



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06639/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 5th January 2015

Decision & Reasons Promulgated
On 6th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

OAT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Afzal - Legal Representative

For the Respondent: Mr A McVeety - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by OAT, a female citizen of Nigeria born 2nd November 1969. She appeals against the determination of First-tier Tribunal Judge Crawford issued on 9th October 2014 dismissing on asylum, human rights and humanitarian protection

grounds her appeal against the decision of the Respondent made on 20th August 2014 to refuse to grant asylum and to remove her from the United Kingdom.

2. On 4th November 2014 Judge Pooler granted permission to appeal. He said:
 - “3. It is arguable that the judge failed to give adequate reasons at [47] for his findings on proportionality. His finding that the Appellant did not meet the requirements of the Immigration Rules relating to private and family life is however unchallenged and the Appellant will need to be alive to the need to show a good arguable case for the grant of leave outside the Immigration Rules, following Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640.
 4. The judge considered internal relocation at [38] where he gave succinct reasons for finding that it would be reasonable for the Appellant to relocate. It is unlikely that the grounds relating to the judge’s conclusions on the asylum appeal disclose a material error of law; but since permission is to be granted all grounds may be argued.”
3. It is submitted in the grounds seeking permission that Judge Crawford failed to give adequate reasons for his decision and applied “a very high standard of proof”. In particular it is submitted that he did not deal properly with the delay by the Appellant in claiming asylum; that he erred in failing to give more reasons for his findings relative to the Appellant’s three children, his finding that their best interests are that they remain with their mother being inadequate; that he failed to give adequate reasons for his finding that removal of the Appellant and her children would be proportionate.
4. At the hearing before me Mr Afzal made a further submission i.e. that Judge Crawford failed to apply his mind, following Gulshan, to the question of whether or not there were exceptional or compelling circumstances in this case which justified him dealing with Article 8. He submitted that in the absence of a declaration of what these exceptional /compelling circumstances were he ought not to have gone on to consider Article 8. Mr Afzal criticised the reliance by Judge Crawford at paragraph 35 on the fact that the Appellant’s husband had arranged travel tickets and accommodation in the USA for the Appellant and her children and his conclusion that these arrangements would have been expensive, making it unlikely that the Appellant’s husband would have asked the Appellant to break off her holiday in the UK four days after her arrival in order to return to Nigeria for FGM to be carried out on her daughters. Mr Afzal said that everything in that paragraph was conjecture. Judge Crawford could not possibly have known what the flights etc. cost or what was in the minds of the family. He made the same submission with regard to the Appellant’s claim that the pastor at her church had arranged for her children to start school only a week or two after they arrived in the UK but she had not learned about the asylum process for several months after that. With regard to the issue of internal relocation he said that people in Nigeria are recognised by their tribal origin. The Appellant’s family would track the Appellant down. The issue of female genital

mutilation and the threat of that happening to her and her daughters is out of her control. He said that her son's arrival may be what prompted her to seek asylum.

5. The position of Mr McVeety is that the Appellant had been in the UK for less than twelve months at the date of the hearing and it would have been almost impossible for her to establish a disproportionate breach of her rights under Article 8. He relied on the decision in **Zoumbas v Secretary of State for the Home Department [2013] UKSC 74** and **EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874** . With regard to the asylum claim he submitted that Judge Crawford had taken account of all the factors and evidence before him. Mr McVeety questioned why the children would start school so soon after arriving in the UK on visit visas. They were talking of going to the USA. He submitted that the findings at paragraph 36 about the delay in claiming asylum are not perverse. In considering internal relocation the Judge took into account the fact that the Appellant is an educated woman. Again he considered the evidence in the round. He pointed out that at the time of the hearing the Appellant's son had only been in the UK for about four months.

Decision on Error of Law

6. I have given careful consideration to all the evidence before me in this case.
7. The determination of Judge Crawford is comprehensive and thorough. He properly considered all aspects of the asylum claim. It was submitted by Mr Afzal that Judge Crawford had raised no issues of credibility but that is not so. Indeed he raised several such issues and concluded that the Appellant had fabricated her asylum claim. He took into account, as he was entitled to do, that although she claimed to have spoken to a lawyer in November 2013 the Appellant did not claim asylum until 10th April 2014. Her son had arrived in the UK in March 2014. He took the view that she had deliberately waited until all her children were in the UK before claiming asylum. As he was entitled to do he took account of the delay in claiming asylum in assessing her credibility. He was entitled to question how people at the church were able to tell her how to enrol her children at a school when they only had visit visas but did not tell her she could claim asylum despite her expressed fears that her daughters were at risk of FGM in Nigeria. He noted that the Appellant had said repeatedly that FGM is carried out on children at the age of 10 years and 5 months and when she came to the UK on 16th August 2013 her daughter S was 10 years and 4 months old. He took into account that the Appellant and her daughters had visit visas for both the UK and the USA and although he may have made some presumptions about the costs of the proposed trip was entitled to take these plans into account in questioning whether or not her husband would phone her as claimed telling her to return to Nigeria, especially in the circumstances that the family had lived in Nigeria for some time after the death of the old head of the family without any talk of the girls being subjected to FGM. With regard to internal relocation again Judge Crawford thoroughly covered all the relevant factors. He took into account the size and the large population in Nigeria. He noted that the family obviously have money having travelled abroad to the UK twice and to the USA. He

took into account the fact that both the Appellant and her husband are educated adults who would be able to obtain employment away from the immediate vicinity of the head of the family. He took into account particularly that the family were in Nigeria for some time after the death of the old head of the family and the installation of the new head but no attempt was made to carry out FGM on the girls. I find no material error of law in the findings made by Judge Crawford relative to the asylum claim or that for humanitarian protection.

8. I consider there to be no merit whatsoever in the submission that the Judge erred in proceeding to consider Article 8 without first finding compelling circumstances. Judge Crawford could have said that there were no compelling circumstances and following **Gulshan**, declined to deal at all with Article 8. Instead he chose to set out his view which was that in all the circumstances removal of the Appellant and her children would not give rise to a disproportionate interference with their private or family lives. I do not see how this can be construed as a material error of law sufficient to vitiate his decision on Article 8. I do not think that he had to give lengthy reasons for finding that it was in the best interests of the children to be with their mother as this has been stated frequently by this and higher courts.

Notice of Decision

The grounds disclose no material error of law and none is apparent on the face of the determination.

The decision of the First-tier Tribunal shall stand.

The appeal is dismissed.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

Signed

Date: 5th January 2015.

N A Baird
Deputy Judge of the Upper Tribunal