



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08377/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> August 2018

Decision & Reasons Promulgated  
On 28<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SOB  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Iqbal, Counsel, instructed by Tower Hamlets Law Centre

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Nigeria, appealed to the First-tier Tribunal against a decision of the Secretary of State of 11<sup>th</sup> August 2017 refusing her application for asylum in the UK. First-tier Tribunal Judge Rowlands dismissed the appeal on asylum and humanitarian protection grounds but allowed the appeal on human rights grounds. The Appellant appeals to this Tribunal against the decision to dismiss the appeal on asylum grounds with permission granted by First-tier Tribunal Judge Lambert on 11<sup>th</sup> June 2018.

2. In the reasons for refusal letter the Respondent accepted that the Appellant is a Nigerian national and that the Appellant's family had threatened that her daughter would be subjected to FGM on return to Nigeria. The Secretary of State went on to consider that there would be a sufficiency of protection from state authorities in Nigeria and that it was open to the Appellant to internally relocate within Nigeria to Lagos, Abuja or another location in Nigeria.
3. Accordingly, the issue to be determined at the appeal was whether there was a sufficiency of protection in Nigeria from the Appellant's family to prevent the child being subjected to FGM and whether there was an internal flight option available to the Appellant. The judge considered the asylum issue at paragraphs 20 and 21 of the decision. The judge considered a medical report and an expert report in relation to FGM in Nigeria but attached little weight to that report. The judge went on to say at paragraph 20:

"...Whilst I accept that FGM still goes on in Nigeria there is clearly an argument that there is sufficiency of protection under the law and that there is no likelihood of her confronting any of her family members where (sic) she to relocate to Abuja for example. There is a very wide sweeping statement to suggest that there is no protection from the authorities for girls or victims of Nigeria despite the ban without any supporting evidence of it. Abuja is the capital of Nigeria and has a population of 776,000 I do not accept the Appellant's argument that she would be able to be found there. I do not accept that the expert in this report has got her position correct."

The judge went on to consider humanitarian protection but for the same reasons concluded that the Appellant had not shown that there was any risk to her upon return to Nigeria.

4. In considering the issues under Articles 2 and 3 of the ECHR the judge looked at the evidence of the Appellant's mental health issues and considered the psychiatric report detailing an assessment of OCD and a potential diagnosis of PTSD. The judge went on to conclude at paragraph 25:

"However, what there is, is well argued argument (sic) diagnosis of her OCD which leads me to conclude that she would have real difficulties in looking after herself and her daughter if she were to be returned to Nigeria. The diagnosis is that the symptoms of her OCD would worsen and this would make it virtually impossible for her to be able to work and to keep herself and her daughter. Quite clearly because of the accepted difficulties with her family's belief on FGM she has no-one to turn to for family support and the effect of removal and the consequent deterioration in her symptoms would be to make her and her daughter destitute."

The judge went on to conclude at paragraph 26 that it would be inappropriate for the Appellant and her daughter to be removed to Nigeria on human rights grounds.

5. There was no challenge to the findings at paragraph 25 or to the decision to allow the appeal on human rights grounds. However, the Appellant challenged the judge's decision on the asylum issue arguing that the judge did not make any clear findings on sufficiency of state protection and that he had instead conflated that issue with

internal flight. It is contended that the judge failed to consider the issue of state protection adequately. It is contended further that the First-tier Tribunal erred in finding that the Appellant and her daughter could relocate within Nigeria in that the judge limited his assessment of internal flight to whether the Appellant and her daughter could live there safely and failed to consider whether internal flight was a reasonable option particularly in light of the findings made at paragraph 25 of the decision.

6. At the outset of the hearing Mr Bates accepted that, given the judge's unchallenged findings in relation to human rights, there was a material error in that the judge had failed to apply those findings to the assessment of sufficiency of protection and in assessing whether the Appellant could access any protection from the authorities in Nigeria, given her mental health issues. He also accepted that the judge had failed to assess whether it was reasonable for the Appellant and her child to relocate within Nigeria in light of her mental health issues.
7. I accept Mr Bates' concession. I accept that the logical outworking of the judge's unchallenged findings at paragraph 25 is that the Appellant's mental health condition means that it is likely that she will be unable to access any state protection. The mental health issues accepted by the judge at paragraph 25 have very obvious implications for internal relocation. I accept that in light of her mental health condition it would not be reasonable to expect the Appellant and her child to relocate within Nigeria.
8. In these circumstances, I find that there is a material error of law in the First-tier Tribunal Judge's decision in relation to asylum and I set that part of the decision aside. I remake that part of the decision by allowing the appeal on asylum grounds. The findings in relation to the human rights appeal are preserved.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside in relation to asylum.

I remake that part of the decision by allowing the appeal on asylum grounds.

An anonymity direction is made.

### **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 her 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.

Signed

Date: 17<sup>th</sup> August 2018

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 17<sup>th</sup> August 2018

Deputy Upper Tribunal Judge Grimes