



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

Appeal Numbers: PA/04705/2017
PA/04726/2017
PA/04739/2017
PA/04753/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2018**

**Determination Promulgated
On 26 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**MONSURU [H]
OLAWUNMI [O]
[P H]
[N I]**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the First Appellant: In person

For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nigeria born on [] 1983, [] 1988, [] 2014 and [] 2016. The first two appellants are husband and wife and the third and fourth appellants are their children. They appealed against the

decision of the respondent dated 2 May 2017 refusing to grant them asylum and humanitarian protection under paragraphs 336 and 339M/339F of HC395 (as amended) of the Rules. Their appeals were heard by Judge of the First-Tier Tribunal Abebrese on 16 June 2017. Their appeals were dismissed on asylum and humanitarian protection grounds and also under Articles 2, 3 and 8 of ECHR, in a decision promulgated on 3 July 2017.

2. An application for permission to appeal was lodged before the First-Tier Tribunal and was refused by Judge of the First-Tier Tribunal Shimmin on 9 October 2017.
3. An application for permission to appeal to the Upper Tribunal was made and was granted by Upper Tribunal Judge Allen on 8 January 2018. The permission states that it is unclear from the Judge's decision, whether or not he accepted that the appellant has converted to Christianity and that is not without materiality to the claim that the appellant will be at risk on return. The matters raised in the grounds concerning the background evidence referring to risks to converts from Islam to Christianity in Nigeria and the challenge to the Judge's findings in respect of the witnesses, raise arguable challenges to the decision as a whole.
4. There is no Rule 24 response.

The Hearing

5. The Presenting Officer's file was incomplete and it was not clear from the decision what evidence was before the First-Tier Judge. I had the bundle that was before the First-Tier Judge together with a bundle submitted a few days before this hearing from the appellants' representative. I gave the Presenting Officer time to read these and compare them as the First-Tier Judge appears not to have addressed issues which were in the evidence before him.
6. After a short adjournment the Presenting Officer submitted that it is clear that the First-Tier Judge did not make a decision as to whether the first appellant is a Christian convert from Islam or has always been a Christian. He submitted that if he is a Christian convert then the witness statements have merit, particularly as they state that the first appellant is a preacher.
7. He submitted that there appears to have been enough evidence before the First-Tier Judge for him to consider the evidence relating to Christian converts returning to Nigeria but he did not consider this risk. He submitted therefore that there are material errors of law in the First-Tier Judge's decision and that the claims should be remitted to the First-Tier Tribunal.
8. He submitted that the grounds of appeal to the First-Tier Tribunal do not appear to have mentioned the threat of FGM to the third appellant on

return and if that is indeed the case, if the claim is being remitted to the First-Tier Tribunal it will require to be considered based on religion only.

9. The first appellant submitted that the FGM point is crucial. I was unable to find the original grounds of application to the First-Tier Tribunal for reconsideration of the hearing, and I asked the first appellant if he could provide me with this. He assured me that it had been in the grounds and I gave him 7 days to produce this.
10. After I had risen I was handed what the first appellant stated were his grounds of application to the First-Tier Tribunal for permission to appeal to the Upper Tribunal and these do indeed refer to his daughter perhaps being subjected to female genital mutilation on return to Nigeria. I am going to remit the claim and this will require to be considered along with the first appellant's claim that he is a Christian convert.
11. It is clear that there are material errors of law in the First-Tier Judge's decision. He did not properly consider all the evidence before him and has made no decision as to whether the appellant is a convert to Christianity or has always been a Christian.

Notice of Decision

12. I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing on religion and particular social group (FGM) to the third appellant.
13. The members of the First-Tier Tribunal chosen to consider the case are not to include First-Tier Immigration Judge Abebrese.
14. Anonymity has not been directed.

Signed

Date 23 March 2018

Deputy Upper Tribunal Judge Murray