



In the Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/10783/2012

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 22<sup>nd</sup> July 2013  
Prepared 23<sup>rd</sup> July 2013

Determination Sent  
On 7<sup>th</sup> August 2013

Before

VICE PRESIDENT OF THE UPPER TRIBUNAL MISS E ARFON-JONES DL AND  
DEPUTY UPPER TRIBUNAL JUDGE DEARDEN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS SOHNA SONKO SANNEH  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr Diwnycz  
For the Respondent: Miss Patel

**DETERMINATION AND REASONS**

1. In this appeal the Appellant is the Secretary of State for the Home Department and the Respondent is Ms Sohna Sonko Sanneh.

2. This is the review of an appeal against the Secretary of State's decision made on 21<sup>st</sup> October 2012 to refuse Ms Sohna Sonko Sanneh's application for leave to remain in the United Kingdom under the Asylum and Human Rights Conventions and under the Humanitarian Protection Provisions. This has been dealt with as an order granting permission to appeal to the Upper Tribunal under the provisions contained in the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010.

### **The History of the Matter**

3. Ms Sohna Sonko Sanneh is a national of Gambia born on 25<sup>th</sup> June 1983. She entered the United Kingdom on 26<sup>th</sup> September 2012 using her own passport and a valid visit visa. The Appellant, who was accompanied by her daughter, claimed asylum at port.
4. Subsequently on 21<sup>st</sup> October 2012 the Secretary of State made a decision to refuse to grant asylum to Ms Sanneh, but did grant her discretionary leave to remain in the United Kingdom.
5. Ms Sanneh appealed the decision of the Secretary of State seeking an upgrade in her status and subsequently appeared before First-tier Tribunal Judge Cox sitting in Bradford on 4<sup>th</sup> January 2013. In a determination subsequently promulgated on 18<sup>th</sup> January 2013 the appeal of Ms Sanneh was allowed. Grounds seeking leave to appeal were filed by the Secretary of State and after initial refusal the matter was referred to Upper Tribunal Judge McGeachy who in a determination dated 3<sup>rd</sup> January 2013 held:
  - “1. This section 83 appeal of Ms Sohna Sonka Sanneh was allowed on the basis that she was the mother of a young daughter who had been recognised as a refugee because she might face persecution on return to Gambia as she would be subjected to FGM. The Judge of the First-tier Tribunal decided to allow the appeal finding that he should follow the decision of the Tribunal in **AMM (Somalia) and Others** [2011] UKUT 00455.
  2. The Grounds of Appeal, lodged by the Respondent, argue that the Judge of the First-tier Tribunal had misapplies (sic) that decision.
  3. I consider the Grounds of Appeal are arguable.”

### **The Representations**

6. Miss Patel on behalf of Ms Sanneh adopted a skeleton argument which was filed before First-tier Tribunal Judge Cox and noted that this was an unusual situation in that the mother Ms Sanneh was granted discretionary leave to remain by the Secretary of State, but her daughter, born on a date in May 2012, has refugee status in the United Kingdom. Miss Patel maintained to us, following paragraph 28 of the determination of First-tier Tribunal Judge Cox, that the mother Ms Sanneh would not under any circumstances leave the United Kingdom and leave her daughter behind.

It was maintained that there was an inconsistency of treatment from the Secretary of State in that the child was a refugee with five years' leave to remain and the child's mother had exceptional leave to remain for a period of just two and a half years.

7. Miss Patel commended to us that paragraph 237 of AMM meant that its provisions were not confined to British citizens and that the findings of the judge on the evidence were, in all the circumstances, completely open to him and that the Secretary of State's grounds amounted to no more than mere disagreement with the findings of fact reached by the judge.

### Has the Judge Erred in Law?

8. The issue for us at this stage of the review is whether the judge has made an error of law sufficient to warrant the determination being set aside.
9. We accept that it was completely open to the Judge to find the following facts:
- (i) FGM of the child would amount to persecution of the child's mother Ms Sanneh.
  - (ii) Whilst AMM applies to Somalia, in the absence of any country guidance case of a similar type for The Gambia, the judge was right to consider that the general principles of AMM (but not the facts) applied equally to Gambia as they did to Somalia.
  - (iii) The mother would not wish to return to The Gambia leaving the child in the United Kingdom.
10. However in our conclusion the judge erred in failing to distinguish the facts of AMM from the facts of this specific case. Paragraph 237 of AMM states:
- "The hypothesis which a Tribunal is required to make, in determining the entitlement of a person to refugee status or other international protection, is, however, not limited to assuming the return to the country of origin only of the Appellant. On the contrary, on a daily basis, judicial fact-finders determine appeals by reference to the hypothetical return along with the Appellant of other persons, whether or not these are British citizens. There is, accordingly, no impediment to Appellant MW pursuing her claim to be entitled to refugee status or subsidiary protection, on the basis that, if compelled to return to Somalia, *it is reasonably likely that she would take her children, including her daughter* (our emphasis) and that she would suffer serious harm in the form of anguish, in the event that her daughter was subjected to FGM."
11. Pertinently the finding in AMM was that if the Appellant were compelled to return to Somalia "it is reasonably likely that she would take her children including her daughter ..."

12. In this case the child of Ms Sanneh is a refugee. She is entitled to remain in the United Kingdom for the next five years at least. However in our conclusion, despite her tender years, the Judge should have found that she could not be taken to The Gambia because any travel document issued to her would not permit her to enter The Gambia. If the child cannot enter The Gambia she cannot be made the subject of FGM. If the child cannot be the subject of FGM then it follows the child's mother cannot succeed in asserting that she is entitled to refugee status if her child is the subject of FGM, when there is no reasonable likelihood of that event occurring.
13. Whilst we found the difference between the mother having two and a half years' exceptional leave to remain and the child having five years leave as a refugee to be somewhat disconcerting, we could not conclude that the mother, in the absence of a real risk to her daughter because the daughter cannot enter The Gambia, could be said to be entitled to refugee status.
14. There is no question of the mother having to leave the United Kingdom within the next two and a half years. If in two and a half years' time the Secretary of State makes a decision refusing the mother further discretionary leave to remain then that decision would carry with it a further right of appeal. We are invited to deal with the appeal on the basis of the hypothetical position if Ms Sanneh left or was obliged to leave the United Kingdom tomorrow. Whilst that would be factually impossible, even if it were possible, the child could not be admitted into Gambia. Therefore the child could not be the subject of FGM, therefore Ms Sanneh's application for asylum status must fail.
15. As a consequence we find that First-tier Tribunal Judge Cox did make an error of law sufficient to warrant his determination being set aside by failing to understand or explain the difference between the facts of **AMM** and the factual position of Ms Sanneh.
16. In setting Judge Cox's decision aside we substitute a new decision dismissing the appeal of Ms Sanneh against the Secretary of State's decision under the Asylum and Human Rights Conventions and the Humanitarian Protection Provisions.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Dearden