Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00051/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 19 November 2018	**On 30 November 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AO
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: Mr Medley-Daley

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, AO, was born on 15 January 1983 and is a female citizen of Nigeria. She entered the United Kingdom as a student in 2006 and has resided here ever since. She is married to a Nigerian citizen and they have three children, all of whom were born in the United Kingdom and who are Nigerian citizens. Her eldest child in the United Kingdom will be 7 years old on 21 February 2018. As at the date of the hearing before the

Upper Tribunal, that child has been living in the United Kingdom for more than seven years. The appellant claimed asylum on 15 June 2017 but by a decision dated 12 November 2017, she was refused international protection. She appealed to the First-tier Tribunal (Judge Myers) which, in a decision promulgated on 12 February 2018, allowed the appeal both on asylum grounds and also on human rights grounds. At the outset of the appeal before the Upper Tribunal, Mr Tan, who appeared for the Secretary of State, confirmed that the respondent was not seeking to dispute the decision of the judge to allow the appeal under Article 8, ECHR. The only issue before the Upper Tribunal is the judge's treatment of the internal flight alternative.

2. At [28], the judge wrote:

> In relation to whether it is reasonable for the appellant and her family to internally relocate within Nigeria I must take account of whether in doing so there would be a disproportionate interference with her Article 8 rights. The respondent relies on the findings made by the First-tier and Upper Tribunal in the appellant's appeal in 2013 when it was held that there were no insurmountable obstacles to the family relocating in Nigeria and the best interests of the children would lie in their remaining in the custody of their parents who could return to Nigeria as a family unit. If their family had returned at that point as they should have done I have no doubt they would have been able to establish a stable family life in Nigeria with limited disruption to their children. However, they did not return and time has moved on.

3. Thereafter, the judge considered the best interests of the children, in particular of the eldest child D who, by the time of the First-tier Tribunal hearing, had been living in the United Kingdom for almost seven years. The judge considered a report of an independent social worker (Christine Brown) who had found the children to be highly westernised and regarded themselves as British, rather than Nigerian. The judge noted that "[Ms Brown] told me that although families can and do relocate successfully to different countries in the world much depends on the circumstances and whether the family wishes to move." The judge concluded [31] that, "it would be in the children's best interests to remain in their happy and stable environment which they are used to. However their best interests are not determinative in deciding whether it is reasonable to expect the appellant and her family to leave the UK and relocate to Nigeria." The judge went on to consider Part 5A of the 2002 Act (as amended). She considered the Secretary of State's guidance in respect of Section 117B(6), noting that "strong reasons would be required in order to refuse a case with continuous residence of more than seven years." The judge found [35] that "the children would adjust to life in Nigeria in time." However, she went on to allow the appeal.

4. I agree with the Secretary of State that the judge has seriously confused the distinct issues of internal flight and Article 8, ECHR. The judge considered internal flight because she found that the appellant had a genuine and well-founded fear of the children suffering FGM if returned to

their home area of Nigeria. That finding has not been disputed. However, the judge should have confined her analysis to the principles set out in *Januzi* [2006] UKHL 5 in determining whether internal flight within the country of origin would be unduly harsh, the focus is upon the circumstances which an appellant would face in the country of origin. That much is made clear by the UNHCR guidelines to which the House of Lords refer in *Januzi* as the appellant's own Rule 24 statement indicates:

> The guidelines refer to respect for fundamental human rights in particular non-derogable rights to economic survival including issues of access to land, resources, protection, family links or a social safety net trivial or cultural difficulties (sic) or conditions of severe hardship and would deem to be helpful in concentrating attention on the standards prevailing in the country of nationality.

5. In her analysis of internal flight, the judge has dealt almost exclusively with the circumstances of the family in the United Kingdom. The judge herself found that the children would "adjust to life in Nigeria in time" which hardly supports her conclusion that it would be unduly harsh for the children to live in Nigeria. The rationale of the judge's decision is that, having lived for seven years in the United Kingdom, the child D in particular has established private life links with others in this jurisdiction which it would be unreasonable to expect him to severe by returning to Nigeria. Those are considerations which are wholly different from determining whether it would be unduly harsh for any member of this family to live outside their home area of Nigeria. The judge has stated in terms that, if the children did not exist, then she would find that it was not unduly harsh for the appellant and her husband to exercise internal flight. She has failed to address at all the circumstances which any member of the family would encounter in Nigeria outside their home area which might concede that it would be characterised as unduly harsh or even unreasonable. The judge's focus has been upon the circumstances of the family in the United Kingdom; it should have been upon their circumstances in Nigeria.

6. I have set aside the judge's decision. The Secretary of State does not dispute that the appellant should be granted leave to remain having succeeded in her appeal under Article 8, ECHR. Considering the facts which were before the First-tier Tribunal and, indeed, Judge Myers' own observations regarding the likely circumstances which the family would encounter outside their home area having exercised the option of internal flight I remake the asylum decision dismissing the appeal on asylum grounds.

Notice of Decision

7. The decision of the First-tier Tribunal which was promulgated on 12 February 2018 is set aside. I have remade the decision. The appeal is allowed on human rights grounds (Article 8, ECHR). The appeal on asylum grounds is dismissed.

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 26 November 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 26 November 2018

Upper Tribunal Judge Lane