



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12789/2018 (V)**

THE IMMIGRATION ACTS

**Heard at George House, Edinburgh
by *Skype for Business*
on 9 December 2020**

**Decision & Reasons
Promulgated
On 17 December 2020**

Before

UT JUDGE MACLEMAN

Between

[A N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms J Blockley, of McGlashan MacKay, Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Nigeria, came to the UK as a visitor on 14 April 2018. She sought asylum on 1 May 2018, based on the risk that the family of her late husband would enforce FGM on her and on her daughter, and would force her and her daughter into marriage. The respondent refused her claim
2. FtT Judge Handley dismissed the appellant's appeal by a decision promulgated on 10 July 2019.
3. The appellant sought permission to appeal on grounds which in outline are as follows:

2.1 Account of alleged persecution: (First) it is unclear what judge did or did not believe; (Second) this failure is not saved by [47] of the decision, where the appellant's claim to

have “no choice” was found not credible; (Third) evidence from a friend of the appellant, going to the core issue, is left out of account.

2.2 Sufficiency of protection: on approaching the authorities, it is unclear if it was accepted that the appellant went to the police and social work department; the objective evidence is not enough to establish sufficiency of protection, if a person does so; it was perverse at [45] to find that there was no evidence about high ranking officers; “ample evidence “ is cited of many high ranking members of the military in late husband’s family.

2.3 Internal relocation: the test needs to be revisited in light of evidence cited in the previous ground.

2.4 Best interests of children: the return of a 12 year old child is not necessarily in her best interests, even if the parent’s return is inevitable; no reasons were given on this issue.

4. The FtT and the UT refused permission. The appellant petitioned the Court of Session for reduction of the refusal by the UT. The petition was settled in terms of a joint minute, agreeing:

FIRST: that the UT erred in law in considering whether the FTT had erred in law because:

(i) The FTT left out of account evidence which may have had a material bearing on whether the petitioner would be at risk on return to her home country after April 2018; being the email dated 5th December 2018 from Toyin Aladeusi ...;

(ii) The FTT left out of account or failed properly to take into account evidence which may have had a material bearing not only on whether the petitioner would be at risk on return to her home country, but also in relation to whether she would receive sufficient protection or whether she could internally relocate if returned to her home country; being photographic and other evidence bearing upon the position of the petitioner’s late husband’s family in Nigeria ...

SECOND: that the UT's error is material as it may be arguable that, had the evidence referred to in (i) and (ii) above been taken into account by the FTT, the petitioner’s appeal would have succeeded.

5. On 5 August 2020, the Vice President of the UT granted permission in light of the joint minute and the interlocutor of the Lord Ordinary.
6. The case accordingly came before me on 9 December 2020. I conducted the hearing from George House. The appellant, and both representatives, attended remotely. The technology enabled an effective hearing.
7. Points (i) and (ii) are both within the original grounds, although not focused quite as clearly as in the joint minute.
8. The evidence mentioned at (i), the email, is not referenced in the decision. I agree with the submission by Mr Avery that this omission does not constitute an error of law. The appellant placed voluminous documentary evidence before the FtT. Judges do not have to deal specifically with every item. It was not shown that the email added anything of such significance as to require separate treatment.
9. On point (ii), there was evidence before the FtT, including photographs, a funeral order of service, names, ranks and identifications, which the

appellant advanced to support her claim that her late husband and many of his relatives held high ranks in the Nigerian military. I was not persuaded by Mr Avery that it could be read into the decision that this evidence had been considered. Rather, the terms of the decision at [45] and [46] show that it was overlooked. This matter was at the centre of the claim. The oversight amounts to an error of law, such that the adverse credibility conclusions cannot safely stand.

10. Ms Blockley made submissions on other alleged errors in the decision, not included in the joint minute or in the original grounds. I was not persuaded that the scope of the UT's consideration should be widened, and I tend to agree with the submission by Mr Avery that no other errors were disclosed. As the outcome on the main point argued for the appellant is a fresh hearing, it is not necessary to consider those other matters any further.
11. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the case is remitted to the FtT for a fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Handley.
12. No anonymity direction has been requested or made.



10 December 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.