



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05993/2018

### **THE IMMIGRATION ACTS**

Heard at Glasgow  
On 9<sup>th</sup> May 2019

Decision and Reasons Promulgated  
On 7<sup>th</sup> June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MRS E G W  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

#### Representation:

For the appellant: Mr C McGinley of Gray and Co, Solicitors, Glasgow

For the respondent: Mr A Govan, Presenting Officer.

### **DECISION AND REASONS**

#### Introduction

1. The appellant is a national of Kenya born in 1981. She came to the United Kingdom on 15 November 2017 with her son, [D], born in September 2000 and her daughter, [R], born in March 2011. They travelled on a family visit Visa, valid from September 2017 until March 2018. On 27 December 2017 she made a claim for protection.

The basis of her claim is that her daughter [R] is at risk of genital mutilation (FGM) from her husband in Kenya.

2. Her claim was rejected by the respondent on 26 April 2018. It was accepted that the claim engaged the Refugee Convention in that individuals at risk of FGM form a particular social group.
3. The respondent did not accept her claim that her husband and his family had tried forcibly to have their daughter circumcised. In considering her credibility the respondent relied upon section 8 of the 2004 Act and the fact she did not claim immediately on arrival. Furthermore, applying for the visit Visa she did not disclose any underlying problem. Furthermore, her Visa application indicated that she worked as an insurance broker whereas at the asylum interview she said she sold fruit and vegetables. Other discrepancies were identified in any event, the respondent concluded that there was State protection and that it was reasonable to expect the appellant to relocate within Kenya to avoid family pressures.
4. Her appeal was heard by First-tier Tribunal Judge Clough at Glasgow on 11 June 2018. In a decision promulgated on 6 November 2018 it was dismissed. The judge did not find the account credible. If the appellant's husband were determined to have their child circumcised the judge felt the appellant would have been unable to protect her. The judge referred to the timeline of events as being inconsistent with the claimed fear.
5. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable the judge failed to give the claim anxious scrutiny in light of the country information. The respondent lodged a rule 24 response opposing the appeal. Reference was made to the fact that it did not follow because the practice occurs in Kenya there was a real risk for this appellant's daughter. The respondent also referred to the timeframe as being a contra indicator of the account.
6. The judge had referred to a claimed incident in March 2016 when the appellant said her husband came intent on taking their daughter away. The Visa application was not made until September 2017 and then the appellant did not leave with her daughter until November 2017, 2 months after the visas had been granted. Reference was also made to her delay in claiming protection when she arrived here.
7. The appellant's representative submitted that the judge failed to provide adequate reasons. I was referred paragraph 28 of the decision whereby the judge accepted that FGM takes place in Kenya, particularly amongst the Masai tribal group. The appellant said she was from the Kikuyu tribe and her husband was of mixed ethnicity, his father being Masai and his mother Kikuyu. He referred

to the judge in the same paragraph stating, 'it is with a great deal of reluctance I come to the decision the appellant's claim is not well founded.' He said the judge did not explain why she had used this expression or, if that was the case why she had not allowed the appeal. He said the decision was very brief and the only real reasons are contained at paragraphs 27 and 28 and he submitted these were inadequate.

8. Mr Govan in reply relied upon the rule 24 response. He said the reasons behind the decision clear if paragraph 25 and 28 were together and the reference to the timeframe. I was also referred to the refusal letter which made the point that so far as a response was concerned there was sufficiency of protection and the option of relocation. Mr Winters pointed out that the appellant did not deal with these alternative matters.

### Conclusion.

9. The refusal letter refers to the country information on Kenya as indicating those in fear of FGM form a particular social group within the meaning of the Convention. The issue was whether the appellant in fact had a well-founded fear.
10. The refusal letter refers to the tribal differences between the appellant and her husband and that when the appellant would not cooperate marital problems began. The appellant described how when her daughter was 6 years old her husband arrived home with his brother wanting the child circumcised. She said there was an altercation resulting in the child being scalded with hot water.
11. The respondent questioned why the appellant had not discussed FGM with her husband before, given they were from different tribes and she was aware of its prevalence amongst the Masai. The appellant had indicated she had not undergone the procedure and the respondent question why her husband would be so insistent on it being performed on their daughter. The respondent also questions why she did not seek help from her own family. The refusal letter then refers to country information in relation to the practice and the question of sufficiency of protection. The refusal letter then refers to the timeframe and having considered all these factors did not find the claim credible.
12. The judge's decision is brief. The bulk of the decision consists of setting out the details of the claim made. There is a section setting out the appellant's evidence. There is a part of the decision containing the heading 'findings'. Rather than setting out findings further details of the claim are set out. It is really only from paragraph 22 that the judge expresses her view. At paragraphs 27 and 28 the judge indicates the factors influencing her. Principally,

the judge is not finding the appellant credible because of the time frame involved.

13. The judge has not referred to the other contra indicators in the refusal letter. Whilst the reasoning is limited, on the claim made I find the judge has given adequate reasons. Essentially, the judge has not found the claim credible because of the appellant's delay in taking action at various stages. The judge had referred to the incident when the appellant said her husband arrived accompanied by his brother and matters came to a head. Despite the incident occurring in the 2016 the appellant did not leave her home country with her children until November 2017 notwithstanding the fact visas have been issued by 26 September 2017 yet she did not leave until 15 November 2017. There was then delay in claiming protection in the United Kingdom. In the circumstance I find this was sufficient. The judge was entitled to draw the inference she did from the time frame set out. The fact FGM may be prevalent among certain tribes does not mean the individual claim made was true.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Clough. Consequently, that decision dismissing the appellant's appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Date 04 June 2019