



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06616/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On May 13, 2015**

**Determination Promulgated
On May 14, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**F C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O’Ryan, Counsel, instructed by Compass
Immigration law Ltd

For the Respondent: Mr Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sierra Leone. On August 7, 2010 she entered the United Kingdom with a valid entry clearance. This enabled her to remain in the United Kingdom until December 2, 2010. On December 13, 2013 she contacted the UK immigration authorities to arrange an appointment to claim asylum. On January 14, 2014 she applied for asylum and was served with form IS151A as an overstayer. The respondent

refused her appeal on August 21, 2014 and a decision was taken to remove her.

2. On September 8, 2014 she appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended.
3. The matter was listed before Judge of the First-tier Tribunal Davies (hereinafter called "the FtTJ") on January 7, 2015 and he refused the appeal in a determination promulgated on January 13, 2015.
4. The appellant lodged grounds of appeal on January 27, 2015. Permission to appeal was granted by Judge of the First-tier Tribunal Plumpre on February 6, 2015.
5. The matter came before me on the date set out above. The appellant was in attendance and the parties were represented as set out above.
6. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier Tribunal and I saw no reason to amend that order.

SUBMISSIONS

7. Mr O'Ryan submitted the FtTJ had erred by failing to have regard to the contents of the expert report both in his assessment of the appellant's claim and when considering the best interest of the child. The FtTJ acknowledged the report in his determination at paragraph [69] but attached no weight to its contents because of his findings on the appellant's credibility. Mr O'Ryan submitted that the FtTJ erred because in making his credibility findings he failed to have regard to the expert's opinion on the prevalence of female genital mutilation (FGM) in the appellant's society or the fact her husband belonged to a society that actively encouraged FGM. The FtTJ made an adverse finding on the delay between her husband insisting that she have a full FGM and when it was planned for despite the fact the expert provided an explanation as to why there could have been a delay. The FtTJ dealt with the child's best interests in a brief paragraph ([69]) and in doing so failed to consider the risk a young child would face of FGM. He invited me to find an error in law.
8. Mr Harrison relied on the Rule 24 response dated February 13, 2015. He submitted that it did not matter which order the FtTJ considered the evidence as long as he demonstrated he had considered all of the evidence. He accepted the FtTJ had not examined the report or analysed its contents when considering the appellant's credibility and whilst it was clearly open to him to reject the report he accepted that following the decision of MK (Section 55-Tribunal options) Sierra Leone [2015] UKUT 00223 the Tribunal made clear that clear and adequate reasons for

rejecting an argument should be given. Mr Harrison conceded that the FtTJ had failed to demonstrate any engagement with the contents of the report both in so far as the appellant's social issues were concerned and with regard to the risk posed to a young female being returned to that culture.

9. Both parties agreed that if I accepted there was an error in law then the credibility findings should not stand and the matter should be remitted to the First-tier Tribunal for a de novo hearing.
10. In light of the concerns expressed above I was satisfied there had been an error in law. The FtTJ was entitled to reject the report but in doing so he had to demonstrate he had engaged with its contents and thereafter give his reasons for finding the opinion carried no weight. In this case the FtTJ rejected the report outright because he had rejected the appellant's account even though the report provided some support for the appellant's case and I am satisfied this evidence should have been considered alongside the other evidence before him. The FtTJ also failed to consider the risk of FGM to the minor child and under Section 55 of the Borders Citizenship and Immigration Act 2009 this was something he should have done. I find there was an error in law.
11. Having considered Part 3, Section 7.1 to 7.3 of the Practice Statement I agreed to remit the appeal back to the First-tier Tribunal for a fresh hearing with no findings preserved.
12. The parties should ensure compliance with any subsequent directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 will apply to this appeal from hereon.

DECISION

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
14. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.



DEPUTY UPPER TRIBUNAL JUDGE ALIS
IMMIGRATION AND ASYLUM CHAMBER

Date: **May 13, 2015**