



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

Appeal Number: AA/11180/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2015**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[M K]

(~~ANONYMITY ORDER NOT MADE~~)

Respondent

Representation:

For the Appellant: Mr L Youssefian (DJ Webb Solicitors)

For the Respondent: Ms A Everett (Presenting Officer)

DECISION AND REASONS

1. The Appellant [MK], a citizen of Sierra Leone born 8 May 1973, appeals to the Upper Tribunal with permission against the decision of the First-tier Tribunal to dismiss her appeal against the removal directions made against her as an overstayer that had followed the refusal of her asylum claim.
2. Her asylum claim was based on her account as summarised in the letter by which her asylum claim was refused, and turned on her fear that

on a return to Sierra Leone she would have to inherit her mother's role as a practitioner of Female Genital Mutilation (FGM), known locally as a *sowei*. She came from the village of Makeni. The Appellant's mother initiated children into the Bondo, by using a razor to circumcise their genitals, a role she had performed throughout the Appellant's childhood, having inherited the role from her own mother. The Appellant herself had never agreed with the practice and made this clear to her mother. The Appellant had been initiated into the Bondo society aged twelve by her grandmother. Her mother had died some 12 days after she arrived in the United Kingdom, on 20 March 2012; the Bondo society left a message for her that as the next of kin she was to inherit her mother's role; her sister informed her that she would be forced to join the society if she returned to Sierra Leone and, given her own mother's experiences, she felt this was a genuine risk. Her husband had originally told her that he would look after her business for her but in fact abused her trust and defrauded her of its proceeds, and additionally sought to divorce her and took another wife. She felt that the Bondo society were demons and would be able to trace her through the underworld using witchcraft.

3. The Secretary of State acknowledged that the claim potentially engaged a Refugee Convention reason given the reasoning in *FB Sierra Leone* [2008] UKAIT 00090, which found that the inferior position of most women in that country and the relative lack of support provided by the community meant that a woman who has undergone FGM but who has opposed traditional practices is capable of being a member of a particular social group.
4. However, it was not accepted that the Appellant would truly suffer at the hands of the Bondo society, as, citing the opinion of Dr Fanthorpe in *FB*, it could be seen that the cutting role was too important to have been suspended in her absence, and given the lengthy period over which she had been abroad, it had to be assumed that another candidate would have filled the role by now. Furthermore, there was no reason to think that they would be able to locate her: the prevalent belief in supernatural forces in Sierra Leonean was acknowledged, but that could not found any objective basis for thinking she could be located, and, again citing Dr Fanthorpe as the source, notwithstanding the presence of the Bondo in every neighbourhood nationally, she would not be at risk of anything more than harassment and taunting if her circumstances came to light.
5. The Appellant gave evidence before the First-tier Tribunal, explaining that she still had two sisters in Sierra Leone, both of whom also disagreed with the Bondo's devotion to FGM: she had had no contact with them since her mother's death in 2012. Around that time the Bondo had visited the family home in Freetown, where her sisters witnessed them looking for her, leaving the crown that they wished her to inherit; she had had no direct contact with the Bondo herself. Her own mother had originally resisted the overtures of the Bondo for two or three months before succumbing to the pressure to become a cutter. The Appellant had left her own daughter in the care of her sisters when she came to the United

Kingdom, and then asked a friend to take over the girl's care: she had subsequently lost touch with them. She had come here as a visitor, aided by her cousin [RK] whose details appeared on her visa application form: [RK]'s [-] address was not known to her relatives in Sierra Leone. It was only via a woman that she met, [R], that she learned of the institution of asylum, which is why she had not made a claim until 2014. She did not think she could relocate safely: aside from her superstitions, people would ask questions where a newcomer was from, especially in the era of the Ebola crisis.

6. Country evidence before the First-tier Tribunal included a report, misattributed by the First-tier Tribunal as emanating from the UNHCR but in fact from the Immigration and Refugee Board of Canada, dated 27 March 2009, entitled *Sierra Leone: The practice of female genital mutilation (FGM); the government's position with respect to the practice; consequences of refusing to become an FGM practitioner in Bondo Society, specifically, if a daughter of a practitioner refuses to succeed her mother*. Therein it is stated that

"... practitioners generally inherit their profession from their mother or grandmother (IAC June 2008, 14, 16). Information on the consequences for refusing to become a practitioner, or the consequences for a daughter of a practitioner who refuses to succeed her mother, could not be found among the sources consulted by the Research Directorate. However, the following information may be of interest.

FGM practitioners in Sierra Leone are "very powerful and influential" both politically and socially (IAC June 2008, 18; see also Women's eNews 7 Sept. 2007). According to the 2007 Writenet report, "people who speak out against the societies risk violent confrontation and forced initiation" (Fanthorpe Aug. 2007, 16). Other sources consulted similarly indicate that those who oppose the practice may face "hostility" (IPS 19 Apr. 2005), and be subjected to "harassment and threats" (Women's eNews 7 Sept. 2007). In February 2009, Bondo Society members kidnapped four women journalists in the city of Kenema [Eastern Sierra Leone] who were conducting interviews to mark the 6 February International Day of Zero Tolerance of Female Genital Mutilation (Reuters 11 Feb. 2009; RSF 10 Feb. 2009). The Bondo members stripped the journalists of their clothing and forced one of them to walk naked through Kenema (ibid.; Reuters 11 Feb. 2009). It is reported that the Bondo members believed the journalists' questioning and comments were disrespectful to their traditions (RSF 10 Feb. 2009; see also Reuters 11 Feb. 2009).

In 11 March 2009 correspondence to the Research Directorate, the Executive Director of the Center for Safe Motherhood, Youth and Child Organization (CESMYCO), a Sierra Leonean non-governmental organization (NGO) that campaigns against FGM (IAC June 2008, 7), stated that "[t]here is no protection for women and [anti-FGM] advocates in Sierra Leone" (CESMYCO 11 Mar. 2009).

Concerning risks faced by Sierra Leonean critics living abroad, the Writenet report states the following:

‘There have been no reports of Sierra Leoneans living abroad suffering persecution for criticizing the societies, nor have there been any reports of individuals suffering persecution abroad for citing a fear of forced initiation or ritual participation (e.g., forced performance of FGM) in asylum claims. (Fanthorpe Aug. 2007, 16)’”

7. The IRB also note that a 2007 report from the United Nations (UN) High Commissioner for Human Rights stated that “the Sierra Leone government's response to the widespread practice of FGM in the country "is at best ambivalent in that it has neither condemned the practice nor has it put in place any legal enforcement mechanism to end or curtail it" and that other reports indicated that the police in Sierra Leone do not interfere in the practice of FGM.
8. The headnote of *FB Sierra Leone* sets out that
 - “1. Given the pervasive influence of the Bondo societies in Sierra Leone, the inferior position of most women in that country and the relative lack of support provided by the community, a woman who has undergone FGM but who has opposed traditional practices is capable of being a member of a particular social group for the purposes of the Refugee Convention.
 2. Although the appellant faces a specific risk in her home area of being forced to be a soweï and of being forced into marriage, in general members of the Bondo societies fall short of adopting a positively hostile or combatant attitude to non-adherents of Bondo principles and avoid targeting them. The treatment faced by the minority is not persecutory.
 - ...
 4. There is a significant migration to Freetown from rural areas. For migrants to Freetown, those with the ability to access support would face no risk. Such support mechanisms might include family or other connections, support mechanisms from other groups, such as the Bondo societies and support from a local mosque or church. There is however no compelling evidence that these support mechanisms are the sole means of eliminating the risk of destitution and its corollary of the risk of beggary, recourse to crime or prostitution.”
9. The Tribunal in *FB* directed themselves that *AA (Uganda)* [2008] EWCA Civ 579 did not suggest that internal relocation to cities would be unreasonable in circumstances falling short of those exemplified by destitution, beggary, crime or prostitution. Young men and women increasingly migrated to Freetown and could settle in the cosmopolitan society there, their ability to support themselves so as to avoid the risk of social exclusion and destitution depending on their family connections, and access to the support mechanisms of the Bondo themselves and from local mosques or churches. Other forms of support might also exist, and the Tribunal observed that it would require cogent evidence to establish that jobs are not available as shop workers, waitresses, typists, office

workers, domestic workers or street vendors, or in teaching or nursing for those with the appropriate skills.

10. The opinion of Dr Fanthorpe as set out in *FB* was to the effect that the female elders of the local community selected leaders from amongst themselves and might prefer descendants of previous leaders: age, experience and local standing would also be considered. In general FGM went unquestioned in the country and even in Freetown the state authorities were influenced by those cultural norms. A person's whereabouts could soon filter back to their home area because society in Sierra Leone operated via networks that united ethnic groups across the country and to cut off links with one's family would deprive one of a major source of economic security and personal protection. A young woman who had not only refused to take up their duties as a *sowe* but additionally refused to enter a polygamous marriage with a local chief might be at local risk though it was very unlikely that there would be a coordinated attempt to track them down elsewhere: they might well, however, be ill-equipped to face the taunting and harassment that might result from their history coming to light in the local Bondo community.
11. The First-tier Tribunal dismissed the Appellant's appeal because, whereas *FB*'s appeal failed because her vulnerability as a young single woman was counteracted by the nursing skills with which she could sustain herself in Freetown, [MK] was in an even better position on return, as she was more mature and experienced and had already successfully established a business in Freetown, suggesting that she would have a support network to draw upon, as well as being able to draw on the presumed availability of her two sisters who on her own evidence bore her no ill-will: accordingly she faced nothing worse than a degree of social ostracism or non-physical harm. Furthermore it was not all likely that the cutting role remained unfilled in the three years since she left the country.
12. Thus the appeal failed taking her case at its highest. However, aspects of her evidence were troubling, such as the circumstances surrounding her relationship with her daughter, who it was hard to accept she had truly left to be cared for without any arrangements for contacting her and whose transfer from her sisters' care to that of a third party had not been detailed in evidence; her departure from her cousin's accommodation in [-] to uncertain conditions merely because of her fears that her sisters might reveal her location in the United Kingdom to other family members was implausible, particularly absent any adequate detail about her whereabouts and support over the period between her leave's expiry and her asylum claim; and her late asylum claim given that it was unlikely that the possibility of claiming asylum had not occurred to her earlier.
13. As to her Article 8 claim, her relationship with her present partner was of recent origin and had been established at a time when her immigration status was precarious; her lack of income and limited English language proficiency counted against her, and the risks from Ebola in Sierra Leone were something that had to be borne by the population generally and

absent any right independent of that issue to remain in this country, the Appellant could not rely on her temporary presence here to gain an advantage over those who had stayed abroad.

14. Grounds of appeal argued that the decision was unsafe because:
- (1) The finding that the Appellant faced no more than ostracism failed to take account of evidence in the March 2009 report that people who spoke out against the societies that practised FGM risked violent confrontation and forced initiation, and there was no basis for concluding that the fact that a temporary candidate for the cutting role might have been found would diminish the risk to the Appellant of her inheritance nevertheless being forced upon her once she returned;
 - (2) It was unfair to doubt the Appellant's evidence because of concerns as to her daughter's care arrangements and as to her departure from her cousin's [-] home, matters that were not raised at the hearing and the latter of which could have been explained by her evidence of her fears of supernatural forces being used against her;
 - (3) She was in a relationship with her partner which had not received proper consideration outside the Immigration Rules, particularly bearing in mind the risks posed by the Ebola outbreak in Sierra Leone.
15. A judge of the First-tier Tribunal having originally refused permission, Judge McWilliam of the Upper Tribunal granted permission to appeal on 31 July 2015 on the basis that it was arguable that the judge did not make discrete findings in relation to risks on return to the Appellant's home area as opposed to the difficulties she would face in finding internal relocation; she did not restrict the grant of permission to any particular ground.
16. At the hearing before me Mr Youssefian made submissions consistent with the grounds of appeal, making it clear that the third ground was not pressed given the limited duration of the Appellant's present relationship. Ms Everett for the Respondent stated that whilst the Refworld report had been overlooked, it in fact relied on sources largely predating *FB*; the Appellant was not a public campaigner but was merely opposed to the practice at a personal level. Whilst it was accepted that the Appellant's lack of care and contact with her daughter was not challenged at the hearing below, even taking the case at its highest it could not succeed as there was no reason to think she would face anything beyond social ostracism in Freetown.

