UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: AA083642015**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated on**
on 18 April 2016	**19 May 2016**

Before

Deputy Upper Tribunal Judge Mailer

Between
A H A B M
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: **Ms R Chapman, counsel (instructed by Bindmans LLP)**
For the Respondent: **Ms N Wilcocks-Briscoe, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. I continue the anonymity direction made by the First-tier Tribunal. This direction is to remain in place unless and until this Tribunal or any other appropriate Court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellant or any member of her family. Failure to comply with this direction could amount to a contempt of court.

2. The appellant is a national of Sudan, born on [ ] 1986. She appeals with permission against the decision of First-tier Tribunal Judge Goodrich, who, in a decision promulgated on 13 January 2016, dismissed her appeal against the decision of the

respondent to refuse her application for asylum and to remove her to Sudan. The appeal was dismissed on all grounds.

3. Ms Chapman, who represented the appellant before the First-tier Tribunal, relied on her grounds of appeal dated 26 January 2016.

4. The appellant applied for asylum contending that she feared returning to Sudan as a young, single woman: it would not be possible for her to live alone and she would be treated as an outcast and forced into marriage. She would be unable to live with her mother's second cousin, SA, who is a widow with three teenage sons, as she would not be accepted back as her sons are now adults. There is thus no-one she could live with and she would be subject to constant harassment and abuse as a single woman.

5. The appellant had as at the date of the hearing of her appeal, become estranged from her mother.

6. It had also been contended before Judge Goodrich that if forced into marriage, the appellant would be subjected to FGM.

7. The Judge summarised the reasons for refusal at [10]. The respondent accepted that the appellant was a member of a particular social group and that the Convention was engaged. It was also accepted that her claim that she had been discriminated against at Khartoum University constituted an imputed political opinion which also engages the 1951 Convention.

8. It was accepted that she had given a consistent and detailed account of the events at the university and had experienced such discrimination. It was not however accepted that the events she described amounted to persecution.

9. The respondent considered the claim that she could not return to Khartoum as she would have nobody to live with. Her case that she cannot live with her aunts because their husbands are not related to her by blood was not accepted as there was no objective evidence to support that aspect of her claim.

10. The appellant contended that the only way that she could safely live in Khartoum was by living with a male family member or by getting married. If she marries there is a strong chance that she would be "circumcised". The FGM aspect of her claim was rejected as it was not considered that the fact she was not circumcised would prevent her finding a husband. Her mother and aunts had not been circumcised.

11. Judge Goodrich considered an expert report from Mr Peter Verney prepared on 20 April 2015 as well as a second (supplemental) report.

12. At [35] the Judge stated that it was a significant feature of Mr Verney's supplemental report that he does not seek to deal in terms with the central point made in the refusal letter about the absence of any source material to support this subjective evidence that the appellant could not live with her aunts because their husbands are not her blood relatives. That was the key point taken in the refusal letter. No explanation was given as to the absence of objective source material to support this aspect of her case.

13. The Judge stated at [17] that she was guided by FM (FGM) Sudan CG [2007] 00060. Although this was a case concerning FGM, she considered that the evidence of Dr Gruenbaum as to the general background of women in Sudan plainly suggests that protection can be conferred by living in the vicinity of the household of a male family member [35].

14. Ms Chapman submitted that the Judge's approach revealed a material error of law. She referred to the decision of the Court of Appeal in K v SSHD [2005] EWCA Civ 1627. There the Court of Appeal set aside the decision of the IAT which rejected the evidence of an expert on the basis that he expressed opinions, for the most part, without reference to sources and without explaining the reasons for his views.

15. At paragraph [19] of K, Sir Paul Kennedy, with whom Lord Justice Wall and the President of the Family Division agreed, stated that on the face of it, the expert in K did clearly qualify as an expert to be listened to. When his reports were read, it should have been obvious to the Tribunal that he had raised issues that needed to be individually addressed and could not simply be swept aside by saying that the passages that were critical were not sufficiently reasoned.

16. Ms Chapman submitted that Mr Verney had given expert evidence in such cases for a considerable period of time and has been accepted as an expert all along.

17. She submitted it is evident from Mr Verney's report dated 20 April 2015, that he considered the question as to whether single unmarried Muslim women with no male protection in Sudan share an innate characteristic of common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. He set out from paragraphs 25 onwards the nature of family or extended families in Sudan.

18. He also considered the question whether a single unmarried Muslim woman with no male protection has a distinct identity in Sudan because they are perceived as being different by the surrounding society.

19. Ms Chapman referred to Mr Verney's "note on sources" at paragraph 134, page 21 of his report. There he stated that his observations represented a distillation of his monitoring of thousands of relevant documents, which also included some

academic papers, human rights and specialist news reports, as well as hundreds of interviews and personal communications with a network of respected resources. They are based on three decades of personal experience, including living and travelling in Darfur and elsewhere in Sudan for 12 years.

20. He has had personal communications with other Sudan specialists as set out at paragraph 136. He also referred to reports of the African Centre for Peace and Justice Study and to the UN panel of experts 2009 report on the Sudanese national intelligence and security service. He appended some of the related objective evidence for reference in a separate section, from pages 24-39 of the report.

21. He also pointed out that as a contributor of materials to the Sudan archive, he is aware of the inevitably patchy nature and poor accessibility of these materials. The information gathered by human rights organisations concerning the fate of individuals is also incomplete. A small proportion of cases recorded as testimony serve as an indicator of the situation. He set out his conclusions from paragraphs 143 onwards.

22. He acknowledged that he had no statistics for the occurrence of forceful marriage in Sudanese society. There is persistent widespread pressure on unmarried Muslim women to regularise the situation by marrying, bolstered by the risks to unmarried women of having little or no access to independent accommodation, and discrimination in the field of employment. If there is no male protection within the woman's family, a husband offers the prospect of protection as well as easier access to employment and accommodation. So few Muslim women in Sudan are uncircumcised, that there are no figures for their marital status. Whilst he is aware that in a few liberal, educated families, FGM is being ignored or done only ceremonially, the vast majority of Sudanese Muslim women are cut.

23. A woman free of FGM would have to exercise extreme caution in revealing this, especially to any potential husband, for fear of it leading to people labelling her as immoral or unclean. A tiny number of uncut Sudanese Muslim women manage to discreetly find suitably open minded husbands, but the matter is fraught with uncertainty and the risk of condemnation or humiliation.

24. He emphasised the near impossibility of trying to survive as an unaccompanied single woman in Sudan with no supporting family network. She would be unable to find accommodation, let alone earn a living in any part of Sudan.

25. That might provide a risk of her becoming homeless and unemployed, treated as a prostitute and forced into intolerable conditions.

26. The appellant had contended that it was not possible to live with her aunt because her uncle, who lives there, was not a blood relative.

27. The appellant also produced a statement dated 27 February 2015 in which she stated that SA, her mother's second cousin, was the only family member that she could live with because she is a widow. The convention in Sudan is that grown up women cannot live with relatives who are married because that would mean living with a man who is not related to her by blood. SA was the only option as her two uncles lived in the USA. She stated that SA would never accept her back as she has not spoken to her since. Her sons are now both adults and she would not be accepted into the household for that reason.

28. There is also a report from a maternal aunt of the appellant, RA, which was produced to the Tribunal. This was dated 9 November 2015 (pages 7-16). She stated that they cannot take the appellant to live with them unfortunately as it is unacceptable for her to live with her or her sister because they are both married and the appellant is a woman now. Their husbands are strangers to her. The fact that her husband is a third uncle to the appellant would not make any difference because his family will not accept this as it will cause a rift. It would also potentially be very damaging to the appellant's reputation.

29. Her brothers both live in the US with their family and the appellant cannot live with them. They would have been the only acceptable option. Their father is 79 years old and divides his time between the two brothers who are looking after him. He is only in Sudan for one or two months of the year.

30. Ms Chapman submitted that the Judge did not consider the supplementary statement at all which contains 'highly corroborative evidence'. The Judge needed to address this evidence and if she were to reject it, proper reasons would have to be given. However, no consideration was given at all. If she had factored in the evidence relating to the aunts, she would have been in the position properly to address the appellant's assertion that she would be unable to live in Khartoum.

31. Ms Chapman also referred to the supplementary statement of Mr Verney dated 20 November 2015, at page 8, paragraphs 10-14.

32. When asked to comment and clarify the points made in paragraphs 33-36 of the refusal letter, with regard to the assertion that the appellant cannot live with men who are not blood relatives, as well as the evidence of that, he stated that it would be “haram – forbidden” if she were to live as an unmarried woman with men who were not blood relatives. It is alien to Sudanese culture for a woman to live independently of her family and women are simply not independent. Nor was it considered morally acceptable in Sudanese society for an unmarried woman to stay with her married sister, her sister's husband and sons. The matter is one of risk of sexual impropriety, whether real or suspected, between her and males of the household.

33. Ms Chapman accordingly submitted that the Judge's finding at [35] is 'perverse'. The Judge did not deal with the issue at all. It was also clear that the Judge did not have proper regard to the source material that Mr Verney had referred to in detail.

34. Moreover, the Judge's reference at [35] to the decision in FM, supra, (and the evidence of Dr Gruenbaum), in preference to Mr Verney's evidence, had nothing to do with this case: FM dealt with a case concerning FGM. Dr Gruenbaum's evidence was specifically in the context of FGM.

35. FM was moreover outdated when compared to Mr Verney's reports, albeit not inconsistent with his views. Nowhere did the Judge address the specific issue concerning the protection that can be conferred by living in the vicinity of the household of a male family member. It was therefore not possible to extrapolate from FM that the findings of an expert in a case relating to 2007 were equally applicable to this appeal. Ms Chapman submitted that the Judge "tried to find a way of not finding the appellant would suffer very significant obstacles on her return."

36. She submitted that there was a further material error of fact: at paragraph [40] she stated that the appellant could have entered the UK as soon as she was granted entry clearance on 13 December 2010 but only did so 13 months later. That did not suggest that the appellant was subject to any societal discrimination in this period even though to the outside world she had finished her studies and was of marriageable age. However, the appellant in fact left Sudan and arrived in the UK about three weeks after being granted entry clearance, having arrived here on 4 January 2011.

37. Ms Chapman also relied on other alleged errors, including the finding that there was no real risk to the lower standard that the appellant would be subjected to FGM if she were to decide to marry. In fact the appellant's clear position had been that she does not wish to marry. The Judge failed to recognise, that in the absence of a male blood relative with whom she could live if returned to Sudan, she would be forcibly married in order to preserve her reputation and that of her family and that given that FGM is seen as a religious duty according to Mr Verney's report, there is a risk even in families which include educated individuals opposed to FGM, that it will be carried out.

38. The finding at [56] that there would not be very significant obstacles to her integration in Sudan were unsustainable for the same reasons.

39. On behalf of the respondent, Ms Wilcocks-Briscoe submitted that the Judge had given adequate reasons for her findings relating to Mr Verney. The sources relied on did not disclose whether this had been based upon his experience.

40. The Judge did consider Mr Verney's report dated 20 April 2015 [32]. She was troubled not only by the fact that his views were "largely unsourced" but also by other features which she sets out at [32](a) to (e).

41. This included his wholesale agreement with the mother's statement suggesting to the Judge that he did not bring an independent mind to bear on the various issues. Further, Mr Verney did not take into account the fact that the appellant's mother and her aunts did not undergo FGM or that there was any evidence that they had been forced to marry. Nor were her family's views taken into account with regard to whether the appellant would be coerced to marry and undergo FGM. He further maintained his view that women who had not undergone FGM 'are unmarriageable'. In that respect he did not refer to the country guidance case of FM, even though he gave evidence in the Upper Tier - [32(a)-(e)].

42. Ms Wilcocks-Briscoe submitted that the Judge considered the appellant's account alongside the mother's account. The aunt was not a witness. The mother's statement was given little weight as it had not been tested in cross-examination. That would similarly have applied to the aunt's evidence.

43. Although the Judge did not expressly refer to the aunt's statement, the issues raised were considered as part of the evidence as a whole. In any event, the finding was not in any way irrational or perverse.

44. With regard to the "incorrect dates" at [40] the Judge did set out the actual dates of the appellant's grant of entry clearance and her arrival in the UK. It was the calculation that was incorrect. In any event, the Judge did not only look at the period before leaving but also had regard to the fact that she had remained in Sudan undertaking studies from 2009. She had not experienced discrimination. Her mother came to the UK in 2010. The appellant had lived with her mother and her cousin, SA.

45. With regard to the submissions regarding the appellant's uncle, the issue as to whether he was or was not a blood relative was not addressed by Mr Verney. It seems that he was a blood relative. He is a third uncle. She had two uncles who were blood relatives, but a third uncle was not.

46. The Judge also expressed concern regarding the family circumstances in Sudan. Nobody has had the opportunity to ask questions of the appellant's mother about those circumstances and in particular the family protection that could be provided for the appellant were she to live with or in the vicinity of her aunts or other relatives [37]. The appellant had stated that she had stopped speaking to her mother and had been cut off by family members in Sudan.

47. Ms Wilcocks-Briscoe referred to the appellant's own evidence in cross-examination where she accepted that when she applied for entry clearance as a student she intended to return to Sudan [46].

48. Ms Wilcox-Briscoe also relied on the Upper Tribunal's decision in AAW (expert evidence – weight) Somalia [2015] UKUT 00673 (IAC). The failure to comply with the Senior President's Practice Direction may affect the weight to be given to expert evidence. An opinion offered that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness, is likely to be afforded little weight by the Tribunal.

49. She relied on the decision of the Deputy President of the Asylum and Immigration Tribunal in FS (Treatment of expert evidence) Somalia [2009] UKAIT 00004: Immigration Judges have a duty to consider all of the evidence before them in reaching a decision in an even handed and impartial manner. In assessing the evidence before them, they must attach such weight as they consider appropriate to that evidence. It may on occasion be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing.

50. In reply, Ms Chapman submitted that First-tier Tribunal Judge Robertson in granting permission misunderstood the basis of the grounds. At paragraph 3 of that decision it is stated that the Judge had preferred the evidence before the Tribunal in FM, supra. However, Ms Chapman contended that it would be perverse to fail to consider that eight years had passed since that decision and that the First-tier Tribunal was considering a wholly different set of circumstances.

51. Ms Chapman referred to the reasons given by the Judge at paragraph [32] for being "troubled" by Mr Verney's "wholesale agreement" with the mother's statement. It appeared to suggest that he had not brought an independent mind to bear on various issues. The Judge at [34] acknowledged that the report does provide sources on a wide range of matters but repeated her concerns as to whether he has brought an independent mind to bear in the issues in the appeal.

52. Ms Chapman submitted that the Judge omitted to consider Mr Verney's "introduction" to his report where he expressly stated at paragraph 5 that he was aware that there are Sudanese people who are gaining asylum by rehearsing false cover stories which have been tailored for this purpose. He is concerned to distinguish the authentic from the merely "well prepared".

53. The appellant's account is individual, distinctive and true to life in Sudan with no sense of contrivance or "generic" elements. It is not possible to concoct an account based solely on journalistic material as it would be an incomplete and distorted picture of daily realities. Mr Verney again reminded himself at paragraph 22 that he

is concerned to filter out opportunists and remains alert to the possibility of stock elements being rehearsed.

54. He further stated that it is "emphatically" not his role to act as advocate for the applicant as he is particularly concerned to assist the Court as a dispassionate and neutral observer in the light of the situation described.

55. The witness moreover had been provided with the appellant's witness statement; a screening interview and documents submitted with the screening interview. He also stated in his supplementary report that he consulted with two Sudanese medical doctors living in the UK, both of whom had had experience of FGM in their clinical work and in their family lives. They confirmed that it is unsafe to assume that because the individual's nuclear family opposes FGM, her aunts, uncles and grandparents will think the same way. Not all family members are educated to the same level or have the same outlook and opposition to FGM which is still the exception rather than the rule in the majority of families.

56. Ms Chapman referred to paragraph 70 of the supplementary report, where he notes that young girls in Sudan continue to face a high risk of FGM even when they come from educated families. He referred to a case where the father who was resistant to FGM because it is not an Islamic requirement, was overridden by family pressure.

57. He also commented at paragraph 81 and 82 of the impact on the appellant's life of having a grandfather who is publicly outspoken about his opposition to FGM. The long standing public opposition to FGM by a leading figure in progressive health education and an opponent of FGM inevitably makes her own status and her views and her body in this regard, a matter of intrusive public speculation.

58. Ms Chapman accordingly submitted that Mr Verney did deal with these issues properly. He was aware of the context.

59. Finally, she submitted that Mr Verney had "sourced" his evidence relating to the difficulties that the appellant would encounter as a single person. This is evident from paragraph 74 onwards of his report.

60. With regard to the "third male" being a blood relative, Ms Chapman referred to the asylum interview, question 75, where she stated that the reason why she did not stay with them in the first place is because her aunts were married and since their husbands are not related to her by blood, she cannot be sure with them. That is why she lived with her mother's relative. She was a widow and her sons were young at the time. That was expressly considered by Mr Verney in his supplementary report at paragraph 14. It is not considered morally acceptable in Sudanese society for an unmarried woman to stay with a married sister and that sister's husband and sons.

Assessment

61. The appellant's case was that she would be unable to return to live with her aunt as she would not accept her back. Her sons are now adults. There was thus nobody she could live with. She would be subject to constant harassment and abuse as a single woman. She also had concerns about being forced into marriage and being subjected to FGM.

62. The Judge stated that no explanation was given for the absence of any source material to support the appellant's subjective evidence that she could not live with her aunts as their husbands are not her blood relatives [35].

63. However, Mr Verney had given a substantial body of reference material from pages 24 to 39 of his report. That includes excerpts from a liberal Sudanese newspaper as well as background sources on women in Sudan, referred to at page 34-35.

64. He has also worked in Sudan for 12 years and on current affairs there for a further 20 years. He has continuously monitored events. He has travelled extensively in Sudan during the course of his work. He has developed a sense of connection with Sudanese at various levels. Since 1999, he has been requested to assist in more than 1,000 asylum cases as an expert witness and has given evidence before the AIC in country guidance cases as well as more than 30 other asylum hearings.

65. Mr Verney has written reports for more than 80 women coming from Sudan to claim asylum in the UK. He stated that he is aware of rehearsed false cover stories tailored for the purpose of obtaining asylum. He is concerned to distinguish between the authentic and the merely well prepared account.

66. He regarded the appellant as lacking in any contrivance or "generic" elements. She had given an individual, distinctive and true to life account in Sudan. It is not possible to concoct an account based solely on material which is either of a journalistic or academic nature.

67. I have had regard to the decisions of the Court of Appeal referred to in respect of the treatment of expert evidence.

68. I find that the First-tier Judge has not given any satisfactory reasons for being "troubled" by the fact that the views expressed in Mr Verney's report dated April 2015 "were largely unsourced." In the reasons for refusal, the respondent did not rely on the absence of such material but rather on the absence of any evidence at all.

69. On the face of his report, Mr Verney did clearly qualify as an expert to be listened to. Having regard to his background and qualifications and the fact that he has been to Sudan, and has assembled and considered a great deal of information that he has

disclosed, he was able to assist the Tribunal. No issue was raised regarding his qualifications to give evidence in the appeal. Once it was accepted that he was an expert, he should have been "listened to" - K v SSHD supra.

70. In the circumstances the Judge has not given proper reasons for not giving proper weight to Mr Verney's conclusions. The appellant had claimed in her interview that there would be no blood relatives and it would thus not be acceptable for her as an unmarried woman to stay with her married sister and with her sister's husband and sons. Contrary to the Judge's findings, Mr Verney did provide supporting evidence in his supplementary statement from paragraphs 10-14 for the appellant's assertion that she cannot live with men who are not blood relatives.

71. Moreover, the finding that Mr Verney did not bring an independent mind to bear on the issue is not sustainable. He emphasised in his report that he did not simply accept the evidence of the appellant. He expressly stated that he has never sought to be an advocate of an asylum seeker.

72. I also find that the Judge erred in relying on the evidence of Dr Gruenbaun (FM, supra), as to the general background of women in Sudan which 'plainly suggests' that protection can be conferred by living in the vicinity of the household of a male family member. Her evidence had been given in the context of FGM which was in any event outdated. Moreover, she did not address the issues arising in the appellant's case, concerning the protection conferred by living in the vicinity of a household of a male family member. In that regard the Judge failed to take account of the additional evidence provided by the appellant's maternal aunt, Ms A, contained in the supplementary bundle.

73. She also erred in failing to have regard to the appellant's evidence that she did not ever wish to marry. Accordingly, the absence of any male blood relative with whom she could live, posed a risk that she would be forcibly married to preserve her reputation and that of her family, with the further risk that she would be exposed to FGM, which did not exclude educated individuals who are opposed to it.

74. The evidence as a whole did not therefore sustain the Judge's finding that the appellant could find protection by living in the vicinity of the household of a male family member. That finding was based on the supposed failure of Mr Verney to supply objective source material in support of the appellant's claim that she could not live with her aunts as there husband's are not blood relatives.

75. Finally, the Judge also erred in incorrectly finding at [40] that notwithstanding her concerns, the appellant only came to the UK some 13 months after claiming an entry clearance visa.

76. In the circumstances, I set aside the decision of the First-tier Tribunal. Ms Chapman has submitted without opposition that in that event this is an appropriate case for the appeal to be remitted to the First-tier Tribunal for a fresh decision to be made.

77. Having regard to the amount of evidence and the extent of the fact finding required, I find that this is an appropriate case to be remitted to the First-tier Tribunal.

Notice of Decision

Having set aside the decision of the First-tier Tribunal, I direct that the appeal be remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made before another Judge, with a time estimate of 3 hours.

Anonymity direction continued.

Signed Dated: 16 May 2016

Deputy Upper Tribunal Judge Mailer