Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01167/2013

THE IMMIGRATION ACTS

Heard at Glasgow **Determination promulgated**
on 1 August 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

YAMIDA REGINA MODU METTLE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1) The appellant is a citizen of Sierra Leone, born on 9 October 1965. She entered the UK as a visitor on 27 December 2007, and overstayed. Removal proceedings having been commenced, she sought asylum on 29 January 2012.

2) The appellant based her claim on an alleged incident in April 2007 when she was forced into a police vehicle and raped by 7 police officers. She had no problems with the police before or after that attack.

3) The respondent refused the claim by letter dated 25 January 2013. The respondent did not find the claim credible. The respondent also considered that even taking the claim at its highest, the appellant had suffered a random attack; that there were mechanisms in Sierra Leone for making complaints against the police and a legal sufficiency of protection; and that, if necessary, the appellant could relocate from Freetown.

4) First-tier Tribunal Judge Scobbie dismissed the appeal by determination promulgated on 22 March 2013. The judge also found the appellant to be incredible. He further found that in any event her claim would not fall into a "social group" in terms of the Refugee Convention; and that given the random nature of the attack, the appellant was no more at risk on return than any other woman in Sierra Leone.

5) The appellant sought permission to appeal, on rather lengthy and not altogether clear grounds, running to 6 paragraphs. In essence, paragraph 1 argues against the finding that the claim would not fall into the category of a social group. Paragraph 2 disagrees with the judge's finding that the appellant is intelligent enough to have claimed asylum at an earlier time. Paragraph 3 complains of the finding that sums the appellant sent back to Sierra Leone to pay her children's school fees were "significant" in amount. Paragraph 4 complains that the finding that the appellant was not raped is insufficiently reasoned, so far as based on the time the appellant took to leave Sierra Leone. Paragraph 5 complains that the finding that the appellant was no more likely to be raped again on return than any other woman ignores detailed background information that rape is still carried out in Sierra Leone, including rapes carried out by the members of the authorities for which they are not held to account.

6) On 16 April 2013 First-tier Tribunal Judge Cruthers refused permission to appeal. He thought that grounds 2, 3 and 4 were only minor quarrels with some of the wording used in the credibility assessment, rather than treating the determination as a whole, and that they did not cast any real doubt on the judge's reasoning. Ground 1 did not appear to be sound, but in any event made no difference because the appellant had not established real risk of serious harm on return. Although ground 5 complained of the conclusion that the appellant was no more at risk than any other woman in Sierra Leone, the ground did nothing to establish that was arguably wrong. The appeal would still have failed even if both the credibility assessment and the Refugee Convention reasoning were wrong. Reference was made to paragraph 10 of R (Iran) [2005] Imm AR 153.

7) The appellant renewed her application for permission to appeal to the Upper Tribunal, on similar grounds, disagreeing also with the views expressed by Judge Cruthers.

8) On 13 May 2013 Upper Tribunal Chalkley granted permission, saying:

> I believe that the grounds of application (here referring to the original application to the First-tier Tribunal) do raise properly arguable issues which *may* identify errors of law on the part of the First-tier Tribunal Judge in failing to recognise the appellant as a member of a particular social group. I do not believe that the other challenges have any great merit but I do not seek to limit the grounds.

9) Mr Martin said that the contention in ground 1 was that the appellant fell into the social group of "women in fear of persecution by the authorities of Sierra Leone." The authorities of Shah and Islam [1999] UKHL 20 and of Fornah were before the First-tier Tribunal, at least by indirect reference. The respondent had put in a copy of FB (Lone Women – PSG – Internal Relocation – AA (Uganda) Considered) Sierra Leone [2008]

UKAIT 00090 on the day of the hearing. Women in Sierra Leone occupy an inferior position. The judge accepted that there are widespread instances of corruption, abuse and rape in Sierra Leone. His conclusion that the appellant's case did not fall into the category of a particular social group was inadequately reasoned or even perverse. The appellant's claim should have been found to be "objectively credible", because the judge accepted evidence that such events occur in Sierra Leone. In terms of paragraph 339K of the Immigration Rules, an incident of past persecution should have been found probative of future risk, absent indications to the contrary. The judge's conclusions were wrong by reference to the background evidence. On ground 2, Mr Martin said it was not irrational to take the appellant's apparent intelligence into account in assessing the lateness of her claim, but the thrust of the ground was rather that the reasoning was inadequate. It was inconsistent for the judge to find under section 8 of 2004 Act that the appellant's use of deception on entry and failure to claim at that stage was not adverse to her case, and yet that her later substantial delay was adverse. A person who feared the authorities in her own country might similarly be reluctant to approach the authorities in another country. This amounted to an error either of applying the wrong standard of proof, or of failing to approach the evidence in the round. It was accepted that ground 3 did not disclose a matter of much significance to the outcome, but it could be considered as part of the cumulative error in the determination. As to ground 4, the judge noted at paragraph 50 the length of time it took the appellant to leave Sierra Leone (8 months) but that was not adverse given that the judge accepted the "external evidence" [the background evidence of such incidents]. The claim was "patently plausible". The judge took little account of what the appellant actually said and disbelieved her account only due to her later conduct, matters which had been given too much weight. As to ground 5 the judge found the attack to be random but failed to assess the risk of it happening again. Mentioning FB, Mr Martin submitted that the appellant could not be expected to return to Freetown, because that was the locus of the persecution, she could not rely on the authorities, and in all the circumstances to expect her to relocate would be unduly harsh.

10) I asked whether the logic of Mr Martin's argument is that all women in Sierra Leone are entitled to refugee status. Mr Martin said that that was a point which Judge Scobbie had raised orally at the hearing. Mr Martin's submission was that the appellant had shown a reasonable likelihood that she might be persecuted again in the same way, and the wide extent of that risk was beside the point.

11) Finally, Mr Martin submitted the determination should be set aside and reversed.

12) Mr Mullen submitted that in Fornah there was a finding that a particular type of claim, based on FGM, was of the nature of a particular social group, but it did not extend to all women in the country. In Shah and Islam it had been found that if a woman complained of her husband's ill-treatment she would herself become liable to persecution in which authorities connived. The same is not true of Sierra Leone. In any event, the issue of whether a particular social group existed in this case was not decisive, because the adverse credibility findings disclosed no error of law. The core allegation was a straightforward one with little detail, which itself could not be

analysed very far. It was valid to examine the appellant's subsequent behaviour. At paragraph 38 the judge noted that the appellant had gone to the Refugee Council in December 2011 and said that she was "told that the Home Office would not give her asylum because the war was finished. The appellant did not go to the Home Office because she was frightened of being arrested and sent home." That did not sit well with the claim which she made later only after having been detained by Immigration Officials and after having made an application for an Emergency Travel Document (which appears to have later been withdrawn). It was unlikely that the appellant would have been given the advice she mentioned by the Refugee Council if she had given them her present account. I pointed out that this specific point did not seem to have been made by the judge. Mr Mullen submitted that the judge had looked at the issue of the appellant's credibility in the context of her conduct and the point now made was part of that. The judge was entitled to conclude that the appellant was intelligent and aware enough to have claimed asylum at an appropriate stage, much earlier, if her claim was genuine. The fact that she approached the Refugee Council, even although that was late in the day, showed that she was aware of the possibility of claiming asylum in the UK. She delayed for another year thereafter and claimed only under force of circumstances. The judge was entitled to conclude that the claim was made only because there was no other avenue of remaining in the UK. The proposition now made on her behalf was that she might have been reluctant to claim because of fear of the UK authorities. She did not appear ever to have said that, and it did not fit with her having come to the UK to gain protection. It must have been plain to her that the UK authorities are not of the same nature as those in Sierra Leone. The appellant had approached the UK authorities to obtain her visa to come here in the first place. In terms of SB, a claim such as this could succeed only if the appellant's survival on return would come at a price of falling into destitution, beggary, crime or prostitution. The appellant had been able to fend for herself in the past and there was no reason why she could not do so in the future or why she might fall into such a dire situation. Mr Mullen also commented on the absence of medical evidence, either physical or psychological, to support the appellant's account.

13) Mr Martin in reply submitted that a medical report in physical respects was not likely to disclose anything useful after such a lapse of time, and that the absence of any psychological report was of no significance.

14) I indicated that I would attach no significance to the absence of medical evidence. Beyond that, I reserved my determination.

15) In R(Iran) at paragraph 10 the Court of Appeal said:

> Errors of law of which it can be said that they would have made no difference to the outcome do not matter.

16) That was said in relation to an earlier statutory appellate regime, but it remains valid.

17) Neither representative referred directly to country guidance or other authorities. In FB the Asylum and Immigration Tribunal held that the Court of Appeal's decision in AA

(Uganda) [2008] EWCA Civ 579 was not authority for a wider proposition that lone women cannot be returned to Uganda or any other specific country. Nor is it support for the proposition that it is unduly harsh to expect lone women to relocate to the capital city of a country of origin or any other large urban centre. Rather it reaffirms that such relocation must be reasonable, in other words, that it must not have such consequences as to be unduly harsh. "If survival comes to cost of destitution, beggary, crime or prostitution, then that is a price too high." In relation to Sierra Leone the AIT found no compelling evidence that outside support mechanisms were the sole means of eliminating such risks on return. In the case of this particular appellant I see no reason why the First-tier Tribunal might have been bound to conclude that she would be unable to survive as a lone woman without suffering such dire consequences, even if her claim were to be taken at highest. Her case was not a good one, on that point alone.

18) The arguments of error in the credibility assessment did not amount to much more than the proposition that because such incidents as alleged occur in her country, her allegations must be held as established. That is not so. There were also arguments of too much or too little weight being given to various aspects of the evidence, but the amount of weight to be given is a matter for the judge. Read fairly and as a whole, the determination justifies the adverse conclusion. Any other errors, if they existed, would not matter.

19) I do not think that the judge erred by finding that the evidence does not place this claim in a Refugee Convention category of social group, but her claim would fail anyway, because the evidence did not show that she would be at any greater risk than any other woman in Sierra Leone, nor that every woman in Sierra Leone qualifies for international protection.

20) The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal shall stand.

21) No anonymity order has been requested or made.

Hugh Macleman

2 August 2013
Judge of the Upper Tribunal