Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07736/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 5 June 2017	**on 7 June 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

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Respondent

For the Appellant: Mr O Olabamiji, Solicitor, of Ethnic Minorities Law Centre, Glasgow
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the FtT.

2. Judge Mill allowed the appellant's appeal by decision promulgated on 17 January 2017.

3. The SSHD appeals to the UT on the following grounds:

> … the judge identified the issue at [19] as specifically directed towards the risk that the appellant's mother-in-law would have her daughter forcibly circumcised.
>
> In respect of that risk the judge finds at [23], "It may be said that the appellant's risk on return may be low due to the fact she would not require to contact mother-in-law with whom she has had no recent contact. The appellant has some fear that her mother-in-law could trace her as a consequence of her other family connections but I do not think this is likely".

> Having effectively found no well-founded fear of persecution on return for the reasons claimed, the judge nevertheless goes on to find at [24] that the appellant would not readily access employment in Nigeria. This is unexplained; the judge has already noted that the appellant worked in Nigeria for 10 years as a teacher [19, iii]. From there, the judge proceeds to speculate at [24] that the appellant "would succumb to undue negative pressures which are likely to involve either the real risk of FGM being inflicted on her daughter from a source other than her [mother-in-law] or her seeking support and refuge from her mother-in-law despite her express wishes for her daughter which constitute her asylum claim". This finding is perverse or, in the alternative, inadequately reasoned.

4. A rule 24 response for the appellant runs as follows:

> The finding at [23] is to be read in the context that risk is low in terms of internal relocation. The appellant does not have to show a real risk in the safe haven, simply that internal relocation would be unreasonable.
>
> Although the FTT noted that the appellant had worked as a teacher for 10 years, the FTT explained why the appellant would not readily access employment at [19, vi, ix, xi, xiv, xv, xvi], [22] and [24] ...
>
> The remaining finding criticised at [24] is not speculation but based on the [above] findings made on the evidence ...
>
> The FTT's approach ... does not disclose an error of law. The FTT has explained in clear terms why the appellant won ... No misdirection of law has been identified, the fact-finding process cannot be criticised and the findings were reasonably open to the FTT. In any event, there was evidence on which the FTT was entitled to reject grounds (pp. 73 - 76, 155 and 267 - 268 of the appellant's bundle). The SSHD has not pointed to convincing reasons leading to a contrary conclusion ...
>
> In any event, the refusal letter did not take issue with internal flight.
>
> *Separatim* the finding is not perverse... The SSHD may disagree with the findings, but such findings were within the range of reasonable responses open to the FTT.
>
> The grounds are simply a disagreement...

5. Both parties' submissions were along the lines of the above. The main additional points which I noted from the SSHD were these:

> From the finding at [23], the judge should have gone on to find no risk. The appellant is well educated and worked for 10 years in Nigeria. Even with two children and without outside family support, she would be able to find work and re-establish herself. The decision did not have full regard to her background. As pointed out in the refusal letter, she had spent 3 years in Lagos, where there would be no risk. There was no evidence to justify the finding at [24] that the appellant was likely to succumb to "negative pressures"; that was highly speculative. The outcome would be logical only if the evidence supported a risk to all females in Nigeria, without regard to their background. The outcome was unreasoned or even perverse. The SSHD had submitted to the FtT on relocation. The case should be remitted to the FtT for assessment of risk by another judge.

6. These were the further points for the appellant:

[23] was to be read in full and in context. The appellant did not have to show risk everywhere in Nigeria, only that relocation would be unreasonable, or unduly harsh. There was no absence of reasoning for the outcome. It was justified by the findings identified in the response, which excluded relocation. Alternatively, relocation was excluded by the conclusions in an expert report, pp.267 – 268, against which the SSHD had made no submission, and by the evidence of the prevalence of FGM in Nigeria, pp. 73 – 76. The findings referred to explained why the judge thought that despite her 10 years working as a teacher in Nigeria the circumstances of the appellant had changed; she then had remittances from her husband, but she would now be a single parent, as he had moved to Canada, and they had separated.

7. I reserved my decision.

8. The FtT's decision is not based on the appellant's circumstances being such that relocation, away from an area of local risk, would be unduly harsh. It is based on relocation not excluding risk, which would apply throughout Nigeria. The outcome is derived from the facts set out as established at [19, i – xvii], the last of which sub-paragraphs states:

> The appellant would be highly vulnerable and unable to support herself … She would be returning with two young children … unlikely to be in a position to provide sufficient levels of care to meet her own needs and those of her two children … likely to succumb to local cultural traditions and / or family pressures from her husband's family … to obtain necessary supports.

9. That finding is not criticised directly, but only through the grounds directed against [23] and [24].

10. As Mr Olabamiji contended, [23] is to be read in context and in full.

11. The grounds take the first two sentences of [23] rather out of context. The first sentence recognises the low point of the appellant's case. The second discounts the alleged risk of direct tracing by her mother-in-law. The third and final sentence, omitted from the grounds, says that the appellant's circumstances "must be looked at in the wider sense". That is what leads the judge to find a risk, not directly from the appellant's mother-in-law tracing her, but through falling back on outside support, possibly including her mother-in-law.

12. The findings from which the ultimate conclusions follow include the breakdown of the marital relationship; little contact between the appellant and her husband, although he communicates with the children; no close relative on the appellant's side to whom she might turn; and an economic crisis with high unemployment rates, all as cited from [19].

13. The respondent's final submission, in seeking a remit to the FtT, in effect rowed back from the argument that the outcome was irrational, and that the appeal could only properly have been dismissed.

14. The evidence of high rates of FGM to which Mr Olabamiji referred is not enough to show real risk; the question is one of the risk of infliction against the will of the victim and of her carer or carers. Not only the appellant but also the father of the child opposes the practice. The judge did consider a direct risk from a 70-year-old mother-in-law, extending throughout such a vast and populous country as Nigeria, unreal. It might not be difficult to find cases where women qualified for teaching or similar work have been judged capable of re-establishing themselves and their female children without falling back on assistance which brings a risk from pro-FGM sources. But points of that nature made by the SSHD do not amount to more than re-argument on the facts in a borderline case.

15. While another judge might well have decided otherwise, the SSHD's grounds do not show that the judge's ultimate conclusion was not rationally available to him, or that it is supported by less than legally adequate reasoning.

16. The determination of the First-tier Tribunal shall stand.

17. An anonymity direction was made in the FtT, and is preserved herein. No report of these proceedings shall directly or indirectly identify the appellant 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.

6 June 2017
Upper Tribunal Judge Macleman