



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000563/564/565/566

First-tier Tribunal No: : PA/52100/2022  
PA/52101/2022 PA/52102/2022  
PA/52103/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 19 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE LANE**  
**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**EG-R and three dependants**  
**Appellants**  
**(ANONYMITY ORDER MADE)**

**SECRETARY OF STATE FOR HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Gazzin  
For the Respondent: Mr Wain, Senior Presenting Officer

**Heard at Field House on 8 June 2023**

**DECISION AND REASONS**

1. The first appellant, E G-R, is a female citizen of Nigeria born on 11 April 1992. She is the mother of the second, third and fourth appellants who are minors. We shall refer hereafter to the first appellant as ' the appellant'. The appellants appealed to the First-tier Tribunal against a decision of the Secretary of State dated 24 May 2022 refusing their claims for international protection. The First-tier Tribunal, in a decision dated 12 December 2022, dismissed the appeals on all grounds. The appellants now appeal to the Upper Tribunal.

2. The background to the appellants' claim for protection is summarised by the First-tier Tribunal judge in her decision at [2-3]:

The appellant was issued with a visa for the UK on 5 April 2019 expiring 5 October 2019. Her son then aged 5 was also issued with a visa with the same dates. An application for her daughter then aged 2, made two days earlier was issued to expire on 4 October 2019. They left Nigeria on 9 May 2019 arriving in the UK the same date. They claimed asylum on 17 June 2019. The 4th appellant, a son, was born in the UK on 28 June 2020. She had a screening interview on 17 June 2019 and full asylum interview on 20 February 2020. In support of the application she also submitted a medical letter dated 14 February 2020 and screenshots of text and call logs between 6 - 26 June 2019.

Her claim for asylum is based on fear of persecution on return to Nigeria for her membership of a particular social group, i.e. the parent of a child at risk of FGM, a lone woman and single mother. The children claim asylum on the same basis. She said that her husband's family practise female genital mutilation (FGM) and she fears that the practise will be forcibly carried out on her daughter. The respondent accepts that this social group exists in Nigeria but does not accept that the appellant is a member of such group.

3. Upper Tribunal Judge Perkins granted permission on 28 April 2023. At [5-6], he wrote:

At paragraph 20 of the Decision and Reasons the Judge says "If FGM can be carried out from 21 days after birth it is not clear why she waited until her daughter was almost two before leaving Nigeria" but the Appellant has given an explanation. She said that the Appellant claim that her daughter had a fractured shoulder six days after birth and "they agreed to wait until the child turned 2 years old". It was the Respondent's evidence that 84% of girls who are subject to FGM are cut before they are 5 years old.

I have noted the observations of the First-tier Tribunal Judge concerning the materiality of the error. Those views may yet prevail but I find that the case is arguable.

4. Whilst also arguing that the judge had failed to engage with the explanation given by the appellant, the grounds submit that the appellant did not:

receive a fair hearing because the judge failed to seek clarification of what she found was not clear and also failed to take in consideration the relevant facts she recorded at paragraph 5 of her decision.

At [5], the judge recorded:

The appellant said that she and her husband are from the Yoruba tribe. Background information is that 45.4% of Yoruba women in Nigeria have undergone FGM. She said that her husband was in Kenya when her daughter was born. She was visited by his family and told her daughter would have to be circumcised. They said this should be done when she was 21 days old. She

said she would wait until her husband returned. Her daughter also had a fractured shoulder six days after birth and so they agreed to wait until the child turned 2 years old. The respondent finds this inconsistent with background information that FGM is carried out on girls under 5, with 16% before their first birthday and 84% before the age of 5.

At [20], the judge wrote:

When she was interviewed in February 2020 she said her husband was in Nigeria. In her interview she said that she fears his family, that her children would be taken away from her and eventually her daughter circumcised. She claims it in her husband's family FGM is carried out on girls from 21 days after birth and if not when they are aged 2. She could not explain why it was the age of 2. If FGM can be carried out from 21 days after birth it is not clear why she waited until her daughter was almost two before leaving Nigeria. In her interview she was vague when asked why FGM is carried out among the Yoruba, although she claims it to be a tradition and she had joined the Moms organisation since 2017.

5. In our opinion, the judge has not erred in her treatment of the appellant's evidence. First, she has accurately recorded the reason given by the appellant for not performing FGM on the child after 21 days. The judge records that explanation at [5] ('Her daughter also had a fractured shoulder six days after birth and so they agreed to wait until the child turned 2 years old.') At [20], the judge considered the explanation in her overall credibility assessment; what is clear is that she has not simply ignored the explanation. The difficulty for the appellant is that her evidence about the practice of FGM in her husband's family makes little sense, the delay in perpetrating FGM on the child was not adequately or plausibly explained and the family's delay in leaving Nigeria indicated to the judge that their fear of FGM was not as great as they had claimed. These were all self-evident problems in the appellant's evidence addressed by the judge. The appellant's evidence was that FGM could be carried out '*from 21 days*' [our emphasis]. It was, therefore, unclear why there would be delay of almost 2 years notwithstanding the child's shoulder injury. The significance of 'the age of 2' was never explained by the appellant; that significance is not obvious given that, according to the appellant, FGM could be performed at any time following 21 days after birth. Moreover, the appellant could not explain why, even if it was true that the family had agreed to delay FGM until the child was two years old, the mother waited almost until the expiry of that deadline before seeking protection abroad. Had the mother been genuinely afraid she would have left Nigeria as soon as she could. We also observe that it is entirely unclear why the appellant would trust those who she knew wished to perform FGM on her daughter not to breach of any agreement and carry out the procedure before the child's second birthday.

6. In our view, these problems were obvious on the face of the evidence given by the appellant and there was no obligation on the judge to seek clarification. As Upper Tribunal Judge Perkins noted the judge has given 'has given a raft of reasons for disbelieving the First Appellant'. Those reasons, citing vagueness and unexplained inconsistencies throughout the appellant's evidence, are set out in detail by the judge at [18-27]. We consider that the judge's findings at [20] were properly open to her on the evidence and that, far from vitiating her credibility analysis as the appellant argues, justified the judge's rejection of the appellant's account as untruthful.
7. Paragraph [4] of the grounds of appeal is without merit. The appellant argues that the judge erred in law by not making a finding as to whether the appellant's child fractured her shoulder at the age of 6 days. It is apparent from the judge's analysis that she proceeded on the basis that the child had suffered the injury claimed (see [5] above). As we have noted, it is the appellant's evidence concerning events following the injury which is problematic.
8. The remaining grounds [paragraphs 5-8] concern Article 8 ECHR. The appellant submits that the judge has failed to follow the 5-stage procedure referred to in *Razgar* [2004] UKHL 27, has failed to consider the 'relevant facts for each appellant' and has failed to engage with section 55 of the Borders Citizenship and Immigration Act 2009.
9. At [28], having dealt with asylum/Article 3 ECHR, the judge wrote:

The appellant and her children are able to return to Nigeria. The refusal letter sets out in detail the reasons that the appellant and her family do not qualify for a grant leave on the basis of family or private life under Article 8 ECHR. The children are able to return to Nigeria with their mother and continue family life there. The decision is not a violation of Article 8.

The inevitable consequence of the dismissal of the asylum/Article 3 ECHR appeals is that the first appellant will return to Nigeria with her children. It follows that family life between the four appellants will continue in the their country of nationality. There was no evidence that any of the appellants enjoy a private life in the United Kingdom which requires the protection of Article 8 ECHR. The best interests of the children (who are all under the age of 9 years) are entirely met by their remaining in the care of their mother. On those facts, no other outcome than the dismissal of the appeals on Article 8 ECHR grounds could follow; indeed, the grounds make no attempt to indicate how a more extensive *Razgar* analysis by the judge would have made any difference to the outcome. On the particular facts, the judge's observation that 'The children are able to return to Nigeria with their mother and continue family life there' was adequate to dispose of the appeal on Article 8 ECHR grounds.

10. For the reasons we have given, these appeals are dismissed.

**Notice of Decision**

These appeals are dismissed.

**C. N.**

**Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 8 June 2023**