



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

Appeal Number: PA/01877/2019 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 1 February 2021**

**Decision & Reasons Promulgated
On: 23 February 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**BI
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel, instructed by Sterling Lawyers Ltd

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant is a national of Nigeria born on 1 November 1988. She first came to the United Kingdom in 2001 but was deported to Nigeria in 2002 after committing credit card fraud. She returned to the UK in 2006 with her aunt and, other than a short visit to Nigeria in 2012 for her father's funeral, claims to have remained since that time in this country. Since coming to the UK, she had

two children with her on-and-off partner, WE, both daughters, N and S born on 18 December 2012 and 27 June 2018 respectively.

3. The appellant made two unsuccessful applications for an EEA residence card as the extended family member of her aunt, who had dual Nigerian and Italian nationality, and was then issued with an EEA residence card in October 2010. Her subsequent application for a permanent residence card was refused on 7 February 2016 and her appeal against that decision was dismissed by the First-tier Tribunal on 10 May 2017. The appellant then made two further, unsuccessful applications for EEA residence cards and then on 11 October 2017 she claimed asylum.

4. The appellant's claim was made on the basis of her fear of the Ogboni and Asigidi cults, of which her father was a senior member, and her fear that her daughters would be subjected to female genital mutilation (FGM). The appellant claimed that her mother had died when she was young and she had been treated badly by her father who took her to disturbing cult ceremonies. Her neighbour, seeing how badly she was treated, took her to the UK in 2001 when she was 13 years of age, but she was returned to Nigeria in 2003. Her aunt brought her to the UK again in 2006 as she was also concerned about how her father was treating her. The appellant said that she fell out with her aunt in 2010 when she met WE and became pregnant. When she went to Nigeria in 2012 for her father's funeral in Benin, members of the Ogboni and Asigidi cults removed his tongue and eyes and told her that she had been reincarnated from a princess/ a man. Three days after the burial she was approached by members of the cults demanding that she replace her father as he had agreed, or else she would be killed. She fled Benin as a result and went to stay with a cousin in Lagos, but the cult members came to look for her at her cousin's house and she managed to escape. She then came back to the UK and was told that her cousin in Lagos had vanished. She feared that the cults would kill her because she had refused to join them and feared that they would subject her daughters to FGM.

5. The respondent rejected the appellant's account of her father being a member of the Ogboni and Asigidi cults and rejected her claim that members of the cults had threatened to kill her because she refused to join them and threatened to subject her daughter to FGM, owing to inconsistencies in her account and the fact that she had not mentioned that in her previous appeal. The respondent found that the appellant did not have a subjective fear of persecution in Nigeria, but that even if she did, it was not well-founded as there was a sufficiency of protection available to her from the Nigerian authorities and she could also relocate to another part of the country. The respondent considered further that the appellant's removal would not breach her Article 8 rights, as there were no very significant obstacles to her integration in Nigeria and no exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent noted that there was no evidence of the children's contact with their father and no evidence of his claimed German residency and that it would not be unduly harsh for the appellant and her daughters to return to Nigeria as a family unit.

6. The appellant appealed against that decision. Her appeal was initially heard by First tier Tribunal Judge Lloyd on 11 April 2019 and was dismissed in a decision promulgated on 16 April 2019. Judge Lloyd did not find the appellant's claim to be credible and found that neither she nor her daughters would be at risk on return to Nigeria and that their removal would not breach their Article human rights. However, following a grant of permission to appeal to the Upper Tribunal, the judge's decision was set aside. Although the only error of law found by the Upper Tribunal Judge was in relation to the question of internal relocation, the whole decision was set aside and the matter was remitted to the First-tier Tribunal to be heard afresh.

7. The appeal then came before First-tier Tribunal Judge Cruthers on 14 January 2020 and was again dismissed on all grounds, in a decision promulgated on 6 April 2020. As a preliminary point, the judge considered the respondent's objection to a new matter being raised, namely the fact that the appellant's eldest child N had now lived in the UK for over 7 years, since her birth. The judge refused an application from the appellant for an adjournment to prepare a skeleton argument on the issue and concluded that it was a "new matter" for the purposes of section 85 of the Nationality, Immigration and Asylum Act 2002, and that it could not, therefore, be considered. The judge heard from the appellant and from WE. He rejected the appellant's account of being at risk on return to Nigeria in relation to cults and FGM and did not find her account to be credible. He found that even if the account was credible, the appellant could access a sufficiency of protection and could also safely relocate to another part of Nigeria. The judge found further that the appellant's removal to Nigeria would not breach her Article 8 rights or the rights of her children.

8. The appellant sought permission to appeal to the Upper Tribunal on the following grounds: that there had been procedural unfairness in the judge determining that the appellant's daughter's 7 year residence in the UK was a new matter and denying her the opportunity to rely upon that; that the judge had erred by failing to consider matters accepted by the respondent, including the plausibility of the appellant's claim of her father's membership of the Ogboni cult and the expectation that she would inherit her father's membership of the cult and the prevalence of FGM in the area; that the judge had failed to consider other material matters and evidence including background evidence relating to the question of protection from the authorities, the correct test for internal relocation and the reasons for the appellant's delay in making her asylum claim; and that the judge had failed to take account of the fact that the eldest child had been in the UK for over 7 years.

9. Permission was granted by the First-tier Tribunal in relation to the judge's approach to the eldest child becoming 7 years of age as a 'new matter' in terms of the Article 8 assessment, although the other grounds were not excluded. The respondent, in her rule 24 response, conceded the error of law in relation to the judge's Article 8 assessment but resisted the grounds relating to the asylum claim.

Hearing and Submissions

10. The matter then came before me. Mr McVeety advised me that the appellant and her daughters had since been granted discretionary leave on the basis of the eldest child having lived in the UK for 7 years, although it was noted that the appellant had not yet received the letter granting leave. In the circumstances Ms Patel made submissions on the asylum grounds only.

11. Ms Patel submitted, in relation to the first ground, that the judge had erred by failing to take into account in his findings the matters accepted by the respondent, such as the plausibility of the appellant's father being a member of the Ogboni cult (at [37] of the refusal decision), the plausibility of the appellant's claim to have been told by cult members that she was expected to replace her deceased father (at [45]) and the fact that the appellant came from an area where FGM was prevalent and had been subjected to FGM herself. As for the second ground, Ms Patel submitted that the judge erred by simply rubber-stamping the respondent's adverse credibility findings rather than making his own findings and by making adverse findings arising from the screening interview, contrary to the guidance in YL (China) [2004] UKIAT 00145. Ms Patel submitted further that the judge also erred in his credibility assessment by failing to consider the appellant's evidence in her witness statement in relation to her father having his eyes and tongue missing; by making adverse findings based upon the appellant's evidence in her previous appeal under the EEA Regulations which was not relevant to her asylum claim; by making adverse findings on the appellant's delay in claiming asylum and failing to consider that she had previously been granted leave under the EEA Regulations; and by taking section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as being determinative. Ms Patel submitted that the judge had failed to consider the background evidence relating to cults in Nigeria when considering sufficiency of protection and had failed to apply the appropriate test and consider relevant factors when considering internal relocation.

12. Mr McVeety submitted that the grounds were simply a disagreement with the judge's decision. He submitted further that the judge had taken account of the respondent's views on plausibility, he had provided his own reasons for making the adverse credibility findings that he did, he was entitled to rely on the inconsistencies arising from the screening interview given in particular the nature of the inconsistencies, he was entitled to rely on evidence given by the appellant in her EEA Regulations appeal in regard to the person who brought her up as that was related to the asylum claim, he did not take section 8 as being determinative but was entitled to consider the delay in the appellant's claim and he took all relevant evidence into account when making his findings, in the alternative, on sufficiency of protection and internal flight.

Discussion and Findings

13. In granting permission, First-tier Tribunal Judge Easterman made it clear that he did not consider that the grounds relating to the appellant's asylum

claim had particular merit. I am entirely in agreement and, like Mr McVeety, consider the grounds to be little more than a disagreement with the judge's adverse findings.

14. The appellant's first ground of challenge is that the judge failed to incorporate the respondent's positive findings in his assessment of credibility. However, that is plainly not the case as the judge, at [12], specifically referred to, and set out in some detail, the matters accepted by the respondent and the matters which she found to be plausible. In any event, whether or not parts of the appellant's claim were considered to be plausible, the respondent did not find the claim to be a genuine and credible one and she completely rejected the appellant's claim that her father was a member of the Ogboni and Asigidi cults and her claim to have received threats from cult members to kill her and to subject her daughter to FGM. Accordingly, the fact that the respondent considered parts of the claim to be plausible, whilst appreciated and noted by the judge, was in any event immaterial given that her account was ultimately not accepted in any respect.

15. As for the assertion in the grounds that the judge simply endorsed and rubber-stamped the respondent's adverse credibility findings without making his own assessment, that is also clearly and unequivocally not the case. At [59] the judge accepted that there was validity in all, or most, of the credibility points raised by the respondent in the refusal decision and at subsequent points in his decision referred to specific paragraphs of the refusal decision which made adverse credibility findings. Far from simply adopting those adverse findings, however, the judge observed the extent to which the appellant had failed to address those matters in her statement and her oral evidence and then went on to give details of the various discrepancies and inconsistencies in her evidence and to provide his own, cogent reasons for drawing the adverse conclusions that he did. In so far as the judge relied on inconsistencies arising from the screening interview, he plainly followed the guidance in YL (China), which he specifically referred to at [23], and considered the inconsistent evidence in the round together with the many other discrepancies arising in the evidence. As Mr McVeety submitted, the inconsistencies arising from the screening interview were not insignificant and I agree that the judge was entitled to have regard to the impact of the evidence given at that stage on the appellant's subsequent account.

16. Likewise, I agree with Mr McVeety that the judge was perfectly entitled to have regard to the appellant's evidence in her EEA Regulations appeal as her account of her mother's death and her aunt's involvement in her life was relevant to the issue of her father's influence in drawing her into the cults and was thus directly relevant to her asylum claim. Ms Patel challenged the judge's consideration of section 8 and the delay in the appellant's claim for asylum as being a determinative factor, but again that was clearly not the case and the judge simply considered it as another of many reasons for the appellant's credibility being undermined, as he was perfectly entitled to do. The judge was fully aware that the appellant had previously been granted a period of residence under the EEA Regulations but was entitled nevertheless to consider

the delay in making a claim for international protection as an indication of a lack of credibility.

17. Accordingly, it seems to me that there is no merit in the challenge in the grounds to the judge's adverse credibility findings. The judge undertook a detailed assessment of the appellant's claim and considered her evidence against the background evidence and country guidance caselaw. The judge provided a detailed account of the inconsistencies and discrepancies in the appellant's evidence and gave full and cogent reasons for concluding that they were such that the claim could simply not be believed. Having reached such a conclusion, the judge's findings on sufficiency of protection and internal relocation were not material and were simply made in the alternative. In any event I find no merit in the challenge in the grounds in that respect and consider that the conclusions were properly reached by the judge with full regard to all relevant factors and in the context of the relevant country reports and background information.

18. Accordingly, I find no errors of law in the judge's findings and conclusions on the appellant's asylum claim. The judge was fully and properly entitled to reject the appellant's claim as lacking in credibility and to conclude that she was at no risk on return to Nigeria. I do not need to make findings on Article 8, given that the appellant's claim has been accepted to the extent that she and her children have been granted discretionary leave as a result of her eldest child's length of residence in the UK.

DECISION

19. The making of the decision of the First-tier Tribunal in relation to the appellant's asylum claim did not involve an error on a point of law and I do not set aside the decision in that regard. The decision to dismiss the appeal on asylum grounds stands. In regard to human rights, the judge's decision has been set aside and the appellant has been granted leave.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed S Kebede
Upper Tribunal Judge Kebede
2021

Dated: 1 February