



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04514/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 15 May 2019**

**Promulgated**

**On 22 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**M J B M**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Sisnerios of Counsel

For the Respondent: Miss A Everett, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Malawi born on 6 February 1978. She appeals against the respondent's decision to refuse to grant her asylum and humanitarian protection in the United Kingdom.
2. First-tier Tribunal Judge M A Khan dismissed the appellant's appeal in a decision dated 11 March 2019. Permission to appeal was granted by First-tier Tribunal Judge O'Brien who said that it is arguable that the judge failed to consider the claim and did apply anxious scrutiny and failed to make sustainable findings on sufficiency of protection and internal relocation.

Furthermore, while the First-tier Tribunal Judge accepted that Professor Aguilar's report was "good for information" does not appear to have considered the eventual risk to the appellant's infant daughter on return.

3. The First-tier Tribunal Judge made the following findings in her decision which I summarise. The judge did not find the appellant credible. He did not find the appellant's claim credible that she fears that her daughter will be subjected to FGM and or sexual cleansing on her return to Malawi by her ex-husband, Mr T or by the biological father of her child. The judge also did not accept the appellant's evidence that her husband would have any interest in the daughter which the appellant had with another man in the United Kingdom. He also did not accept that the appellant's biological father, who has not had any interest in her daughter, would seek her out in Malawi for any reason.
4. The judge did not accept that the appellant was married to a Mr T in Malawi as claimed. The judge found there were a number of inconsistencies in the appellant's evidence in her asylum interview, her statement and her oral evidence at the hearing. In her substantive asylum interview she stated that she was not threatened or abused by Mr T, but this subsequently claimed he had subjected her to domestic violence and that this was an afterthought.
5. The appellant stated in her interview stated that her relationship with H, her daughter's father, was not good and she did not know his immigration status and she did not know if he was interested in their daughter. The appellant now claims that he is asking friends for her contact number and his family want to instil their cultural values in her daughter. The judge found there was no evidence of this as he had shown no interest in his daughter.
6. The judge considered that the appellant's credibility was further damaged by Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because she only claimed asylum fourteen years after she had lived in this country.
7. The judge considered the expert report which she found was overexaggerated and assumed too much that H's family would want to bring up his daughter. The judge found it not credible that a man who has not shown any interest in his daughter since her birth in 2016 would now by himself or through his family would want to take on responsibility to bring up the child and then subject her to sexual violence. The judge then said that the report "is good for information" but it is overstretched towards the appellant's claim. The judge dismissed the appellant's protection appeal.
8. The judge also dismissed the appellant's appeal under Article 8 and took into account after taking into account the public interest.
9. The appellant's grounds of appeal argue the following. The first ground is that the judge failed to consider the risk two the appellant's child being

subjected to ritualised rape through sexual cleansing and other risks on return. This is the kind of sexual cleansing which is practiced within the appellant's ethnic group and which arises separately from any risks from the child's father's family. The judge made no finding on the appellant's evidence that she had been subjected to sexual cleansing which was corroborated by expert evidence identifying this as a very common practice in Malawi, particularly one of those of appellant's ethnicity. The judge failed to make findings on the risk to the appellant returning as a single woman with a child to Malawi. The expert evidence was that return to Malawi as a lone mother would cause the appellant to be accused of being a prostitute and shaming her husband and the risk of her daughter being killed in Malawi.

10. The second ground of appeal is that the judge failed to reach sustainable conclusions regarding the appellant's history of trafficking. The respondent accepted some aspects of the appellant's claim in respect of being trafficked but did not ultimately accept that the appellant had been trafficked into the United Kingdom. It was argued that it was not reasonably open to the First-tier Tribunal Judge to reject these aspects of the appellant's account, nor did the judge provide any or any adequate reasons for rejecting this evidence some of which was accepted by the Secretary of State.
11. The third ground is that the judge failed to give proper consideration to the expert evidence or provide adequate reasons for rejecting it. The judge gave no reasons for why he thought that Professor Mario Aguilar's report was overstretched towards the appellant's claim and for rejecting the expert's conclusions generally. The judge provided no reasons for rejecting the expert's conclusion and for his finding that the conclusion of the expert was not reliable after having accepted that the information provided by the country expert was of good quality.
12. The fourth ground of appeal is that the judge failed to take into account the totality of the evidence before the Tribunal and failed to consider the appellant's claim with anxious scrutiny. The judge failed to consider or make findings on the appellant's account of having been subjected to ritualised rape in Malawi in the form of sexual cleansing which was material to the credibility of her claim and the risk to her daughter. The expert report's evidence was not taken into account which referred to the prevalence of domestic violence, particularly towards younger women. The judge did not take a structured approach to the assessment of credibility which is set out in the case of **KB & AH (credibility-structured approach) Pakistan [2017] UKUT 00491 (IAC)** which includes an assessment of external consistency and plausibility.
13. The fifth ground of appeal is the judge failed to make sustainable findings on sufficiency of protection and internal relocation for the appellant and her daughter. The judge's findings on internal relocation are cursory when rejecting the risk of return to the appellant and her daughter. The judge failed to take into account the reasons for rejecting the evidence that traditional practices were deeply entrenched and tolerated in Malawi and

that there was a gap between Statutes and the reality on the ground and the harmful practices endured despite being formally outlawed.

14. In conclusion I was asked to find that there has been a material error of law in the decision of the First-tier Tribunal Judge.
15. At the hearing I heard submissions from both parties which I have considered with great care. The judge in a detailed decision set out the appellant's claim and then went on to assess the credibility of the appellant. He did not find the appellant credible and gave cogent reasons for not finding her credible. The judge did not accept the appellant's evidence that she had been married and had been subjected to domestic violence by her husband in Malawi. The judge referred to the inconsistent evidence given by the appellant in her asylum interview, her statement and her oral evidence.
16. The judge was entitled to reach the conclusion that he did on the evidence before him and stated that the appellant has fabricated the whole of evidence in order to make an asylum claim 14 years after entry to the United Kingdom. The judge found that the appellant has fabricated her evidence to support her application for asylum and humanitarian protection. He took into account her credibility under Section 8 of the Treatment of Claimants Act 2004 and stated that the appellant has been in this country for fourteen years and only make a claim for asylum based on being trafficked because of the risk of sexual cleansing and FGM for her daughter.
17. Much has been made by the appellant's counsel, of the judge's consideration of the expert report from Professor Mario Aguilar dated 15 January 2019. The judge considered the report and found that it has been overstretched in the appellant's favour. The judge entitled to give the appropriate weight to the report after considering all the evidence. The judge noted that the expert report stated that after marriage the man would move to the woman's village and if the woman died, he would have to choose another woman from the same family. The appellant states that Mr T's second wife was her cousin and therefore in these circumstances he would already be living in the same village as the appellant herself. The judge also stated that the expert has over exaggerated an assumed that the appellant's biological family would want to bring up his daughter given that this family has shown no interest in the child since her birth in 2016. I have looked at the report and the expert gives his view on how things happen in Malawi as opposed to giving evidence and reasons for his conclusion. I find there is no material error of law in the judge's evaluation of the expert report.
18. The judge gave cogent reasons why the appellant's husband would have no interest in the daughter of another man and the daughter's father has never expressed any interest in the daughter and found that there is no credible reason for why he would now develop an interest in the daughter an exposure to a risk of FGM or sexual cleansing.

19. The judge found that the appellant could relocate within Malawi because she is of no interest to anyone in that country. The Judge did not set out exactly which part of the country she can relocate but that is not a material error of law.
20. The appellant ultimately claims to fear her husband and the father of her child on her return to Malawi who are nonstate agents. There was no evidence before the judge that there is no sufficiency of protection from nonstate agents in Malawi for the appellant.
21. The judge considered the appellant's and her daughters rights under Article 8 and found that it was proportionate to remove the appellant with her daughter to Malawi. The judge noted that the appellant entered the United Kingdom as a student in 2003 and gave little weight to her private life as an immigration status has always been precarious. He noted that the appellant's daughter is not a qualifying child and the whole of the appellant's time spent in the United Kingdom is in the knowledge that she has no right to settle here.
22. The judge took into account the best interests of the child I noted that the appellant's daughter was not a British citizen. He said that the appellant's daughter has lived in the care of a mother who has spent the majority of her life in Malawi and they will be removed as a family unit. The judge found the appellant's daughters best interests asked to stay with her mother who is ultimately responsible for her well-being and quoted the case of **Azimi Moyed and others (decisions affecting children; onwards appeals) [2013] UKUT 00197 (IAC)**. There is no material error in the judge's reasoning in this regard and the appellant and her daughter's removal to Malawi would not breach the United Kingdom's obligations under the European Convention on Human Rights and this is a sustainable finding.

### **Notice of Decision**

23. The grounds of appeal are more of a disagreement with the findings of the judge and I find that no differently constituted Tribunal would come to a different conclusion on the evidence. I therefore dismiss the appellant's appeal.

### **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 her or any member of her 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 21<sup>st</sup> day of May 2019

Deputy Upper Tribunal Judge Chana

**TO THE RESPONDENT**  
**FEE AWARD**

This is a fee exempt appeal.

Signed

Date 21<sup>st</sup> day of May 2019

Deputy Upper Tribunal Judge Chana