



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

Appeal Number: PA/00759/2018

THE IMMIGRATION ACTS

Heard at Manchester

On 6th March 2019

Decision & Reasons

Promulgated

On 18th March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**L A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair of Counsel instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge A J Parker (the judge) of the First-tier Tribunal (the FTT) dated 9th August 2018.
2. The Appellant is a female Nigerian national. Her daughter, born 19th January 2009, is a dependant in her appeal. The Appellant's human rights claim and claim for international protection was refused on 2nd January 2018. The appeal was heard on 9th August 2018.

3. The judge allowed the appeal with reference to Article 8 of the 1950 European Convention on the basis that the Appellant's daughter had resided in the UK since birth and was almost 10 years of age at the date of the FTT hearing. The judge dismissed all other Grounds of Appeal finding that the Appellant was not a credible witness, and had given inconsistent and implausible evidence notwithstanding her vulnerable witness status. The judge found there would be no real risk on return, and the Appellant could return to her home area, and there is a sufficiency of protection in Nigeria, and the Appellant would also have a reasonable internal relocation option.

The Application for Permission to Appeal

4. The Appellant's claim for protection was made on the basis that there was a real risk of her daughter being forced to undergo FGM if returned to Nigeria, and the Appellant would face a real risk of further sexual exploitation.
5. It was submitted that the judge had erred in assessing the risk in relation to FGM by failing to consider the risk from the Appellant's family. It was submitted that the judge had erred in stating at paragraph 23 that the Appellant's family did not wish FGM to be carried out on the daughter whereas the Appellant in her asylum interview had expressly stated that her family do believe in FGM which was carried out on her. In her evidence at the appeal hearing the Appellant referred to her sister having warned her not to return home because the family wanted to carry out FGM on her daughter.
6. It was submitted that the judge had erred in proceeding on the basis that the Appellant had claimed that FGM was against the tradition of the Yoruba tribe as no such claim was made. The Respondent's refusal letter recognised that one of the highest rates of FGM is in the Yoruba tribe and this was confirmed in the Respondent's CPIN at 2.3.5 and 7.6.1.
7. It was submitted that the above errors are material given the judge's finding that the Appellant could return home to her family. It was submitted that there appeared to have been some confusion in the judge's mind as to who was at risk from FGM, as the judge at paragraph 20 had indicated that because the Appellant had undergone FGM, the risk profile for the Appellant would be greatly reduced. The case was put on the basis that the risk of FGM was to the Appellant's daughter not the Appellant who had already undergone FGM.
8. It was submitted that the judge had erred when assessing sufficiency of protection from FGM by simply adopting the Respondent's arguments on this point. This failed to take into account that there had been no convictions or charges following the coming into force of The Violence Against Persons (Prohibition) Act 2015.
9. It was contended that the judge has conducted a flawed assessment of relocation by simply stating that the Appellant had demonstrated considerable fortitude in locating to the United Kingdom, but failing to

address adequately the Appellant's individual circumstances, including the fact that she would be a single mother with a child, with mental health issues, minimal education and little work experience. She would not have a family to rely on given the risk of FGM to her daughter.

10. It was contended that the judge had conducted a flawed assessment of sexual exploitation. The judge had agreed with the Respondent that the Appellant's account was apparently "inconsistent and implausible and lacking in detail" (paragraph 37) but had provided inadequate reasons for reaching this conclusion. It was submitted that the Respondent had actually stated that various elements of the account of sexual exploitation were coherent and plausible including her general treatment in the house in which she was kept and treatment from men who came to the house, as indicated in the refusal decision at paragraphs 44, 48 and 49. It was submitted that it was inadequate for the judge simply to rely in bare terms on what had been said by the Respondent.
11. It was submitted that the judge had conducted a flawed assessment of credibility by adopting an overly narrow and restrictive view as set out in paragraph 29, and failed to take into account or address the impact of the Appellant being a potential victim of sexual exploitation. It was contended the judge had not taken into account paragraphs 6 and 7 of the skeleton argument, which quotes from the Respondent's own guidance in relation to potential victims of sexual exploitation and which refers to mitigating reasons why a potential victim of human trafficking or modern slavery is incoherent, inconsistent or delays giving details on material facts.

Permission to Appeal

12. Permission to appeal was granted by Judge Lever in the following terms;

"The judge had provided a lengthy and clear assessment in respect of the Appellant's claim to remain in the UK under Article 8 ECHR. This was largely based on the fact that the Appellant's daughter had been born in the UK and had lived here continuously for ten years. There is nothing wrong in law in the decision reached by the judge in this respect. In terms of risk on return however matters are less clear. The judge had adequately set out inconsistencies and contradictions within the Appellant's evidence that could well have led to adverse credibility findings. However there arguably appears to be some confusion as to who was at risk and from whom. In relating the refusal grounds it appears the Appellant was claiming the risk was to her young daughter being forced to undergo FGM, such risk coming from the daughter's father's family. However there were references and conclusions drawn as to the risk to the Appellant herself from her own family. The picture presented in the decision is somewhat confusing and it is arguable that the judge has not adequately and with clarity identified the individual at risk and the alleged potential perpetrators. It is arguable that the lack of clarity and identification may amount to an error of law in terms of a proper assessment of the evidence."

13. Directions were made that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

My Analysis and Conclusions

14. At the oral hearing before me Ms Mair relied and expanded upon the grounds contained within the application for permission to appeal.
15. Mr Diwnycz accepted that the grounds disclosed a material error of law and that the decision of the FTT should be set aside and remade.
16. I am not bound by the concession made by Mr Diwnycz, but in my view, the concession is rightly made. I find a material error of law as set out in the grounds contained within the application for permission to appeal, read with the grant of permission.
17. There has been no challenge to the findings made by the judge that the appeal should be allowed on Article 8 grounds and those findings are preserved.
18. Both representatives submitted it would be appropriate to remit the appeal back to the FTT to be heard afresh.
19. Having considered the Senior President's Practice Statements, in particular paragraph 7.2, I find that it is appropriate to remit the appeal to the FTT because there will be extensive judicial fact-finding required. It is more appropriate that this is undertaken by the FTT rather than the Upper Tribunal.
20. In addition to the findings in relation to Article 8 being preserved, both representatives agreed that it would be appropriate to preserve the finding made by the judge that the Appellant is a vulnerable witness. In the circumstances that finding is also preserved.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT. Findings in relation to Article 8 are preserved as is the finding that the Appellant is a vulnerable witness. The hearing before the FTT will consider whether the Appellant has a well-founded fear of persecution and whether she and/or her daughter would be at risk if returned to Nigeria.

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. This direction is made because the Appellant has made a claim for international protection.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

6th March 2019

**TO THE RESPONDENT
FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the FTT.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

6th March 2019