**Upper Tribunal**
**Immigration and Asylum Chamber** **Appeal Number: AA/11020/2012**

**THE IMMIGRATION ACTS**

| **Heard at Manchester** | **Promulgated on:** |
|---|---|
| **On 26 April 2013** | **On 18 June 2013** |

**Before**

**Deputy Upper Tribunal Judge Davidge**

**Between**

**Ms Fatoumata Cynthia Camara**

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

# Determination and Reasons

**Representation**
For the Appellant : Ms Mair, Counsel
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**Details of Appellant and basis of claim**

1. This appeal comes before me following the grant of permission on 13 March 2013 by Designated Immigration Judge Zucker in respect of the determination of First-tier Tribunal Judge Hindson who dismissed the appeal following a hearing at Bradford on 25 January 2013 by way of a determination promulgated on 12 February 2013.The Appellant is a Gambian National born on 11 September 1984. She appeals against the decision of the respondent to remove

her from the UK as an illegal entrant. She arrived in the UK on a student visa on 07 September 2009 valid until 19 March 2012, having advised Pascal Francis Mendy, a former boyfriend, that she was arriving she went to live with him on arrival. The Appellant did not study. In September 2010 Mr Mendy was arrested working in possession of a false document for which he received a prions sentence. In May 2011 the Appellant 's leave was cancelled. In October 2011 Mr Mendy applied for leave outside of the rules with the Appellant and their eldest child as a dependent. The application was refused. The Appellant 's leave was curtailed. The Appellant made a claim for asylum on 20 August 2012. Her partner Pascal Francis Mendy (born 17/02/1978) and her two children Joshua Solomon Mendy (born 02/10/12) and Sampierre Francis Mendy (born 26/06 2010) are all dependents in her claim.

2. The Appellant claimed at her screening interview that her maternal family are Christian Ghanaians. Her mother went to the Gambia from Ghana and became the second wife of her father, a Serahule muslim. She is the only child of that union. Her maternal grandmother in Ghana was a witch. When the grandmother died her maternal family wanted her, in the absence of her mother who had dies of breast cancer in 2004, to become a witch. She refused and the family came to Gambia and tried to kidnap her and forcibly take her to Ghana to become a witch. In 2012 her mother's brother came to look for her at her friend's house in London Corner in Serakunda and neighbours told him she had moved to the UK. She is frightened the family would kidnap her if she returned.

3. At substantive interview the Appellant added two further bases of claim: that she converted to Christianity in 2006, and was, and would continue to be, persecuted by her father's family because of her conversion. That she will be forcibly circumcised by extended family on her father's side. Her father is a retired school teacher. He is alive. The Sarahule tribe practise FGM. He is not against circumcision, but her deceased Christian mother was, and so the Appellant was not circumcised. Since her mother's death the Appellant claims that in 2005 she put off a telephone enquiry about her circumcision and in 2006 she avoided her paternal aunt taking her to her village to be circumcised which led to her being slapped and beaten by the aunt. Her father divorced her mother and then lived full time with his first wife in Dippa Kunde, when the Appellant became pregnant out of wedlock, or alternatively when her mother, who had converted to Islam when she married him, converted back to Christianity.

4. Appellant explains that initially on claiming asylum she only mentioned her mother's family in Ghana and the issue of witchcraft because she saw a male interviewer.

5. The Appellant has a child from a former relationship living in The Gambia, with his father according to Mr Mendy's screening interview and with a friend according to the Appellant . The Appellant maintains that her account of the facts is correct and that she has no explanation as to why Mr Mendy account differs. Mr Mendy has not provided a witness statement. The Appellant 's explanation for her late claim for asylum is a position of ignorance which she says only changed on being positively advised of a right to do so by lawyers in 2012. The Appellant 's partner is not Serahule and is a Christian, who the Appellant says has a brother and sister here in the UK but no family in The Gambia. The Appellant says her family would not approve of the match.

6. The appeal was dismissed by the judge who decided: That the Appellant was not a credible witness, her claimed fear of witchcraft was fabricated in an effort to establish a claim for her and her family to stay here when other avenues had been exhausted. The judge found the objective evidence did not support a claim for persecution as a Christian, and her account of religious persecution/abduction for witchcraft was, at its highest, a stale incident of family disapproval which did not give rise to any current threat justifying international protection. That there was no real risk of forced circumcision, historically it had not happened, he rejected the account of threats from the paternal aunt, and noted that the Appellant in any event now had a partner who would provide protection.

**The Appeal hearing**

7. At the hearing before me on 26 April 2013 the Appellant attended. Ms Mair expanded on the grounds. The grounds argue that the credibility finding is perverse, based solely on s8 (1) & (2) of the Asylum and Immigration Treatment of Claimants Act 2004, with too much emphasis given to the late claim which the Ft TJ had failed to appreciate was fully explained by her lack of knowledge that she could claim, as established by the fact that the letter from Immigration Aid dated 11 July 2012 showed that that was the first time she had been advised that she could claim asylum, and it can be assumed that if she had already known the position there would have been no need for the advice. The adverse credibility finding in respect of the late claim had also led the Ft TJ to conclude that the Appellant had entered the UK pretending to be a student, when really she was coming to join Mr Mendy. In response Mr Harrison submitted that the Appellant's evidence had been heard and she had not been believed. As the entire claim was rejected, the claim of risk, including of FGM was not accepted. At the conclusion of the hearing I reserved my determination which I now give.

## My Consideration Findings and Conclusions

8. I find no merit in the challenge to credibility. The Ft TJ's reasoning makes it perfectly clear that it was not the late claim for asylum that was the ratio for the adverse credibility finding concerning entry to the UK. The Ft TJ explains clearly that he does not believe the Appellant ever intended to study here because she did not start studying when she arrived and made no contact with her college on arrival. She was not pregnant on arrival and even though she became pregnant shortly thereafter that her pregnancy would not have prevented her from starting the course as planned in September. This ground is also flawed in its reliance on the letter from Immigration Aid. The letter from Immigration Aid is not determinative of what the Appellant knew, only of the advice given by those particular advisers at that time, and nor can it be reasonably be said that the fact of the advice being given establishes a lack of knowledge prior, so that the letter reveals an incontrovertible mistake of fact. Nor can its import be said to be such that the Ft TJ was bound to remark on it, and that his failure to refer to it is an error of law.

9. I find that the Ft TJ's adverse credibility conclusions were properly open to him on the evidence, and that there is no perversity. The Appellant's claim was internally consistent in parts but not in others, there was a poor immigration history, and the late claim had all the hallmarks of expediency. The claim that FGM was not initially mentioned because of the lack of a female interviewer is clearly undermined by the failure to mention the claim based on Christianity.

10. In any event the criticisms made cannot sustain an error of law finding because they ignore the fact that the Ft TJ considers the position in the alternative, i.e. on the basis that the account of events in The Gambia is credible. Ms Mair submitted to me that it is not clear that the issues are considered in the alternative, but rather that the consideration of the different heads of claim show that, contrary to the adverse credibility findings, the FT TJ in fact accepted the account given in its entirety, but not the inferences drawn by the Appellant . I am satisfied that when the Ft TJ says, at paragraph 61, "However I have considered the position if her account is true", he meant exactly that he was considering it in the alternative, and there is no inconsistency in his reasoning.

11. The grounds do not challenge the findings in respect of the claim witchcraft and Christianity beyond the issue of credibility that I have dealt with, and it follows that I find no error in respect of the decision in respect of those parts of the claim.

12. The last ground of challenge is that the FT TJ failed to properly assess the risk on return arsing from FGM. The particularisation is that the account of the Appellant is that she was able to refuse her paternal aunt's attempts to take her back to her place of residence but that resulted in violence to her which underlined the serious of the threat that the aunt would return, and ignores the Appellant 's evidence that she had then moved away to avoid further threats, so that the Ft TJ's finding that the fact the Aunt had not returned showed there was little risk that she would be interested now, is unsafe.

13. I find no merit in the basis of this challenge. It again ignores that it is a finding in the alternative. The primary finding is that the Ft TJ did not find credible the evidence that the maternal aunt had made any threat or that the Appellant had moved around because of it.

14. I drew to the representatives' attention the new country guidance case of K and Others (FGM) The Gambia CG [2013] UKUT 00062. Both representatives indicated that they did not require an adjournment to deal with any matters arising from it, and were in agreement that I should take it into account in reaching my decision. I have considered whether in light of that case, the approach of the Ft TJ here reveals any material error of law. The head note states:

*1) FGM has been practised upon about three quarters of the female population of The Gambia historically. The most recent scientific evidence, based on data from 2005, showed no significant change in its incidence. There are ongoing campaigns, principally by GAMCOTRAP (Gambia Committee on Traditional Practices Affecting the Health of Women and Children), aiming to reduce and eventually to eliminate FGM. There has been some increase in published opinion in the Gambia against FGM, and there have been local declarations of renunciation, but there has been no scientific evaluation of GAMCOTRAP's effectiveness in establishing a decline.*

