



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02627/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 7<sup>th</sup> February 2019**

**Decision Promulgated  
On 8<sup>th</sup> March 2019**

**Before**

**DEPUTY JUDGE UPPER TRIBUNAL FARRELLY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MS M I**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the appellant: Mr A Govan, Presenting Officer  
For the respondent: Mr S Winton, Counsel, instructed by Brown and Co.  
Solicitors

**Introduction**

1. Although the Secretary of State is appealing in these proceedings, for convenience I will hereinafter refer to the parties as in the First-tier Tribunal.
2. The appellant, Ms MI, is a national of Nigeria. She came to the United Kingdom on a visit Visa in October 2012. Thereafter she overstayed. She made a claim for protection in September 2017 after having been served with a notice she was to be removed.
3. Her claim was she grew up in a village in Edo State and her family were farmers. Her parents died and she was raised by her

stepmother who treated her badly. Following her father's death in 2010 her stepmother arranged her marriage. She did not want this. Fortuitously, a cousin living in London invited her for a holiday. When she was about to return to Nigeria she had second thoughts and decided to stay. She began a relationship resulting in her giving birth to her daughter on 27<sup>th</sup> October 2017.

4. She claims to fear her relatives in Nigeria and is fearful that her daughter would be subject to FGM, as she was.
5. Her claim was refused by the respondent on credibility grounds. Alternatively, she could relocate within Nigeria to avoid localised difficulties
6. The appeal was heard by the First-tier Tribunal Judge Clough in Glasgow on 2<sup>nd</sup> of May 2018. In a decision promulgated on 4 September 2018 the judge did not find the account credible but allowed the appeal under article 3. This was on the basis that the appellant's daughter would be at risk of FGM.

#### The Upper Tribunal

7. The Secretary of State was given permission to appeal the decision because it was arguable the judge did not consider the question of internal relocation or adequately assess the consequent sufficiency of protection. There was an expert opinion provided in support of the appellant which suggested internal relocation was not a viable option. However, the judge did not engage with this. This issue had been raised in the refusal letter and also in submissions and in a skeleton argument submitted on behalf of the appellant at the hearing.
8. Mr Winton relied upon the skeleton argument and the rule 24 response. Reference is made to the expert report and the argument was that the risk of FGM for the appellant's daughter existed throughout Nigeria.

#### Error of law

9. At paragraph 16 the judge commented on the expert report and refers to FGM being practiced within the appellant's family and that it was prevalent ethnically. There is reference to legislation designed to protect children but the comment was that the police regard this as a cultural matter. However, the judge did not engage in any detail with the report or the protection available if the appellant were to relocate. These were obvious issues which have not been dealt with. I am satisfied therefore that the Secretary of State has demonstrated a material error of law in the decision which means it can no longer stand.

#### Remaking the decision

10. Both representatives are in agreement that the appeal could be remade in the Upper Tribunal on the issue of relocation and protection based solely on submissions. There has been no cross-appeal in respect of the rejection of the underlying claim.
11. Mr Govan referred me to the expert report submitted on behalf of the appellant. The expert report confirmed that FGM was prevalent in Edo State, particularly amongst the poorer sections. The appellant's claimed fear related to her stepmother but Mr Govan pointed out that at paragraph 23 the judge did not find the appellant to be credible.
12. First tier Judge Clough referred to the evidence of the appellant's cousin. She had appeared at the earlier appeal against her visit Visa refusal. The judge had extracts from that Visa application. This described her situation as completely different from that portrayed in the protection claim. The Visa application stated the appellant worked as a secretary and had been part of a savings scheme for a number of years; she was very close to her mother and brother and sister in Nigeria. It was indicated she had no intention of remaining in the United Kingdom as she was engaged to be married in Nigeria. The judge in the earlier visit Visa appeal found the evidence of her cousin to be credible. Consequently, Mr Govan argued that based on the Visa application the appellant did not meet the profile of someone who would be vulnerable and who would permit FGM on her daughter against her will.
13. Mr Govan pointed out that her visit Visa application stated she lived in Abuja and worked as a secretary which was not consistent with her account of a hard upbringing in a village. He suggested that in a city such as Abuja or Lagos FGM was much less prevalent and she had the reasonable option of relocating. On return she would benefit from the returns package and suggested that she could re-establish herself in a different part of the country if necessary. I was referred to paragraph 71 onwards of the refusal letter about internal relocation.
14. In rebuttal, Mr Winton referred me to the appellant's interview where she said she was from a rural village and had only a limited education. He submitted that the Visa application was not inconsistent with the appellant's stated level of education. He referred me to pages 4 and 5 of the bundle where his instructing solicitors addressed the question of internal relocation.
15. He also submitted that the appellant suffers from psychological issues which would make internal relocation difficult for her.

## Conclusions

16. The respondent's Policy and Information note of February 2017 records that the authorities are working with agencies in relation to gender-based violence. There also are non-governmental organisations. The conclusion in the note was that there was effective State protection, albeit factors such as the person's age and socio-economic groupings would be relevant. The question of internal relocation was to be decided on a case-by-case basis having regard to the individual circumstances.
17. First-tier Tribunal Judge Clough did not find the appellant to be a credible witness. The history she gave of her fear was undermined by the content of her visit Visa application. That application had been initially unsuccessful. Her sponsoring cousin attended the appeal. The visit Visa application painted an entirely different picture of the appellant than that which she gave in her asylum interview. I do not agree that with Mr Winton's suggestion that the 2 accounts are reconcilable. The judge in allowing her visit Visa appeal accepted the details given in that application and the evidence of her cousin. Consequently, it is very difficult for the appellant now to seek to argue a different case. This was a significant feature in First-tier Judge Clough finding the appellant's account was not credible. The judge also referred to the evidence about scarring which did not support the claim. Consequently, the judge dismissed the appellant's claim.
18. The appeal was allowed on more general grounds: namely, that she had a daughter whom the judge felt would be a real risk of FGM. However, this generalised conclusion is at odds with the background information about FGM and consideration of the vulnerability of the individual. Certainly, it is prevalent among certain tribes and areas but tends to be amongst the less well educated, living in rural areas. This is not the appellant's profile. I find this undermines the judge's conclusion in this regard. This leads me to the conclusion that is not in fact necessary for the appellant to relocate given the rejection of the claim of familial pressures.
19. If the appellant were under any localised pressures with regard to her daughter and FGM then I find it would be reasonable for her to relocate to one of the cities in Nigeria. She is described as a secretary. In her Visa application it was indicated she lived in the city of Abuja. I find this was the case. The respondent, from paragraph 36 onwards of the refusal letter, sets out the argument for relocation. This is premised upon the appellant coming from a rural village and under family pressure which in fact I find is not the case.
20. There are 7 large cities in Nigeria. The evidence does not suggest the appellant is particularly vulnerable. There was medical evidence expressing the opinion the appellant's presentation was consistent with a diagnosis of post-traumatic stress. However, the judge records this diagnosis was based upon the history given by

the appellant which has been found false. The expert report submitted on behalf of the appellant links the risk to the appellant's child with her family and ethnic background. However, whilst FGM may be practised in other areas this does not mean the appellant's child would necessarily be at risk. The evidence would indicate that the appellant could protect her from this if she did not wish to take place.

21. The underlying claim is not genuine. If the appellant were under any localised pressure to have her daughter circumcised then it would be reasonable for her to relocate away from those pressures. I find this would be something which she could reasonably do, bearing in mind she is not the simple uneducated person she describes. Rather, she is educated and from a city and has the experience of travel.
22. I am required to have regard to the best interest of her child as a primary consideration. The child is very young and its focus will be upon the appellant. They both will be returning to the appellant's home country. In the circumstance I do not find the appellant's removal along with her daughter would be disproportionate. The public interest lies in immigration control as stated in section 117 B.

#### Decision.

The decision of First-tier Tribunal Judge Clough materially erred in allowing the appeal. I set the decision aside and remake it, dismissing the appeal on all grounds

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY