



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA074422013

**THE IMMIGRATION ACTS**

Heard at UT (IAC) Stoke  
On 10 May 2016

Decision & Reasons Promulgated  
On 25 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C E I

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Miss Johnstone, Senior Presenting Officer  
For the Respondent: Mr G Brown, Counsel, instructed by Greater Manchester  
Immigration Aid Unit

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant a national of Nigeria, date of birth [ ] 1970, appealed against removal decisions made under Section 10 of the Immigration and Asylum Act 1999 dated 22 July 2013, a form IS151A having been previously served on 20 July 2011 and an asylum/human rights based claim having been refused. The basis of that refusal was found in the Reasons for Refusal Letter made by the Secretary of State on 19 July 2013.
3. In a somewhat chequered passage of time in terms of events involving the Tribunal to one degree or another, the claim came to be reheard by First-tier Tribunal Judge Kim Foudy (the Judge) who on 9 February 2016 promulgated a decision in which she allowed the Claimant's appeal on Refugee Convention grounds and in respect of Articles 2 and 3 of the ECHR. The Secretary of State appealed that decision quite specifically challenging the judge's findings of the risk of re-trafficking and made no reference to the claim that the Claimant's young child would face, without protection, the real risk of being subject to FGM.
4. Permission to appeal that decision was given by First-tier Tribunal Judge Page on 25 February 2016 upon for reasons which were essentially the risk of re-trafficking and/or the extent to which there was domestic protection to which the Claimant could have recourse.
5. Somewhat surprisingly, it might be thought, the judge did not address in any meaningful way internal relocation or its reasonableness bearing in mind the Claimant was from the area of Benin city and of course the highly populous and varied areas which make up the state of Nigeria. Be that as it may Miss Johnstone says that although there is no reference and no challenge to the judge's decision about the risk of FGM faced by the Claimant's child, that was, as the judge expressed it, entirely contingent upon the risk of re-trafficking. If there is no such risk then there is no such risk of FGM. Whilst I have some sympathy with that point it seemed to me that the person settling the grounds on behalf of the Secretary of State would

clearly have been able to articulate the risk of FGM issue without relying upon the Claimant's claim of re-trafficking. Nevertheless for the purposes of considering whether there was a material error of law I have proceeded on the basis that the FGM claim was at least for these purposes related to if not determined by the risk of re-trafficking. The Secretary of State's grounds essentially argued that the judge has got this assessment of risk wrong and that the Claimant is no longer at any risk of being re-trafficked.

6. I concluded that I might well have reached a different decision from that of the judge but that of course is not the basis for finding that an error of law has been established. Rather it seemed to me that the Secretary of State for understandable reasons did not agree with the judge's findings and essentially was seeking to reargue, by reference to the case law, that that risk(s) did not, as a fact, exist. I readily understand why the Secretary of State takes that view, the issue was considered fully by the judge. It is not suggested the judge made any material omissions about the evidence or took into account matters which should not have been or demonstrated an irrational or unlawful decision has been arrived at. Therefore, in the light of the decisions in *R Iran* [2005] EWCA Civ 982 and *E & R* [2004] QB 1044 CA, I emphasise that I would not by any means necessarily have reached the same view as the judge did. However, I do not see that that forms a proper basis to conclude that the Original Tribunal's decision cannot stand.
7. The appeal of the Secretary of State is dismissed.
8. An anonymity order was not made by the judge although it had previously been made by Upper Tribunal Judge Dawson on 6 January 2015. In my view it is given the age of the Claimant's child and the issues raised about her claim it is appropriate and necessary for there to be an anonymity order.

**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 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

Dated 22 May 2016

Deputy Upper Tribunal Judge Davey