Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06866/2013

Heard at Field House
on 24th February 2014

Determination Sent
on 4th June 2014

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LB
(Anonymity order in force)

Respondent

Representation:
For the Appellant: Mr Melvin – Senior Home Office Presenting Officer
For the Respondent: Miss S Harrison of Halliday Reeves Law Firm

DETERMINATION AND REASONS

1. On the 22nd April 2013 Upper Tribunal Judge Coker set aside the determination of First-tier Tribunal Judge Birkby promulgated on the 4th October 2012 in which she dismissed the appeal against the removal direction to Guinea which accompanied the refusal of LB's claim for asylum or any other form of international protection.

2. There are a number of preserved findings as follows:

    a. LB is a citizen of Guinea born in 1986 from Dongo, Conakry.

    b. LB is of Fula ethnicity and a Muslim.

    c. LB is the fourth wife of AWB who in 2012 was 56 years of age.

d. LB underwent Type II Female Genital Mutilation (FGM) as a child.

e. LB has not attended school in Guinea.

f. LB was not involved in organising anti FGM meetings in Dongo from her hairdressing salon.

3. A specific direction was issued by Judge Coker relating to the preparation of an expert report on issues relating to the prevalence of secondary FGM in Guinea (also referred to by the expert as FGC); the societal and familial consequences for women who are not the first wife in a polygamous marriage; the prevalence of domestic violence and spousal rape in Guinea.

4. In November 2013 the Upper Tribunal confirmed this is not a country guidance case and at the hearing I advised the parties it is not going to be submitted to the Reporting Committee either as it turns very much on its facts. The issues are complex and have required careful consideration and deliberation of all relevant issues which has been more time consuming than usual.

Preliminary issues.

5. On the 8th January 2014 Judge Coker, in consultation with Miss Harrison gave further directions giving leave to LB to file an updated expert report by Professor Dr. Knorr and Professor H Crawley by 24th January 2014 and for questions to be put to the experts by the Respondent by 4th February 2014, with replies by 11th February 2014. A specific direction was made that "A failure by the Respondent to comply with these directions will be considered by the Upper Tribunal to mean that the Respondent does not challenge the content of the reports".

6. No report has been filed by Professor Crawly and the report of Professor Knorr was received on the 24th January 2014. There have been no questions put by the Respondent but in the interests of justice the Tribunal does not consider it appropriate to prevent Mr Melvin from challenging the conclusions of the report as to do otherwise, in the circumstances of this case, may be construed as preventing the Respondent from having a fair hearing.

7. The application to adjourn set out in the skeleton argument to allow the Respondent to prepare a response to Professor Knorr was refused. The basis of the application was that as a result of internal administrative failures the report was not linked to the file but this is not a satisfactory reason for putting the matter off and it has not been shown the interests of justice or fairness are infringed in refusing the application. It was also clear from the questioning and submissions made during the hearing that Mr Melvin had had adequate time to prepare and was fully appraised of the relevant facts, in any event. The

Respondent was aware of the issues from the directions made earlier in the case and has had ample time to obtain rebuttal evidence if this is what is now sought. The fact the Respondent may operate on a reactive rather than proactive basis is no reason to adjourn, without more. I also approach the issue of the expert evidence from the standpoint that failure by the Respondent to adduce her own expert evidence cannot imbue Professor Knorr's evidence with any greater value than it merits when considered alongside the rest of the evidence.

8. Mr Melvin also challenges the credentials of Professor Knorr as a country expert. In paragraphs 35-41 of his skeleton argument he sets out his case. In K v SSHD [2005] EWCA Civ 1627 the Court of Appeal said that if the Tribunal had reservations about an expert's qualifications it ought to explain why. The Court also said that expert evidence should not be discounted simply because the expert had not been to the country of which he writes, if he has information which will be of use to the Tribunal.

