Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11356/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 March 2018	**On 21 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

J.
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Fisher of Counsel instructed by Duncan Lewis & Co.
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge T. Jones promulgated on 9 November 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 6 October 2016 to refuse asylum in the UK.

2. The Appellant is a national of Nigeria. Her date of birth and personal details are a matter of record on file, and are not reproduced here in

keeping with the anonymity direction that has been made in these proceedings.

3. The Appellant's immigration history is also a matter of record and is set out in the papers on file: see in particular paragraphs 4-20 of the 'reasons for refusal' letter ('RFRL') dated 6 October 2016. In brief summary: the Appellant visited the UK for 3 months in 2004; she re-entered the UK in October 2007 pursuant to a family visit visa; the Appellant became an overstayer before making an application in July 2015 for leave to remain; the application was refused in January 2016 with an out-of-country right of appeal; removal directions were issued on 19 January 2016; the Appellant appears to have sought to challenge or avoid removal by way of attempts to issue judicial review proceedings and making EEA applications without success. On 7 April 2016 she claimed asylum.

4. The Appellant's claim for protection was advanced on the basis of her sexuality and her conversion from Islam to Christianity.

5. The Respondent refused the application for asylum for reasons set out in the RFRL. The Respondent did not accept that the Appellant was a lesbian (RFRL at paragraph 47), and did not accept that she had converted from Islam to Christianity. In this latter regard the Respondent considered that the Appellant had always been a Christian (RFRL at paragraph 55).

6. The Appellant appealed to the IAC.

7. The appeal was dismissed for reasons set out in the Decision and Reasons of First-tier Tribunal Jones.

8. The Appellant sought permission to appeal to the Upper Tribunal which was granted by Resident Judge Phillips on 28 December 2017. In material part the grant of permission to appeal was in these terms:

> "*This is a difficult decision to assess. In the first place it appears that this is an Appellant with a poor immigration history whose claim raises a potentially contrived plethora of issues including FGM, sexuality, religious conversion and domestic violence. It is not helped by a significant number of typing and grammatical errors in the decision (see for example paragraphs 63, 68 and 69).*

Although it is clear that the Judge rejected much of the Appellant's claim due to lack of corroboration where corroboration could rightly be expected (religious conversion and sexuality) and this discloses no arguable error of law it is also clear that the Judge was mistaken when rejecting her claim not to have raised her deafness at interview as a reason for misunderstanding some of the questions raised. The rejection of her claim to be Muslim, confused as it is with the acceptance that FGM has taken place (at paragraph 61) is arguably inadequately reasoned and is certainly difficult to understand. Similarly, the conclusion that "It appears only that which is no (sic) favourable to her claim stands to be rejected or denied" (paragraph 63) seems to display inadequate reasoning."

9. In the event the ground of challenge based upon the supposed tension between the rejection of the Appellant's claim to have been brought up as a Muslim and the finding that she had been a victim of FGM was not pursued by Ms Fisher. During the course of submissions I queried with the representatives whether the practice of FGM in Nigeria was confined to Muslim communities. During the lunch adjournment the representatives identified with reference to the Respondent's Country Policy and Information Note 'Nigeria: Female Genital Mutilation' (version 1.0, February 2017) that the practice was not confined to the Muslim community. See in particular paragraph 7.5.1 quoting from a Harvard University project – "*In Nigeria FGM is slightly more common in the southern, predominantly Christian regions, but it is practised within both Christian and Muslim communities across the country*". On this basis Ms Fisher acknowledged that she could not rely upon the fact that the Appellant had undergone FGM as indicative of her having been a Muslim.

10. Once this point falls away in respect of the claimed conversion and risk by reason of being an apostate, the grant of permission to appeal takes on a very different complexion. Judge Phillips observed that there was no arguable error of law on the First-tier Tribunal Judge's rejection of much of the Appellant's claim due to a lack of corroboration where corroboration might be expected including in respect of religious conversion. What is left in terms of the reasons for granting permission is the issue of the Appellant's deafness and criticisms of the typing and grammar of the Decision.

11. In respect of deafness criticism is made on behalf of the Appellant in respect of the following passage at paragraph 62 of the First-tier Tribunal's decision:

> "*I have noted the Appellant's claim she could not hear well at the asylum interview, and yet there is a lot of information imparted. She seemingly didn't raise that (her deafness) at the time.*" (Grounds of Appeal at paragraph 2).

12. It seems to me that there is an ambiguity in that latter sentence. Ms Fisher would have me read the sentence as indicating that the judge erroneously formed the view that the Appellant had not raised the fact of a hearing impairment at interview and that this was a material error of fact that may have influenced the Judge's evaluation of the Appellant's overall credibility and in particular her assertion that she may have not heard properly certain questions at the interview. It seems to me that that would only make sense if the Judge were in denial that there was any issue in respect of hearing loss and had, in effect, formed the view that it was an invention to explain deficiencies in the interview. In my judgement the sentence quoted above is to be read as indicating that the Judge was mindful that the Appellant did not raise at the asylum interview that her hearing impairment was such that it had occasioned her any difficulties during the course of the interview. It seems to me that such a reading is to be preferred upon an overall consideration of both the paragraph in which that sentence appears, and the Judge's decision as a whole.

13. The full paragraph at 62 is in these terms:

> "*I have noted the Appellant's claim she could not hear well at the asylum interview, and yet there is a lot of information imparted. She seemingly didn't raise that (her deafness) at the time. I don't doubt she had treatment of later to improve the hearing, but I am mindful of supportive correspondence from community groups reporting her active participation without mention of any communication difficulties. At the hearing, she "blames" her solicitors for not reading that interview back to the. There is no evidence she has complained of this to them, or of any response on their part. In light of this, I set little if any weight by that claim.*"

14. Over and above the Judge is overt reference to this issue at paragraph 62, it is clear that the Judge was aware that there was a hearing issue: adjustments were made at the hearing on 14 September 2017 to accommodate such a disability: see paragraph 3 – "*I made adjustments of the hearing so that the Appellant might be able to sit with parties speaking towards her right side which is her better ear…*". There is no suggestion that the Judge thought the ehring impairment was in some way fabricated or even exaggerated.

15. However, it is also to be noted that in the same paragraph the Judge comments that the Appellant confirmed that she had understood everything. This reinforces the notion also identified by the Judge at paragraph 62 with reference to her active participation in community groups without any apparent difficulties, that whilst there might be a hearing impairment it did not significantly impact upon communication to an extent that adequate communication was not possible.

16. Similarly, at the interview – in which undisputedly the Appellant mentioned her hearing difficulties (question 2) – she confirmed at every point when asked that she understood and was content to proceed. In this context I am conscious that in some cases where there is a language difficulty an interviewee or appellant may not be the best person to assess their objective level of understanding. I do not consider that the same applies to issues of hearing impairment – the interviewee or appellant can either hear and make sense of what is being said or cannot; there is not the same element of subjectivity as there is in evaluating whether an interpreter has translated into the listener's own language accurately what has been said by the interlocutor.

17. More particularly nothing is readily identifiable in the answers at interview to suggest that any particular question was misunderstood. Whilst it may well be that the Appellant has subsequently wished to offer different answers, any difficulty with the answers given at interview has not been shown to me to relate to miscomprehension of the question.

18. In this context it is to be noted that the Judge recorded examples of the Appellant seeking to blame her hearing impairment for discrepant answers at interview at paragraphs 36 and 41, with reference to questions 36 and 117 of the interview. Indeed at paragraph 41 the Judge comments that he afforded the parties time to pause and consider how the answer to question 117 - which the Appellant now wished to deny and blame on a hearing impairment – might have arisen. Nothing was forthcoming to explain what it was that the Appellant might have thought she was giving an answer to, what she might have thought the question what was.

19. It seems to me that in all the circumstances the Judge was fully cognisant of the fact that the Appellant had a hearing impairment and had raised that hearing impairment at the interview. However, what the Judge was stating – in my judgement very clearly - was that the Appellant had not raised at the interview that her hearing impairment was such that it had

impeded her in the conduct of the interview. That was an evaluation open to him and indeed clearly sustainable on the basis of her full involvement and engagement with the interview, and a contextual analysis of those questions where she was now suggesting hearing impairment had impeded her in understanding the questions.

20. I find no substance in this basis of challenge.

21. Moreover the meaning of the words at paragraph 63 which are queried in the grant of permission to appeal are readily understandable coming as they do immediately after the analysis at paragraph 62 (cited above) – and allowing for the addition of the letter 't' after the word 'no': "*It appears only that which is no[t] favourable to her claim stands to be rejected or denied*". in my judgement it is clear from what immediately precedes and what immediately follows that the Judge is commenting on the Appellant seeking to distance herself – by rejecting or denying - from aspects of her earlier statements when such statements do not match the narrative now being relied upon. This is also consistent with the Judge's observations at paragraph 74 – "*I am drawn to the view the Appellant will simply say anything, at anytime, that suits her purpose*".

22. Whilst there are otherwise some criticisms to be duly made in respect of typing and grammatical errors I am not remotely persuaded that these are material to the overall conclusions in the appeal.

23. Beyond the point identified in the grant of permission to appeal, the remainder of the Grounds of Appeal are, in my judgement, little more than assertions of disagreement with the analysis, findings, and conclusion of the First-tier Tribunal Judge and do not constitute allegations of error of law.

24. In this latter context I note that there was some discussion before me in respect of the adequacy of the Judge's consideration of the supporting evidence from the Appellant's church. However, it seems to me that irrespective of what might be made of those documents they do not assist in establishing that the Appellant was a convert from Islam – a matter in respect of which the grant of permission to appeal observed that there was no arguable error of law in the Judge concluding that there was no corroborative evidence of conversion when one might reasonably have expected such evidence to be available. In this context it is to be recalled also that in so far as issues were raised in respect of the Appellant's son's

conversion the Judge identified significant difficulties with his evidence; it is also to be borne in mind that the Judge rejected outright the notion that a fatwa had been issued. Similarly it was open to the Judge to reach adverse conclusions on the extremely limited evidence in respect of the Appellant's claimed relationship with another woman.

25. In summary: those matters that informed the grant of permission to appeal on closer analysis do not demonstrate any error of law; those further grounds pleaded in the application for permission to appeal (whilst not directly commented upon in the grant of permission, but in respect of which permission to appeal was not expressly denied) essentially constitute an attempt to reargue the case and do not identify any error of law. The First-tier Tribunal Judge reached sustainable conclusions in respect of the core elements of the Appellant's protection claim, and also in respect of the residual pleadings with regard to Article 3.

26. In all the circumstances I find that there is no material error of law in the Decision of the First-tier Tribunal and it stands.

Notice of Decision

27. There is no material error of law in the decision of the First-tier Tribunal and it stands.

28. The Appellant's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or a member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Date: **14 November 2018**

Deputy Upper Tribunal Judge I A Lewis