Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01293/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 September 2019	**On 18 September 2019**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Mr M McGardy, Counsel, instructed by J M Wilson
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the Appellant's challenge to the decision of First-tier Tribunal Judge Hawden-Beal ("the judge"), promulgated on 21 June 2019, in which he dismissed her appeals against the Respondent's decision of 3 January 2019, which in turn refused her protection and human rights claims. Those claims were essentially based upon the following. The Appellant had grown up in extremely impoverished circumstances and was illiterate. She had been forced to marry a much older man who subsequently abused her over the course of some six years. She had undergone FGM. As a result of the unhappy marriage she has two children, a boy and a girl, aged 5 and 3. The girl has also been subjected to the act of FGM. Circumstances led to the Appellant and her children living in Guinea for a number of years. The Appellant then had to return to Mozambique, where she resided for some six years prior to her journey to the United Kingdom. At the date of hearing before the judge and to date, the children remain in Guinea. The Appellant was to be returned to Mozambique.

The judge's decision

2. The Respondent was not represented before the judge.

3. Importantly, the judge found the Appellant to be entirely credible. This included an acceptance of all of the various matters that I have set out in the first paragraph of my decision. By way of implication, the judge accepted that the Appellant had been born in 1999, and not 1990, as asserted by the Respondent. The judge found that there had been past persecution for a Convention reason and that there was risk in the home area. When turning to the issue of internal relocation, he concluded that the Appellant's husband would not be able to track her down elsewhere, for example to the capital of Maputo, and that she may be able to have sought the assistance of an NGO operating in Mozambique. In light of this the judge found that the Appellant could internally relocate.

4. Turning to the issue of Article 8 and in particular paragraph 276ADE(1)(vi), the judge concluded that as the Appellant had resided in Mozambique for the past six years, spoke Malinka (a language spoken in Guinea, not Mozambique), French, and a little English, and was "more than aware" of how life in Mozambique was carried on, there would not be "very significant obstacles" to her reintegration into the society of that country.

5. The appeal was duly dismissed on all grounds.

The grounds of appeal and grant of permission

6. The succinct grounds of appeal assert that the judge failed to take into account highly relevant factors when considering the issues of internal relocation and paragraph 276ADE(1)(vi).

7. Permission was granted by First-tier Tribunal Judge Omotosho on 24 July 2019.

Decision on error of law

8. At the outset of the hearing before me, and in my view applying his customary fair approach to such matters, Mr Bramble accepted that there were material errors of law in the judge's decision and that it had to be set aside.

9. I entirely agree with this position. In my view the assessment of both internal relocation and paragraph 276ADE(1)(vi) are clearly inadequate, given the positive findings of primary fact reached by the judge earlier in his decision. With all due respect, I struggle to see how the very significant factors relating to the Appellant's personal characteristics could have been left out of account in the assessment of the two core legal issues. However, left out they were.

10. The judge's decision is set aside.

11. The findings of primary fact are unchallenged, and they shall stand.

Remaking the decision

12. In respect of disposal, both representatives quite properly accepted that I could, and should, remake the decision in this case, based upon the evidence before me and the findings of primary fact reached by the judge. This I now do.

13. Again, to his credit Mr Bramble did not offer up any substantial opposition to the success of the Appellant's appeal in light of the findings made by the judge.

14. Having assessed the relevant issues for myself, I take into account the following matters, none of which are now in dispute. The Appellant can properly be described as an exceptionally vulnerable individual, having regard to a litany of horrific circumstances which have befallen her over the course of her young life. She is essentially the victim of torture with regards to FGM, as is her young daughter; she is entirely illiterate; a victim of egregious domestic abuse over a prolonged period of time; a single mother without any support network whatsoever; without any relevant work experience; without assets of any kind; and, perhaps unsurprisingly, is a person of what I would describe as at the very least, fragile mental health.

15. The Appellant would, as the First-tier Tribunal found, undoubtedly be at risk of persecution and Article 3 ill-treatment in her home area.

16. Turning to internal relocation, and with regard to the Qualification Directive and the well-known principles set out in AH (Sudan) [2008] 1 AC 678 and Januzi [2006] 2 AC 426 (as summarised more recently in, for example, AS (Afghanistan) [2019] EWCA Civ 873), there is only one rational outcome in this case, namely that it would without doubt unduly harsh for this individual to relocate elsewhere within Mozambique. In light of the personal characteristics I have set out above, the conclusion is in my view self-evident.

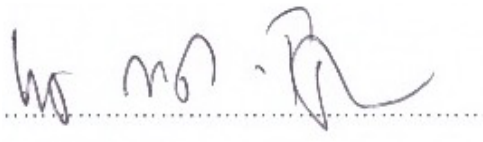
17. The same applies to paragraph 276ADE(1)(vi). Whether there is any difference between the unduly harsh test and the very significant obstacles test, makes no difference in this particular case. Such obstacles would quite clearly have existed at the date of the Appellant's claim in this country (that being 14 October 2017) and now.

18. I make a final observation. Without intending any criticism of Mr Bramble, this appeal should have resolved itself before coming up for hearing. The Respondent really should have taken stock and provided a rule 24 notice conceding both the error of law and the ultimate result.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and is set aside.

I remake the decision by allowing the Appellant's appeal on asylum and human rights grounds.



Signed ..... Date: 16 September 2019

Upper Tribunal Judge Norton-Taylor