



IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002660

First-tier Tribunal No:
PA/52213/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th September 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

AOO

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms N Loughran, Solicitor of Loughran and Co

For the respondent: Mr M Dwnycz, Senior Presenting Officer

Heard remotely from Field House on 20 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the combined error of law and re-making decision in the appellant's case.
2. The appellant is a citizen of Nigeria. She appeals with permission against the decision of First-tier Tribunal Judge Agnew ("the judge"), promulgated on 7 April 2022 following a hearing at the Glasgow hearing Centre on 30 March of that year. By that decision, the judge dismissed the appellant's appeal against the respondent's refusals of her protection and human rights claims.

3. The essence of those claims was as follows. The appellant asserted that she was a member of the Bini ethnic group (with her father being a member of a particular tribe called the Igunmowen-Ehige). She had been the victim of very serious sexual abuse at the hands of the father, as had her older sister. She had also been subjected to FGM. Eventually, with the assistance of her mother, the appellant left Nigeria and came to the United Kingdom. She claimed that her father was an influential man in the political sphere and that he would be able to find her wherever she might go in Nigeria. In November 2021, the appellant gave birth to a daughter. No details about the child's father have emerged. The appellant asserted that her daughter was at risk of being subjected to FGM in Nigeria.
4. Having considered the appellant's claims, the respondent accepted her account of past sexual abuse. However, it was not accepted that the father was influential and the respondent took the view that she could obtain state protection and/or internally relocate to an urban area such as Lagos or Abuja.

Decision of the First-tier Tribunal

5. The judge acknowledged the respondent's concession as to the past sexual abuse and found that the appellant would be at risk on return to her home area of Benin City: [3], [7] (I note that the finding on risk included the conclusion that the authorities would be unwilling and/or unable to offer protection). The judge identified the core issue in the appeal as being that of internal relocation. She directed herself to relevant case-law at [8]-[11]. She then made reference to a fair amount of country information contained in the respondent's CPIN on internal relocation in Nigeria, published in September 2021: [13]-[16]. She went on to cite country information contained in the CPIN on FGM relating to the prevalence of FGM in that country: [17]-[18]. At [19]-[31], the judge assessed the evidence relating to the appellant's father and found that he was not in fact a person of political power or influence, as claimed,

and would not be able to locate the appellant wherever she might relocate to.

6. When assessing whether internal relocation would be unduly harsh, the judge took account of the appellant's good level of education, the fact that she was in her mid-20s when she left Nigeria, and her general resourcefulness: [30], [34]-36], and [38]. The judge did not accept that the appellant had no contact with her mother and/or sister, or at least could not re-establish any such contact if necessary and presumably then access some form of family support: [37]. The judge accepted that the appellant may face "some difficulties" on return to Nigeria as a single parent. However, in light of all the factors seen as relevant, relocation would not be unduly harsh. Accordingly, the appeal was dismissed on protection grounds.
7. Article 8 was then addressed, it being concluded that the appellant's removal would not be disproportionate in all the circumstances.

Grounds of appeal

8. The grounds of appeal essentially make the following points: firstly, the judge failed to deal with the claimed risk of FGM to the appellant's daughter in any place of relocation; secondly, the judge erred in her consideration of the possibility of family support; thirdly, the judge failed to properly consider the country information on members of ethnic minority groups and single parents when addressing internal relocation.
9. Permission was granted on all the grounds as drafted. In addition, the First-tier Tribunal Judge deemed it to be "obvious" that the Article 8 was arguably flawed if the errors relating to internal relocation were made out.

Rule 24

10. Following the grant of permission, the respondent provided a brief rule 24 response.

The hearing

11. Ms Loughran relied on the grounds of appeal and provided me with assistance in clarifying certain issues, with particular reference to the FGM risk pertaining to the appellant's daughter.
12. Mr Dwnycz described the judge's decision as "finely balanced" and accepted that there was some merit in the appellant's challenge, with particular reference to the ethnicity issue and FGM risk. There was no formal concession, however.
13. At the end of the hearing, I announced to the parties my conclusion that the judge had materially erred in law and that her decision should be set aside. I now set out my reasons for that conclusion.

Error of law reasons

14. I acknowledge the need for appropriate judicial restraint before interfering with a decision of the First-tier Tribunal, where it has considered a range of evidence and undertaken the task of fact-finding and the evaluation of matters relevant to the legal tests.
15. In the present case, however, I am satisfied that the judge erred in four ways.
16. Firstly, I am satisfied that an element of the appellant's case put to the judge was that the appellant's daughter would be at risk of FGM, not simply in the home area, but elsewhere in Nigeria: a reference to this point can be found at [2] and at paragraph 20 of the appellant's skeleton argument provided for the hearing below. I conclude that the judge failed to engage with this element of the appellant's case. There was country information which lent support to the claim and as such cannot properly be said that the judge's error was immaterial.

17. Secondly, I am satisfied that the judge overlooked, or failed to provide reasons in respect of, potentially relevant evidence relating to the possibility of family support. The judge was unimpressed with the appellant's claim not to have been in contact with her mother and sister. However, there was evidence from the appellant to the effect that the mother and sister continued to live with the father and both of them were in (justified) fear of him. They would not have been in a position to offer any meaningful support to the appellant, without potentially placing themselves at risk from the father. The appellant's evidence was not decisive, but it required proper consideration. The question of family support was relevant to the overall assessment of whether internal relocation was a viable option.
18. Thirdly, amongst the country information referred to by the judge were passages indicating the difficulties faced by non-indigenes in urban areas. The judge read the evidence as stating that discriminatory restrictions did not apply in larger urban areas such as Lagos or Abuja. However, I am satisfied that the relevant evidence in fact stated that the absence of such discriminatory restrictions applied only to official measures, not to more general societal views. The judge's misinterpretation of this evidence was relevant to the position of the appellant as a non-indigene, single-parent of a daughter, who potentially had no family support.
19. As to the question of the appellant's ethnicity, I had understood that this was never in dispute. It is true that the judge did not make a clear finding on this. It is perhaps difficult to discern whether the ethnicity was taken as a stand-alone consideration, although it might be implicit in the judge's assessment.
20. I conclude that the judge did not err in law when making her findings that the appellant's father held no position of influence away from the immediate home area. There has been no substantive challenge to those findings and, in any event, they were plainly open to the judge.

Disposal

21. There was a discussion at the hearing as to the appropriate method of disposal in this case. There was clearly no basis on which to remit the appeal to the First-tier Tribunal. The real question was whether I could go on and re-make the decision based on the evidence currently before me, or whether there should be an opportunity for further evidence to be adduced in advance of a resumed hearing.
22. In the end, a consensus was reached whereby I would re-make the decision in light of the evidence as it stands. Ms Loughran confirmed that there was no realistic prospect of further evidence being provided. An issue which had caused her some concern, namely the appellant's ethnicity, was expressly accepted by Mr Dwnycz before me. The issues which fall to be decided now are clear.
23. Having considered all the circumstances of this case, I concluded that it was appropriate to go on and re-make the decision without adjourning.

Re-making the decision

24. In re-making the decision in this case I have had regard to the evidence which was before the judge, namely the respondent's bundle and the appellant's personal evidence bundle (indexed and paginated 1-40) and the objective evidence bundle (indexed and paginated 1-258).
25. I have also taken account of the respondent's reasons for refusal letter, dated 29 April 2021. I have done so in the context of subsequent findings made by the judge, some of which have been preserved, together with the absence of any additional submissions from Mr Dwnycz at the hearing before me.

26. I have taken account of the appellant's skeleton argument provided in advance of the hearing before the judge, as well as the respondent's review.
27. The preserved findings are as follows:
- (a) The appellant is a victim of very serious sexual abuse at the hands of her father, over a prolonged period of time;
 - (b) The appellant is the victim of FGM;
 - (c) The appellant's father would seek to persecute and/or do her serious harm if she were to return to the home area;
 - (d) The risk of harm from the father would not be materially reduced by way of state protection;
 - (e) The appellant's father is not a person of influence (political or otherwise) such that he would be able to locate her beyond the home area of Benin City;
 - (f) The appellant is a single parent of a daughter who has not been subjected to FGM. I start from the premise that the daughter's father plays no part in my assessment (the respondent has not suggested that he should);
 - (g) The appellant is relatively well-educated and speaks English.
28. As mentioned previously, the respondent has now conceded the fact of the appellant's ethnicity: she is a member of the Bini ethnic group, her father's particular tribe being the Igunmowen-Ehige.
29. The issues for me to determine now are:
- (a) Whether the appellant and/or her daughter are at risk of persecution and/or Article 3 ill-treatment in places of potential internal relocation within Nigeria;
 - (b) If not, whether it would nonetheless be unduly harsh for the appellant and her daughter to internally relocate;

(c) Whether, in addition to the protection claim, or in the alternative, it would be disproportionate for the appellant and her daughter to be removed to Nigeria.

30. I gave the representatives the opportunity to make further submissions on the re-making issue prior to the conclusion of the hearing. Mr Dwnycz had nothing further to add. Ms Loughran reiterated the various characteristics of the appellant and her daughter which went to the issues of risk and internal relocation. She urged me to have regard to the relevant CPIN which had been referred to by the judge.

Relevant additional findings of fact

31. The first additional finding I make relates to the possibility of family support available to the appellant and her daughter if they were to be returned to Nigeria. The judge erred in her consideration of this issue, as discussed previously. Having considered the appellant's evidence for myself (in particular, the detailed statement of evidence), it is clear that she claims that her mother lived in fear of the father and had herself been abused by him. It is also clear that the father is said to have sexually abused the appellant's sister.

32. In assessing the credibility of that evidence, I take account of the respondent's express concession that the father had seriously abused her, that being relevant to the overall assessment of other aspects of the claim. It is also of some relevance that Mr Dwnycz made no further submissions challenging the truthfulness of this aspect of the appellant's case.

33. On the lower standard of proof, and having regard to all the circumstances, I find that the appellant's mother and sister were indeed abused by the father and lived in fear of him for a prolonged period of time. I find that the appellant's mother assisted her to leave Nigeria, but did so at real risk to self. I find that it is reasonably likely that the mother and sister continue to live with the father and that he would have a clear

and highly detrimental influence on them. In those circumstances, it is at least reasonably likely that the appellant has not been able to, or willing to, contact her mother and/or sister because of the potential risk of doing so. Even if there has been, or could potentially be, some limited contact between them, it is unlikely in the extreme that the mother and sister would be in a position to offer any meaningful support to the appellant and her daughter in respect of an attempted relocation to other parts of Nigeria, including the large urban areas. In addition, I find that there are no other family members elsewhere in Nigeria who would be willing and/or able to provide such meaningful support. I say this in the context of the cultural and tribal norms applying to the appellant's family, together with her own evidence on the issue. In short, I find that there would be no material family support available to the appellant and her daughter were they to attempt relocation elsewhere in Nigeria.

34. There is no evidence that the appellant has any form of a social network in other parts of Nigeria. It would be impermissibly speculative for me to somehow assume that there were undisclosed friends or acquaintances who would be able and/or willing to provide material assistance to the appellant under daughter in any place of relocation. I do not undertake such speculation.
35. I find that the appellant has no history of employment, either in Nigeria or the United Kingdom.
36. In respect of education, I find that the appellant began a degree, but did not complete the course due to her flight from Nigeria. Thus, she is in one sense relatively well-educated, but is not a graduate.
37. In terms of the appellant's health, I acknowledge her evidence at the interview that she had spoken to her GP about mental health difficulties and that an appointment with a psychologist had apparently been arranged. There is no additional evidence relating to any further treatment. In the circumstances, whilst I accept it to be reasonably likely that the appellant does suffer from (as yet possibly untreated) mental health challenges as result of the severe trauma experienced whilst in

Nigeria, I am unable to find that she has serious conditions which could represent a significant consideration in this case.

