



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

Appeal Number: AA/11284/2014
AA/11286/2014
AA/11291/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 27 May 2015
Prepared on 28 May 2015**

**Determination Promulgated
On 10 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**K. K.
R. K.
A. K.**

(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, Counsel, instructed by Parker Rhodes
Hickmotts Solicitors

For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Sierra Leone, a mother and her two young daughters. The First Appellant entered the United Kingdom on 8 August 2011 using her own passport and with entry clearance as a visitor. Her two children entered separately in the company of her husband in April 2012. She and her daughters claimed asylum on 11

October 2012, asserting that she did not now know where her husband was.

2. The Respondent refused the asylum claims on 16 October 2014 and in consequence made a decision of the same date to remove the family to Sierra Leone.
3. An appeal against those removal decisions was heard and allowed by First Tier Tribunal Judge Dearden in a Decision promulgated on 26 February 2015. There were very significant issues that arose over the credibility of the First Appellant, because there were serious inconsistencies between the account she gave in evidence and the details she had given of herself in her VAF, so that at least one of those accounts had to be a fiction. There was also a significant delay since she had entered the UK before she had sought to regularise her immigration status. She claimed to have lost her passport, but she had not reported its loss, and had claimed that she felt unable to approach the Embassy for the issue of a replacement, even though she had no fear of the authorities in Sierra Leone. Despite this the Judge accepted that she was a truthful witness. He accepted that her two girls were at risk of FGM, and that she had been forced to intervene on four occasions to prevent them being taken for FGM against her wishes by members of the Soweï Bondo Society. He accepted that neither her husband, nor the authorities in Sierra Leone, were willing or able to provide protection against the risk of harm that the girls faced. He also found that the Appellants would be at risk of a breach of their Article 3 rights in the event of their return to a country in the grip of an Ebola epidemic, as he found Sierra Leone then was.
4. Permission to appeal was granted to the Respondent by First Tier Tribunal Judge McDade on 17 March 2015. There were only two grounds, and neither sought to challenge any of the findings of primary fact that the Judge had made. First, it was said to be arguable the Judge had failed to offer adequate reasons as to why the Appellants could not avoid the risk of harm through relocation within Sierra Leone. Second, it was also said to be arguable that there was no proper basis for allowing the Article 3 appeals on the basis of the Ebola epidemic.
5. The Appellants filed a Rule 24 Notice on 17 April 2015. They argued that the Judge had directed himself appropriately, and that there was no material error of law in his decision.
6. Thus the matter comes before me.

Internal relocation

7. I am satisfied that it is unsafe to consider only the jurisprudence upon FGM relating to the country of origin of a particular claimant.

There is much useful guidance to be found by taking a broader view than only that presented in FB (Lone women, PSG, internal relocation, AA (Uganda) considered) Sierra Leone [2008] UKAIT 90, for example by considering the approach adopted in K and others (FGM) The Gambia CG [2013] UKUT 62. Whilst the Judge did not in fact refer in his decision to any of the jurisprudence relating to either the risk of FGM, or the expedient of internal relocation, that does not however, of itself, give rise to a material error of law, and it is not argued before me that it did.

8. In this case the Judge's findings must include his acceptance that the two girls were at risk of harm from the Swei Bondo Society, and from members of their extended family. He accepted that the practice of FGM was common across all sectors of society within Sierra Leone, so that data from 2008 showed that 91.3% of women aged 15-59 had undergone FGM. He also accepted that it was most commonly performed on girls aged 10-14 as part of their initiation into women's secret societies, and coming of age ceremonies. (Both girls are below the age of 14.) He also accepted that early marriage was common, with 22% of women married by the age of 15, and 56% of women married by the age of 18. In the light of this data he accepted that there was a real risk that the two girls would be taken from their mother and subjected to FGM and/or early marriage. There is no challenge to this finding.
9. The Judge dealt with internal relocation very briefly in the sub-paragraph dedicated to that issue, saying simply that the Appellant was living in the urban area of Freetown before she left, and that it would be more difficult to relocate to a rural area than to remain in Freetown [22(5)]. However the sub-paragraph dedicated to Ebola also contained findings that were material to the issue. The Judge accepted on the basis of the Foreign Office's own advice to British nationals that the general medical facilities throughout Sierra Leone were under severe strain due to Ebola, that there were restrictions on movement in some areas, and that pregnant women were at increased risk from the disease [22(7)].
10. Ms Rackstraw argued that the Judge had failed to engage with the Respondent's case as it had been put in the letter giving reasons for the refusal of the asylum claim. This was an urban family from Freetown, who could relocate to another urban area, since Freetown was not the only urban area within Sierra Leone. Relocation to a rural area was not their only option. The First Appellant had identified the risk of FGM from the Bondo Society as arising as a result of the attitudes of her parents in law, and not the population at large. Nor had she ever identified a risk from the authorities within Sierra Leone; the high point of her case in relation to them was that she did not believe they were willing or able to provide any effective protection to herself or her daughters against the FGM risk.

