Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01346/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2 February 2016	**On 1 June 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

B F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sood, instructed by 1st Call Immigration Services, Nottingham
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, BF, is a female citizen of Gambia. She arrived in the United Kingdom in 2013 and claimed asylum. She has two daughters who are minors and also United States citizens. They claim as her dependants.

The appellant's asylum application was refused and the decision was made on 8 January 2015 for her to be removed with the children to Gambia. She appealed against that decision to the First-tier Tribunal (Judge Hillis) which, in a decision and reasons promulgated on 9 April 2015, dismissed the appeal. She now appeals, with permission, to the Upper Tribunal.

2. The decision of Judge Hillis contains a number of unfortunate typographical or template errors. In particular, at [14] the judge wrote, "The appellant's children will be the same ethnicity as their father which the appellant states is Wolof and, therefore, they are Mandinka as claimed." One of the issues in this appeal is that the Secretary of State does not accept that the appellant's children are Mandinka, as the appellant claims rather that they are of Wolof ethnicity. In the light of the expert report (see below) this issue is important as the incidence of FGM (female genital mutilation) amongst Mandinka is very much greater than amongst the Wolof. Read in the context of the entire decision, I find that this is no more than an unfortunate error on the part of the judge and one which does not penetrate to the heart of his reasoning. It is also an error which occurs in that part of the decision entitled "the respondent's submissions"; in this section, the judge has set out the Secretary of State's reasons for refusing asylum contained in the refusal letter and an error in this part of the decision is less serious than in the analysis by the judge of the evidence and his findings of fact.

3. The appellant relied upon an expert report of Bettina Shell-Duncan of the University of Washington, Seattle. At [8] Dr Shell-Duncan noted that "Ethnicity in the circumcising tradition are typically inherited along paternal lines." She goes on to make her assessment of risk in Gambia on the basis that "[The appellant's] daughters are considered Mandinka ...." She notes that FGM among Mandinkas is 96.5% whilst amongst the Wolof (who are generally said not to practice FGM) the prevalence is 12.1%. She notes that,

> What largely determines whether a girl in a particular family will or will not be cut is whether it is considered a tradition in their lineage. The fact that Mrs Faye's co-wife, girls are all cut tells me that FGM is a tradition in this family. Hence I believe her daughters are at risk of being cut should they return to the Gambia.

4. It is clear from his decision that Judge Hillis was aware that this passage of the report summarises the central issue in the appeal before him. At [34] (and relying on the decision of *K and Others (FGM) The Gambia CG* [2013] UKUT 00062 (IAC)) the judge concluded that the appellant and her children were of Wolof and not Mandinka ethnicity. The judge noted that a woman tended in Gambia to take the ethnic identity of her husband. Therefore, the appellant's husband's first wife (a Mandinka) became, in effect, a Wolof upon marriage to the husband. That is a finding that was clearly open to the judge on the basis of the evidence before him and in accordance with the guidance provided by *K*. However, the judge

indicated that he was alive to the issues raised in the expert report where at [34] he wrote (not entirely clearly),

> If, however, the appellant's first wife was a Mandinka at birth I, of course, acknowledge that tribal and family traditions may be carried on in line with her ethnicity at birth. Whether that practice will be applied to the appellant and her children is a central issue in this appeal."

The judge was aware that this was not a case which turned merely upon a determination of ethnicity but (as the expert expressed it) "whether [FGM] is considered a tradition in [the appellants'] lineage."

5. On the one side of this argument is the expert's observation that, notwithstanding her marriage to a Wolof man, the appellant's husband's first wife permitted or arranged for her own children to undergo FGM. Set against this are the observations made by the judge at [37] *et seq*. Judge Hillis points out that the appellant would have known that the first wife's family had been circumcised and that the first wife was a Mandinka woman and that "she was to be his second wife." Notwithstanding that knowledge, the appellant had gone ahead with the marriage and there had been no demands for her to be circumcised at any time until she made the present claim for asylum in the United Kingdom. The judge also states [38] prior to travelling to the USA, the appellant would have known of her husband's first wife's family preference for FGM. The judge finds that the appellant would not have travelled back from the USA to Gambia with her children had she believed that circumcision would be carried out against their wills. The judge concluded [39] that the appellant "would not have left the USA without applying for asylum if she or her children were genuinely at real risk of circumcision in the Gambia." He goes on to make the not unreasonable observation that, given that the children were US citizens, the appellant herself had a reasonable chance of being granted asylum in the USA. I also note [42] that a testamentary guardianship agreement in favour of the appellant's sister would only take effect in the event of the appellant's "death or incapacity".

6. The question posed by the grounds of appeal was whether the judge has given adequate reasons for disagreeing with the assessment of risk of that made by the expert witness in her report at [8]. I find that Judge Hillis has tackled the central issue in this appeal and that he has (in those parts of the decision which I have summarised above) given adequate reasons for departing from the expert's assessment of risk. In summary, he finds that (a) the influence of the appellant's husband's first wife is diminished on account of her now having a Wolof rather than a Mandinka identity; (b) notwithstanding the appellant's claim that the first wife's children have been circumcised, the appellant herself would not have behaved in the way described in her evidence had she genuinely believed that she or her children would be circumcised in Gambia. Given that the judge's findings were open to him on the evidence and that he has surpassed all of those findings without adequate and cogent reasoning, I see no reason to interfere with his decision.

Notice of Decision

This appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 30 March 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 30 March 2016

Upper Tribunal Judge Clive Lane