IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003746

First-tier Tribunal No: PA/04710/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9 February 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

RE
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms E Rutherford, counsel, instructed by Central England Law Centre
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family, 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 and/or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Nigeria. She last entered the United Kingdom with her three children in February 2014. The appellant had the benefit of a multi-visit Visa valid until 17 July 2014. Her three children were granted visit visas on 8 October 2013 valid until 8 April 2014. When the visit visas ended the appellant and her children remained in the United Kingdom unlawfully. Some two years later, in July 2016 the appellant claimed asylum. Her claim was refused by the respondent for reasons set out in a decision dated 13 January 2017. That decision was initially sent to an incorrect address but that error was corrected on 20 February 2017.

2. On 10 January 2020 the appellant made further submissions to the respondent. The appellant claims she left Nigeria and fled to the UK because her daughters are at risk of FGM and early marriage. Although the international protection and human rights claims made by the appellant were refused, the respondent accepted the claims as fresh claims giving rise to a right of appeal before the First-tier Tribunal.

3. The appellant's appeal to the First-tier Tribunal was dismissed by First-tier Tribunal ("FtT") Judge Thapar ("the judge") for reasons set out in a decision promulgated on 14 January 2022. The judge rejected the appellant's claim that she is separated from her husband. The judge concluded that the appellant has failed to establish, to the lower standard, that her daughters are at risk on return from FGM or early marriage. The judge found the appellant would not be at risk from her husband and his family upon return to Nigeria and consequently, internal relocation is not an issue. The judge went on to address the human rights claims. She found there is not a real risk that the appellant or her children will suffer a breach of their protected rights under Articles 2 or 3 of the ECHR. As far as the Article 8 claim is concerned, the judge found that the balance weighs in favour of the respondent's policy aim of effective and legitimate immigration control, and the decision to refuse leave to remain is not disproportionate to that legitimate aim.

The Grounds of Appeal

4. The appellant claims the decision of the FtT is vitiated by material errors of law in respect of the judge's assessment of the appellant's human rights claim. It is said that in concluding that it is reasonable for the appellant's three children to return to Nigeria, the judge failed to consider all the relevant evidence. All three children had at the date of the hearing of the appeal, spent seven years and nine months in the UK. The appellant's eldest daughter was under the age of 18 at the date of the application and the focus should have been upon whether it is reasonable in all the circumstances to expect the children to return to Nigeria.

5. The appellant relied upon the report of an independent social worker, Nikki Austin and as far as the appellant's eldest daughter is concerned, a report of Dr Erica Eassom, a clinical psychologist who specialises in complex trauma. The appellant claims the judge referred to the report of Nikki Austin, but failed to consider that Nikki Austin's clear conclusion is that it is in the children's best interests to remain in the UK on a more

permanent basis. It is said the judge failed to consider the impact that requiring the children to return to Nigeria would have upon their education and their emotional well-being. The appellant claims that in reaching her decision, the judge failed to consider all the evidence and give adequate reasons for her conclusions regarding the impact upon the mental health of the appellant's eldest daughter. The judge is said to have failed to consider the evidence regarding the subjective fears that the appellant's eldest daughter has about return to Nigeria, and fails to give adequate reasons in respect of the evidence before the Tribunal from a country expert and background material that facilities are extremely limited for those suffering from mental health problems in Nigeria. It is said the judge also failed to consider the evidence that those with mental health difficulties face discrimination and stigma in Nigeria.

6. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor on 29 September 2022.

The hearing of the appeal before me

7. At the outset of the hearing before me, Ms Rutherford confirmed the appellant does not challenge the conclusion reached by the judge at paragraph [22] of her decision that the appellant has not discharged the burden of establishing that the removal of the appellants and her children would be in breach of the 1951 Refugee Convention. The focus of the grounds of appeal is upon the judge's assessment of the Article 3 and 8 claims at paragraphs [25] to [33] of the decision.

8. Ms Rutherford submits the judge failed to refer to what was said by Nikki Austin, an independent social worker ("the ISW") in her report dated 13 October 2021. Nikki Austin said *(page 26 of 50)*:

> "It is the best interests of the children to remain in the UK on a more permanent basis. Each child and their mother have established a firm private life in the UK. Each family member is settled after a long period of instability. Each child is focused and committed to education and creating a bright future for themselves, this is something that should be supported and lauded. Each child has friends they can rely on for support, comfort and companionship."

9. In setting out where the best interests of the children live, Ms Rutherford submits the ISW had due regard to the length of time the appellant's children have spent in the UK and the position the children would find themselves in, in Nigeria. Ms Rutherford submits the judge referred to the children's education but the judge did not consider the crucial stage of the children's education. Ms Rutherford submits that as children reach crucial stages, the situation changes and the children have spent several years in school in the UK preparing for exams. There will be a significant disruption and impact upon the children's education that the judge failed to consider.

10. Ms Rutherford submits that at paragraph [28], the judge failed to have regard to the ages of the children when they arrived in the UK, and their respective ages at the time of the hearing of the appeal. The children

have, she submits, established connections with the UK and the youngest two children have very limited ties and recollection of life in Nigeria. At paragraph [25] of her decision, the judge failed to address the negative impact that a return to Nigeria will have upon the children. The appellant's eldest child, as the judge accepted at [29], suffers from severe, chronic social anxiety disorder, moderate chronic agoraphobia and moderate, chronic major depressive disorder. The judge failed, Ms Rutherford submits, to consider the fact that the prospect of removal would adversely affect her mental health. The appellant's daughter also has a wide network of support in the UK, that would not be available to her in Nigeria. Ms Rutherford submits there was a country expect report before the FtT that addressed the availability of medical facilities in Nigeria. In paragraph [5.15] of the report Debbie Ariyo states:

> "Those experiencing mental health illnesses can also face incredibly harmful stigma, abuse, discrimination and ostracisation based on their mental health status, being branded as witches, or possessed, and thus shunned by their family and community. In many other cases, they may be forced to undergo harmful rituals to exorcise the demons causing their malaise. Clearly, this does not alleviate the problem, and indeed can exacerbate the mental trauma and distress felt by individuals."

11. Ms Rutherford submits the medical facilities available in Nigeria are extremely limited and the judge failed to properly consider the treatment that may be available to the appellant's daughter and the stigma and discrimination the child may face. The evidence of the country expert is that the appellant's daughter's is likely to suffer panic attacks and agoraphobia, that is likely to be exacerbated by the negative situation she is bound to experience in Nigeria. That, the expert states, would put her at risk of stigmatisation as a witch or as possessed by demons due to the symptoms of her condition.

12. In reply, Mr Lawson adopts the rule 24 response dated 31 March 2023 filed by the respondent. He submits the grounds of appeal amount to little more than a disagreement with the findings and conclusions reached by the judge. Mr Lawson submits the judge referred to the best interests of the children at paragraphs [25] and [31] of her decision. The judge found, at [25], that the appellant has not separated from her husband, the children's father, and that they are not at risk upon return to Nigeria from him or his family. That finding is not challenged. The judge said the appellant and her children would be returning to the life they were living before their arrival in the UK. Mr Lawson submits the evidence before the FtT was that medical treatment and education are available in Nigeria. The judge accepted the diagnosis relating to the appellant's daughter referred to by Dr Erica Eassom. The judge found treatment for mental illness is possible in public hospitals and there is no form of mental illness for which treatment is not available. Mr Lawson submits the judge gave adequate reasons for the decision that she reached, having had regard to the best interests of the children in particular. The appellant's children may wish to remain in the UK, but that is not the test.

Decision

13. The appellant had claimed that she left Nigeria and fled to the UK because her daughters are at risk of FGM and early marriage. The judge found, at [17], that the appellant's claim to have separated from her husband is untrue. The judge found, at [18], that the appellant has failed to establish, even to the lower standard, that her husband and his family support FGM or early marriage. The judge found the appellant has not established that she along with her husband would be unable to protect their daughters. At paragraph [22] the judge said:

> "22. As stated above, having considered the whole of the evidence in the round, I find that the Appellant has not discharged the burden of proof of having a well-founded fear of persecution for a Convention reason and that the Appellant and her children's removal would not cause the UK to be in breach of its obligations under the 1951 Convention."

14. Ms Rutherford accepts the findings made by the judge in respect of the claim for international protection and the reasons given for dismissing the international protection claim are not challenged. Before addressing the submissions made by Ms Rutherford, under s11 Tribunals, Courts and Enforcement Act 2007 an appeal from the FtT only lies on points of law. In other words, it is only if there is an error of law that the Upper Tribunal is entitled to intervene. There are some most elementary propositions that I have borne in mind:

    a. The core issue in this appeal was whether the decision to refuse the appellant leave to remain was a justified or a disproportionate interference with the right to respect for family life or would be in breach of Article 3. As the Court of Appeal said in *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095, this is an issue which faces judges of the specialist immigration tribunals on a daily basis, and the paradigm of one on which appellate courts should not "rush to find misdirection" in their decision-making.

    b. It is not necessary for a judge to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. *Budhatkoki* [2014] UKUT 00041 (IAC)

    c. Adequate reasons mean no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why they have lost and to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach. *MD (Turkey) v SSHD* [2017] EWCA Civ 1958

d. The UT is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in *AH (Sudan) v SSHD* at [30]:

> "Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."

15. In paragraph [5] of the grounds of appeal, the appellant submits that there are a number of important pieces of evidence that have simply not been considered by the judge when she assessed whether or not it is reasonable to expect the appellant's children to leave the UK and return to Nigeria.

16. I reject the claim that the judge failed to have regard to the length of time the children have been in the UK and their connections to the UK. The judge referred to the appellant's immigration history at paragraph [2] of her decision, noting the appellant and her children arrived in the UK in February 2014 as visitors and that they have remained in the UK since. The judge was plainly aware of the length of their presence in the UK. At paragraph [25], the judge noted the children have expressed aspirations to complete their studies and develop careers. I also reject the claim that the judge failed to refer to, or address the evidence of the ISW that it is in the best interests of the children to remain in the UK. At paragraph [25] of her decision, the judge expressly addressed the report of the ISW. She acknowledged that removal of the appellant and her children will cause them emotional distress particularly because they do not wish to leave the UK. At paragraph [28] of her decision, the judge acknowledged the connections that the appellant's children have established in the UK. She noted the children had been able to adapt in the UK, and it was open to her to conclude that they would adapt to life in Nigeria again, where they would have the support of both their parents.

17. The ISW was instructed to give an opinion on the overall outcome that would be in the children's best interests. Her opinion was, as Ms Rutherford submits, that it is in the best interests of the children to remain in the UK on a more permanent basis. The ISW explained that the appellant and children have established a firm private life in the UK and that each family member is settled after a long period of instability. The ISW said that each child is focused and committed to education and creating a bright future for themselves. Section 4 of the ISW report must be read in context. As Ms Rutherford accepted before me, at the end of section 4 of her report the ISW said:

> "…The information provided to me did not reveal any risks of significant harm in the UK. The information provided to me did present a potential risk of significant harm in Nigeria and for that reason I believe that it is in their best interests to remain in the UK."

18. The information provided to the ISW is set out in section 7 of her report in which she sets out the 'history' as provided by the appellant. That included the appellant's claim that her daughters were at real risk of FGM and forced marriage, and that caused difficulties in the appellant's marriage that ended following a traumatic and brutal event described by the appellant. In her report the ISW adopted a 'balance sheet' to identify the benefits and burdens to the children remaining in the UK and living in Nigeria. In addressing the 'burdens to the children if the family are forced to move to Nigeria', the ISW referred to the possibility of the children being separated from their mother and being forced to live with their father, and the reported risk of FGM.

19. The leading authority on section 55 remains *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4. In her judgment, Lady Hale confirmed that the best interests of a child are "a primary consideration", which, she emphasised, was not the same as "the primary consideration", still less "the paramount consideration". As to the best interests of the children, the judge said:

> "25. … It is in the best interests of the children to remain in the care of the Appellant. The Appellant and the children would be returning to Nigeria together and therefore the support that they provide one another and their family life can continue together in Nigeria. I have found above that it is likely the Appellant has not separated from her husband and they are not at risk from her husband and his family. It has not been suggested that the family are to be separated and therefore, the Appellant and her children would be returning to the life they were living before their arrival in the UK. I see no reason why the Appellant cannot seek support from her husband, the Appellant has been through the educational system in Nigeria and there is no reason why the children cannot continue their studies in Nigeria."

20. The judge considered the support available to the appellant and her children and the impact that removal to Nigeria will have upon the children in particular, at paragraphs [30] and [31] of her decision. It is clear in my judgment that the judge had regard to all relevant evidence when she considered the best interests of the children. The ISW did not have the benefit of the unchallenged findings of fact made by the judge regarding the appellant's relationship with her husband and the risks that the children are exposed to in Nigeria. Standing back and reading the decision as a whole, it is clear that the judge had proper regard to the best interests of the children and considered whether or not it would be reasonable to expect the children to leave the UK, having due regard to the report of the ISW and the findings made by the judge.

21. I also reject the claim that the judge failed to consider the impact of removal on the appellant's daughter's mental health, and whether treatment is realistically available to her, or the discrimination and stigma that she will face in Nigeria. The judge referred to, and accepted the diagnosis set out in the report of Dr Erica Eassom. As the judge said at paragraph [29], Ms Ariyo acknowledged that there are medical facilities available in Nigeria, but claimed there is a shortage of personnel. In her report, Dr Eassom confirmed *(paragraph 4.2.11)* that the appellant's

daughter's short and long-term prognosis without psychological treatment is poor. She quite properly acknowledged that she cannot directly comment on the availability of treatment in Nigeria. As the Tribunal said in *AM (Art 3; health cases) Zimbabwe* [2022] UKUT 00131 (IAC), such evidence is more likely to be found in reports by reputable organisations, clinicians, and country experts with contemporary knowledge or expertise in medical treatment and country conditions in the receiving state. The judge noted the absence of direct contact with any medical facilities in Nigeria. Dr Eassom considered the content of the report of the country expert, Debbie Ariyo, who said there is very little availability of free mental health care in Nigeria. Dr Eassom was of the opinion that the appellant's daughter is highly unlikely to come to the attention of the services that are available because due to their nature agoraphobia and social anxiety disorder are largely 'invisible' difficulties, with the burden being carried by individuals and their families or carers. She said sufferers do not typically present as a risk to society or themselves.

22. Neither Dr Eassom nor the country expert Debbie Ariyo had the benefit of the findings of fact made by the judge regarding the claimed risk upon return and the support that would be available to the appellant and her children from the appellant's husband and wider family. Standing back and reading the decision as a whole, it is clear that the judge had proper regard to the mental health of the appellant's daughter in particular and whether the appellant has adduced evidence sufficient to establish that there are 'substantial grounds' for believing that as 'a seriously ill person', she would face a real risk' of treatment contrary to Article 3 on account of the absence of appropriate treatment in Nigeria or the lack of access to such treatment. The threshold test is a high one, that was not met on the evidence before the Tribunal.

23. I am quite satisfied that reading the decision as a whole, the judge identified factors that weigh in favour of, and against the appellant in her consideration of the Article 3 and 8 claims made by the appellant. The weight to be attached to the opinions of the experts, fell to be considered in light of the findings made by the judge based upon her evaluation of the evidence as a whole. The assessment of such a claim is always a highly fact sensitive task.

24. The judge gave adequate reasons for her decision. The requirement to give adequate reasons means no more nor less than that. It is always possible to say that a decision could have been better expressed, but I do not accept that the judge failed to have regard to the evidence before the Tribunal when she considered whether it would be reasonable to expect the children to leave the UK either on Article 3 or Article 8 grounds.

25. It follows that am satisfied there is no material error of law in the decision of the FtT and I dismiss the appeal.

Notice of Decision

The appeal is dismissed and the decision of First-tier Tribunal Judge Thapar stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 January 2024