



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/01634/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 25 January 2019**

**Decision & Reasons
Promulgated
On 06 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**O. N.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway, Brar & Co Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was granted leave to enter the United Kingdom, and did so on 24 June 2009 as a visitor; on expiry of the six month period of leave, she became an overstayer.

2. On 15 November 2016 the Appellant made a protection claim based upon the risk of harm she would face in seeking to protect her daughter from the risk of FGM. This claim was refused on 18 January 2018. The Appellant's appeal against the refusal of her protection claim was heard and allowed by First Tier Tribunal Judge Bircher in a decision promulgated on 12 April 2018.
3. The Respondent's application for permission to appeal was refused by the First tier Tribunal, but a renewed application to the Upper Tribunal was granted by Upper Tribunal Judge McWilliam on 14 September 2018.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

The challenge

5. The Respondent had conceded before the Judge that the Appellant had been subject to FGM as a child, and, that her family would wish to subject her daughter to FGM. Thus the Judge's focus was upon whether there was a real risk posed by the members of the Appellant's extended family to her and to her daughter. If there was, then the secondary focus was upon whether the state afforded sufficient protection to its citizens against such a risk, and, whether the Appellant could reasonably be expected to avoid that risk by relocation within Senegal.
6. The grounds are not well drafted. Mr Diwnycz declined to advance the first ground, which was that the Judge had erred in failing to deal with the Appellant's delay in making her claim to protection. That delay was noted by the Judge, and it was open to her to conclude that in the light of the Respondent's concessions of the key planks to the Appellant's account, that it was not an issue that carried any weight in the issues she had to determine.
7. Mr Diwnycz also accepted that, as drafted, the grounds failed to challenge either the assessment of the sufficiency of protection afforded by the Senegalese authorities to its citizens, or, the ability of the Appellant to relocate. In the circumstances he accepted that the grounds demonstrate no material error of law in the decision.
8. Accordingly the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires her decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 12 April 2018 contained no material error of law in the decision to allow the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 25 January 2018