



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08248/2016

THE IMMIGRATION ACTS

Heard at Liverpool
On 9 February 2018

Decision & Reasons Promulgated
On 14 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

CO & OTHERS
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Moksud, instructed by IIAS
For the respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Herwald promulgated 6.6.17, dismissing his appeal against the decision of the Secretary of State, dated 25.7.16, to refuse his protection claim.
2. First-tier Tribunal Judge Scott Baker granted permission to appeal on 25.9.17.
3. Thus the matter came before me on 9.2.18 as an appeal in the Upper Tribunal.

Basis of Protection Claim

4. The protection claim was made on the basis of a fear of mistreatment for having married someone from the Osu caste. The appellant's wife was allegedly abducted,

beaten and raped and he was subjected to hostility by members of his own family and others unknown. He received threats and his shop windows were smashed. He also claims to fear his daughter will be subjected to FGM on the family's return to Nigeria.

The First-tier Tribunal Findings

5. In essence, the appeal was dismissed on credibility grounds.
6. Judge Herwald found the appellant's claim of hostility arising from his marriage to someone from the Osu caste largely untruthful, including the claimed attack on his wife. At [14(j)] the judge concluded on the evidence there relied on that the appellant and his family had come to the UK with the intention to settle here and never return to Nigeria.
7. In relation to the FGM claim, the judge noted at [13(e)] that the practice of FGM has been criminalised and that there is a greater degree of professionalism in the Nigerian Police Force, despite some corruption. On the evidence, the judge did not accept that there is a systemic or institutionalised unwillingness to afford protection to victims. At [14(o)] onwards, the judge considered the claimed fear of FGM, but was not satisfied that anyone who might have wished them harm would be able to find them if they relocated in Nigeria and rejected the appellant's claim that there was "no hiding place" for them. The Judge relied on the evidence that both the appellant and his wife were strongly opposed to FGM. Taking into account the sufficiency of protection, and the reasonableness of relocation, the judge was not persuaded that there was any genuine risk of FGM and that this claim had been 'bolted on' in an attempt to bolster an unmeritorious claim.

Error of Law

8. For the reasons summarised below I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Herwald to be set aside.

The Grounds of to Appeal

9. Mr Moksud attempted to argue article 8 issues including Section 55 of the Borders, Citizenship and Immigration Act 2009 best interests when this had not pleaded in the grounds and no permission had been granted. In fact, at the First-tier Tribunal appeal hearing it had been specifically stated by the appellant's representative that article 8 was not relied on. In the circumstances, I declined to hear further submissions on this issue.
10. There is no merit in the pleaded submission in the grounds that the judge's findings were distorted by reliance on section 8 considerations at [15]. The section 8 consideration was entirely open to the judge and states only that it has been taken into consideration in the overall credibility assessment; no error is disclosed.

11. The grounds allege that the judge erred in law in that almost all the reasons for rejecting credibility relate to the caste issue and rape allegation and not the FGM claim. Whilst that is true, it would obviously be so, as the bulk of the appellant's factual claim relates to the assertions of hostility based on his wife's Osu caste and rape. In the absence of any allegation of any specific threat to carry out FGM made towards the appellant or any member of his family, the FGM claim has to be largely based on objective evidence; the country background information. However, the judge was entitled to rely on the overall credibility findings to determine whether the claimed fear of FGM was genuine, or whether, as the judge concluded, it was something added in an attempt to bolster an otherwise weak protection claim.
12. It is submitted in the grounds that the fears of FGM were well-founded as the objective evidence confirms the continued prevalence of the practice, despite its criminalisation. Mr Moksud submitted that there could be no guarantee that FGM would be carried out. However, those submissions ignored the specific findings of the judge as to why the family would not be at risk, including the fact that the children would have the protection of both parents in the family unit, and would, as the judge found, be able to relocation away from those who might wish them harm.
13. It is clear that the judge did take into account the objective evidence referred to by Mr Moksud, and considered issues of sufficiency of protection, as well as reasonableness of relocation. The conclusion that there was no risk that anyone who might wish the family harm would be able to find them in Nigeria's 175 million-strong population, was open to the judge, particularly given the judge's conclusions on the credibility of the claimed threats based on his wife's Osu caste and rape. If those threats were not credible, as the judge found, there was nothing to specifically suggest that there was any particular motivation of family members to inflict FGM. More significantly, it was open to the judge to find that as both parents were strongly opposed to FGM, the risk was insufficient. Taking all those factors together, the conclusion that there is no well-founded fear of FGM was entirely justified and open to the judge on the evidence. No error of law is disclosed.
14. The grounds also complain that whilst the judge held that internal relocation was available, no finding was made as to whether that would be reasonable. The test in fact is the Januzi as to whether it would be unreasonable or unduly harsh to expect the applicant to relocate to another part of their country. The judge accepted that the appellant had already relocated to Lagos but was not persuaded that he would be able to be located there by any person from his original home area who might wish him ill. Further, there are other large cities throughout Nigeria to which it would be reasonable to relocate. The judge noted that the appellant had managed to relocate to the UK and thus could do so in a country where he has spent almost all of his life. Whilst the judge does not spell out the conclusion that relocation would not be unreasonable or unduly harsh, and it would have been better to have done so, that conclusion is nevertheless obvious from the findings at [14(n)].
15. The finding at [14(p)] that the FGM claim had been bolted onto an already unmeritorious asylum claim appears at first sight stark, without justifying reasoning at that point, but has to be read in the light of the findings and the decision as a

whole. In any event, this particular finding is not material to the outcome of the claim and the decision is justified and can stand independently of it.

16. In the circumstances, neither the grounds nor the submissions of Mr Moksud disclose any material error of law such as to require the decision to be set aside and remade.

Decision:

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. However, as children are involved I make an anonymity direction.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 responded. Breach of this direction may result in proceedings for contempt of court.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'James Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup