if her father was an imam she had been given in marriage without any religious ceremony or nikah and responded that her father could give her to any man. At hearing reply 150 the Applicant insisted she had not been married to the older man to whom she was handed by her father. There was no explanation why if her father was an imam he would marry her off in this particular manner without any religious ceremonies or contract and there was no explanation to reconcile this reply with her earlier replies and the expert evidence of Professor Lawrence Junior. she did not know what the Sharia law is and said Mecca was important for Muslims because those who are well-off travel to Mecca. Medina was important for Muslims because many visit there: see hearing replies 156-159

40. She said her boyfriend in her village to whom she had fled from her husband on their wedding night had given her money to travel to Conakry. She had travelled to her maternal uncle who had arranged her travel out of Guinea but she has not spoken with him since she arrived in the United Kingdom: see hearing replies 176-178.
41. In the course of the hearing the Applicant produced two photographs which she stated were of her father as imam. There was no evidence either oral or on the photographs to explain when and in what setting they had been taken or any explanation why it had taken the Applicant so long to obtain such evidence. She said the photographs had been taken by her mother: see hearing replies 181-190. The Applicant said her parents had divorced over her refusal to marry in accordance with her father's wishes but she had not known of this until she had arrived in the United Kingdom and she could not explain how it was that the photographs were recent and how her mother had come to be able to send them, bearing in mind that the Applicant said she had left Guinea in March 2012: see her self-completed statement of evidence. This was notwithstanding that she had also claimed to have lost contact with her mother subsequent to October 2014: see hearing replies 30 and 94. There was no explanation for any of these apparent inconsistencies or implausibilities.
42. If she were to return to Guinea her father would trace her, if necessary by despatching his students all over the country to look for her: see hearing replies 152-154 and 135-137.

### **Submissions for the SSHD**

43. Ms Isherwood urged me to dismiss the appeal on the basis that the Applicant had fabricated her account. The previous hearing had been adjourned to give her time to obtain expert evidence to show that she had not been to France and fingerprinted there. An expert had visited the Home Office but the Applicant had not submitted any evidence except her bald assertions that she had never been in France and so

could never have been fingerprinted there. There was a witness statement from a Home Office expert about the matching fingerprints and the SSHD had discharged the burden of proof in this respect. The Applicant had failed to give any reason for not accepting the evidence that she had been fingerprinted in France.

44. The Applicant on her own evidence had been educated in Guinea until shortly before she had left and had said she could read and write a little but the expert report relied on her being illiterate. The expert report at paragraphs 15 and 16 found that on her account she had married the older man chosen by her father but at the hearing the Applicant had denied this and had said there was no ceremony or nikah evidencing her marriage and yet she claimed to be the daughter of the village imam.
45. The Applicant had described how she had been ill-treated by her father at paras.6-7 of her statement of 11 July 2012 but had never claimed until the hearing he had beaten her on many occasions while he had kept her locked in the sitting room to persuade her to marry the man he had chosen for her. It was only at the hearing that she had claimed that she had been beaten by him on numerous occasions in the course of being locked up.
46. It was not plausible that the Applicant had not made efforts to contact her boyfriend in Guinea who she said was the father of her eldest child. She had not disclosed until the hearing that her maternal uncle who had helped her leave Conakry had now moved back to the family village although the SSHD had maintained the Applicant could safely relocate with her uncle in Guinea. There were inconsistent statements from the Applicant about the contact she had had with her mother and it was implausible that she had not been in touch with her uncle. There were no statements from either of them or explanation for the failure to produce such statements, notwithstanding that in the course of the hearing the Applicant had managed to obtain by fax photographs of a man said to be her father.
47. The school letter of February 2014 at O1 of the Applicant's bundle did not mention her father was an imam although this would be a relevant matter.
48. The Applicant had been evasive in her answers at the hearing. Little weight could be given to the two photographs she had produced at a very late stage in the hearing. There were issues in the evidence about when and how they had been obtained if her parents had been divorced and the Applicant claimed that her mother had sent them by mobile phone; yet the Applicant had not had contact with her mother since October.
49. Ms Isherwood continued there was limited evidence about the Applicant's two children and their medical conditions.
50. Addressing the expert report, Ms Isherwood noted it was dated 27 January 2015. At paragraph 10 it referred to an asylum interview but in fact there had not been one. The reference to "the narrative of force" at paragraphs 22 and 24 failed to understand the nature of an "error of law" decision. Professor Lawrence Junior had found the Applicant's account consistent with the background evidence but this did not mean

her account was true. She had been evasive about her travel to the United Kingdom. The Applicant had not been able to recall when she first dated her partner although he is the father of her younger child. He is a failed asylum seeker with no pending application and had no entitlement to remain in the United Kingdom. Professor Lawrence in the expert report treated the Applicant as unattached and had made no reference to her second child born in August 2014.

