



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

Appeal Number: PA/03014/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 February 2018**

**Decision & Reasons Promulgated
On 01 March 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[C U]

(anonymity direction not made)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Eastey, of counsel, instructed by Wilson Solicitors LLP

For the Respondent: Ms. Z. Ahmad, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on [] 1991, is a national of Nigeria. She entered the United Kingdom, as a student, on 13 August 2010. Leave to remain was subsequently granted until

29 July 2013. She made applications for leave to remain on family and private life grounds, which were refused on 7 January 2013 and 28 October 2014.

2. Removal directions were set for 10 October 2015 and the Appellant applied for asylum on that same day. Her application was refused on 9 November 2015 and she appealed against this decision. Her appeal hearing was adjourned for a range of reasons on five occasions before coming before First-tier Tribunal Judge Obhi on 17 November 2017. She dismissed the appeal in a decision promulgated on 29 November 2017.
3. The Appellant appealed against this decision and permission to appeal was granted by First-tier Tribunal Judge Saffer on 4 January 2018. The Respondent filed a Rule 24 Response on 24 January 2018

ERROR OF LAW HEARING

4. Both Counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

5. In her initial asylum interview the Appellant said that she feared that, if she returned to Nigeria, her father would beat her. In her substantive interview she explained that he would hit her on the head or beat her with a cane. Furthermore, when she was medically examined by Dr. Ward whilst in detention, she told her that some of the scars on her body were from these beatings. It is also part of the Appellant's case that she is at risk of FGM, if removed to Nigeria.
6. In a letter, dated 15 September 2016, the Appellant's solicitor alerted the Tribunal to the need to hear the appeal "in chambers" and to the fact that the Appellant was a vulnerable witness. In her decision, the First-tier Tribunal Judge also referred to a statement by the Appellant's solicitor which explained that the Appellant's statement had taken a very long time to prepare because she was often very anxious and cancelled appointments and that when she did attend an appointment she was very agitated and fiddled with things on the desk.

7. In addition, in paragraph 55 of her report, Eileen Walsh, a clinical psychologist, concluded that the Appellant was suffering from a major depressive disorder. At paragraph 84 she also noted that the Appellant may need prompting and encouragement in order to give evidence and added that “if giving evidence in court, she may present as emotionally number or cut off and have difficulties with concentrating She may also present with emotional distress related to some aspects of her history, as she did in this assessment. All of these factors ...impact on her ability to give evidence in court”
8. In the fourth ground of appeal, it was submitted that the First-tier Tribunal Judge failed to apply the Presidential Guidance Note on Vulnerable Witnesses or apply *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123. There is no indication from the decision that the Judge applied the recommended approach in relation to vulnerable witnesses. It was not sufficient to say in the penultimate paragraph of her decision that “the appellant is a vulnerable witness, I accept that she is anxious and I therefore make an anonymity order”.
9. She should have considered whether the Appellant’s mental state may have had an adverse impact on her ability to give cogent evidence about her risk of persecution by her father. Instead in paragraph 25 of her decision, First-tier Tribunal Judge Obhi found that “the appellant did not give me a credible explanation as to why she had befriended her father on Facebook or how he had obtained details of where she was. The only explanation she could give was that her father kept asking her to add him to her Facebook account; again if she were running away from abuse, she is not likely to have responded to the requests from him”.
10. Neither did she remind herself that Dr. Walsh had said in her report that the Appellant “reports a problem that is not unusual in survivors of abuse, where she experiences fear in relation to her father, but also a sense of emotional attachment to him”.
11. Instead, the First-tier Tribunal Judge made a non-specific reference to “some research that suggests that victims can have an emotional bond with their abusers to the point that they go back to the abuser – such as in the cases of domestic violence or victims of childhood sexual abuse, the appellant does not have the other characteristics of someone who fits into that model. She never had a close relationship with her father, she was never “groomed” by him

and she appears to be saying that she was trying to get as far away from him as she could”. There was no reference to the nature or provenance of this research. I do not agree with the Home Office Presenting Officer that this was a reference to Dr. Walsh’s report.

12. First-tier Tribunal Judge Obhi also failed to apply *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 and consider all of the evidence in the round, apportioning appropriate weight to each part of the evidence, before coming to a final decision as to credibility. One example of this was her approach to the opinions of the expert report by Adaobhi Nkeokelonye in paragraph 23 of her decision.
13. Another was her failure to consider the impact of Dr. Walsh’s evidence in relation to the Appellant’s ability to live independently if removed to Nigeria. Instead, in paragraph 29 of her decision, First-tier Tribunal Judge Obhi relied on the fact the Nigeria is a large country and concluded that the Appellant could simply relocate away from Lagos. She did not properly consider the Appellant’s particular circumstances and characteristics.
14. The Home Office Presenting Officer relied on paragraph 36 of *South Bucks District Council and another v Porter* [2004] UKHL 33 for the proposition that “the reasons need refer only to the main issues in dispute, not to every material consideration”. However, the expert evidence which was not addressed or not addressed adequately and did go to the main issues in dispute, which were the Appellant’s true relationship with her father and the risk he may pose for her in Nigeria.
15. Furthermore, the fact that the Appellant’s need for medical treatment did not meet the high threshold established in the cases of *N v Secretary of State for the Home Department* No. 26565/05 and *D v United Kingdom* Application No. 30240/96 does not undermine the importance of expert psychological evidence in her asylum claim and, in particular, in relation to the issue of internal flight.
16. As a consequence, I find that First-tier Tribunal Judge Obhi did make errors of law in her decision.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The decision by First-tier Tribunal Judge Obhi is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Obhi.

Nadine Finch

Signed

Date 16 February 2018

Upper Tribunal Judge Finch