



IAC-AH-SC-V1

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

Appeal Number: PA/04203/2019

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated
Belfast
On 9 February 2022** **On 25 March 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**CAO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Peters, BL, instructed by Wilson Nesbitt Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The hearing on 9 February 2022 was an “rolled-up” hearing in that it considered both whether permission to appeal should be granted and, if so, whether the decision of the First-tier Tribunal involved the making of an error of law. For the reasons are set out below, I am satisfied that:
 - (i) permission to appeal should be granted on all grounds; and

- (ii) the decision of the First-tier Tribunal should not be set aside as it did not involve the making of an error of law.
2. The appellant is a citizen of Nigeria born in 1971. She arrived in the United Kingdom on 21 September 2018 and sought asylum on 8 November 2018. She was accompanied by two children, a son born in 2002 and a daughter born in August 2006. Her case is that she faced domestic violence at the hands of her husband on return to Nigeria and that her daughter would be subjected to FGM.
 3. The Secretary of State did not accept the appellant's account of being subjected to domestic violence or having had to flee her husband or that he had made attempts to follow her. The Secretary of State did not consider it plausible that the appellant's daughter was at risk of FGM. She considered also that any fear was not objectively well-founded, given that there would be a sufficiency of protection for the appellant and her daughter and also that it would be reasonable to expect her to relocate to another part of Nigeria. The Secretary of State also considered, having had regard to her duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 but concluded that the factors drawn to her attention did not alter the decision to remove her to Nigeria.
 4. The appellant appealed to the First-tier Tribunal on the grounds that:-

"I fear that if I am returned to Nigeria I will be subject to domestic violence by my husband and he will force our daughter to have female genital mutilation performed upon her.

Our rights under Article 2, 3 and 8 ECHR would be breached."
 5. When the matter came before First-tier Tribunal Judge Grimes on 18 February 2020, the appellant was represented by Mr A Beech, instructed by Nelson-Singleton Solicitors. The Secretary of State was not represented. The appellant had, however, provided a skeleton argument but that does not appear to be on file; Mr Peters was unable to provide me with a copy nor did it appear that he had seen that. Indeed, he accepted he had not seen the grounds of appeal to the First-tier Tribunal.
 6. The judge heard evidence from the appellant. She also heard submissions from Mr Beech. Although she accepted the appellant had been subjected to domestic violence by her husband up until June or July 2003, the judge found the appellant was able to access sufficient protection from the police at the time and had not shown that she had been subject to any physical violence after that; or, that she moved around Nigeria, was tracked down or threatened by her husband thereafter. She found the appellant had not established her father-in-law had the means to find out where she was and therefore concluded that she was not at risk of further domestic violence from the husband on return to Nigeria.
 7. In the light of a number of inconsistencies in the appellant's account, the judge was not satisfied that the appellant's husband wanted to subject her

daughter to FGM as claimed and even if that was so in her home area, the Secretary of State was likely to provide protection and that the appellant could seek the protection of the police if any family members sought to arrange practices. She concluded it would be reasonable for the appellant and her children to relocate within Nigeria, the appellant being well-educated, having previously worked in a bank and being self-employed. The judge concluded she was well, able to work again and to provide for her family.

8. The judge concluded the issues relating to Articles 2 and 3 of the Human Rights Convention stood or fell with the asylum claim. With respect to Article 8 the judge said this:-

“53. Mr Beech accepted at the hearing that there are no separate issues arising in relation to the appellant’s private and family life which have not been considered in the context of the asylum claim. No submission was made that the appellant meets any of the requirements of the Immigration Rules in relation to her private or family life. The appellant and her family will return to Nigeria together and I find on the evidence before me that it is in the best interests of the children to remain with their mother. On the evidence and submissions before me no separate Article 8 claim arises, and I am satisfied that the decision to refuse the appellant’s application is proportionate to the respondent’s legitimate aim of the maintenance of an effective system of immigration control.”

9. The appellant sought permission to appeal to the Upper Tribunal, which was refused first by the First-tier Tribunal and again by the Upper Tribunal. Subsequent to that, the appellant petitioned the High Court of Justice in Northern Ireland for a judicial review of the decision to refuse permission. The order from Mr Justice Colton of 12 May 2021 orders as follows:

“IT IS HEREBY ORDERED as follows:

- (a) The impugned decision is quashed (which will have the effect of requiring a different Upper Tribunal Judge to make a fresh decision on the applicant’s permission to appeal application).

...

Recital:

- (i) The parties have agreed that the Upper Tribunal Judge responsible for taking the fresh decision on the applicant’s request for permission to appeal to the Upper Tribunal Judge required by this order shall be provided with a copy of the bundle of papers the applicant lodged with the judicial review court, along with a covering letter explaining what happened and a copy of the leave judgment of Scofield J in application by **JR137 [2021] NIQB 13**, decision of this court, dated 8 February 2021 and the decision of the Scottish Inner House Court of Session in **ZG v SSHD** dated 2 March 2021.”

Submissions

10. Mr Peters relied primarily on his skeleton argument which does not address in specific detail the grounds upon which permission was sought save for those relating to Section 55 of the 2009 Act. Whilst Ms Cunha accepted that it was arguable in the light of Arturas that the latter point was arguable, she did not accept Mr Peters' submission that the findings with respect to the appellant's case were so interlinked with the decision on the Section 55 issue such that all grounds were arguable; or, that there was any material error.
11. Given Ms Cunha's concession, I am satisfied that given **Arturas** and the apparent failure of the judge to address the Section 55 issue, that the grounds of appeal were arguable. I consider also that there is merit in the point that it is at times difficult to discern a difference between the points made in the grounds and how they interrelate with the interests of the daughter's case.
12. Turning then to the appeal in respect of the judge's findings on credibility, they are unfortunately in a form frequently deprecated by the courts. They consist, for the most part, in a paragraph by paragraph analysis pointing out where the judge breached error.
13. It is of note in this appeal that the appellant's evidence was that, despite the threats that her estranged husband had made and his threats to subject the daughter to FGM, and despite her preventing him getting access to the daughter and moving several times in Nigeria in that attempt, the father took the active step of giving his consent to her being taken to the United Kingdom. Yet, he was somehow being persuaded that she would bring the child back to Nigeria at the end of a holiday in the United Kingdom. That was clearly relevant to the issue as to whether there was truth in the threats. The judge was, in the circumstances, entitled to conclude that the father's consent to the daughter being taken to the United Kingdom was inconsistent and to reject, as she did, the explanation provided.
14. I deal with the grounds in turn.
15. It is not the case that the judge made irrational or perverse findings in respect of the inconsistencies identified at paragraphs 11 and 16. The averments to the contrary in the grounds at [1] are little more than disagreements and an attempt to reargue the case. The submissions made in the grounds are related to weight and assert that the judge had not considered relevant evidence.
16. It is trite law that a judge is not required to deal with each piece of the evidence and the grounds fail to establish the judge was not aware of the points raised in the grounds at [1]. It is sufficiently clear from the judge's decision that she was aware of and took into account all the evidence and the grounds fail to show any real error on the part of the judge's analysis of the evidence. It is axiomatic that an appellate Tribunal should be

reluctant to overturn the findings of fact and particularly those relating to credibility, made by a judge who heard all the evidence.

17. Ground 2 is without merit. Paragraph 19 is clearly a summary of the paragraphs that preceded it and there is no basis for the assertion that the judge did not refer to the evidence upon which she was basing her conclusion as she had done in the preceding paragraphs.
18. There is no merit in ground 3 either. It is nothing more than an attempt to reargue the case; the judge was manifestly entitled to conclude that the willingness of the husband to consent to her taking the children out of Nigeria to travel to the United Kingdom was inconsistent with the claim of the ongoing threats from the husband.
19. Contrary to what is averred at [4] the judge was manifestly entitled to put little weight on the affidavit and she did not act consistently in relying on it at points. The judge was entitled to conclude that no weight could be attached to it as a matter of its truth but she was entitled to take into account inconsistencies with what was said to be the case in that affidavit and the other evidence.
20. The judge was at [24] manifestly entitled to conclude that the appellant's evidence was vague and confused for the reasons given. She heard the evidence and had the advantage of seeing and hearing the appellant give evidence. The judge's reasoning is clear and sustainable on this point.
21. There is no merit in what is submitted at [6] for the reasons given above. The judge was entitled to note inconsistencies in evidence without putting weight on the letter from Pastor Folorunsho. Again, the author of the grounds confuses the issue for a judge taking evidence into account and placing weight of it as evidence of the truth of what it says.
22. The challenges made at [7] and [8] are again simply attempts to reargue the case. The impugned findings are neither perverse nor irrational. On the contrary, they are adequate, sustainable and properly reasoned. Similarly it cannot be argued [9] that the judge's finding that the appellant had given an inconsistent account as to why she left Nigeria is perverse and irrational. Again, the judge gave adequate and sustainable reasons for so finding.
23. Further, the challenges at [11] to [13] are again attempts to reargue the case. The judge's findings were clearly supported by the evidence and the grounds fail to identify any material error in those.

Section 55 of the UK Borders Act 2009

24. In the course of his submissions, Mr Peters accepted that he had not read the grounds of appeal to the First-tier Tribunal nor was he aware of what submissions had been made. The refusal letter was written well after **JG** had been decided, yet at no point does it seem to have been argued

before Judge Grimes that the Secretary of State had failed in her Section 55 duty.

25. I put it to Mr Peters in the course of argument that it was difficult to demonstrate that a judge had erred if she failed to reach findings on a matter which had not been put to her. It was sufficiently clear from the refusal letter that the Secretary of State had considered a Section 55 duty. If it had been the appellant's case that this had not been properly done then this could have been raised in the grounds of appeal or in submissions to the First-tier Tribunal. There is nothing before me to suggest that this was done and it is telling that the judge recorded the appellant's representative stating that the case stood or fell with the asylum claim. [See paragraph 53].
26. Mr Peters' submission is that notwithstanding that, the judge was required by Section 6 of the Human Rights Act 1998 not to act in a way incompatible with the Convention, which included ensuring that the procedural aspects of Article 8 were complied with. I disagree.
27. The appellant was represented by solicitors and counsel who must be taken to have been aware of JG yet the issue of section 55 of the UK Borders Act 2009 was not argued in front of the judge. The issue is fact-sensitive and not purely an issue of law. It cannot, in such circumstances, be for a judge to go looking for issues which the legally represented appellant did not raise.
28. This case can clearly be distinguished on its facts and what was argued, from the decision in JG. Despite the order from the Northern Ireland Court of Appeal I have not been provided with the bundle of material provided to the High Court. But in any event, I have not been taken to anything that demonstrates to me that the High Court considered the materiality of any arguable error.
29. Accordingly, for these reasons, I consider that the decision of the First-tier Tribunal did not involve the making of a material error of law and I uphold it.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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 21 February 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul