



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006647

First-tier Tribunal No: PA/52215/2021
IA/07330/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 December 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**BN
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mensah instructed by Broudie Jackson Canter Solicitors.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 20 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permissions a decision of First-tier Tribunal Judge Andrew Davies ('the Judge'), dated 14 August 2022, in which the Judge allowed the appellant's appeal pursuant to Article 3 ECHR, but dismissed the appeal on asylum and humanitarian protection grounds.

2. Permission to appeal was sought on the basis that on the findings made by the Judge in relation to the real risk of the appellant's child suffering harm, including sexual abuse and rape, the appellant was entitled to be recognised as a refugee and, if not, to a grant of Humanitarian protection.
3. The asserted Convention reason was that the appellant fell within a Particular Social Group (PSG).
4. There was discussion before the Upper Tribunal in relation to the nature of that PSG. A reading of the Judge's decision and the pleadings prior to the hearing indicated that the submissions that were made to the Judge were on the basis that the PSG was the appellant's family. It does not appear anything else of substance was pursued.
5. Before me Ms Mensah raised another issue submitting that the PSG in question was the appellant and her daughter's membership of their specific tribe in Namibia. Their tribal membership was accepted by the Judge.
6. Mr McVeety accepted that membership of the trial constituted a PSG on the basis the required test had been satisfied.
7. The discussion therefore moved on to considering the issue of persecution. It was not disputed before me that the Judge's findings clearly indicate that the treatment the appellant's daughter will be subjected to if the family are returned will be sufficient, both in terms of its nature and duration, so as to amount to persecution by a non-state actor.
8. The issue therefore arose whether, although the appellant's daughter was entitled to be recognised as a refugee, as it had been found by the Judge that there was no sufficiency of protection or internal relocation option available to either of the family members in Namibia, the appellant who herself was not at risk of similar ill-treatment was also entitled to grant of international protection.
9. In her skeleton argument Ms Mensah relied upon the decision of the Upper Tribunal in FM (FGM) Sudan CG [2007] UKAIT 00060 in which the appellant in that case had been found to warrant a grant refugee status as a result of the understandable profound effect upon her of seeing her daughter subjected to FGM. It was submitted by Ms Mensah, by analogy, that the understandably profound effect upon the appellant of seeing her 12-year-old daughter being forced to marry and have sexual intercourse/rape and abuse at the hands of the 48-year-old relative would have a similar, if not more serious, effect. That was not disputed by Mr McVeety.
10. I find therefore that the appellant has, through no fault of the Judge who did not receive such focused submissions on the issue, established legal error material to the decision of the Judge to dismiss the asylum appeal.
11. I substitute a decision to allow the appeal under the Refugee Convention.
12. As the appellant is entitled to a grant of asylum she is not entitled to a grant of Humanitarian protection. That element of the challenge is without merit in light of the primary finding above.

Notice of Decision

13. The Judge has erred in law in a manner material to the decision to dismiss the appeal under the Refugee Convention. I set the decision aside. The factual findings of the Judge are preserved. I substitute a decision to allow the appeal under the Refugee Convention.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December 2023