9. An expert witness is a witness who by virtue of education, training, skill or experience is believed to have expertise and specialised knowledge in a particular subject beyond that of the average person, sufficient that others may officially and legally rely upon the witness's expert opinion to assist the fact finding process.

10. Professor Knorr has provided a copy of her C.V and summarises her experience in her letter dated 8th January 2014 in the following terms:

> I am an anthropologist, working as Head of the Research Group "Integration and Conflict along the Upper Guinea Coast/West Africa" at the Max Planck Institute for social Anthropology and as an Extraordinary Professor for Social Anthropology at the Martin Luther University in Hall/Saale, Germany. My report is based upon first-hand knowledge, i.e. on empirical findings from many years of field research and on reading most of the relevant literature on the themes it concerns. I conduct comparative research across the Upper Guinea Coast in particular and West Africa more generally. I was brought up in the region as well. Thus, my expertise results from scientific research and personal experience."

11. Having considered the CV and details of her experience I reject the submission that Professor Knorr cannot be heard as a country expert although the grounds relied upon by Mr Melvin in relation to this issue may be relevant to the weight I am invited to give to her report.

The credibility of the claim

12. Mr Melvin submitted that the Tribunal has not been given the whole picture in relation to events in Guinea which I find to be a sustainable argument. There was reference to the fact no up-to-date statements have been provided in relation to the current family situation or the reaction of LB' family or husband

to her actions, and that the only witness statements are those dated 13th August 2012 and the reply to the Respondents refusal letter dated the same date. LB also failed to attend the hearing.

13. It is for a party to decide the nature of the evidence they seek to rely upon and it may be the case that additional material is available. All the Tribunal can do is to make a decision based upon the available evidence when considering whether LB has adduced sufficient evidence to substantiate her claim to be at risk on return.

14. The core of the account being relied upon by LB is that if she is returned to Guinea her father will kill her because she has let the family down and that her husband will force her to undergo FGM for a second time. She also alleges her husband will force her to sleep with him and if she refuses she will be beaten. LB also alleges that she is unable to relocate within Guinea as her father will be able to find her. He is a businessman with the ability to bribe others to help him find her and that it is not possible for a single person to live alone. LB also alleges that if she does not have a husband it will be said she had been abandoned or that she is a prostitute, making it difficult in practice for a woman to live alone.

15. In her initial witness statement LB states she underwent FGM before the age of ten. From 2005-2006 she trained as a hairdresser and owned her own salon from 2007. She married in 2008 and became the fourth wife of her husband. LB alleged she held regular anti FGM meetings at the salon from the end of 2007 but when her father discovered the meetings he warned her three times to stop but that when he realised she had not stopped he married her off to an older man.

16. LB alleges she attempted to leave her husband in 2010 but was returned to the marital home after one day. She was beaten by her father as a result of which LB claims to have scars on her elbows, knees and legs. LB alleges her husband shouted at her and stopped her going to the salon which effectively closed down the business; although LB claims she would sneak out and plan further meetings or speak to others on the telephone.

17. LB also claims her husband told her that when she returns to Guinea she will have further cutting (FGM/C) as the first time did not work which is why she did not have children. It is said her husband discussed this matter with her father three years into the marriage.

18. It can be seen that the core of LB's claim relies upon a chain of events the origin of which is the fact she held meetings and discussions with others relating to FGM which her father discovered and, as a result of her refusal to stop, forced her to marry her husband. Such a claim has been undermined, however, by the finding of the First-tier Tribunal, which is preserved for the purposes of this

hearing before the Upper Tribunal, that no such events occurred. If LB did not hold the meetings she claims to have, the claim she was forced to marry her husband by her father as a result of her refusal to stop such meetings is not substantiated either.

19. If the claim to have married by force has not been proved to be true it must be the case that the marriage was undertaken without the element of duress LB relies upon in this claim.

20. The finding no such meeting occurred also undermines the claim to have been prevented from returning to her hairdressing business by her husband as the basis for alleging he did so has not been shown to be true. This therefore undermines the claim that as a result of her inability to attend the salon the business failed and the claim she made contact and attended meetings without her husband's knowledge.

21. Mr Melvin also produced copies of two visa application forms relating to applications for visit visas made by LB and her husband to come to the UK. Applications for such visas from Guinea are made on-line followed by an attendance in person at the High Commission in Freetown, Sierra Leone. The forms show the on-line application was made on the 12th December 2011 with the submission in person thereafter at which biometric details would have been taken. LB confirms that fingerprints were taken in relation to the visit visa application in reply to question 2.9 of her screening interview [R's bundle, page A5].

22. The application form states LB and her husband have lived at the same address for four years which raises a minor credibility issue as, if this is so and the application was made at the end of 2011, the four year period must have commenced in 2007 yet it is claimed elsewhere the marriage took place in April 2008 with no mention of any intervening co-habitation.

23. I also note in LB's application form a reference to her occupation as a self employed "Coiffeuse" and a stated income from the business of $750 per month gross. This indicates the business was not closed or lost as alleged but continued and was producing an income for LB at that time. The evidence of Professor Knorr was that the patriarchal society in Guinea and the subservient role and status of women is such that LB would not have been able to apply for a passport or have such a business without the support of her father before marriage and her husband after marriage.

24. Medical evidence in relation to the FGM issue has been provided but insufficient evidence to corroborate the claim to have suffered injury at the hands of her father. There are some photographs of a person sticking dressings/plasters on LB's legs etc but no pictures of the actual injury site and insufficient medical evidence to support the presence of scarring or in relation to

causation – such limited material does not substantiate this element of claim in relation to causation in particular, especially in light of the fact other material elements of the case relating to her father's alleged conduct have not been shown to be true. There is an un-translated medical certificate – [A's appeal bundle page 496] which does not materially assist.

25. It is clear from the material set out above that there are clear examples of LB claiming she is at risk for reasons which have not been found to be true. The Judge of the First-tier Tribunal who heard LB give oral evidence recorded a number of concerns and in fact found LB had undermined her credibility in relation to all she had stated with regard to her father and husband which was rejected. Her account was found to have been fabricated in order to sustain a claim for asylum [determination of First–tier Judge Birkby, para 38]. In granting permission to appeal to the Upper Tribunal, on a renewed application, Upper Tribunal Judge Lane stated:

> The determination of the First-tier Judge is clear and detailed and I grant permission only with considerable hesitation. It does, however, appear to me to be arguable that the judge has not properly addressed the evidence of the expert reports as to risk to the appellant of further FGM, notwithstanding his adverse credibility findings regarding her alleged account of her past experiences. The grounds also make the arguable point that the appellants lack of knowledge regarding her husbands wives is explicable by reference to cultural norms and the fact she lives separately from those women.

The expert evidence

26. A report has been provided by a Dr H E Sykes following an examination of LB on 17th August 2012. The report is not challenged before me and concludes:

> 19. [LB] presents as an intelligent but poorly educated young woman who was subjected to FGM as a young child. She did not experience any problems as a result of this and it is unlikely that her infertility was caused by it.
>
> 20. The type of FGM that L B was subjected to, like all other types; has no medical purpose and carries the risk of infection, haemorrhage, disability and, in extreme cases, death has occurred. There are world-wide campaigns to encourage all countries to make this procedure illegal but despite the recent WHO declaration (copy enclosed), this is not being enacted universally as yet.
>
> 21. [LB] is understandably anxious about her situation and the threat of being returned to a country where she has little independence and has to comply with her husbands wishes. She feels she will not be able to resist having whatever cutting her husband may have arranged for her; a second procedure is not unusual but I have not been aware of it previously of it being threatened by a husband whose wife has failed to conceive. I have no reason to doubt my findings in relation to her history, but I am unable to comment on the possibility of her being subjected to another possible life-threatening assault.