*2) Incidence of FGM varies by ethnic group. Within the four main ethnic groups there are subgroups, within which the incidence may vary – see the table below. In no ethnic group is the practice universal; in some ethnic groups the practice is absent. Ethnic groups are thoroughly interspersed. The country is small and highly interconnected. (Where reference is made to ethnic group we include sub-groups save where specified)*

*3) The evidence as at November 2012 falls short of demonstrating that intact females in The Gambia are, as such, at real risk of FGM. The assessment of risk of FGM is a fact sensitive exercise, which is likely to involve ethnic group, (whether parental or marital), the attitudes of parents, husband and wider family and socio-economic milieu.*

*4) There are significant variables which affect the risk:*

a. *the practice of the kin group of birth: the ethnic background, taking into account high levels of intermarriage and of polygamy;*
b. *the education of the individual said to be at risk;*
c. *her age;*
d. *whether she lived in an urban or rural area before coming to the UK;*
e. *the kin group into which she has married (if married); and*
f. *the practice of the kin group into which she has married (if married).*

5) *Also relevant is the prevalence of FGM amongst the extended family, as this may increase or reduce the relevant risk which may arise from the prevalence of the practice amongst members of the ethnic group in general.*

6) *In assessing the risk facing an individual, the starting point is to consider the statistical information currently known about the prevalence of the practice within the ethnic group that is the relevant ethnic group in the individual's case, as follows:*

7) *If the individual is unmarried and given that ethnicity is usually taken from the father in The Gambia, the relevant ethnic group is likely to be the ethnic group of the father.*

8) *If the individual is married to a man from an ethnic group that is different from her father's ethnic group, then the relevant ethnic is the ethnic group of the husband.*

9) *The statistics from which the prevalence of the practice of FGM within the ethnic groups in the Gambia is drawn, vary considerably given the lack of detailed research and analysis undertaken in The Gambia. From the material before the Upper Tribunal, those statistics indicate as follows:*

| 10) Ethnic group | 11) Prevalence of FGM/C |
|---|---|
| 12) Mandinka | 13) May be as high as 80-100% |
| 14) Fula (Overall) | 15) 30% |
| 16) Hobobehs (sub group of Fula) | 17) 0% |
| 18) Jama (sub group of Fula) | 19) 0% |
| 20) Toranks, Peuls, Futas, Tukuleurs, Jawarinkas, Lorbehs, Ngalunkas and Daliankos (sub groups of Fula) | 21) Practise but % unknown |
| 22) Serehule | 23) May be as high as 100% |
| 24) Njefenjefe (within the Serehule ethnic grouping) | 25) 0% |
| 26) Niumikas (within the Serehule ethnic grouping) | 27) Practise but % unknown |

| | |
|---|---|
| *28) Jola & Karonikas* | *29) 90 to 100%* |
| *30) Jola Foni* | *31) Practise but % not known* |
| *32) Jola Casa* | *33) 0%* |
| *34) Others* | *35) Variable* |
| *36) Wolof – those who migrated from Senegal Oriental* | *37) 0%* |
| *38) Wolof – those who migrated from Sine Saloum* | *39) Practise but % not known* |

*40) The next step is to consider the various other factors mentioned in paragraph 4 above as some may increase the risk, whilst others may reduce the risk. Whist each case will turn on it own facts, the following are of general application:*

*a. In the case of an unmarried woman, parental opposition reduces the risk. In the case of a married woman, opposition from the husband reduces the risk. If the husband has no other "wives", the risk may be reduced further. However, it should be borne in mind that parental/spousal opposition may be insufficient to prevent the girl or woman from being subjected to FGM where the extended family is one that practises it, although this will always be a question of fact.*

*b. If the prevalence of the practice amongst the extended family is greater than the prevalence of the practice in the ethnic group in question, this will increase the risk. Conversely, if the prevalence of the practice amongst the extended family is less than the prevalence of the practice in the ethnic group in question, this will reduce the risk.*

*c. If the woman is educated (whether she is single or married), the risk will reduce.*

*d. If the individual lived in an urban area prior to coming to the United Kingdom, this will reduce the risk. Conversely, if the individual lived in a rural area prior to coming to the United Kingdom, this will increase the risk.*

*e. The age of a woman does not affect the risk measurably; it is an issue upon marriage. Amongst the Fula, FGM has been carried out on babies as young as one week old. The average age at which FGM is carried out appears to be reducing and this may be due to concerns about the international pressure to stop the practice. Although there are statistics about the average age at which FGM is carried out on girls and women for particular ethnic groups, the evidence does not show that, in general, being above or below the relevant average age has a material effect on risk. It would therefore be unhelpful in most cases to focus on the age of the girl or woman and the average age at which FGM is carried out for the ethnic group of her father (if unmarried) or that of her husband (if married).*

