



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2021-001017
First-tier Tribunal No:
PA/04999/2019

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 4 April 2023**

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

Between

**R M
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Zapata-Besso, instructed by Duncan Lewis Solicitors
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 16 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and her children are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her children. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Rodger, promulgated on 11 August 2021, dismissing her appeal against the decision of the Secretary of State to refuse her protection claim. In summary, her claim is that she is a victim of FGM, that her daughter currently in Nigeria is a victim of FGM, and that her daughter who is resident in the United Kingdom would also be at risk of FGM were she to return to Nigeria. She has also said that she has been physically and verbally abused by her husband's family in Nigeria.
2. By way of background, is it worth noting that the appellant had a previous appeal, heard by First-tier Tribunal Judge Cox, who dismissed it in a decision promulgated on 6 December 2017.
3. The appellant and her husband gave evidence before Judge Rodger, who in broad terms did not find the appellant to be credible. He did not accept that she had been subjected to the abuse claimed at the hands of the family in Nigeria; did not accept that there was a risk of FGM to the daughter; and, did not accept that even if what the appellant had said was true, there would be no sufficiency of protection available or risk to her in Nigeria.
4. The appellant challenges the decision on five grounds. We deal with the grounds in turn.

Ground 1: Failure to assess the new evidence 'in the round' and an inconsistent approach to the credibility assessment.

5. It is averred that the judge did not give proper attention to the medical report of Dr Olowookere, focussing on scarring, which found that there was a scar attributed to the appellant being hit by a plank by her brother-in-law. The doctor said that the scar was typical in Istanbul Protocol terms of the kind of abuse she had received. It is said firstly that the manner in which this report was dismissed is unfair, it being inconsistent with how the judge had dealt with other omissions. In essence the submission here is that the judge's approach to omissions was inconsistent, in that the judge had not drawn inferences adverse to the appellant from other omissions, albeit those that had been proved by other evidence without explaining the different approach.
6. Ms Lecointe for the Secretary of State submits that the judge's approach in Ground 1 was fair, and that there was no inconsistency, this simply being disagreement as to the findings of fact.
7. We disagree. We consider that the manner in which the judge dealt with the report from Dr Olowookere was not appropriate. There is a degree to which, as in the other grounds to which we will turn, points on which the judge relied were not put to the appellant or her representatives. We find that this was a defect in the assessment of credibility.

Ground 2: Insufficient weight to expert mental health evidence and erroneous approach to date of disclosure.

8. The judge did not accept that the appellant was suffering from any mental health issues at the time of the previous appeals as these had not been mentioned to Hackney Social Services in their 2017 assessment and because she did not attend an appointment with a psychiatrist in 2020. We note in this respect that there was a report from Social Services who had interviewed the appellant, albeit in the context of an assessment of her ability to care for her children. We accept the submission from Ms Zapata-Besso. that this was not an analysis carried out by a psychiatrist. That said, the documents were before the judge and we are not satisfied, taking all the matters in the round, that it was not open to the judge, for the reasons she gave, to reject the submission that the appellant was not suffering from any mental ill health at the time of the earlier appeal. We do not consider that she took into account irrelevant matters and we bear in mind that what the psychiatrist was being asked to do, was to look back into the past and make an assessment as to the likelihood of the appellant suffering from mental ill-health to such an extent that it would have affected her ability to give a good account of herself at that point which was inherently speculative. Accordingly, we do not find for the appellant in respect of Ground 2.

Ground 3: Failure to consider relevant factors; procedural unfairness.

9. We are satisfied that the judge drew inferences from a failure to mention the incident in which the appellant was hit by her husband's brother with a wooden plank causing scarring. There is no proper indication that a failure to mention this was put to the appellant's husband or that any attention was drawn to this which we consider ought fairly to have been done. This is not a case in which there was an obvious inconsistency in evidence which one might expect a party to address, rather it is an absence of evidence or detail, and it ought to have been put to the relevant witnesses so that they could fairly provide their evidence of it and/or as to why they had not previously mentioned it. Thus, this ground is made out.

Ground 4: Undermining the appellant's credibility on the basis of a flagrant misdirection as to the evidence.

10. It was accepted by Ms Lecointe that, contrary to what the judge had said in her decision, that there was a mistake of fact as to when the appellant had first mentioned the risk of FGM. The judge concluded that this was first mentioned in a screening interview on 25 January 2018, whereas, as the judge had recorded elsewhere, it was at the appeal before Judge Cox in 2017. We do not accept that this is a minor slip. We find that this error is material given that it was a significant point taken into account in assessing the appellant's credibility, despite what the judge also said at paragraph 80.

11. We pause there to consider what we have now found. We bear in mind that it is rare that an Appellate Tribunal would overturn a credibility finding by a fact-finding Tribunal, which had had the advantage of hearing and seeing the appellant and witnesses give evidence, but for the reasons we have given, there were significant and serious procedural difficulties arising in three out of the four grounds which we have already discussed. We consider that taken cumulatively, they are sufficient for us to consider that the findings of fact or credibility are vitiated by this error to such an extent that we find the findings of fact and as to credibility cannot be sustained.

Ground 5: Failure to consider country expert and background evidence relevant to sufficiency of protection in Nigeria.

12. The judge wrote that there is no persuasive evidence that the appellant or her own family had sought protection of the police authorities in Nigeria or that the authorities were unable or unwilling to help her or her parents in relation to their children left in Nigeria. We find that there is merit from the submission in the grounds at paragraph 23 that there is no reference in the decision to relevant background material. Further, the Home Office's CPIN indicates strongly that the police do not intervene in such matters (see paragraph 23(a) of the grounds). Also, it is unclear what facts the judge had found with which to base her alternative analysis that there would be a sufficiency of protection. There was no proper analysis of what the risk would be to the appellant were what she had said were true and were she to encounter her husband's family in Nigeria. And although this was not a point put in submissions, it does not appear to be in any doubt that she has a child in Nigeria who is in the care of the family, which begs the question of how she would avoid contact with the father's family.
13. For these reasons, we consider that the decision of the First-tier Tribunal involved the making of an error of law and we set it aside. We are satisfied that owing to the procedural defects and the defects in the adverse findings of credibility, that in accordance with the relevant guidance we must remit the decision to the First-tier Tribunal to be made again, without preserving any findings of fact.
14. While the appellant has made an application to adduce further evidence pursuant to rule 15(2A) of the Tribunals Procedure (Upper Tribunal) Rules 2008, we see no need to make a decision on that matter, given that whether any new evidence should be admitted will be a matter for the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.
2. We remit the decision to the First-tier Tribunal for it to be remade afresh. For the avoidance of doubt, none of the findings of fact made by Judge Rodger are preserved.

Signed

Date: 24 March 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber