



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

Appeal Number: AA/06355/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 5 November 2015**

**Decision and Reasons Promulgated
On 10 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**N S O
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood of Rochdale Law Centre

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lambert promulgated on 28 July 2015 which dismissed the Appellant's appeal against a refusal of asylum on all grounds.

Background

2. The Appellant was born on 9 September 1980 and is a national of Nigeria.

3. The Appellant has a lengthy immigration history which is unchallenged and set out in detail at paragraph 1.2 of the decision. On 7 December 2012 the Appellant applied for asylum as she feared that if she returned to Nigeria her daughter would be subjected to FGM as she was.
4. On 13 March 2015 the Secretary of State refused the Appellant's application and made directions for her removal. The refusal letter accepted that the Appellant had been circumcised but challenged the credibility of her account of a forcible marriage and her consequent fears on return to Nigeria. Even if her account was accepted as credible the Respondent relied on recent legislative changes that would amount to effective protection against FGM in Nigeria and that internal relocation would not be unduly harsh.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lambert ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
6. She accepted in the light of all of the background material that FGM was prevalent in particular amongst the Igbo people. She accepted that the Appellant was forcibly circumcised.
7. The Appellant's failure to apply for asylum promptly significantly undermined her credibility. The Appellant had two distinct opportunities to claim asylum after her fears of the consequences of her forced marriage and the prospect of FGM for her daughter first arose in October 2010 when she returned from Nigeria and August 2011 after the birth of her daughter.
8. The Appellant only claimed in December 2012 several months after immigration enforcement action had been commenced and had closed down her and her husband's business.
9. The Judge did not find the Appellant's explanation for her failure to claim asylum was credible against the background of her immigration history.
10. The account of a forced marriage and its breakdown was not credible and the Judge set out her reasons for that finding.
11. The Judge concluded that while she accepted the practice of FGM among the Igbo generally she did not accept that her fears for her daughter were genuinely held. The Judge found that the Appellant could use her own education and resourcefulness to protect her daughter and seek state protection.
12. She took into account the medical evidence and concluded that even allowing for the mental health issues she had the Appellant had demonstrated the ability to be intellectually and financially productive and of caring for her children satisfactorily.
13. The Judge found no reason to allow the appeal outside the Rules.
14. Grounds of appeal were lodged arguing that :

- (a) The Judge failed to take into account the report of Dr Comfort Momoh.
 - (b) The Judge made unreasonable findings in relation to the Appellant's mental health issues by failing to give adequate weight to the expert evidence.
15. On 19 August 2015 First-tier Tribunal Judge Saffer gave permission to appeal on all grounds.

Submissions

16. At the hearing I heard submissions from Mr Wood on behalf of the Appellant that
- (a) He relied on the grounds of appeal.
 - (b) He referred to H7 and 8 of the Respondent's bundle which contained the conclusions of Dr Momoh's report about the Appellant. She concluded that the Appellant's child was at risk of FGM and abduction which stems from her tribal background and that there would be no effective state protection but internal relocation would 'be very difficult' for the Appellant. The Respondent had accepted that weight should be attached to Dr Momoh's report.
 - (c) It was insufficient to make one brief reference to the report in the decision but not take it into account in the credibility findings in relation to the risk to the Appellant and her daughter. This failure vitiated all of the conclusions.
 - (d) In relation to grounds 2 and 3 he relied on the report of Desiree Saddik a child and family clinical psychologist and her conclusions as to the likely effect of return on her mental health problems and her inability to relocate and feel safe anywhere in Nigeria.
 - (e) He referred to the report of Dr Kaur at I1-2 and his conclusions.
 - (f) The Appellant's mental health issues were relevant to the findings on credibility and Article 8.
17. On behalf of the Respondent Mr Mc Vitie submitted that :
- (a) While there was only one brief reference to the report of Dr Momoh the issue was one of materiality. The expert concludes that FGM is prevalent and therefore the Appellant is at risk. There is little in the report that is directly relevant to the Appellant.
 - (b) In relation to Ms Saddik's report if the Judge concluded that she did not find that the Appellant had given a credible account of her history she was entitled to reach the conclusions that she did.
 - (c) In rejecting the medical evidence that suggested that the Appellant could not cope on her return to Nigeria and care for her children the report of Ms Saddik not engage with the issue of how the Appellant had been able to cope with her mental health problems until her leave ran out. The Judge was able to go behind the medical evidence if she gave reasons for doing so.

Finding on Material Error

18. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

19. In relation to the argument that the Judge failed to take into account the expert report dated 22 August 2013 from Dr Momoh I am satisfied that there was no material error of law in the Judges approach. Dr Momoh's report is found at pages H1-H8 of the Respondent's bundle. The vast majority of the report, H1-H6 consists of an assessment of the practice of FGM in Nigeria and to a lesser degree her physical examination of the Appellant as to whether she has been subject of that practice as she claimed. Indeed hers is the only objective evidence that confirms the Appellant was subject to FGM and therefore I find that the Judge must have taken it into account and given weight to it as she states both at 5.2 and 9.3 that she has taken into account all of the Appellant's documents and accepts that FGM is prevalent in Nigeria which was 'broadly supportive' of her fears on return and she found that the Appellant was subject to it a finding that can only have arisen out of Dr Momoh's report.
20. I am satisfied however that the Judges task went beyond a finding of whether the Appellant had been the subject of FGM but she was required to consider whether the Appellant had given a credible account as to why she was claiming asylum and the fact of her being subject to FGM was but one part of the factual matrix underpinning her claim. Thus the majority of the report was not in dispute and was accepted by the Judge.
21. The only part of Dr Momoh's report that directly relates to the Appellant and her child specifically, and is disputed, is a very brief paragraph, 44, at H7 in which Dr Momoh assesses the risk to the Appellant and her child based on an uncritical acceptance that the Appellant has been truthful about the circumstances in which she came to make her asylum claim. The Judge was therefore entitled to reject Dr Momoh's conclusions about the risk to the Appellant and her child on return as she gave detailed and cogent reasons at paragraphs 9.4-9.9 why she did not find that the Appellant was a credible witness and conclude that the Appellant's 'stated fears for her daughter are genuinely held.' Those reasons were rational and reasonably open to her and included that it was not credible that the Appellant's in laws would tell her in October 2010 that they expected her daughter to be circumcised given that she was not even aware she was pregnant or that she was expecting a girl; the claim that her in laws would insist on FGM for her daughter was inconsistent with them not maintaining contact with her; there are inconsistencies in relation to her accounts of her husband's attitude to FGM for their daughter between her asylum interview and her witness statement; her account of her violent and abusive marriage is inconsistent with her immigration history of supporting applications made by him; her account of the circumstances in which her husband left her were inconsistent; there were inconsistencies in relation to her claim to have received a threatening text message from an 'uncle' from an unknown number when the text produced showed the number and came from a cousin.
22. In relation to the assessment of the Appellant's credibility generally I am satisfied again that the Judge made clear that she took into accounts all of the evidence which perforce included the evidence of her mental health problems. I can find nothing in that evidence that would have resulted in a different view being taken by the Judge in relation to the assessment of credibility.
23. I have considered the challenge that the Appellant did not give sufficient weight to the conclusion of Ms Saddik that the Appellant could not cope if returned to Nigeria and

thus return would not be in the best interests of her children. I am satisfied that the Judge made clear that she had considered the evidence of both Ms Saddik and the more cent evidence of Dr Kaur in her detailed analysis at 9.13. She was of course entitled to take into account that the evidence of Ms Saddik a clinical psychologist was now rather old dating back to April 2013 and her conclusions were in contrast to those of the other evidence advanced by the Appellant from Dr Kaur a Consultant Psychiatrist dated 19 March 2014 whose conclusion the Judge quoted that the Appellant posed no risk to herself or her children and there were no safeguarding issues. This conclusion the Judge was entitled to find was reinforced by the fact of everything that the Appellant had been able to achieve inspite of her troubled history: coming to the United Kingdom to do post graduate study, helping her husband in his business with a 'huge shop' surviving as a single mother without any apparent means of financial support. It was therefore open to the Judge to conclude that there was no evidence to suggest that she could not continue to serve her children's best interests in her home country.

24. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

25. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

26. **The appeal is dismissed.**
27. **Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and due to the sensitive nature of this appeal I continue that order.**

Signed

Date 9.11.2015

Deputy Upper Tribunal Judge Birrell