Case No: C5/2008/0324

**Neutral Citation Number: [2008] EWCA Civ 568**
**IN THE SUPREME COURT OF JUDICATURE**
**COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL**
**[AIT No: AS/16403/2006]**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 29th April 2008

**Before:**

**LORD JUSTICE RICHARDS**

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**Between:**

**CM (KENYA)** **Appellant**

**- and -**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** **Respondent**

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**Mr S Farazi** (instructed by the Lambeth Law Centre) appeared on behalf of the **Appellant.**

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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# Judgment

**(As Approved)**

**Lord Justice Richards:**

1. The applicant is a young woman, now aged 22, who came from Kenya to the United Kingdom in 2003 and claimed asylum on the grounds of fear of female genital mutilation ("FGM"). Her claim has had a long history, with repeated hearings. On a reconsideration in April 2006 the AIT held that she would be at risk in her home area but that internal relocation to Nairobi was available. In February 2007 the Court of Appeal allowed an appeal against that decision and remitted the matter to the Tribunal on the issue of whether it was open for the applicant to relocate to Nairobi. In a fresh decision dated 29 November 2007 Immigration Judge Buckwell again dismissed the applicant's appeal, both on asylum and on human rights grounds (an Article 8 claim having been entertained by him despite the limited scope of the remittal). The applicant now seeks permission to appeal against that decision. Permission was refused by a senior immigration judge in the Tribunal and by Keene LJ on consideration of the papers. The case before me has been presented very clearly and attractively by Miss Farazi on the applicant's behalf.

2. On the question whether it would be unreasonable or unduly harsh for the applicant to relocate, the Immigration Judge directed himself by reference to the decision of the House of Lords in SSHD v AH (Sudan) [2007] UKHL 49. He also had regard to the Country Guidance case of FK (FGM Risk and Relocation) Kenya CG [2007] UKAIT 00041. In broad terms no criticism can be made of his working within that framework, but three grounds of appeal are advanced.

3. Ground 1 relates to the Immigration Judge's treatment of material relevant to internal relocation. In particular he had before him expert reports of Professor Aguilar and Dr Cheeseman, together with various items of objective evidence. It is said that he failed to consider the evidence, in particular the expert evidence, properly or at all. Insofar as it related to the risk that the applicant would face on account of severe economic hardship and vulnerability to sexual exploitation in Nairobi, the submission is that he concentrated unduly on what the evidence had to say about the operation of the movement called the Mungeki in the slum areas of Nairobi and failed to consider or address the relevant evidence in the broader context of whether it would be unreasonable or unduly harsh to relocate, or indeed to give proper consideration to that wider issue in the terms in which it was put in the case presented to him on the applicant's behalf.

4. At paragraph 34 of his decision, the Immigration Judge said this:

> "I have considered the report of Dr Aguilar, which particularly concerns FGM. I note his views in that respect with regard to FGM and the attitude of the Mungeki. However, considering the personal circumstances of the appellant -- not a follower of the Mungeki, nor is her father-- and assimilating those circumstances to the country guidance

> decision to which I have referred above, I consider that I can only conclude that the appellant would not be at risk from the Mungeki in relation to FGM, were she to be removed to Nairobi. The country guidance decision in FK itself considered expert evidence and although it is arguable that Dr Aguilar has expressed a contrary view -- see section 8 of his report -- I do not believe that it constitutes sufficient grounds to override specific country guidance. My approach to the report of Dr Cheeseman is the same."

5. In paragraph 35 he said that he took due account of the objective evidence before him but had to assess the position of the applicant in the light of case law and he in particular referred to SSHD v AH (Sudan) [2007] UKHL 49. He said he was not persuaded by the evidence before him, either personal to the applicant or generic to the country situation in Kenya, that she would be at risk of FGM if she were returned to Nairobi. A little later in that paragraph he said that when she had been in Nairobi 4½ years previously she had been able to find assistance. She did not endure any suffering or persecution whilst there; indeed she found only kindness, albeit from a complete stranger (I think this was the person who helped her to leave the country). He then went on in paragraph 36 to deal with the position if she were now to return there. I will come back to that in a moment.

6. As to paragraph 34, the Immigration Judge was, in my view, right to describe Professor Aguilar's report as being concerned particularly with FGM and the attitude of the Mungeki. As I read it, that is the report's focus and it was the failure to deal with that aspect of the report in the earlier decision that caused the Court of Appeal to quash that decision and remit the case. This was plainly an important factor for the Immigration Judge to consider. It was right to focus on it, even if it was not the main part of the case as then presented before him on the applicant's behalf (though it was of course also incumbent on him to deal with the rest of the case as so presented). I would add that Dr Cheeseman's report also contains a lot about the Mungeki in its description of conditions in Nairobi.

