



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/12282/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 23 May 2019**

**Decision & Reasons Promulgated
On 05 June 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**RM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S McKeeve, Solicitor, McGlashan MacKay Solicitors

For the Respondent: Mr A Govan, Senior Presenting Officer

**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 him or any member of their 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.

DECISION AND REASONS

1. The appellant, who is a national of the Philippines, has been granted permission to appeal the decision of First-tier Tribunal Judge David Clapham. For reasons given in his decision dated 15 January 2019 the judge dismissed the appellant's appeal against the Secretary of State's decision dated 9 October 2018 refusing her protection and human rights claim.
2. The claim has some complexity. In summary, the appellant was raised as a Roman Catholic in Manila. A child was born to her relationship with the individual who has disappeared. In 2000 she obtained employment in the UAE and left her son behind with her family in the Philippines. She met her husband [AS] in the UAE who was studying at Ajman University. On marriage she converted to Islam, and thereafter lived with her husband. A son was born in 2009 and a daughter in 2011. Her husband and his family are of Sudanese origin.
3. In a family meeting in December 2017, the appellant's mother in law announced her intention to impose on her daughter FGM in April 2018. The appellant and her husband, together with the two children, came on holiday to the United Kingdom on 1 April 2018, during which she sought to dissuade her husband from FGM being carried out. She resisted when he had said the family would have to return home and he walked out when the appellant threatened to call the police. He has not returned. The appellant apprehends that family connections of her husband would lead to her whereabouts in the Philippines being discovered and they would find someone to kill her. The police in the Philippines would be bribed to take the children away.
4. The judge had found the appellant to be a broadly credible witness and accepted her account that she claimed asylum after her husband left her and the children in Birmingham. He accepted that his family wanted to impose FGM on their daughter. The judge concluded that neither the appellant nor the children would be at risk in the Philippines.
5. The grounds of challenge argue a failure by the judge to consider the human rights grounds. Specifically there had been a failure to consider paragraph 276ADE(vi) or the position outside the Rules. The obstacles to her integration are identified as:
 - (i) Her absence for approximately thirteen years.
 - (ii) The risk, even if remote, that her husband's family might find her.
 - (iii) The death threat.
 - (iv) Her conversion to Islam.
 - (v) The risk that her children might be removed from her custody.
 - (vi) The children being nationals of Sudan and there was an increased risk of their removal.

6. In granting permission to appeal, First-tier Tribunal Judge Keane observed that there had been no permission to appeal the decision dismissing the appeal on asylum grounds. In respect of Article 8 it was incumbent upon the judge to arrive at findings of fact and to determine this aspect.
7. Mr Govan accepted at the outset of the hearing that the judge had failed to consider the case under paragraph 276ADE(vi) or Article 8 outside the rules and acknowledged that this amounted to an error of law. I consider he was correct to do so. The judge's decision which is careful and detailed comes to a halt with the conclusion that the asylum claim had not been made out to the necessary standard and that the appeal was dismissed. Whilst the grounds of appeal to the First-tier Tribunal relied on protection grounds including Articles 2 and 3, I accept that there was argument before the judge on the impact on the appellant's private and family life which required consideration, not least because of the presence of two children whose best interests were required to be considered under Section 55 of the Borders, Citizenship and Immigration Act 2009.
8. The extent of further findings will require further evidence for which, in accordance with the Practice Statement, the appropriate venue is the First-tier Tribunal. I therefore set aside the decision and remit the case for a reconstituted Tribunal to re-decide the matter.
9. The parties have agreed the following issues for the scope of the re-hearing as follows:
 - (i) The findings on asylum and Article 3 risk are preserved.
 - (ii) The best interests pursuant to Section 55 are required to be assessed.
 - (iii) Consideration of the case with reference to paragraph 276ADE(vi) will be needed. This will entail further findings of fact including those factors that did not amount to a risk of persecution or a breach of Article 3 for the appellant and the children.
 - (iv) Consideration whether if the appellant is unable to succeed under paragraph 276ADE the interference with her private life taking account of the best interests of the children is proportionate.

Signed

Date 31 May 2019

UTJ Dawson
Upper Tribunal Judge Dawson