Thus the group of non state agents who the Judge had accepted posed a risk to this family was in reality very small, and very easily avoided, possibly even by relocation within Freetown itself.

11. Whilst the Judge plainly did not refer himself to the detailed step by step analysis of the risk of FGM faced in the Gambia that was undertaken by the Upper Tribunal in K and others, it is possible to draw a number of parallels between the findings made in that case and the findings of fact that the Judge made in this. The overall incidence of FGM is not dissimilar between the two countries, and the Judge was not given statistical information as part of the evidence placed before him that would allow him to find that there was no risk within specific ethnic groups, or to the ethnic group of which the Appellants were members. In K and others the Upper Tribunal warned that whilst the risk of FGM could be reduced if the children's father was opposed to it, it may not be sufficient to avoid that risk if the extended family were in favour of FGM. Living in an urban area would reduce the risk, whilst living in a rural area would increase it. That strikes me as guidance of general application when considering a risk of FGM, and not guidance that was specific only to the Gambia.
12. The guidance offered upon the issue of internal relocation in K and others was that as a general rule an individual at risk of FGM in her home area would be unlikely to be able to avail herself of internal relocation. Cogent reasons would be needed for a sustainable finding that an individual could relocate safely, especially given the evidence that in the Gambia ethnic groups were thoroughly interspersed, the country was small and ethnic groups in different parts of the country were highly interconnected.
13. Whilst Sierra Leone is a larger country than the Gambia (about six times the size), with a higher population (about three times the size) the guidance to be found in K and others upon the issue of internal relocation is plainly relevant to a consideration of the risks faced by young women in that country. I am satisfied, and indeed Ms Rackstraw did not dispute, that however he expressed himself, the Judge must be taken to have found that the Appellants were at risk in their home area of Freetown from members of both their extended family, and the Soweï Bondo Society. He gave brief, albeit sound, reasons for his finding that it was unreasonable to expect the Appellants to seek to relocate to a rural area, and Ms Rackstraw did not seek to challenge that finding.
14. What then upon a proper analysis was left in dispute? In terms of avoiding the family and the members of the particular Bondo Society identified by the Appellants, the Respondent does not seek to argue that the evidence before the Tribunal showed that the position of different ethnic groups in the urban areas of Sierra Leone was

materially different to that prevailing in the Gambia. The inference must be therefore that within the urban areas of Sierra Leone the different ethnic groups are thoroughly interspersed, and the different ethnic groups highly interconnected. It was therefore open to the Judge to find that the risk of harm from the group of non state agents identified extended across all of the urban areas. If so, then the conclusion would be that internal relocation to an urban area would not avoid the risk under consideration.

15. Whilst he did not perhaps deal with the possibility with his usual clarity, the findings that the Judge did make also raised the wider issue of a risk of FGM and/or forced marriage at the hands of the wider community, that their mother as a lone woman without family support would be unable to protect them from. If the girls did face such a generalised risk from the population at large within their home area of Freetown, against which the authorities were unable or unwilling to offer protection, as the Judge appears to have accepted, then it is extremely difficult to see how internal relocation within Sierra Leone to any particular location could avoid that risk. No such location was identified by the Respondent.
16. In the circumstances I am not persuaded that the Respondent has established that there was any material error of law in the decision, given the unchallenged findings of primary fact.

Ebola

17. It is not disputed before me that it was open to the Judge to find on the evidence before him that Sierra Leone remained in the grip of an epidemic of Ebola, even if the incidence of new cases of that disease had fallen dramatically by the date of the hearing. There was however no consideration by the Judge of whether the authorities within Sierra Leone had reacted (with the benefit of international support) to that disease in such a way as to afford its population adequate protection against infection and against the disease itself once contracted. Equally, however, it is not disputed before me that if the Judge was correct to find that the Appellants faced a real risk of harm across Sierra Leone as a result of the risk of FGM/forced marriage, that there could be no material error of law in any finding by the Judge that the Ebola epidemic alone constituted a real risk of a breach of their Article 3 rights upon return.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 26 February 2015 therefore contained no error of law in the decision to allow the appeals of the Appellants appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 28 May 2015

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal)
Rules 2008

Unless and until the Tribunal directs otherwise the Appellants are granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 28 May 2015