*41) Thus, it is possible to arrive at a conclusion that the risk faced by an individual is less than, or more than, the rate of incidence of FGM in the ethnic group of the individual's father (if unmarried) or her husband (if married). The rate of incidence of FGM in an ethnic group must therefore be distinguished from the degree of likelihood of infliction on*

*an individual against her will or against the will of her parents. Some individuals from ethnic groups with a high incidence may not be at risk, while some individuals from ethnic groups with a low incidence may be at risk.*

*42) <u>State protection:</u> FGM is not specifically criminalised in The Gambia although it may be covered by the existing criminal law on assault or in The Gambia's Children's Act 2005. However, there are no known cases of prosecutions under the general criminal law or under the 2005 Act. There is no reliable evidence to suggest that a female who may be at real risk of FGM can avail herself of effective State protection or that her father or husband could invoke such protection on her behalf.*

*43) <u>Internal flight:</u> As a general matter, an individual at real risk of FGM in her home area is unlikely to be able to avail herself of internal relocation, although this is always a question of fact. Cogent reasons need to be given for a finding that the individual would be able to relocate safely, especially given the evidence that ethnic groups are thoroughly interspersed, the country is small and ethnic groups in different parts of the country are highly interconnected.*

15. I note that the CG case confirms that the statistical evidence of the practice of FGM of the ethnic group of the Appellant's father, the Serahule is up to 100%. That does not of course mean without exception, as is self-evident here because, in fact, the Appellant is intact.

16. The factual basis relevant to the assessment of risk is not the account put forward by the Appellant, but those matters accepted by the Ft TJ. In summary that is that the Appellant's father's ethnic tribe widely practise circumcision, and her paternal family practise it, and her own father approved of it. She is the child of her father's second wife and whilst her parents remained married her particular family had not inflicted it forcibly against her mother's wishes, or against her own. After the death of her mother in 2004 and prior to her coming to the UK in 2009 she had not faced attempts to forcibly circumcise her, as she claimed. She had not moved about in an effort to avoid forcible circumcision as she claimed. The position now is different from when the Appellant left in 2009. The assessment is not of the Appellant returning as a single woman, and to the Serahule tribe. She has a partner with whom she has two children. I am satisfied that there is no basis to daw a distinction between the Appellant's relationship with Mr Mendy and a marriage in this context. Mr Mendy is of course a dependent in this claim. They would be returned as a family unit. Mr Mendy did not give evidence at the First Tier; the Judge was advised that that was because the Appellant did not see that he would add anything to her claim. That was a decision properly open to her and her representatives. The CG case makes clear that a woman's ethnicity is, whilst she is single, her father's, and once married, her husbands. The Appellant has said that Mr Mendy is not of the Serahule ethnicity and that he is a Christian with no family in The Gambia.

Indeed the lack of his having family to support the couple was a concern militating against return. There is no evidence from which it can reasonably be inferred that Mr Mendy is anything but supportive of the Appellant and her desire not to undergo FGM. The country guidance case specifically reminds us that the attitude of the partner is significant when assessing risk. On the facts here Mr Mendy has no family in The Gambia who might subject the Appellant to forced mutilation. The Appellant has never suggested that she fears any involvement from Mr Mendy in terms of FGM, or suggested that as a result of his ethnicity she would be at risk, her claim has, since she made it, always been that it is her paternal extended family who are the cause of her fear.

17. I have carefully considered all the submissions and the evidence before arriving at my conclusions. I appreciate that there were serious difficulties with the Appellant's evidence and that there were real concerns identified by the judge whose findings were made with full consideration of the evidence, albeit not the country guidance case. I note the compelling reasons given by the judge for rejecting the account. When considering the risk to the Appellant on return, I find that the judge considered all the relevant matters upon which evidence was provided, as referred to in the country guidance case, including, on the judge's findings, that there had been no prior problems, as well as the support of the Appellant's partner, and how that might impact upon how she would be perceived on return. On the particular facts of this case the FT TJ's conclusions, although reached without the benefit of the new CG case, do not run contrary to it, but are very much in line with it. This is not a case where it can be said that simply because the Appellant had Serehule ethnicity through her father by birth, she would be at risk now, so that the Ft TJ's findings are perverse. For all these reasons I find that the First-tier Tribunal did not make any errors of law and the determination stands.

**Decision**

18. The First-tier Tribunal made no error of law. The decision dismissing the Appellant's appeal stands.

**Signed:**

**E.Davidge Deputy Judge of the Upper Tribunal**
26 April 2013.