27. Professor Knorr has produced two reports, the most recent being that dated 8th January 2014, [LB's bundle, pages 15 -32], in which she comments upon the Fula specificities which she considers to be particularly relevant to the case. Professor Knorr states:

> "They have often been labelled the "Jews of West Africa". As a result of their being dispersed and suffering discrimination in many parts of West Africa, they depend on intraethnic ties and support even more than other ethnic groups and have maintained a high degree of intraethnic cohesion and coherence (in Guinea) as well). Even in larger settlements and towns, where there is a great amount of interethnic contact, marriage, etc, the Fula are known to favour interethnic marriages.

28. Of relevance to the opinion of Professor Knorr is her statement that the maintenance of ethnic identity and cohesion also involves strict rules concerning proper social conduct, called 'Pulaku' and that offending such rules is considered to have severe negative effects on both the individual offender as well as on his or her social environment as offences of Pulaku are said to cause death, disease, infertility, miscarriages, conflict etc. It is said that as a Fula woman LB will already be regarded as having severely violated such social, ethnic and religious norms and values due to the fact that she has deserted/fled her husband, (b) lived in the UK with another man not her husband, (c) refused to return to Guinea and to her husband, and (d) having been involved in anti-FGM campaigning. As a result her father will be expected to take measures of punishment, which could include physical violence, social neglect or expulsion. It is also Professor Knorr's opinion that to reintegrate her into the family LB is likely to be forced to return to her husband and to undergo FGM or, if he did not want her back, her family may force her to marry another man as a third or fourth wife.

29. If LB were unable to find a husband she will be forced to live as a single woman and if she is found to have severely violated traditional norms and values and not having met her family's expectations, this will leave her without family support [A's bundle page 502, para 7].

30. In relation to the plight of single women in Guinea Professor Knorr writes:

> In Guinea, single women (whether unmarried, divorced or widowed) without family support have an inferior social status and reputation and find themselves socially isolated and therefore in an extremely vulnerable position. They are particularly vulnerable in terms of having to endure violence, suffer social discrimination and public humiliation. They find it very difficult to live a relatively descent and secure life in Guinea. Not being a member of a supportive family and social network, unaccompanied women find it very difficult to provide for their own safety and needs. Not having a husband and family makes women easy targets and likely victims of sexual violence as well [A's bundle, page 503, para 8]

31. In relation to the risk of further FGM, Professor Knorr writes:

> 9. Female genital cutting in Guinea (and in most parts of the Upper Guinea coast region) is part of a cross-cultural and cross-religious ritual of initiation into female adulthood. It is deeply rooted in socio-cultural norms, and upheld by traditional and religious leaders, circumcisers, and elders, who wield power and authority from their engagement in the practice at the local level.
>
> 10. Although female cutting is often associated with the religion of Islam, it is not primarily a religious, but social practice that predates Islam and is spread among different religions (cp. Johnson 2000). The practice has been illegal in Guinea since 2000 but continues to be practised everywhere in the country at all levels of socio-economic development. Perpetrators of FGM are not prosecuted.
>
> 11. Female circumcision covers three main types all of which are practiced in Guinea (with deviations):
>
> i. Sunna (from Arabic, meaning "tradition") circumcision: removal of the prepuce and/or the tip of the clitoris. In Guinea, however, this procedure of removing only a part of the clitoris is not considered "proper" Sunna – it is called *n'dekhabara* which means "to remove a part."
>
> ii. Clitoridectomy/Exision: in Guinea, this variety is rather radical in that it involves the removal of the entire clitoris and the removal of the adjacent labia. Only then is excision considered "proper Sunna" (called *akaba iya fiche,* meaning "to remove or render clean"). It is the most common form of FGM in Guinea (GIZ 2011).
>
> iii. Infibulation (pharaonic circumcision): most radical form consist of the removal of the clitoris, the adjacent labia and the joining of the scraped sides of the vulva across the vagina, where they are secured with thorns or sewn with thread. A small opening is kept to allow the passage of urine and menstrual blood. An infibulated woman must be cut open to allow intercourse on the wedding night.
>
> 12. Besides, there are a number of other harmful procedures of cutting, perforating, piercing, corroding, and puncturing female genitals, which are sometimes referred to as a fourth form of FGM. There are efforts being made by some NGO's to find less harmful practices.
>
> 13. Among the Fula (the ethnic group LB belongs to) mainly excision and infibulation are practiced and all Fula girls/women are obliged to the practice as part of their initiation into adult womanhood: "the results of both studies [DHS, UNICEF] indicates that FGM is nearly universal in Guinea. The DHS [Demographic and Health Survey] survey showed that nearly all girls (99%) go through female circumcision. The formative study

