



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04462/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18<sup>th</sup> December 2018

Decision & Reasons Promulgated  
On 27<sup>th</sup> March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

CO  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. A Eaton, Counsel instructed by Turpin & Miller LLP

For the Respondent: Mr. E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal (“FtT”) has made an anonymity order and for the avoidance of any doubt, that order continues. The appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to

comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is a Nigerian national. She arrived in the UK in June 2014 with leave to enter valid until 17<sup>th</sup> May 2017, as the dependent of her husband, a Tier 4 Migrant. Their daughter was born on 18<sup>th</sup> December 2015, and their son was born on 15<sup>th</sup> June 2017. On 18<sup>th</sup> September 2017, the appellant made a claim for asylum with her husband and two children as dependents. That claim was refused by the respondent for the reasons set out in a decision dated 19<sup>th</sup> March 2018. The appellant's appeal against the decision was heard by FfT Judge James on 30<sup>th</sup> August 2018 and dismissed for the reasons set out in a decision promulgated on 23<sup>rd</sup> October 2018. It is that decision that that is the subject of the appeal before me.
3. The background to the claim for asylum is simple. The appellant claimed, and the respondent accepted, that the appellant is a Nigerian national born in Imo State, and of Igbo ethnicity. Similarly, the appellant claimed, and the respondent accepted, that in Nigeria, she had been subjected to type one FGM. The international protection claim made by the appellant centred upon the risk that the appellant's daughter, who was born in the UK, would now face upon return to Nigeria. The appellant claimed, and the respondent accepted, that the appellant had received a letter urging the appellant to return to Nigeria in order for her daughter to be circumcised. The appellant fears that upon return to Nigeria her daughter will be subjected to FGM. Although the respondent accepted that the appellant has demonstrated a genuine subjective fear on return to Nigeria, the respondent considered the claim not to be objectively well founded. Broadly put, the respondent concluded that there is sufficient protection provided by the authorities in Nigeria, and in any event, there is an area of Nigeria to which the appellant and her family could reasonably relocate.

#### The decision of FfT Judge James

4. At paragraph [11] of his decision, the Judge records that the representatives agreed that the issues for him to determine was whether there was a sufficiency of protection in Nigeria, or whether the appellant could safely relocate. At paragraphs

[12] to [14] of the decision, the Judge refers to the evidence noting in particular, at paragraph [14] that he had before him a bundle of documents from the appellant comprising of 361 pages. Importantly, that bundle included an expert's report from Adaobi Nkeokeloyne, who had been instructed by the appellant's solicitors to give an expert opinion regarding a number of matters including *inter alia*, the prevalence of FGM, feasibility of internal relocation, and the importance of maintaining tribal links in Nigeria.

5. At paragraph [17] of the decision, the Judge records the submission made on behalf of the respondent that the expert report is based upon generalisations and information from the appellant. At paragraph [24] of the decision, the Judge notes the submissions made on behalf of the appellant relating to the matters set out at paragraphs [132] to [139] of that report.
6. The findings and conclusions of the Judge are to be found at paragraphs [30] to [42] of the decision. At paragraphs [31] and [32] of the decision, the FfT Judge sets out the evidence before him regarding the appellant's extended family in Nigeria. At paragraph [33], the Judge concludes that he is satisfied that there are large areas of Nigeria, especially in the central and northern areas, where the appellant has no family presence. The Judge was satisfied that the presence of family members in the location specified by the appellant would not inevitably lead to her being found by her family. The Judge noted that the uncle who is pressing for her daughter's return and circumcision, has businesses in four States, but there was no evidence of a network throughout Nigeria, via which the appellant could be traced.
7. At paragraphs [34] to [38], the Judge engages with the background material. The Judge noted at paragraph [34], the percentage of women who have undergone FGM in the Igbo tribe and noted that that is the third highest rate of incidence. The judge also noted that the incidence of FGM is highest in the southern part of Nigeria, which also correlates to the fact that the Igbo tribe are natively found in the southern part of Nigeria, although they can be found across Nigeria. The Judge noted that the

background material demonstrates that there are significant parts of northern Nigeria, where the rate of FGM is less than 4%.

8. The Judge noted, at paragraph [36] that the appellant's account that it would not be possible to obtain work or housing without membership of a tribal association was not supported by the matters set out at paragraphs [178] to [180] of the expert's report. At paragraph [38], the Judge rejected the claim by the appellant that she would be unable to withstand societal pressures in Nigeria, and that a failure to undergo FGM would adversely affect her daughter's marriage prospects. At paragraphs [39] and [40], the Judge concluded as follows:

*"39. The appellant's daughter would not be returning to Nigeria without family support. She would be accompanied by her parents and in particular by her father whose decision in relation to FGM should have significant influence culturally. The appellants parents are against FGM as are some of her siblings. I am not satisfied that the appellants family would be able to find her or her family on return to Nigeria but even if they did I am not satisfied that she would be unable to withstand family pressure in light of the support of her parents and some of her siblings. I am not satisfied that the appellant would have to reveal her presence in Nigeria by joining a tribal association. I do not accept that employment would be dependent upon joining such an association. Both the appellant and husband are experienced education professionals who should be able to readily find employment. Both the appellant and her husband have long experience of social and cultural norms in Nigeria. I do not accept that they would be unable to integrate on return to Nigeria.*

*40. While I accept that enforcement of VAPPA is poor to the point of non-existent and as a result it does not represent any deterrent to the practice of FGM. Notwithstanding I find that the appellant and her family can safely relocate in Nigeria to an urban area in a state where the incidence of FGM is low, where there would be little or no societal pressure, where they would not have to disclose their presence to the family and where the appellant and her husband would be able to protect their daughter from FGM. Accordingly I am not satisfied that the appellant has a genuine well founded fear of her daughter suffering from FGM that is objectively well founded."*

## The Appeal before me

9. The appellant advances four grounds of appeal. First, in assessing the risk of the appellant being found by her family, the Judge failed to apply the correct standard of proof. At paragraph [33] of the decision, the Judge stated that he was not satisfied *“that the presence of family members in the locations specified by the appellant would inevitably lead to being found by her family.”*. Applying the correct standard of proof the question was whether it was reasonably likely that the appellant would be found by her family.
10. Second, in considering whether the appellant would be found by family, the Judge failed to properly consider the matters set out in the expert’s report, and the evidence of the appellant that she would have to give her personal details if she applied for work and will not be able to hide where she is from. Third, in considering the question of internal relocation, the Judge limited his consideration to whether or not relocation would be safe, and whether the appellant would be able to integrate without considering whether internal relocation would be unduly harsh or unreasonable. The Judge failed to take into account the considerable evidence regarding the possibility destitution, focusing instead, solely upon the role of tribal associations.
11. Permission to appeal was granted by Designated Judge Shaerf on 13<sup>th</sup> November 2018.
12. At the hearing before me, Mr Eaton relied upon the appellant’s grounds of appeal and submits that the Judge has failed to adequately engage with the matters set out in the experts report. The expert had identified many of the difficulties that the family might face if they were to internally relocate. At paragraph [180] of the report, the expert had noted that where the appellants family members are committed to finding the family, internal relocation may prevent the family being found, only for a while. The expert had expressed the opinion, at paragraph [179] of the report, that upon returning it to Nigeria, it is highly unlikely that the appellant and her family will thrive living in isolation and that it is highly unlikely that the appellant’s family

can endure isolation. Mr Eaton submits that the issues raised in the experts report required careful consideration and the decision of the FfT simply fails to engage with the opinions of the expert, regarding matters that are relevant to an assessment of whether it would be unduly harsh for the family to internally relocate. For example, at paragraph [191] of the report, the expert states that the cost implications must be taken into consideration and the family appear to have no funds and will not be returning to Nigeria with any prearranged employment. The chances that the family will secure accommodation in any city and sustain it over time, while also catering for the potential needs of the two children without a reliable source of income, remains in the experts view, slim. The expert had noted, at paragraph [198] of the report that Nigeria's rate of unemployment had risen and that amongst the Nigerian unemployed, women are most affected. These were all crucial to an assessment whether it is unduly harsh for the family to internally relocate, and the Judge did not engage with that evidence.

13. The respondent opposes the appeal and Mr Tufan submits that in a detailed decision, the Judge considered all the background material before him, including the expert evidence, and reached conclusions that were open to him. Mr Tufan submits that the decision of the Judge must be read as a whole and that the Judge properly directed himself to the burden and standard of proof in an asylum claim at paragraph [8] of the decision. Mr Tufan submits that the Judge had proper regard to the expert report, albeit 'tangentially', and that the Judge was not required address each of the issues set out in the experts report at length. The Judge adequately dealt with the issues before him, and the decision discloses no material error of law.
14. In my judgement, the conclusion of the Judge as to whether the presence of family members in the locations specified by the appellant would "inevitably" lead to the appellant and her daughter being found by her family, bears no relation to the low standard of proof when assessing risk in a claim for international protection claim. I accept, as Mr Tufan submitted, that the use of that term is unfortunate and might well have been unintended, but in the end, the use of the term indicates that the

Judge erred in law, by applying too high a standard of proof in relation to an issue that was at the heart of the appeal.

15. It is also unfortunate, that the Judge does not set out in his decision any of the material evidence that was relied upon by the appellant and her husband, as set out in their witness statements, particularly regarding the circumstances that they would find themselves in, upon returning to Nigeria. Furthermore although there is some loose reference to the expert's report in the decision, the Judge does not expressly consider the opinions of the expert set out. I have carefully read the report of the expert, and there is some force in the submission that is made by Mr Tufan that Nigeria is known to be the most populous country in the African continent and the seven most populous country in the world. That is recognised by the expert. At paragraphs [159] to [173], the expert considers the feasibility of internal relocation and the expert concludes that although internal relocation appears to be a safer option in the event that the family is returned to Nigeria, it will not in the long run keep their location hidden from the extended family. In my judgement, that opinion, and the evidence of the appellant and her husband, required careful consideration by the Judge, that is simply not apparent from the decision. Similarly the evidence of the expert at paragraphs [174] to [180] of the report regarding the importance of maintaining tribal links, and the evidence regarding the risk of destitution, again required careful consideration in light of the evidence of the appellant and her husband as set out in their witness statements. They are matters that are plainly relevant to proper assessment of whether it would be unduly harsh or unreasonable to expect the appellant and her family to internally relocate.
16. The expert does not rule out internal relocation but highlights some of the issues that are likely to be relevant to a proper assessment of whether that might be possible. They are the issues the Judge does not adequately engage with. That is not to say that the appeal was bound to succeed. In the end, it may well be considered that internal relocation would not be unduly harsh but I cannot be satisfied that careful consideration of all the evidence would lead to such a conclusion. There is therefore

in my judgement, a material error of law in the decision of the FfT Judge and it must be set aside.

17. I must then consider whether to remit the case to the First-tier Tribunal, or to re-make the decision with regard to the issue of internal relocation, myself. The appellant and her husband have set out in some detail, why they claim, in the particular circumstances, internal relocation would be unduly harsh. The FfT Judge does not adequately address that evidence and as further findings are likely to be necessary upon the evidence of the appellant and her husband, the appropriate course is to remit the matter back to the First-tier Tribunal for determination.

### **Notice of Decision**

18. The appeal is allowed and the decision of FfT Judge James is set aside.
19. The appeal is remitted to the First-tier Tribunal for a fresh hearing of the appeal, with no findings preserved.
20. An Anonymity direction is made.

Signed

Date

24<sup>th</sup> January 2019

**Deputy Upper Tribunal Judge Mandalia**



**TO THE RESPONDENT**

**FEE AWARD**

Whether or not a fee award is appropriate will be determined by the FtT following the re-hearing of the appeal.

Signed

**Deputy Upper Tribunal Judge Mandalia**