



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

Appeal Number: PA/05717/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 October 2019**

**Decision & Reasons Promulgated
On 20 November 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**KA
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan instructed by Fisher Stone Solicitors

For the Respondent: Mr Dimnycz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Moxon promulgated on 8 July 2019 in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant, a citizen of Senegal born on 10 October 1979, entered the United Kingdom on 21 March 2011 lawfully as a visitor with leave valid to 17 August 2011. The appellant claimed asylum on the basis of an alleged fear of her ex-husband and her family in Senegal although before the Judge stated she no longer fears her ex-husband and that the only source of fear was on account of her family intending to undertake FGM upon her daughters.
3. The appellant's representative had withdrawn on 27 June 2019. The Judge considered whether it was fair to proceed given the appellant was no longer represented but for the reasons set out at [6] concluded that it was fair in the interests of justice to proceed without an adjournment.
4. The Judge had the benefit of seeing and hearing the appellant give oral evidence together with the documentary evidence in the appellant's appeal bundle which had been prepared by the former solicitors.
5. The Judge notes at [22] that the material issue to be determined was whether it was reasonable for the appellant to relocate to Dakar. At [23] the Judge noted much of the appellant's evidence was accepted by the respondent which enhanced her credibility.
6. There are however a number of aspects of the appellants evidence that the Judge rejected. At [25] the appellants claim that her brother had moved to Dakar was not accepted. The Judge in that same paragraph concludes that the appellant will be able to live without, attracting the attention of her family, in Dakar in light of it being a large city with a population of 2.4 million people.
7. At [27 - 28] the Judge writes:
 27. I also reject her account in oral evidence that rather than relocate to Dakar she would voluntarily surrender her daughters to her family to have FGM undertaken upon them. I note that she has not stated this in her asylum interview or her witness statement and given her efforts to flee her family I find it implausible that she would allow FGM to be undertaken upon her children. I do not believe that she will be pressured to have FGM undertaken upon her children by anyone outside of her family in Dakar and note the objective evidence, which has not been adequately rebutted, as to the far lower level of FGM in that area then in the appellant's home area.
 28. Whilst I accept that the Appellant would return to Senegal as a single mother who fears her family, I nevertheless find it a fact that she could reasonably relocate to Dakar could obtain work and could support herself and her children and that she would be both willing and able to protect them from mutilation.
8. Thereafter the Judge considered whether the appellant was entitled to a grant of Humanitarian Protection but found she was not on the basis the appellant had failed to make out she faced a real risk of serious harm on return. The claim pursuant to article 2 and 3 ECHR fell with the protection claim. In relation to the article 8 ECHR aspect the Judge finds at [32 - 33]:

32. Whilst the Appellant asserts family life with her two younger children in the United Kingdom, this would not be interfered with by removal, as they have no status in the United Kingdom and so would travel to Senegal with her. It would not interfere with her family life with her older daughter, who in any event lives in a third country. Removal will be lawful and would be in the public interest in light of immigration control and the financial well-being of the United Kingdom. Whilst I remind myself that the best interests of the children must be a primary consideration, their age is such that their best interests are met by remaining with their mother regardless of which country that may be. There are only three years of age. I have found as a fact that they would not be at risk in Senegal. I have found as a fact that the Appellant will be able to obtain work and will be able to care and support them. There is no evidence before me that they could not be suitably educated in Senegal or that there is a lack of medical treatment available for any needs they may have.
 33. The Appellant speaks English. She is not financially independent. The children are not qualifying children nor are they British citizens. Any private life was developed whilst the appellant's immigration status in the United Kingdom was at best a precarious.
9. The Judge finds the respondent's decision proportionate.
 10. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal the operative part of which is in the following terms:
 2. The grounds of appeal assert that the Judge acted unfairly in proceeding with the appeal hearing when the appellant had requested an interpreter in the language she understood and was comfortable with. That the Judge acted unfairly in not adjourning the appeal to enable the appellant to be legally represented as her representative had decided a few days before the hearing to no longer represent her and that the Judge erred in law in her assessment of whether the appellant was able to relocate to Dakar.
 3. It is arguable that there could have been a material difference to the outcome or fairness of the proceedings if the appellant had had a court-appointed interpreter in the language she was comfortable with. The other grounds are arguable. Permission is granted.

Error of law

11. The Judge has helpfully provided within the Tribunal file a typed verbatim transcript of the procedure and evidence given on the day which both Ms Kaur and Mr Dimnycz were given the opportunity to read before making their submissions.
12. Ms Kaur submitted that an interpreter was used to assist the appellant with her asylum interview and that the matter had been listed previously for which an interpreter had been provided. It was submitted although the appellant speaks some English it was not clear she was able to understand all and that she needed the assistance of an interpreter. It was submitted the appellant felt pressurised at the hearing even though she was able to understand some of the questions and the procedure in English. Ms Kaur submitted that even

though she was able to have a conversation with the appellant in English the question was her understanding of the same. It was submitted the appellant has always asked for an interpreter.

13. Ms Kaur specifically submitted that the internal relocation issue was not discussed with the appellant who was unable to communicate her views upon the same.
14. It was submitted the Judge should have stepped back and considered if it was fair to proceed in all the circumstances. The appellant's position is that she believes internal relocation is not a safe option.
15. Mr Dimnycz in his submissions referred to a note from the Presenting Officer Mr Spence who appeared before the Judge recorded the unrepresented appellant had been treated with care and in an appropriate manner. It was submitted the appellant was able to partake in the proceedings without difficulty and that the Judge's conclusions were reasonably open to him.
16. The Judge records in his Record of Proceedings (ROP) the following:

Guinea Mandanka has been booked which is not the same as Senegalese and Gambian Mandanka.

STOOD DOWN TO MAKE ENQUIRIES IF A SUITABLE INTERPRETER CAN BE OBTAINED

A informed that no suitable interpreter is available today.

Becomes clear that A understands and speaks English.

Are you ready to proceed today? Yes

Do you want to proceed today? Yes, interpreter can help where needed

Procedure outlined.

17. This clearly demonstrates that the Judge was fully aware of the issue that arose concerning the suitability of the interpreter and that efforts were made to establish whether another interpreter could be made available. It appears clear that had the appellant indicated to the Judge that she did not wish to proceed it is likely the hearing would have been adjourned. The Judge gave the appellant the opportunity to decide whether she wanted the hearing to proceed or not when it became clear the appellant understood English.
18. The appellant's asylum interview conducted on the 16th of January 2018 with the assistance of an interpreter who was a Mandinka interpreter, which Mr Dimnycz submitted was not the language the appellant claimed to need assistance with, but which she confirmed she understood and was content to be interviewed in Mandinka. That is the language of the interpreter who attended and the appellant's indication that she wished to proceed in English with the interpreter helping where needed is clearly an indication that the appellant herself was happy to go ahead and was acknowledging an ability to understand the appointed interpreter.

19. The Judge's note records the appellant adopted her witness statement which had been prepared by previous representatives, signed a copy, and had nothing to add. There is then a recording of the questions put to the appellant by way of cross-examination and the appellant's replies. There is also a recording of questions asked by the Judge and the appellant's response. The Judge then records submissions made by the Presenting Officer together with the appellant's own submissions and intervention by the Presenting Officer in the following terms:

Appellant:

Is there anything else you would like to tell me before we finish the hearing? If you send me back to Senegal, maybe I will try to run from family but I would not be able to run for ever and I know that one day they will come and get my girls and maybe I will have no choice but to hand them to the girls as running and hiding will be difficult with the girls and it will be so hard that I will not have any choice but to hand the girls to them.

I myself will hand the girls to them as it will be hard to run and hide knowing that daughters life is in danger and so I will hand over the girls.

Mr Spence:

Not reasonable likely to do that, and never mentioned before

Appellant:

I am here trying to protect myself and want you to protect my daughter, how can people in Senegal protect daughters, it would be very hard.

Is there anything else that you would like to tell me? I want to stay here to protect my daughter and I know is that if I go to Senegal they will take my daughter and I know my family

*becomes upset

I know my family, they will take my daughters
if you want that you can take them

20. The transcript also clearly shows the issue of internal relocation was discussed with the appellant who was able to answer questions in relation to that specific issue. These include being asked about other towns and cities, any problems the appellant would have staying on her own, whether she could get a job in Senegal, whether the police will protect her from her family in Dakar, and who she was actually scared of amongst other points.
21. In *Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)* it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to

- be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?
22. There is nothing in the transcript to indicate the appellant claimed not to understand the proceedings or even sought the assistance of the interpreter who was available on the day. The appellant was clearly able to understand the questions asked of her by the Judge and Presenting Officer and the replies given, allowing for the change relating to the alleged fear of her husband, do not appear to be arguably different from the replies given when interviewed previously or in the appellant's case set out in her witness statement prepared with the assistance of solicitors.
 23. I find the Judge took the appropriate degree of care to ensure that the appellant fully understood what was going on and that she understood English to the required degree to enable her to properly and fully participate in the appeal hearing. Whilst the appellant does not like the Judge's conclusions this does not mean she has been denied a fair hearing or that her level of English was such that the Judge's decision to proceed amounts to a procedural irregularity sufficient to amount to an error of law. There was no reason for the Judge to adjourn following the withdrawal of the appellant's representative either as the First-tier Tribunal are experienced in dealing with self-representing appellants.
 24. I do not find it established that the appellant was denied the right to a fair hearing such that material legal error has been established.
 25. It is not made out the Judge's findings are outside the range of those reasonably available to the Judge on the evidence.

Decision

- 26. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

27. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 15 November 2019