found that among Sosso, Fulani [Fula], and Mandinka, all girls were expected to be circumcised" (Yoder and Mahy 2001: 9; cp. Bonhour, Hechavarria, Kaplan and Martin 2011, GIZ 2011).

14. I would like to point out that contrary to the Home Office's assumption (20 -- 22) it is not at all unusual that people in Guinea do not know about FGC being illegal according to state law.

15. State law is not perceived as being in charge of matters relating to culture and tradition, state law. Rather, it is customary and religious law which is concerned with issues which concern the family, the relationship between men, women and children, religious and cultural obligations etc.

16. As well as that the practice of FGC has continued irrespective of it being illegal according to state law. State authorities, including the police, do not take measures to prevent the practice. Whether FGC is illegal according to state law or not has so far had little relevance for the continuation of the practice.

17. I have met many Guineans opposed to FGC who did not know that the practice is illegal. Others did know, but like all activists engaged in the battle against FGC, they were aware of the fact that stage law in Guinea has little influence where traditions is deeply rooted in the social, religious and a ritual life as the practice of FGC are concerned.

18. I would also like to point out that most local NGOs activities related to FGC (mentioned in the Home Office's refusal letter/ 21) deal with the practice as a health issue, trying to improve hygienic standards. This has led to a medicalisation (rather than eradication) of FGC where people can afford it.

32. Professor Knorr also notes that although according to tradition girls should ideally undergo initiation before or upon entering puberty this age varies and if a girl has been cut incompletely in childhood and youth, she may have to undergo another more severe form of cutting later on [19].

33. It is reported that repeated FGM often takes place before or shortly after marriage when girls/women are examined genitally by circumciser to assess whether they are "clean". LB's degree of genital cutting is not likely to be considered "proper Sunna", but as incomplete, leaving her "unclean". In connection with her not having conceived and having failed morally, the lack of cleanliness would likely be perceived as being particularly severe and in need of "repair" [20].

34. It is noted that incomplete cutting may well be thought to be responsible for a woman failing to conceive and that repeated FGM is not uncommon in cases in which women are proved to be infertile or to have delivered a stillborn child. Professor Knorr states that contrary to the Home Office's assumption (28-29) a clear link is made between incomplete genital cutting and infertility. One of the

major reasons for genital inspection upon marriage is to make sure that a woman is clean and will be able to conceive [21].

35. It is noted that Guinea has a particularly bad reputation concerning women's rights and protection against violence and that many women are victims of domestic and sexual violence and abuse and that even though according to Guinean law women may seek help from the police, should they suffer domestic/family/community violence, the police rarely intervene. Marital rape is not considered a crime and so a husband could continue raping her, hence seriously violating her physically and emotionally and if it was found she had severely offended *Pulaku* LB would be at her husband's mercy even more and could not expect any support from members of the family or community .

36. Professor Knorr also notes that the cases in which sexual violence is considered a (relatively) serious offence in Guinean society are when it involves minors, virgins and married women. Rape and sexual violence are considered a rather trivial offence on the part of men and are not considered worth prosecution. Victims of violence do not receive support in prosecuting those who raped them -and even less so when perpetrated by the state and the army [31].