Assessment and conclusions

38. The respondent has not accepted that the appellant falls within a particular social group within the meaning of the Refugee Convention. The appellant's skeleton argument asserts that the appellant falls within one or more of three possible particular social groups: a Bini female survivor of forced FGM ongoing consequences as result; a Bini mother who opposes FGM in respect of her daughter; a Nigerian Bini female victim of incestuous sexual abuse.
39. The judge did not address this issue. I conclude that the answer is relatively straightforward. As recognised at paragraph 1.2.3 of the respondent's CPIN on FGM in Nigeria, a parent of a daughter at risk of FGM can be a member of a particular social group. The appellant in this case is the parent of a daughter who is, for reasons which will be set out in due course, at risk of FGM. Alternative particular social groups would include a woman from Nigeria, or a single parent from Nigeria: see paragraphs 2.3.1 and 2.3.2 of the same CPIN. Therefore, the Refugee Convention is engaged.
40. The next issue is whether the appellant or her daughter would be at risk of persecution and/or Article 3 ill-treatment in a place of relocation. Taking the appellant in isolation, I conclude that there is no risk to her. Her father has no influence beyond the home area and would not be able to find her in any place of relocation. I do not accept that the fact that she has been subjected to FGM, in and of itself, places her future risk. Her status as a single parent is undoubtedly relevant to the question of risk to the daughter and internal relocation, but this factor does not of itself demonstrate a risk of persecution or Article 3 ill-treatment.

41. I turn to the position of the appellant's daughter. I have had particular regard to the CPIN on FGM and the other country information referred to in the appellant's skeleton argument, as well as that specifically referred to by the judge in her decision.
42. The appellant and her daughter would be attempting relocation to a place outside of their home state (Edo State). They would in all likelihood go to a large urban area such as Lagos or Abuja. The respondent has not suggested that they would attempt relocation into the north or north-east of the country and I do not consider that as a viable option.
43. Taking the country information and the respondent's summary assessment contained in the CPIN into account, I consider the relevant circumstances to be as follows. The appellant is a single parent without any family or social support network in the place of relocation. The appellant and her daughter will be non-indigenes (i.e. members of an ethnic group not indigenous to the place of relocation). The appellant has herself been subjected to FGM and comes from a geographical area and an ethnic group with a high prevalence of that practice. The prevalence of FGM is higher in urban areas than rural areas. The appellant's daughter is within the age bracket of those most at risk of FGM. Although the appellant has had more than just secondary education, she did not graduate. She has no employment history.
44. Taking these considerations cumulatively, I conclude that the appellant's daughter is at risk of FGM in a place of internal relocation. Having regard to the country information cited in section 6 of the CPIN on FGM, I conclude that there would not be, on the facts of this particular case, sufficient protection for the appellant and her daughter. The position adopted in the respondent's reasons for refusal letter was not based on a full consideration of the particular characteristics which I have taken into account.
45. It follows from the above that the appellant and her daughter are refugees because there is a risk in the home area and a risk in places of

possible internal relocation. The appellant and her daughter are also at risk of Article 3 ill-treatment.

46. In the event that I was wrong on the issue of risk outside of the home area, I go on and state my conclusion on internal relocation. In so doing, I take full account of the relevant authorities, in particular Januzi v SSHD [2006] UKHL 5, SSHD v AH (Sudan) [2007] UKHL 49, and AS (Afghanistan) [2019] EWCA Civ 873. I take account of all of the relevant personal characteristics pertaining to the appellant and her daughter, as set out previously at paragraph 42 and 43. I have also taken account of the respondent's CPIN on internal relocation in Nigeria, version 2.0, published September 2021. In her summary section, the respondent acknowledges that single women and non-indigenes may face greater difficulties in relocating: see paragraph 2.3.9. Adding into this the fact that the appellant is a single mother without any form of external support and her position becomes, in my judgment, a good deal more precarious. Indeed, the difficulties she is very likely to face go significantly beyond mere challenges or readjustments. I conclude that the cumulative effect of the relevant considerations demonstrate that relocation would be unduly harsh on both the appellant and her daughter.
47. On this alternative scenario, the appellant and her daughter are refugees and/or persons in need of subsidiary protection on the basis of Article 3.
48. It is unnecessary for me to reach a conclusion on Article 8, but, simply on the basis of my conclusions under the Refugee Convention and Article 3, the appeal must also succeed on Article 8 grounds.

Anonymity

49. It is clearly appropriate to maintain the anonymity direction previously made. This case is all about protection-related issues and that consideration outweighs the important public interest in open justice.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I re-make the decision by allowing the appeal on Refugee Convention and Articles 3 and 8 ECHR grounds.

**H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 25 September 2023**