



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

Appeal Number: PA/11948/2017

IA/25605/2015

IA/28899/2015

IA/28903/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19 April 2018**

**Decision & Reasons Promulgated
On 26 April 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

OFC

CMO

CMO

Appellants

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant:

Ms G. Loughran of counsel, instructed by Wilson Solicitors LLP

For the Respondent:

Ms A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The 1st Appellant, who was born on [] 1980, is a national of Nigeria. She entered the United Kingdom, as a student, on 8 September 2010 on a visa which expired on 30 October 2011. The 2nd and 3rd Appellants, who are twins, were born in the United Kingdom on 6 May 2011.
2. The 1st Appellant's third child, CFCOI, was born in the United Kingdom on [] 2013. It is the 1st Appellant's case that the 4th Appellant is a British citizen but this has not been accepted by the Respondent.
3. The 1st Appellant submitted a FLR(FP) application on 16 March 2015 and her fourth child, MTO, was born here two days later. The basis of her application was that she was the sole carer of a British child and she named the 2nd and 3rd Appellants as her dependents.
4. Her application was refused on 1 July 2015 and she appealed, naming the 2nd and 3rd Appellants as her dependents. The appeal hearing was initially listed for 8 November 2016 but the 1st Appellant had in the meantime disclosed a fear of persecution in Nigeria. The hearing did not go ahead due to hearing difficulties and was adjourned until 10 April 2017. However, it was also adjourned on that date in order for the Respondent to consider the new matters and make a supplementary decision, if necessary.
5. At a case management hearing on 5 June 2017, the Respondent informed the 1st Appellant that she needed to make a formal asylum application. The 1st Appellant was referred into the National Referral Mechanism but it made a negative reasonable grounds decision on 20 July 2017 and her asylum claim was subsequently refused on 31 October 2017.
6. The appeals were heard together and dismissed by First-tier Tribunal Cockrill in a decision, promulgated on 10 January 2018. The Appellants appealed and First-tier Tribunal Judge Andrew granted them permission to appeal on 21 February 2018.

ERROR OF LAW HEARING

7. Both counsel for the Appellants and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below. .

ERROR OF LAW DECISION

Ground One

8. The Appellants asserted that the 1st Appellants daughters would be at risk of FGM if removed to Nigeria. In paragraph 27 of his decision the First-tier Tribunal said that there would be a sufficiency of protection for them there as FGM was now illegal and, even if it was practiced in her home area, they could re-locate elsewhere. This finding was made without any detailed consideration of where it was likely that the Appellants would be living in Nigeria or the psychological evidence relating to the 1st Appellant's likely deterioration in mental health, if she were to be removed to Nigeria.
9. The grounds of appeal also submit that the First-tier Tribunal failed to take into account that infanticide was practiced on twins in some parts of Nigeria. Again the First-tier Tribunal Judge failed to take into account where the Appellants were likely to live if removed to Nigeria and the evidence contained in pages 261 to 296 of the Appellant's Appeal Bundle.
10. It is also said that the First-tier Tribunal Judge did not give adequate reasons in relation to the 1st Appellant's mental health. In paragraph 28 of his decision the First-tier Tribunal Judge did state that by Dr. Thomas had provided a very helpful and valuable report but did not address the fact that it was Dr. Thomas's opinion that the 1st Appellant was suffering from a major depressive disorder which was likely to deteriorate if she were to be removed to Nigeria.
11. As a consequence, the First-tier Tribunal Judge had failed to take into account relevant evidence when reaching his decision.

Ground Two

12. It is the 1st Appellant's case that she will be at risk of being trafficked if removed to Nigeria. The 1st Appellant does not assert that she was trafficked into the United Kingdom and the evidence does not indicate that she was trafficked within the United Kingdom. The 1st Applicant had sex with S because she needed accommodation but this does not amount to sexual exploitation for the purposes of section 3 of the Modern Slavery Act 2015 and she has not established that she was exploited for any other purpose contained in section 2(1) of the Act. In addition, she has not established that S arranged or facilitated her travel within the United Kingdom for purposes of section 2(3) of the Act.

13. Counsel for the Appellant sought to rely on *HD (Trafficked women) Nigeria CG* [2016] UKUT 00454 (IAC) but the ratio in that case is based on a woman returning to Nigeria having previously been trafficked to the United Kingdom. The factors counsel seeks to rely upon are those which indicated an enhanced risk of trafficking when a woman has been previously trafficked. Therefore, the fact that the First-tier Tribunal Judge did not refer to this country guidance case did not amount to an error of law.

Ground Three

14. In paragraph 30 of his decision, First-tier Tribunal Judge Cockrill dealt with the question of internal flight very briefly. He merely stated that the 1st Appellant “could find, as I see it, a place within Nigeria, which I have already stressed is extremely populace, where she and the children can settle and do so in safety”. The question of whether they could live safely in an area other than her home area was just one aspect of the issue of whether it would be unduly harsh for the 1st Appellant to have to relocate within Nigeria with her four daughters. The fact that the First-tier Tribunal Judge did not address the totality of the test does amount to an error of law in the context of him having found that she is a lone parent who would be returning with four young children.

Ground Four

15. The First-tier Tribunal Judge had failed to take into account relevant evidence before concluding in paragraph 33 that the 1st Appellant did have family in Nigerian to whom she can turn for some measure of support and assistance. In particular, he neglected to review the evidence as to the 1st Appellant’s contact with her remaining relatives or take into account that she said in paragraph 122 of her witness statement her sister does call her from Nigeria but that it is usually to ask her for money. In paragraph 124 she also said that she was not on good terms with her mother and sister because they were disappointed that she was not employed in the United Kingdom and able to provide them with financial support.

Ground Five

15. The manner in which the First-tier Tribunal Judge dealt with the question of whether there very significant obstacles to the 1st Appellant’s re-integration into the community in Nigeria were also very perfunctory. In particular, he did not follow the guidance in *Secretary of State for*

the Home Department v Kamara [2015] EWCA Civ where Lord Justice Sales held at paragraph 14 that:

“the idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in the other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private and family life”.

ERROR OF LAW DECISION

16. As a consequence, I find that First-tier Judge Cockrill did err in law in his decision.
- (1) The Appellants’ appeals are allowed.
 - (2) First-tier Tribunal Judge Cockrill’s decision is set aside.
 - (3) The appeals are remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Cockrill.

Nadine Finch

Signed

Date 19 April 2018

Upper Tribunal Judge Finch