37. It is said there are no state authorities who will be willing or able to provide protection for LB from either further genital cutting or being forcibly returned to her husband or remarriage to another man or from other forms of violence. People in authority largely share the values of the society in which they live and share the view that LB must be returned to her husband and/or father and punished. It is the experts opinion that the few NGOs engaged in improving all women's living conditions in Guinea are not in a position to protect women from FGC or other forms of violence [38–45] and that as a single Fula woman LB would be unlikely to be able to provide for even her most basic needs and to build a safe living environment irrespective of where she went to reside in Guinea [46 -50]

38. In conclusion Professor Knorr writes:

> 56. As a result of what will be perceived by her father /husband /community as severe violations of Muslim and Fula rules (*Pulaku)* of proper (female) conduct [LB] will in all likelihood suffer severe neglect, humiliation, discrimination and violence upon her return to Guinea. She may be forced back into marriage with her husband who will expect her to undergo further FGC and will most likely continue to rape her as previously. She may also be rejected by her husband and expelled from her family which will subject her to a life as a lone and destitute, highly vulnerable single Fula woman likely to be forced into prostitution to provide for herself. She will also face a severe danger of being a victim of trafficking, and of suffering sexual and other forms of subjugation, exploitation and violence. Neither the State authorities nor NGOs will be able and/or willing to

> protect L B from the dangers described and to enable her to live an independent and relatively secure and decent life.

39. Other country material in LB's bundle supports the Professors' opinion.

Discussion

40. There are a number of potential triggers of real risk identified in the expert evidence and the key question to be considered is whether LB has substantiated her claim to face such a risk in light of the adverse credibility findings and the established facts of this case.

41. Professor Knorr identifies four possible reasons why LB will be perceived as having breached the social, ethnic and religious values which are set out above. In these the reference in (b) to living in the UK with a man who is not her husband is taken as a reference to the fact LB claimed that having lost her money and passport she met a man who spoke her language outside the hotel and stayed with him at his house. There is no suggestion the relationship was improper and in fact LB is recorded as telling this person that her husband was expected to be coming to the UK very soon. For this to be considered as a potential cause of risk LB will have to substantiate a claim that her husband or father will be aware of this fact which has to be established on the evidence, and which I find has not been. Option (c) is a claim LB has refused to return to Guinea and her husband but there is also no evidence that the fact she has refused to return will be known or, if it is, the reason. Option (d) has been proved to lack credibility and so the only remaining reasons is (a) with LB being regarded as having severely violated such social, ethnic and religious norms and values due to the fact that she has deserted/fled her husband.

42. Professor Knorr was asked at the hearing whether in light of the fact three of the four issues she identifies have fallen by the wayside her overall conclusions remain as stated in the report, which she confirmed was the case.

43. LB gave an account of events in Guinea which has been found not to be true. She also claims she was able to recover her passport and a substantial sum of money, 3,850 Euros, which is equivalent to around 37,240,000 Guinea Francs from her husband's car. There may be an issue regarding whether it is plausible that such a large sum of money would have been kept in a car in a country where its people are among the poorest in West Africa in which most of its people live on less than $1 (6,959.53 GF) a day. This sum equates to 14.66 years of such a level of income.

44. I accept that even though she would ordinarily be under the control of her husband, if she had a valid travel document and visa LB would have been permitted to leave the country as per the oral evidence of Professor Knorr.

45. If, as appears to be the case by the making of joint applications for visas to enter the United Kingdom, LB's journey here was approved and supported by her husband who may have wished to travel to Canada to see his children or who proposed to meet her at a later date, it cannot be found that she has substantiated her case to have disobeyed her husband by stealing money and fleeing.

46. The core of her account regarding events in Guinea has been found not to be true but one element on which no adverse findings have been made, and in relation to which LB has been internally consistent, is that she has failed to conceive. It is also alleged that it is believed that this has occurred as a result of her first circumcision not being "done properly". It was on this basis Upper Tribunal Judge Lane granted permission to appeal.

47. If this element of LB's case is to be found to give rise to risk on return it is necessary to assess what her husband's reaction is likely to be. The parties were three years into their marriage in 2011 and yet her husband had not done anything on the evidence up to the time she left for the UK to force her to undergo further cutting; although I accept this does not mean there is no risk of such events occurring if returned.

48. It is not disputed before me that LB has no children, and indeed she did not claim that they had any children of their marriage in the visa application form. Those children that are mentioned appeared in LB's husband's visa application who are said to be living with their mother in Montréal in Canada. In LB's own visa application form, in reply to questions appearing in part four, she states that she has no dependent children.

49. It is an accepted fact that LB is a Muslim of Fula ethnicity from Guinea who is the fourth wife of her husband whom she married in April 2008, a man 30 years her senior. He has children from a previous relationship but no children from this marriage which is said to be contrary to the expectation in Guinean society and appears to be contrary to her husband's wishes, on LB's evidence.

50. The evidence relating to LB's employment situation and activities has in part been found to lack credibility but it is not disputed that she has suffered FGM/C in the past which the expert indicates may not be considered to have been done "properly" leaving her "unclean" and providing an explanation for her inability to conceive.

51. The expert evidence indicates there is no state or other effective protection available and that ingrained societal views and expectations will require such process to be undertaken without effective protection from within her family, notwithstanding the fact that evidence obtained in the United Kingdom indicates that there may be a medical explanation for failure to conceive based upon issues relating to hormonal balances or other matters. Whilst this may be

a scientific explanation for any such difficulties, unless accepted by her husband who is then willing to pursue a medical 'solution', the risk is said to remain.

52. In relation to a Convention reason, that of women likely to be at risk of suffering FGM/C, in K and Fornah v SSHD [2006] UKHL 46 it was held that in societies where women are expected to be circumcised, forcible circumcision will always be persecution, and it will be for membership of a particular social group, however widely or narrowly that group may be defined. Lord Bingham of Cornhill said that women in Sierra Leone were clearly "a group of persons sharing a common characteristic which, without a fundamental change in social mores, is unchangeable - namely a position of social inferiority as compared with men". He added: "They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not." Female genital mutilation was an extreme manifestation of the discrimination to which all women were subjected in Sierra Leone. Lord Bingham noted that: "The operation, is often very crudely performed, causes excruciating pain….It can give rise to serious long-term ill effects, physical and mental, and it is sometimes fatal". Lord Hope stated that "in Sierra Leone FGM is a process that society expects women to undergo" and "that an uninitiated indigenous women represents an abomination, fit for the worse kind of sexual exploitation". Lady Hale thought that the treatment an uninitiated woman might face if she succeeded in resisting FGM might itself amount to persecution.

53. LB has previously undergone FGM/C but I find having undergone such experiences she does not necessarily cease to be a member of the relevant social group if the evidence indicates a real risk of further and repeated FGM/C in certain circumstances for Guinean women, especially in light of the inferior position of women within Guinean society and the lack of support provided by the community to those opposing such practices.

54. I find in relation to the evidence upon which the Tribunal are entitled to place weight in LB's favour, relating to the risk of further FGM/C on return as a result of fertility issues and a perception of a failure to conceive to date in light of the incomplete nature of her previous cutting and societal expectations, that she will have discharged the burden of proof upon her to the required standard to establish that she faces a real risk of further FGM/C on return to the lower standard applicable to appeals of this nature, if what she states regarding her husbands position is true. The rejection of the remaining elements of her case, based upon the adverse credibility findings, may not impact upon this core element per se, but it is not for the Tribunal to find that the evidence is of a sufficient degree to eliminate a real prospect of such risk on return. It is for LB to prove to the required standard that she will face such a real risk on return.

55. As noted above, the Tribunal has not been given the whole picture in relation to events in Guinea. No up-to-date statements have been provided in relation to the current family situation or the reaction of LB's family or husband to her

actions and the only witness statements I have been able to consider are those dated 13th August 2012 and the reply to the Respondents refusal letter dated the same date. LB also failed to attend the hearing before the Upper Tribunal to enable her to be questioned and cross-examined on the relevant issues.

56. Whilst I accept the evidence of Professor Knorr in relation to country conditions and the risk of further suffering of women who fall within the classes of those identified as being at risk of FGM/C or further FGM/C in Guinea, the evidence does not support a finding that all women from Guinea are at risk of such harm on return. It is the absence of any familial protection from either a father within the family or husband which appears to be the defining factor, provided that those individuals are not themselves the perpetrators of harm/risk/abuse. LB, if this appeal fails, will be no more than a failed asylum seeker who will be returned to her home state with no credible evidence to support her claim of hostile action and reaction from her father or husband in the past and no credible evidence she is not able to return to her husband per se. The failure to engage with the process before the Upper Tribunal, the paucity of evidence, and finding she has lied in the past, means that even applying the lower standard applicable to appeals of this nature, LB has arguably failed to discharge the burden of proof upon her to the required standard to show that she can be found as coming within a group at risk of further harm identified by Professor Knorr in her evidence.

57. Professor Knorr referred to a general class of persons who can be said to have deserted their husbands. If all married Guinean females coming to the United Kingdom and claiming asylum can be said to have deserted their husband, such as to create an enhanced risk on return, then all such individuals are entitled to refugee status, in addition to those at risk of FGM on return. There is no country guidance case indicating that all married Guinean females are at risk and this is not supported by the evidence before me. LB did not advance her case on this basis and this is an issue raised by Professor Knorr. LB claimed in her earlier evidence that she was expecting her husband to join her in the United Kingdom but that he did not arrive and there is no evidence that she has seen him since. The fact she has claimed asylum may also indicate she wishes to remain in this country and not return. Notwithstanding this, and whilst recognising the societal reality for women in Guinea, there is insufficient evidence to support a claim that all married women are treated in such a manner so as to entitle them to international protection. It must be a fact specific assessment depending upon evidence relating to the nature of the marriage and the reaction of the individual's husband and/or father and resultant likelihood of a married woman not being entitled to return to the marital or family home. The evidence does not support a finding being made that this is the likely outcome in every such case, although does provide guidance on the consequences for the individual if this does occur.

58. In this case LB claimed that she lived with her husband separate from his other wives. She claimed they jointly made the application for the visit visas to come to the United Kingdom for the purposes of a shopping trip for which a substantial sum of money was made available [8,000$US – husbands visa application – reply to question 103]. She claimed this was a trip prior to her having to undergo further FGM/C, although she has been found to lack credibility in relation to other material elements of her claim and other aspects to lack plausibility. The country material speaks of the difficult situation faced by women generally in Guinea and if LB was married to a man who behaved as societal norms indicate he would behave, one wonders why he thought it necessary or appropriate to spend substantial sums of money to enable LB to come to the United Kingdom if he wanted her to undergo this procedure. The country material indicates that if this was his wish she would have little chance of opposing him and that such procedure could be undertaken with there being little expense or inconvenience to him. It is necessary for an individual to prove what they are alleging and this applies in relation to this element of the evidence as much as to other matters. Notwithstanding LB coming to the United Kingdom and remaining here, and the country material provided, I find she has not substantiated a claim to face a real risk of her husband believing that she has abandoned him such as to create a real risk of rejection or ill-treatment sufficient to warrant a grant of international protection, on the facts.

Decision

59. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

60. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Judge of the Upper Tribunal
Dated the 27th May 2014