51. She noted the focus was on West Africa generally rather than Guinea in particular. The discussion of forced marriage at paras.29-50 added little and failed to address the specific aspects of the Applicant's claim. With regard to para.54, the Applicant had indeed never claimed her father had been dominating or abusive before he forced her into marriage. Paras.61-62 referred to female genital mutilation but this did not figure at all as part of the Applicant's claim. At para.63 there was a reference to "bride wealth transfer" but the Applicant had not made any suggestion that that might have been a reason for her father's choice of husband. I accept that if it had been part of the arrangement the Applicant might not have been aware of it. Nevertheless, the latter part of para.63 has little reference to the context which the Applicant describes as the background to the forced marriage.
52. Although at para.65 the expert states the Applicant's uncle could not protect her, the fact is that on her account he did protect her and arranged her travel out of Guinea. The report failed to address this.
53. Although the expert had seen the reasons letter he had failed to address the background evidence referred to extensively at paras.37-47 about the extent of forced marriage and in particular the last sentence of para.43 which states:-

The representative of Tostan who met with Landinfo was of the view that a young girl who has sufficient knowledge of her rights and who has [translation] 'the strength of character necessary to confront the family decision' would have a chance to negotiate a marriage refusal with the support of the members of her family or the local authorities. ...

54. The expert had not mentioned the item from the Immigration and Refugee Board of Canada at pages A2-A6 of the Applicant's bundle filed on 4 November 2014 which referred at the top of page A3 to evidence given in late 2011 that the practice of forced marriage involving physical or psychological violence has [translation] "become marginal in Guinea and practically non-existent in urban areas" and to another report of March 2012 that "generally, [translation] 'religious marriage, which is most important to Guineans, comes before civil marriage, which is sometimes not even celebrated'".
55. At para.73 of the report reference is made to the impossibility of relocation because the Applicant's ethnic group inhabits all parts of Guinea. No details are given of the Applicant's ethnic group except for the reference to it at para.19 of the report and even then it appears from the wording of para.19 that the Applicant herself has not identified her ethnic group. Para.74 referred to the reporting of the arrival of newcomers but focused, mostly if not entirely, on rural districts.

56. With reference to para.77 of the report the Applicant had never claimed she had been trafficked. She could return with her partner and would be able to seek protection from her mother and maternal uncle. With reference to para.80, the Applicant had never claimed she had been or would be likely to be trafficked.
57. The expert report failed to refer to the Applicant's partner or to the position of her children. It had failed to address the individual aspects of the Applicant's claim other than to say that they were consistent with the background evidence.
58. The Applicant could return with her partner who is a Guinean and her two children who are also both Guinean.
59. Turning to the claim under Article 8 of the European Convention outside the Immigration Rules, Ms Isherwood referred to the Applicant's partner and children. Even if living conditions, education and medical facilities in Guinea were less favourable than in the United Kingdom, the Applicant would be returned with her two children as a family unit. Her partner and the father of her second child could return with her. She referred to para.60 of the judgment in *EV (Philippines and Others v SSHD [2014] EWCA Civ. 874* which states:-

That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the Immigration Judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the Tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.

60. She also referred to para.24 of the judgment in *Zoumbas v SSHD [2013] UKSC 74* dealing with the return of a family unit to the Democratic Republic of Congo in which the Court said:-

There is no irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic of Congo. No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as health care and education which the decision-maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and health care in this country. They were part of a close-knit family with highly educated parents and were of an age when their emotional needs could only be fully met within the immediate family unit. Such integration as had occurred into United Kingdom society would have been predominantly in the context of that family unit. Most significantly, the decision-maker concluded that they could be removed to the Republic of Congo in the care of their parents without serious detriment to their well-being. We agree with Lady Dorrian's succinct summary of the position in para 18 of the Inner House's opinion.

61. It was necessary for the Tribunal to consider the public interest factors referred to in Section 117B of the 2002 Act. It was accepted the Applicant had some ability to speak English but there was no other evidence of integration or ability of the Applicant to support herself and her children. Throughout her time in the United Kingdom her immigration position had at best been precarious.
62. She referred to the SSHD's guidance of 22 October 2014 on the issue of Ebola in West Africa. It noted that returns to Guinea have not been suspended and that the World Health Organisation in September 2014 had found that:-

The risk of a traveller becoming infected with Ebola virus during a visit to the affected areas and developing disease after returning is extremely low, even if the visit included travel to areas where primary cases have been reported. ... The risk for travellers visiting family and friends in affected areas is similarly low, unless the traveller has direct physical contact with a sick or dead person or animal infected with Ebola virus. ...

The Applicant had simply failed to evidence a sufficiently strong case to warrant the grant of further leave to remain in the United Kingdom and her appeal should be dismissed on all grounds.

### **Submissions for the Applicant**

63. Ms Pease relied on the skeleton argument of Ms Peterson filed for the First-tier Tribunal hearing. This briefly set out the Applicant's account and her assertions that she feared return to Guinea for a Refugee Convention reason. Reference was made to the reasons why the SSHD found her account not to be credible and to the background evidence about forced and early marriage in Guinea and that according to the the US State Department Report for 2013 there were no reported prosecutions of child marriage during the year notwithstanding estimates that some 63% of women aged between 20 and 24 years were married before the age of 18 and that women subjected to a forced marriage generally do not report it to the authorities. The Appellant now had two children born out of wedlock and would not be able to return to Guinea as an unmarried mother from a conservative background. There would be no system of her support available to her and she would be rejected by her family.
64. Ms Pease accepted the Applicant had not submitted any evidence to challenge the fingerprint evidence submitted by the SSHD. Nevertheless she had always been consistent in her account in its many re-tellings that she had never been in France. She had not adjusted her account of what had happened to her in Guinea in any way. That the Applicant might not be good at remembering the dates of various events should not be held against her. Not everybody can accurately remember dates of events in their personal lives. The core of her account had remained the same throughout and was both credible and plausible.
65. The Applicant had given a credible explanation of her marriage to an older man arranged by her father. Her boyfriend in Guinea had given her money to travel to her

matter of uncle in Conakry. On her return as an unmarried mother of two neither would be able to offer any material assistance.

66. She referred to the two photographs supplied of a man whom she said was her father. She urged me to take account of the limited contact with the Applicant had been able to maintain with her mother and that she had had none since the previous hearing. Her friend with a smart phone to whom the photographs had been sent was not in Guinea.
67. The evidence of the Applicant was consistent with the background evidence and Ms Pease urged me to keep this in mind when assessing the Applicant's credibility. Any inconsistencies in her account of her travel to the United Kingdom should be considered in the light that the Applicant had not previously travelled by air and was heavily pregnant at the time and not feeling well as was evidenced by what had happened shortly after her arrival in the United Kingdom.
68. Ms Pease referred to the expert report and in particular para.67 referring to the Applicant's actions in resisting her father and the man whom he had chosen for her to marry. In this light the Applicant would be considered to have committed adultery. At para.63 the expert report found the Applicant's account to be consistent with a "bride wealth transfer". That the appellant did not know of details of any liabilities which her father might have owed to the man he had chosen for her to marry was plausible in the context of the background evidence about forced marriage.
69. She accepted that the expert report did not properly address particular aspects of the Applicant's claim other than by generic reference to the background information. The expert report's account of the prevailing attitudes in Guinea towards women, would place the Applicant on return, as the unmarried mother of two children by different fathers, at real risk of ill-treatment and destitution. Her claim needed to be considered in the context of society at large in Guinea.
70. Additionally there was the matter of the risk to the Applicant and her children on account of the Ebola outbreak. Ms Pease concluded the Applicant was credible and her appeal should be allowed.

### **Findings and Consideraion**

71. I have carefully scrutinised and considered the Applicant's evidence together with the documents in the Tribunal file and the submissions made for each of the SSHD and the Applicant.
72. The Applicant has been given more than adequate opportunity to inspect the SSHD's evidence to support the allegation that she was fingerprinted in France. There was no challenge to the statements made for the SSHD that a fingerprint expert appointed for the Applicant had attended the offices of the SSHD. There was no explanation for the absence of any expert report challenging the SSHD's contention that the

Applicant was fingerprinted in France in October 2011. It may be of note that the surname given for the owner of the fingerprints taken in France was claimed to be 'Diaby' which is the same as the surname the Applicant has given for her boyfriend who paid for her travel to Conakry and whom she claims to be the father of her first child.

73. Given the fact that the only challenge to the fingerprint evidence is the Applicant's assertion that she had never been in France, I reject the Applicant's denial that she has ever been in France. Looking at the chronology given the Applicant was in France in October 2011, her account to have escaped from her husband to Ahmad, her boyfriend in January 2012 and to have left Guinea on 11 March 2012, arriving in the United Kingdom the next day is rejected. The Applicant gave no evidence of Ahmad's whereabouts on the basis that she had not been able to contact him since leaving Guinea in March 2012.
74. I do not find plausible or credible the Applicant's evidence about the nature of her betrothal and delivery to the home of the older man chosen for her by her father. The Applicant claims her father is a locally well-known and respected imam but her account contains no reference to any religious ceremony or nikah, even allowing for the fact that her presence at the signing of the nikah or even the ceremony may not have been required. I do not find it likely that she would have been presented to her new husband having been kept locked up in a room for some three days and denied proper sustenance and washing facilities. The Applicant does not claim she was given any opportunity to recover from her "imprisonment" and to prepare herself to meet her husband or that her new husband would not give her some time to prepare herself before taking her to the marital bed. The implausibility of this is in part underlined by the Applicant's claim that she had no difficulty in obtaining his agreement to her visiting the lavatory which she claims was the opportunity for her to escape.
75. I find the letter of denunciation from the Applicant's School at page O1 in the Applicant's First-tier Tribunal bundle does not refer to the vocation of the Applicant's father whom she claims was and is a well-known and notable imam. She also claimed he was of such standing that he had his own school and would be able to order his students to search throughout Guinea to find her if she were to return. One of the two photographs shows a man teaching young boys. There was no other evidence beyond the Applicant's assertions about her father's position and no explanation for the absence of any such evidence, notwithstanding the stature and renown she claimed for her father.
76. The upshot is that I do not accept any aspect of the Applicant's account of events leading to and the circumstances and timing of her departure from Guinea. The consequence is that what is left of the Applicant's claim is that as a single mother of two young children she will be at risk on return to Guinea.
77. There was no evidence by way of oral testimony from her partner in support of the Applicant. I was supplied with copies of her partner's statement of 18 April 2011 in

response to the SSHD's refusal of his claim for international surrogate protection and the determination of Immigration Judge Afako promulgated following a hearing on 27 April 2011 dismissing his claim for international surrogate protection for lack of evidence: see paras.21-25 and 27 of the determination. There was no evidence about the Applicant's claimed change of accommodation which was submitted as the reason her partner could not attend because he was looking after the two children. There was no recent evidence from him except a brief statement of 19 January 2015. The statement confirms his lack of residential status although it refers to another application which has not yet been made. He asserts his close relationship with both of the Applicant's children. It is to be noted that what evidence there was about him pre-dated the birth of the Applicant's first child by some 17 months and a little more than five months before the Applicant had been fingerprinted in France.

78. It is evident from the expert's report the expert had not been fully advised as to the nature and focus of the error of law hearing on 1 October 2014. Ms Pease accepted the expert report did not adequately or sufficiently focus on the particulars of the Applicant's claim. It is a learned piece of work on women and non-voluntary conjugal association generally in sub-Saharan Africa with some specific references to Guinea. There are points in the expert report which appear to go beyond its remit, for instance at paras.51-52. However the expert has not engaged with the particulars of the Applicant's account with the degree of detail which the Tribunal generally seeks in expert reports.
79. Where an appellant has been found not to be credible, reliance alone on the background evidence is generally, but not always, insufficient to establish a claim for international surrogate protection. The Applicant's claim that she will be ill-treated and destitute on return to Guinea needs to be considered on the basis that the rest of her account has not been accepted. This will include her claim she has no family to turn to and that she will be the target for an "honour killing". The Applicant gave little or no evidence about efforts she had made to re-instate her claimed contact with her mother. She said her uncle in Conakry had returned to her home village but there was no information how she had discovered this, notwithstanding the little or no contact she has had with anybody in Guinea for some time. I reject the suggestion that her father will be able to send students throughout Guinea to trace her and punish or kill her.
80. The Applicant states the father of her second child is a Guinean national. There was no evidence that he had any right, however limited, to be in the United Kingdom other than that of a failed asylum seeker refusing voluntarily to return. The Applicant's account is that both her children are of Guinean nationality and there was no suggestion, let alone evidence, that she could not return to Guinea with her two children and the father of her second child, as a family. In this context, she has failed to establish even to the lower standard of proof, that on return she would be at risk of ill-treatment.
81. There remains the Applicant's claim under Article 8 of the European Convention. I take into account the State's duty to consider as a primary concern the welfare of the



Applicant's two children and the medical complaints of both children who are very young, there was no evidence that the older one had started school. The Applicant has stressed the involvement of her partner with both her children: see paragraph 4 of her statement of 22 January 2015. There was no submission that she and her partner with her two children could not return to Guinea as a family unit. She states that she received secondary level education in Guinea. As a family unit, she would not have to make her presence known to members of her family in Guinea if she did not wish. I reject the claim, even made at the lower standard of proof, that her return to Guinea would come to her father's attention or that if he knew she had returned he would dispatch his students to punish or kill her for having brought dishonour to her family.

82. Adopting the approach to appeal is on grounds of Article 8 summarised at paragraphs 7-12 of *EB (Kosovo) v SSHD [2008] UKHL 41*, I find the Applicant has established a private and family life in the United Kingdom by reason of her presence and her two children. Her proposed removal would not interfere with her family life because she and her two children could be removed as a family unit with her partner.
83. Beyond her presence in the United Kingdom with her two children and a tenuous because inadequately evidenced relationship with her partner with whom she does not live there was little or no evidence of any private life. I have considered the best interests of the children as a primary concern. While the educational and health facilities in the United Kingdom might well be better than they are in Guinea, the Applicant and indeed the father of her second child are both of Guinean nationality and liable for removal. It is accepted that it is generally in the best interests of young children that they remain part of their parents' family unit and there is no evidence of any particular or unusual circumstances in this appeal which suggest to the contrary: see *EV (Philippines) and Others v SSHD [2014] EWCA Civ.874* and especially paras.60-61.
84. I conclude that the proposed removal of the Applicant and her children would not amount to an interference with their private and family life of sufficient gravity to engage the United Kingdom's obligations under Article 8 of the European Convention. It follows that the claims of the Applicant and her two children must fail under the Refugee Convention, the Qualification Directive and under the European Convention and accordingly they are all dismissed.
85. If I am wrong and the State's obligations are engaged then there was no suggestion that that any interference would be otherwise than in accordance with the law and for a legitimate public end. The assessment of the proportionality of removal that must nevertheless depend on any particular set of circumstances.
86. I have had regard to ss.117A,B and D of the 2002 Act. There was no evidence to show the Applicant's integration into the United Kingdom, such as evidence that she spoke English, was not relying on public funds or that her relationship with her partner

had been at a time when either of them had any lawful right of residence or when the immigration status of each of them had been at best anything more than precarious.

87. For the reasons already given, I do not find that the removal of the Applicant and her two children with her partner to Guinea would be disproportionate to a legitimate public objective. Even if the relationship between the Applicant and her partner is not as close as that of an unmarried couple because it is said they live in separate establishments, the partner has obligations to his child and has claimed in its brief statement to be involved in the lives of both the Applicant's children.

**Anonymity**

88. The Judge made an anonymity direction and this is continued.

**NOTICE OF DECISION**

**The First-tier Tribunal's determination contained an error of law and is set aside in its entirety. The following decision is substituted:**

**The appeal is dismissed on asylum grounds.**

**The appeal is dismissed on humanitarian protection grounds.**

**The appeal is dismissed on human rights grounds.**

**Anonymity direction continued.**

Signed/Official Crest

Date 09. iii. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

**TO THE SSHD: FEE AWARD**

No fee has been paid and so no award can be made.

Signed/Official Crest

Date 09. iii. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal