

Heard at: Field House

RM (Sierra Leone – Female
Genital Mutilation –
membership of a particular
Social Group) Sierra Leone
[2004] UKIAT 00108

On: 5 April 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

17 May 2004

Before:

**Miss K Eshun (Chairman)
Mr P S Aujla
Mrs L R Schmitt**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Mr K Kuranchie of the Refugee Legal Centre

For the respondent: Mr D Saville, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Sierra Leone, appeals with leave of the Tribunal against the determination of an Adjudicator (Mr C A Vaudin d'Imecourt) dismissing her appeal against the decision of the respondent made on 14 January 2003 to refuse to vary her leave to enter or remain and grant her asylum in the United Kingdom.
2. The appellant claimed to have a well-founded of persecution if returned to Sierra Leone as a result of membership of a particular social group, that is a female who is expected to undergo female genital mutilation (FGM).

3. The Adjudicator dismissed both the asylum and Article 3 claims. Mr Saville informed the Tribunal that he was granting the appellant three years humanitarian protection leave and was therefore conceding that there would not be a sufficiency of protection for the appellant were she to be removed to Sierra Leone.
4. Mr Saville was, however, contesting the argument in the grounds of appeal that the appellant's claim engages the Convention by way of her membership of a particular social group. He relied on the Tribunal decision in M (Kenya).
5. The appellant's account was that she comes from a lineage of women who generally hold the rank of persons responsible for the carrying out of female genital mutilation. Her grandmother who was the head circumciser in her village died without a female descendant save for her. The appellant said that she was selected by a group of females in her village to replace her grandmother. They were going to force her into having female circumcision which she objected to and one of her relatives paid for her to flee her village and the country.
6. The Adjudicator having considered the principles established in Shah and Islam did not find that this particular appellant falls within the categories of persons that can be described as persons of a particular social group, since it was clear from the principles enunciated in Shah and Islam that "the social group must exist independently of, and not be identified by, the persecution". He found that in the particular circumstances of this case the group to which the appellant claims membership of would not exist independently of and not been identified by the persecution.
7. Mr Kuranchie argued that the appellant is a member of a particular social group of women of the Mendi tribe. Their immutable characteristics are that they are young and female, with an intact body, which has not been interfered with by way of FGM, regardless of the fact that some of the women from that tribe do not oppose FGM. The desire to preserve their body is so fundamental that they should not be required to change it. If those characteristics are accepted as defining the group, then he would argue that the Adjudicator erred in finding that there is no Convention reason.
8. Mr Kuranchie then went on to argue that there would not be a sufficiency of protection for the appellant in Sierra Leone but, as already stated above, Mr Saville did accept that there would not be and that was why he had conceded the Article 3 claim.

9. Mr Saville argued that there was nothing in the objective evidence, which says that people of the Mendi tribe suffer more than any other women from any other part of Sierra Leone. The objective evidence, as contained at paragraph 6.40 of the October 2003 CIPU Report, says that female genital mutilation (FGM) is widely practised among all levels of society. Some estimates of the percentage of women and girls who undergo the practice range as high as eight to ninety per cent. Female Genital Mutilation is practised by almost all of Sierra Leone's ethnic groups therefore there is no identifiable group which exists independently of the persecution. Relying on the objective evidence contained in the appellant's bundle, Mr Saville argued that the appellant is not a member of Bundo because she has not been initiated into that society because she has not undergone FGM. He argued that the appellant left Sierra Leone because of pressure to have FGM. Because of the widespread nature of FGM the appellant cannot bring herself within the Convention reason of membership of a particular social group. The appellant is a long way away from the situation of women in Pakistan who, in Shah and Islam, were found to be fundamentally discriminated against.
10. Mr Saville further argued that the appellant's situation is closer to the case of M (Kenya). At paragraph 13 the Tribunal noted that the Adjudicator was not referred to the Tribunal's decision in Adhiambo, which was an appeal by a member of the Kikuyu tribe against a threat of FGM because of membership of the Mungiki cult. After reviewing the objective evidence that was before them, the Tribunal in Adhiambo held that the evidence did not support a particular social group defined as either "Kikuyu women" or "women who face FGM". The Tribunal said that there was no evidence to show that Kikuyu women were discriminated against or at any greater risk than women in general. The Tribunal found that the appellant did not belong to a particular social group and therefore had not established a Convention reason. The Tribunal in M (Kenya) were not satisfied that the social group identified by the Adjudicator could properly be regarded as a particular social group within the meaning of the Convention. They preferred the reasoning in Adhiambo.
11. Mr Saville argued that Mr Kuranchie had failed to identify any social group that exists independently of the persecution that the appellant fears.
12. In reply, Mr Kuranchie argued that because the appellant comes from a lineage of women in a tribe who were responsible for performing FGM and was next in line to be the head of this group, she had made out a case of being a member of a particular social group.

13. We do not accept Mr Kuranchie's line of argument. The appellant's fear of persecution as set out in paragraph 29 of her statement is that if she is returned to Sierra Leone she will be forced to go through the initiation ceremony and be circumcised. She would then have to take her grandmother's title and become part of the initiation committee. She did not wish to take her grandmother's title and be involved with the initiation committee.
14. It seems from the appellant's own evidence that in order to take up her grandmother's title and become part of the initiation committee, i.e. the Bundo, she would have to be circumcised. It is therefore our opinion that as she is not circumcised she cannot take her grandmother's title, let alone become involved with the initiation committee. In the circumstances, we agree with Mr Saville that the appellant is not a member of the Bundo because she has not been initiated into that society because she has not undergone FGM.
15. The grounds of appeal correctly recognised that the House of Lords in Shah and Islam established the principle that there can only be a particular social group if this group exists independently of the persecution and that members of the group should share an immutable characteristic. In our opinion Mr Kuranchie has failed to identify any social group, the members of which share an immutable characteristic, which identifies that group. Being young and female would apply to all the young females in Sierra Leone. According to the objective evidence FGM is so widely practised in Sierra Leone that the percentage of women and girls who undergo the practice is as high as eighty to ninety per cent. The logical consequence of Mr Kuranchie's argument is that the small minority of maybe ten to twenty per cent of young females who have not undergone FGM make up to a particular social group. However, we are not satisfied that this social group can properly be regarded as a particular social group within the meaning of the Convention. Since FGM is widespread, there is always that lingering fear. It is precisely because that fear became a reality for the appellant that she fled the country. In the circumstances we agree with Mr Saville that Mr Kuranchie has failed to identify a particular social group that exists independently of the fear.
16. Accordingly, we are not satisfied that there is an identifiable social group to which it can be properly said that the appellant is a member of so as to bring her within the Convention.
17. Accordingly, the appellant's appeal is dismissed.

**Miss K Eshun
Vice President**