



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

Appeal Number: PA/00426/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 25 August 2017**

**Decision & Reasons Promulgated  
On 15 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**VA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Semega-Janneh, instructed by Fountain Solicitors

For the Respondent: Ms J Isherwood, Senior Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant herein is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Nigeria, born in May 1981. She appealed to the First-tier Tribunal (“FtT”) against the decision of the Secretary of State for the Home Department (“SSHd”) dated 22 December 2016 refusing her protection and human rights claims. That appeal was dismissed by First-tier Tribunal Judge Wedderspoon in a decision promulgated on 1 March 2017.

### **Setting aside of the FtT’s decision**

2. Before the FtT the appellant asserted that her removal would breach the Refugee Convention and Articles 2, 3 and 8 of the ECHR (see paragraph 4 of the FtT’s decision). In paragraphs 7 to 13 of its decision the FtT set out in considerable detail the relevant legal framework in relation to all of the abovementioned grounds.
3. The FtT summarised the appellant’s Refugee Convention/protection claim in the following terms:

“Her claim for asylum is based on her fear of persecution that if returned with her two daughters to Nigeria as a woman who has undergone FGM her daughters would face mistreatment, namely FGM practices. The appellant’s partner GBA and their two daughters ... are dependent upon her appeal.”

The decision does not, however, incorporate a summary of the relevant features of the appellant’s Article 8 claim.

4. Thereafter, the FtT’s decision sets out relevant aspects of the appellant’s immigration history, at [16] and the Secretary of State’s decision letter (at [17] to [25]), as well as the events at the hearing (at [26] to [43]), including the parties’ oral submissions (at [38] - [43]).
5. The FtT’s findings are contained within paragraphs 44 to 59, the final three paragraphs directing the reader’s attention to the fact that the appeal would be dismissed on Refugee Convention, Humanitarian Protection, and Articles 2 and 3 ECHR grounds. Strikingly, there is no mention in these concluding paragraphs, or anywhere else in the decision, of a decision having been made on the Article 8 ECHR ground.
6. The grounds of appeal to the Upper Tribunal bring challenge to the FtT’s conclusions on the protection grounds, but that challenge was found to be unarguable in the respective decisions (on the applications for permission to appeal) made by First-tier Tribunal Judge Bennett (24 March 2017) and Upper Tribunal Judge Kebede (5/5/17). Mr Semega-Janneh accepted that the appellant could not now pursue these grounds.
7. It is worthy of observation at this stage that had permission been granted in relation to such grounds I would, in any event, have concluded that they had no merit. The FtT’s decision on the protection claim is a model of clarity. The reasons given for the conclusions reached thereon are clear and cogent, and the FtT was undoubtedly entitled to conclude as it did in relation to the protection claim.

8. Upper Tribunal Judge Kebede did, however, grant permission in relation to the claim pursued on Article 8 grounds, stating as follows:

“However, on the basis that Article 8 and the best interests of the children were matters pursued before the Tribunal it is arguable that the judge erred by failing to make any findings in that regard.”

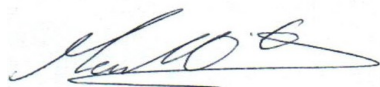
9. Ms Isherwood inevitably accepted that the FtT had failed to determine the Article 8 ECHR ground, which would, *inter alia*, have incorporated an assessment of the best interests of the children. However, she sought to persuade the Tribunal that such a failure was not material because any determination of this ground would ineluctably lead to one outcome, i.e. that the appeal would be dismissed. It followed, she submitted, that the Upper Tribunal should not set aside the FtT’s decision.
10. I reject that submission. In my conclusion, in circumstances where a Tribunal has not engaged at all with a ground put forward by an appellant the proper approach is to require that ground to be determined on its merits - whatever they maybe. In any event, on the information before me I am not prepared to conclude that no rational Tribunal could allow the appeal brought on the Article 8 ground.
11. In my conclusion, the appropriate course is to set aside the decision of the First-tier Tribunal and direct that the scope of the remaking be limited to a consideration of the Article 8 ECHR ground. The conclusions made in relation to the Refugee Convention, humanitarian protection and Article 2 and 3 ECHR grounds are to remain standing.
12. In the instant case, given that no consideration has thus far been given to the Article 8 ECHR ground, I conclude that it is not appropriate for the appeal to remain in the Upper Tribunal. The parties also agreed that this was so. I therefore remit the appeal to the First-tier Tribunal for it to determine the Article 8 ground. Although I make no formal direction to this effect, it also seems to me that in the unusual circumstances of this case such consideration should be undertaken by the same First-tier Tribunal Judge who has determined the protection element of the appellant’s appeal i.e. FtT Judge Wedderspoon. Once again, the parties concurred.

### **Notice of Decision**

For the reasons given above the decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to consider the Article 8 ECHR ground.

Signed:

A handwritten signature in black ink, appearing to be 'A. W. B.', written over a horizontal line.

Upper Tribunal Judge O'Connor