



**Upper Tribunal  
AA/01715/2015  
(Immigration and Asylum Chamber)**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
on 17 December 2015**

**Decision &  
promulgated  
on 14 March 2016**

**Reasons**

**Before  
Mr C M G Ockelton, Vice President  
Deputy Upper Tribunal Judge Davidge**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MF**

Respondent

**ANONYMITY**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.**

**Representation**

Appellant: Mr I Richards, Senior Home Office Presenting Officer  
Respondent: Mr O Manley, of Counsel, instructed by Avon and Bristol  
Community Law Centre

## **DECISION AND REASONS**

1. The Secretary of State for the Home Department is the Appellant, but for ease we refer to the parties as they were known in the First-tier Tribunal (the "FtT").

### **The Appellant and proceedings**

2. The Appellant is a national of Gambia, a member of the Serehule tribe; born on [ ] 1986, she is aged 19 years.
3. The Appellant's parents split up when she was young. The Appellant was raped in Gambia in 2009, aged 14, as a result of which she gave birth to her first child, a daughter. The daughter is still in Gambia, and has been subjected to FGM, which has resulted in health problems for her. In 2011, leaving her daughter behind with her grandmother (it is not said if this is paternal or maternal), the Appellant went to join her mother, who now lived in Spain. Her mother had married in Spain; obtaining EEA residence rights, and is still living in Girona.
4. The Appellant's mother's husband did not want her to stay. The Appellant met a male friend of her mother's, who had Spanish nationality but was resident in the UK, and was in Spain on holiday. The Appellant became pregnant by him, and she travelled to the UK with him on 15 January 2012. Their child, "F", was born on 16 January 2013. The couple separated. The Appellant made an application for an EEA residence card based on the durability of the relationship. It was refused. The Spanish national refused to support an appeal. None of the documentation of that application was relied upon by the parties.
5. On 16 December 2013, aged 17, the Appellant applied for Asylum, naming her daughter "F" as a dependent. The application asserted that if she was returned to Spain she would be unable to resist her mother who would insist that her daughter go to Gambia for FGM. By her decision dated 5 January 2015, the Secretary of State refused the Appellant's application for Asylum, finding that sufficient protection would be available from the authorities in Spain, and made a decision to remove her to Spain, her previous country of habitual residence.
6. The Appellant's ensuing appeal to the FtT succeeded. The appeal was allowed on both Asylum and Article 3 and 8 ECHR grounds.

### **This Appeal**

7. The grant of permission to appeal to this Tribunal recognises the arguability of the Secretary of State's grounds of appeal, the relevant parts of which can be summarised as an underrating of the protection available

in Spain, and the incoherence of granting Asylum on the basis of a potential failure of the Appellant to access the same.

8. It is not disputed before us that the daughter "F" is entitled to Spanish citizenship, with all the attendant EEA rights in the UK. We noted that no applications have been made by her to obtain a residence card as a Spanish national, or for the Appellant to be granted status as the carer of her EEA national child.
9. We further noted that, because of the involvement of social services, the probability is that, if removal of the daughter to Spain were contemplated (and thus far there has been no removal decision in respect of the daughter), it would be open to social services to take action through the Courts here if they considered that the child would be endangered, so in fact no risk arises.
10. At the hearing before us, in the course of discussions, Mr. Manley for the Appellant indicated that he no longer sought to defend the decision in respect of Asylum and Article 3.
11. We find that the determination is infected by some at least, although not all, of the matters raised by the Secretary of State. We set it aside for the reasons identified above. For the same reasons we replace it with a decision dismissing the Asylum and Article 3 grounds of Appeal.
12. The grounds of appeal brought no challenge to the allowing of the Appellant's appeal on Article 8 grounds. Although Mr Richards indicated that alternative arguments might have been made, he recognised that they had not in fact been made, so the decision allowing the appeal on Article 8 grounds cannot be affected by this decision. In the event, bearing in mind the position of the child and the complexities of nationality, the outcome is probably the correct result.

## **DECISION**

13. We allow the Secretary of State's appeal brought on Article 3 and Asylum grounds and set aside the decision in respect of those grounds. We remake the decision and dismiss the Appellant's appeal on Asylum and Article 3 grounds.
14. The decision allowing the Appellant's appeal on Article 8 grounds was not challenged and stands.

Elisabeth Davidge  
Deputy Upper Tribunal Judge

Dated: 18 December 2015