7. It is true that Professor Aguilar's report also deals with briefly with wider issues of the life that the applicant would face in Nairobi, asserting that she would be unable to find accommodation or employment and would be vulnerable to prostitution and people trafficking, and that Dr Cheeseman's report also deals more generally with the likely impact on her of conditions in Nairobi, referring in particular to the difficulties of finding employment other than work of a degrading kind and to the low standard of living, as well as the general risk of sexual violence and trafficking. Further points on those matters are to be found in the other pieces of objective evidence that were before the Immigration Judge.

8. It is also true that the Immigration Judge does not refer specifically to any of those further passages or items of evidence when reaching his conclusions on internal relocation. In my judgment, however, it cannot be said that he failed to have regard to them. He was at pains to set out, in paragraph 20, that his attention had been drawn in submissions for the applicant to specific sections of the reports of both experts, which were recorded in his notes of the submissions, and that he had also noted other aspects of objective evidence to which counsel had referred. At paragraph 28 he confirmed that he had taken account of all the evidence placed before him, including documentation, whether or not specifically referred to thereafter. At paragraph 34 itself, whilst focusing on FGM and the Mungeki, he states in terms that he has considered the report of Professor Aguilar and refers also to the report of Dr Cheeseman.

9. The Immigration Judge's conclusion on the wider issue to which the relevant parts of this material relates is at paragraph 36. In essence he found in that paragraph that the applicant would be returning as an adult with qualifications and was equipped to relocate. She was intelligent and straightforward and would be able to adapt once more to life in Kenya. Her background and education from this country would probably give her an advantage over many others of her age residing in Nairobi. He also mentioned in paragraph 35, as I have said, that when she was in Nairobi before she had been able to find assistance. As Keene LJ observed when refusing permission on the papers, it was implicit in the Immigration Judge's findings that in his view she would be able to survive economically in Nairobi. I would add that wrapped up in that there was, in my view, an implicit rejection that she might be forced into prostitution or be subject to equally degrading treatment.

10. It was on this basis that the Immigration Judge found that it would not be unreasonable or unduly harsh for her to relocate to Nairobi. In my judgment, that was a conclusion reasonably open to him on the evidence. Equally, in my judgment, it was a conclusion expressed with sufficient reasoning. I do not think that it was necessary in the circumstances for him to address in specific terms the features of the expert reports and objective evidence on which Miss Farazi relies or to give fuller reasoning than he did as to why he rejected the views of the experts that the applicant would be unable to find employment and would be at risk of sexual exploitation.

11. I would add that I detect no arguable error of law in the form of a failure to consider the applicant's personal and particular circumstances, as required by the country guidance and as is axiomatic in cases of this kind. It seems to me that the reasoning in the paragraphs to which I have referred, in particular the end of paragraph 35 and paragraph 36, is directed specifically to the personal characteristics and circumstances of the applicant.

12. Ground 2 is a narrower point relating to the passage I have already quoted at paragraph 34 where the Immigration Judge said that he did not believe that what was said by Professor Aguilar constituted sufficient grounds to override country guidance. This is said to show that the Immigration Judge had misunderstood the applicant's arguments and that he failed to apply the correct test in FK and other cases to similar effect. He had not been asked to

override the country guidance and it was not necessary for him to do so. He was being asked to apply the country guidance under which he had to consider the personal circumstances of the applicant as a whole.

13. I cannot accept the submission that this passage reveals a misunderstanding of the applicant's arguments or is otherwise erroneous in law. At paragraph 34, the Immigration Judge was dealing with a specific point about FGM and the Mungeki and was saying that the contents of Professor Aguilar's report, although arguably contrary to the conclusion reached in the guidance case of FK, did not provide grounds for departing from that guidance. That was a perfectly reasonable view. The language of overriding country guidance may have been inappropriate, but the underlying point of substance was valid. As to the wider guidance given in FK and relied on by the applicant, the Immigration Judge actually quoted at paragraph 30 the sub-paragraph in that case that referred to the need to have regard to the general circumstances prevailing in the case of relocation and to the personal circumstances of the applicant, and also referring to the question of whether she would be able to survive economically. That is the approach that he was being invited to apply. It is the approach that he did in fact apply in paragraph 36. There was, in my view, no arguable error.

14. The third ground of challenge relates to the Immigration Judge's finding under Article 8 ECHR that it would not be disproportionate to remove the applicant to Nairobi. That submission depends, as Miss Farazi accepted, on her having succeeded in persuading me that there was a basic flaw in the Immigration Judge's approach to the earlier issue of internal relocation. If, as I have held to be the position, there was no such flaw and the Immigration Judge was entitled to find under the asylum claim that it would not be unreasonable or unduly harsh for the applicant to relocate to Nairobi, then in my judgment he was fully entitled to reject the Article 8 claim. There was no arguable legal error in this approach.

15. For those reasons, whilst thanking Ms Farazi for her submissions, I must refuse the application for permission to appeal.

**Order**: Application refused.