Findings and reasons

17. The first ground of appeal asserts that there was evidence before the First-tier Tribunal which undermined its conclusions that there were no risks to a person who refused to participate in FGM for those relocating to Freetown. I do not consider this challenge is made out. The reality is that

the IRB report which was the sole evidence identified at the hearing before me as relevant to this question expressly stated that information on the consequences of refusing to take up an inherited role as a FGM practitioner was lacking; and the only examples of serious harm actually eventuating arise in the context of those who have actively campaigned against the practice rather than merely taken a personal stand against it. To equate the two effectively ignores the conclusions of *FB* which clearly finds internal relocation to be a solution to a local fear of persecution. There are sources cited by the IRB report which post-date *FB*, but these do not suggest national risks beyond campaigners operating at essentially a political rather than a personal level.

18. Nor is any legal error established in the findings regarding the diminished risk faced by the Appellant on a return given that it must be presumed that the cutting role has been taken up by somebody other than herself over the lengthy period that she has been away from Sierra Leone. Dr Fanthorpe noted that age, experience and local standing would be relevant factors in such an appointment, all of which would strongly count against the Appellant being viewed as the best solution.
19. I appreciate the point made by the Appellant's advocate that *FB* does not appear to be designated as a Country Guidelines decision: however the case has clearly been reported with a view to assisting decision makers assess FGM cases from Sierra Leone, and whilst the absence of express designation may slightly reduce its force as a source of instruction, particularly where cogent evidence is supplied as to a change of circumstances, the reality in this appeal is that there was very little evidence before the First-tier Tribunal that could have cast doubt on the conclusions in *FB*. The Tribunal there had the benefit of expert as well as public domain evidence, and the materials on which they were able to draw seem significantly richer than those that informed the IRB's survey.
20. The second ground of appeal is on stronger ground, particularly given Ms Everett's realistic concession that there is no reason to dispute the contention made on the Appellant's behalf that the doubts expressed by the First-tier Tribunal as to her credibility were not matters raised at the hearing, which seems to have been conducted on the basis that her account of historical facts was accepted. It is of course unfair to doubt an Appellant's credibility where the matter is not put clearly in issue. However, the fact is that these concerns were essentially raised in the alternative to the primary determination of the appeal, which was on the basis that, taking her case at its highest, there was no national risk of serious harm to the Appellant and that internal relocation would be reasonable. *FB* takes as its starting point the premise that it is plausible that over time a person's refusal to participate in FGM will become more known in a place of relocation, but finds that the consequences that would ensue would be no worse than harassment.
21. The Upper Tribunal raised a concern when granting permission to appeal that the First-tier Tribunal may have wrongly equated its approach

to risks in the home area with the reasonableness of internal relocation. On closer inspection of its reasoning, I do not consider that it did so. The First-tier Tribunal was entitled to identify aspects of the Appellant's history which tended to show that she had a support network on return. If Sierra Leonean society is sufficiently close-knit that the Bondo society could locate the Appellant's family home in Freetown, it would appear reasonable to presume that she could in turn re-establish contact with her sisters, who would be an additional source of support for her; and she has previously apparently established herself economically in Freetown.

22. As to the Article 8 ground of appeal, given that the Appellant's residence in the United Kingdom has been wholly precarious and that she has not resided with her new partner for any significant period, her case could not have succeeded under Appendix FM (the route being foreclosed to her given the lack of two years' cohabitation). Absent cogent evidence of a real risk from Ebola across the whole of Sierra Leone, that could not constitute an insurmountable obstacle or exceptional circumstance counting against her return, and I do not consider that a full second-stage enquiry is merited outside the Rules given the scant basis for the claim, bearing in mind that this ground was (realistically and correctly) not pressed before the Upper Tribunal.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.

The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves back towards the right.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 2 November 2015