



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

Appeal Number: PA/08177/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 12 March 2020**

**Decision & Reasons Promulgated
On 24 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MG
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Capel, instructed by Fadiga & Co

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sudan, of Nuban ethnicity, born on 19 July 1988. She arrived in the United Kingdom on 18 November 2017, having previously resided in the UK for three years with an exempt diplomatic visa issued as a result of her husband's employment with the Sudanese embassy, and having left the UK and returned to Sudan on 9 October 2017 when her husband's employment at the embassy ceased. The appellant claimed asylum on 5 December 2017. Her claim was refused on 13 August 2019.

2. The basis of the appellant's claim was that she was at risk on return to Sudan as a result of her husband's political activities and his arrest in Sudan. The appellant claimed that, although her husband worked for the Sudan government, as a warrant officer in the army HQ in Khartoum, he also secretly worked for the Popular Movement as treasurer and he was arrested and imprisoned as a result of his opposition activities. She was told of his arrest from his colleague who also advised her that she was at risk of being arrested and she therefore left the country.

3. The respondent, in refusing the appellant's claim, accepted that she was a member of the Nuba tribe but did not accept that she was of any interest to the Sudanese authorities. The respondent considered that she would be at no risk on return Sudan.

4. The appellant appealed against that decision. Her appeal was heard by First tier Tribunal Judge Oliver on 20 November 2019 and was dismissed in a decision of 30 December 2019. Judge Oliver recorded the evidence, noting that the appellant had two daughters, the eldest A born on 14 September 2010 who had come to the UK with her and her husband, and the youngest, N, who was born on 1 June 2016 in the UK. The appellant's evidence was that her husband, who was of Nuban ethnicity, was a member of the National Party Section North, working as an accountant for them, and had been arrested for raising money for the poor and destitute in the Nuba mountain areas. She last heard from him on 25 October 2017. The appellant also claimed at the hearing that she had been subjected to female genital mutilation (FGM) at the age of about four and feared for her daughters as her mother-in-law had been putting pressure on her and her husband to have them circumcised. The appellant claimed also to support the Sudan People's Liberation Movement - North and that her husband had told her before his arrest that he was worried because of his involvement. Her home was ransacked after his arrest and her laptop and papers had been taken. The appellant stated in her oral evidence that her main fear was for her health, as she had lupus, and her fear of her daughters being subjected to FGM, as well as her fear of arrest because of her husband's arrest.

5. The judge did not accept that the Sudanese authorities had any interest in the appellant and did not accept that she was at risk as a result of her husband's activities. The judge did not accept that the appellant was at Article 3 risk as a result of her medical condition. With regard to the appellant's fear that her daughters would be subjected to FGM, the judge considered that that was a new matter, and which was therefore not for consideration by himself. He declined to consider the matter and concluded that the appellant's removal would not breach her Article 8 rights.

6. Permission to appeal was sought by the appellant on three grounds, namely that the judge had erred by declining to make findings on her fear of her daughters being subjected to FGM when the respondent had in fact consented to the matter being considered; that the judge had made material factual errors; and that the judge had made irrational findings on the Article 3 medical claim.

7. Permission was granted on 27 January 2020 in the First-tier Tribunal on all grounds.

8. At the hearing Ms Fijiwala conceded that the judge's decision could not stand and had to be set aside. As I indicated to the parties, that was the correct course, as it was clear that the judge had materially erred in law and the grounds, in particular the first and third grounds, were plainly made out. In the circumstances there is no need for me to say more.

9. As accepted by the parties, and given the extent of the judge's errors, the appropriate course is for the case to be remitted to the First-tier tribunal to be heard *de novo* before a different judge.

DECISION

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Oliver.

Anonymity

The First-tier Tribunal made an order for anonymity. We continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed



Upper Tribunal Judge Kebede

Dated: 16 March 2020