



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

Appeal number: AA/09662/2014

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
on 17 December 2015**

**Decision and Reasons
Promulgated
On 7 January 2016**

Before

**Mr C M G Ockelton, Vice President
Deputy Upper Tribunal Judge Davidge**

Between

OO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) we make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Representation

Appellant: Mr I Richards, Senior Home Office Presenting Officer
Respondent: Mr D Neale, of Counsel, instructed by Migrant Legal Project

DECISION AND REASONS

Introduction

1. This is an Asylum and ECHR case in which the Appellant challenges a dismissal of her appeal. The Appellant has a husband and 2 children, listed as dependent on her appeal. They are all Nigerian citizens of Yoruba ethnicity.
2. The Appellant entered the UK as a visitor, following a successful appeal, in 2008. At the time she was pregnant. The Appellant describes holding a responsible job in Nigeria as a bank financial controller. After her arrival the Appellant discovered that the baby was a girl. On telling her mother in Nigeria that she was expecting a girl her mother told her to come back to Nigeria so that the baby could undergo FGM. She had undergone FGM when a child. Her sister had also undergone FGM, and is said to have died as a result. She and her husband are against the practice. The Appellant resolved not to return to Nigeria. Her resolve continued when she had a second daughter. The Appellant and her husband are estranged from her family as a result.
3. The Appellant's husband joined her in the UK. He came here as a student in 2010. We have no information as to whether he revealed her unlawful presence but we infer that he did not as that would be inconsistent with the grant of his visa, which must have been predicated on a return to Nigeria. We have no information as to when his leave expired but it is not suggested that he has enjoyed any continuing leave to remain, and we infer that he is an overstayer.
4. The reasons for refusal letter of the Respondent indicates that the Appellant remained as an overstayer, from which we infer that she did not make an application to regularise her status by becoming her student husband's dependent, whilst he had leave. The Appellant agrees that she made three such applications, not the six asserted by the Respondent, to remain as a dependent of her Dutch national cousin, here in the UK (whom we infer sponsored her visit). The last is said to be in 2013. Her evidence was that she is no longer in touch with that cousin. Those applications were refused. She says she discussed asylum with her representative at the time of the EEA early application of 2008, and downloaded information about claiming asylum herself in 2012, but her representative did not know much about it, and advised the EEA route. It is said that in the last application she mentioned her determination to avoid exposing her daughter to FGM. She has not retained the applications and cannot prove the position herself, and she asserts that her subject access requests have not provided the full files. The tribunal find the position unproven either way but comment that in any event such a mention insignificant as no claim was in fact made.

5. The Appellant has worked for the NHS as a radiology assistant at Churchill Hospital, Oxford between 2009 and 2013. Her plan is to do a degree in Nursing at Oxford Brooks University.
6. In April 2014 the Appellant claimed Asylum. Her claim relied on the exposure of her daughter to FGM through her own family living in Lagos, an inability to rely on her husband's father, an Imam in Lagos, because of her husband's conversion to Christianity, and an inability to relocate elsewhere in Nigeria because of stigma attached to the fact her husband suffers from depression, characterised in its acute phase by psychotic episodes.
7. The couple have three children. The eldest is a son D; he lives in Nigeria with his paternal grandmother. He came to the UK on a visit in 2013, and returned to Nigeria. We infer that it is unlikely that the unlawful status of his parents was revealed in that context. The couple's two other children are daughters, both born here, the eldest of whom, F N A was born on 07 May 2008, and the youngest: E M A, on 18 April 2012.
8. They family were served removal decisions inline with the refusal of the principal Appellant's application, and they all filed responses to one stop notices concurrently with the Appellant's notice of appeal. The daughters relied on the factual matrix of the risk of forced FGM to them on return and claimed asylum and Article 3 protection. The husband initially said that he is estranged from his family because he has converted from Islam to Christianity and been subjected to threats from his father, and subsequently clarified that it is also because of FGM, and, in concert with the main Appellant claimed that the exposure of the daughters to FGM places both parents into a Particular Social Group in the context of the Convention, and would expose them to inhuman and degrading treatment contrary to Article 3.
9. By her decision dated 26 October 2014 the Secretary of State refused the application for asylum. The respondent was of the view that the daughters were not at risk at all, able to be protected by their parents, but if there was risk beyond that of the family then by the Nigerian State authorities. With regard to the husband's conversion the Respondent found bare assertion insufficient to establish the conversion, or the claimed father in laws threats arising from it, and that in any event the State would provide sufficient protection. The late claim undermined the credibility of the account of circumstances in Nigeria.
10. The Appellants' ensuing appeal to the First-tier Tribunal (the "FtT") failed. The appeal was dismissed on Asylum, Article 3 and 8 ECHR grounds. The tribunal found that the Appellant was not a credible witness. Her evidence was discrepant and inconsistent internally, and as against the country background evidence. The claim was made so late, in the context of having had legal advice about which she had not complained, and of a poor immigration history, that her statement that the lateness was explained by her lack of knowledge of the Asylum route undermined

her credibility, particularly in light of her education and intelligence. There was a significant lack of evidence of any of the claimed threats she said she had received. Her evidence that her husband had never applied for a USA visa, changed when confronted by the inconsistency of that position with his admission in interview that such an application had been refused, to saying that she had not known about it. The tribunal found that a lie, given the self evident importance of place of residence to the couple.

11. The tribunal found the medical evidence of the GP established that the Appellant had herself suffered Type 1 FGM and so had suffered past persecution.
12. The emphasis of the case in submissions was that the Appellant would be destitute on return to Lagos and it was that position which would force her to fall back on the support of her family, and in that context it was said that support would be forthcoming, but at the price of subjecting her daughters to FGM. The claim was that she and her husband would, in those circumstances, feel they had no choice but to agree to it.
13. The case for destitution was that :
 - the Appellant’s husband would not be able to work because of his mental health problems and or the stigma attached thereto
 - they would not be able to rely on the husband’s father or mother for support because of his threats against the husband for his conversion to Christianity
 - the Appellant would not be able to work because of caring for the children and husband
14. The tension in the decision which was found arguable at the permission stage arises from paragraph 32, the penultimate paragraph in a section headed “Evidence and Findings”:

“32. However the Appellant says she would have to fall back on her parents to avoid destitution on return. Were she to do so then she says she would submit to pressure from her parents to undergo FGM and would be unable to seek protection from the authorities as should she do so support from her parents would be withdrawn. If this occurred we accept to the low standard of proof applicable to an asylum claim that the Appellant as a parent of children at real risk of FGM and so entitled to the protection of the Refugee Convention.”
15. The grounds assert that the wording “and so entitled to the protection of the Refugee Convention” amounts to a finding, in the context of the paragraph heading, that the Appellant is a refugee, so that the dismissal of the appeal is contrary and perverse.
16. We are not persuaded that that is the position. Plainly the paragraph is infelicitously drafted. The obvious typographical error is but an indication of that. The reasoning is not assisted by the incorporation of submission, evidence and findings, somewhat muddled together under the heading,

but decisions cannot be forensically scrutinised and picked over in such a disjunctive way. This is clearly not intended to be a conclusive statement dispositive of the appeal. In the very next paragraph the tribunal set out the Respondent's argument that the parents will be able to protect the children, with the assistance of State protection in Nigeria generally, but also in the context of proximity to the maternal relatives as well, and whilst plainly accepting the former conclude, against the respondent in respect of the latter:

"33. ... **if** however the Appellant were dependent on her parents we accept that the risk is of FGM to the children is a real risk."

17. We pause to note here that what is being said is not that she could not protect the children, but that she would not. However it is the use of the word "if" which clearly underlies the qualified nature of the finding and makes plain that the grounds' characterisation of the previous paragraph as dispositive is misconceived. In short the tribunal found there would be sufficiency of state protection sufficient to meet the risk if the Appellant and her husband lived independently of her family, however they accepted that if the daughters fell into the hands of the maternal grandmother they would be at risk of FGM, and that as parents of children so exposed, the parents would also fall within the convention as a member of a particular social group.
18. The somewhat infelicitous labelling of this next section "internal flight" does not substantively undermine our conclusion. The tribunal over the next five pages explain why in fact they find that the Appellant, who for these purposes (hence the heading) they treat as being returned to her own family, would, contrary to her assertions, be able to live safely elsewhere without undue hardship, and so avoid the persecutory risk of living as a dependent of her parents. Whilst the panel might have simply said they did not think she would return to her parents home, because that is their plain conclusion, their more circuitous approach results in no error. In this following section the tribunal find the claimed inclination and ability of the children's maternal grandparents to reach beyond the household, even in the lesser context of the city of Lagos is not established. They reject the claimed fear of the Appellant's husband's father, i.e. her father in law. The Appellant's own evidence was that her mother in law who was separated from the father-in-law was able to "keep "D" safe from the father in law", even though they all lived in Lagos.
19. The Panel remind the Appellant that her mother in law looks after the Appellant's other child "D", and there is no evidence to show that she would not continue to provide support. The tribunal explain why the Appellant and her husband could live without the support of either the Appellants' parents or those of her husband in any event, in Lagos or elsewhere. The tribunal set out that with the Appellant's education and work history she would be able to work. With regard to her husband the tribunal find on the medical evidence that the risk of remission is in the context of noncompliance with medication and does not establish that he would not be able to work. There was no evidence medication would be

unavailable in Nigeria, and the evidence, on balance showed that he would have the opportunity to remain well.

20. Whilst the tribunal's approach leads to more detailed reasoning than might be considered necessary, reflecting the anxious scrutiny that they have evidently applied to the grounds of appeal, setting out at length the main credibility issues that led them to reject her account, and the reasons why they were not persuaded that her claim that she would be forced to rely on her parents because of undue hardship in separately from them, treated in effect as "relocation", was not made out. In summary the panel find the Appellant and her husband would not be destitute, and would not be dependent on the Appellant's parents, so that the risk that was argued for, i.e. arising from dependence on the Appellant's parents was not established, even to the low standard of proof applicable. The adverse credibility findings are detailed and cogently reasoned. The self direction, factual findings and the reasoning of all are quite adequate when the decision is read as a whole.

DECISION

21. We dismiss the appeal and affirm the decision of the FtT dismissing the appeal on all grounds.

E Davidge Deputy Upper Tribunal Judge
Dated: 18 December 2015