



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

Appeal Number: AA/04746/2015

THE IMMIGRATION ACTS

Heard at Glasgow

On 24th September 2015

**Decision & Reasons
Promulgated**

On 22nd October 2015

Before

**UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

Between

**YM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Spiers, Katani & Co, Solicitors, Glasgow

For the Respondent: Mr Mullen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Gambia born on 25th July 1988. She appealed against the decision of the Respondent dated 5th March 2015 refusing to grant her asylum or other protection in the United Kingdom. Her appeal was heard by Judge of the First-tier Tribunal McGrade on 20th May 2015. The appeal was dismissed and his decision promulgated on 22nd June 2015.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Simpson on 17th July 2015. The grounds of application are (First), that the judge erred in his approach when assessing the appeal outside the Immigration Rules, (Second), that the judge failed to undertake a careful examination of all relevant factors in relation to the Appellant's children and (Third), that the judge erred in his assessment of credibility.
3. As observed in the grant of permission the judge did not believe the Appellant's evidence about her marriages to WHM or PAJ and as he did not accept the forced marriage to the latter, he did not accept that the Appellant's daughters were at risk of FGM from family members. Although noting that there is nothing in the medical evidence to suggest that the Appellant's health issues come within the guidelines in **N [2005] UKHC 31**, the grant concludes that it is arguable that the judge did not sufficiently consider the best interests of the children in light of the recent case law although it is silent as to the case law in mind.
4. There is a Rule 24 response from the Respondent stating that the judge directed himself appropriately and adequately dealt with the best interests of the children, twins, who at the date of the hearing were 1 year old. The judge notes that they have lived with their mother and will return to Gambia with their mother and will not be jeopardised if they return. The judge does not require to list the latest case law in relation to the children's best interests, given their ages and the circumstances and paragraph 41 of the decision deals sufficiently with the children's best interests. The judge found the Appellant to be completely incredible in her evidence and the response states that there is no risk of child trafficking, no issues relating to the Appellant's health and no reason to find she would be stigmatised on return or that any of these matters would adversely affect the children.

The Hearing

5. With regard to the first ground of appeal, we asked the Appellant's representative what the judge did not consider that he should have considered and if there is any way the application could have succeeded under paragraph 276ADE. She accepted that the application could not meet the terms of that paragraph.
6. We asked if there are any factors which are not captured for consideration by the Rules and we were referred to the Appellant's medical condition and her inability to get employment on return because of this. We were referred to the psychological report on file. It was submitted that the Appellant would be unable to support her children in Gambia and we were referred to the Appellant's bundle and the essential passages relevant to the Appellant being a single woman with no support. We reminded the representative of the unchallenged evidence that the Appellant is still in touch with her mother in the Gambia.

7. With regard to the second ground of application and the best interests of the children, the representative submitted that she had referred the First-tier judge to the essential passages in the country evidence. This Appellant will return with two very young children and will be discriminated against because of her single status and will be stigmatised because of her health issues. We asked where the risk of trafficking had come about, as there is no reference to this in the Appellant's statement and the Appellant was not trafficked and does not state that she fears trafficking. The representative submitted that this is a general matter which has to be considered. The representative's reasons for the claim being considered outside the Rules are, a risk of trafficking, the Appellant having no access to employment or support because of her medical condition and the Appellant facing discrimination.
8. We pointed out that this Appellant was employed when she was in Gambia as a waitress. That is how she states she met her first husband. Her representative submitted that the medical evidence postdates this. The Appellant has PTSD. (This is not mentioned in the grounds of challenge.)
9. The representative referred to the psychological assessment at paragraphs 81 to 84 which states that if the Appellant returns to Gambia her fear of being reunited with PAJ will have a substantial negative impact on her and her fear of being a single woman, alone with two small children, coupled with her previous experience in Gambia will mean that she will be unable to cope, particularly because of her mental health problems. We referred her to paragraphs 78 to 80 of the report which indicate that her uncertain immigration status is what is causing her mental health problems. The judge finds the trauma the Appellant refers to is unlikely to have taken place. With regard to the Appellant being reunited with PAJ, the judge rejects the Appellant's evidence about this marriage, finding that it did not take place. The judge also rejected her evidence about her stepfather, finding it not to be credible. The judge in his decision states that the concerns of Dr Tagg, the psychologist, are not well-founded. Paragraph 85 of the psychological report states that the Appellant is a woman on her own with small children and nobody to help her, but that is not the reality. The factual matrix is different.
10. The representative submitted that all the relevant factors relating to the best interests of the children and the Appellant's health issues were not considered.
11. The representative conceded Ground 3.
12. The Presenting Officer submitted that based on the grounds of application only the best interests of the children need to be considered at this hearing. That is not the case. Nothing is particularly excluded and all the grounds require to be considered.
13. He referred to the slip in the decision at paragraph 41 in which the judge states that he does not consider that there are compelling circumstances

that require him to consider the Appellant's appeal outwith Article 8. This should read outwith the Rules. This is not a material error.

14. The Presenting Officer referred to paragraphs 30, 40 and 41 of the decision and submitted that the judge dealt with all the relevant factors in his Article 8 assessment. He submitted that no good arguable case has been put forward for having to consider this Appellant's Article 8 claim outside the Rules.
15. With regard to internal relocation and excessive hardship he submitted that these are bound up with the best interests of the Appellant's children. Healthcare is available in the Gambia. This Appellant worked when she was in her own country and can work when she returns. He submitted that the best interests of the children must be to be with their mother so her claim cannot succeed on this basis and the judge's assessment of Article 8 has been properly carried out.
16. The Appellant's representative then referred to paragraph 84 of Dr Tagg's report which states that the Appellant's mental health problems undermine her capacity to make informed judgments or to form/maintain open and trust based relationships. Dr Tagg also refers to the Appellant having PTSD, finding that this Appellant is evidencing, at a clinically significant level.
17. We reserved our decision.
18. We begin with ground one. The Appellant's representative has accepted that the terms of the Immigration Rules cannot be satisfied. Nothing has been put to us today to show that the judge did not consider anything which he should have or which was not covered by the Rules. The judge gave reasons open to him on the evidence for rejecting the Appellant's mental health issues and for rejecting her account of trauma because of hostility from her stepfather and her inability to live with PAJ. He did not believe she had a forced marriage and did not find that her children were at risk of FGM because of tribal membership in the Gambia. In any case the Appellant's tribe and PAJ's tribe do not practice FGM.
19. The psychologist based her assessment on an acceptance of the Appellant's account. When Dr Tagg refers to the Appellant having PTSD at a clinically significant level it is not clear what level she is referring to. There is no indicator in the report. The judge properly considered the Appellant's medical condition and the fact that she worked before she left the Gambia. It is clear from the decision that the judge did not find that the Appellant's health is a barrier to removal. There is nothing to indicate that this will stop her getting a job on return. The judge finds there to be a total lack of credibility throughout the Appellant's evidence. It is also clear that her mother is in touch with her and will support her on return. There is no error by the judge on the first ground. It is no more than an evidential disagreement.
20. With regard to the best interests of the children, at paragraph 2(i) of the grounds the risk of trafficking is referred to but this is merely a general

assertion. The Appellant was not trafficked and does not state that she fears trafficking. She has family to return to.

21. Ground 2 is tied to Ground 1. The judge accepts that the children are very young and deals with their welfare at paragraph 41 of the decision. They have been with their mother since they were born and will return to the Gambia with her. The judge at paragraph 41 states that he has rejected the Appellant's version of events upon which Dr Tagg reached her conclusion. He does not find that the children's welfare will be jeopardised if they return to the Gambia. He found there to be no compelling circumstances for considering the Appellant's appeal outside the Rules. The diagnosis in the psychologist's report at paragraph 84, which refers to the Appellant's capacity to make informed judgments, is again based on the Appellant's account which is rejected by the judge.
22. With regard to the best interests of the children, the judge has dealt properly with this at paragraph 41 of the decision. The situation is not as stated by the Appellant to Dr Tagg. The children will be returned to the Gambia with their mother. This will be in their best interests.
23. The representative conceded ground 3.

Decision

24. There is no material error of law in the First-tier Judge's decision. His decision, promulgated on 22nd June 2015, must stand.
25. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray