



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/13923/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 13<sup>th</sup> December 2017**

**Decision & Reasons Promulgated  
On 22<sup>nd</sup> January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**BEO  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 8<sup>th</sup> August 1977. The Appellant was originally issued with a visa as a Tier 5 religious worker on 9<sup>th</sup> August 2012. That visa was subsequently varied but the Appellant claimed asylum on 25<sup>th</sup> May 2016 and her claim was lodged on 9<sup>th</sup> June 2016. The Appellant is in the UK with her daughter aged 12 and her son aged 10.
2. It was the Appellant's claim that her husband had been abusing her since the start of her marriage in 2004 and that she fears further abuse and that

her husband has threatened to subject her daughter to FGM. The Appellant's application was refused by Notice of Refusal dated 30<sup>th</sup> November 2016.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Brunnen sitting at Manchester on 18<sup>th</sup> January 2017. In a decision and reasons promulgated on 9<sup>th</sup> February 2017 the Appellant's appeal was dismissed.
4. The Appellant has acted in person throughout. She lodged Grounds of Appeal to the Upper Tribunal. Permission to appeal was refused by Judge of the First-tier Tribunal Chohan on 24<sup>th</sup> May 2017. Renewed handwritten Grounds of Appeal were submitted by the Appellant on 7<sup>th</sup> June 2017. The principal thrust of the Grounds of Appeal is a failure by the First-tier Tribunal Judge to consider the risk pursuant to Article 2 of the European Convention of Human Rights that her daughter would be subjected to FGM if she is returned to Nigeria emphasising that her husband's family work at the airport and her prospect of being able to freely enter Nigeria without coming to their attention is unlikely.
5. On 13<sup>th</sup> July 2017 Upper Tribunal Judge Plimmer granted permission to appeal. Judge Plimmer considered that it was arguable that given the Appellant's failed attempts at obtaining employment in Nigeria over an extended period of time the only practical way for her to support her daughters would involve advertising her presence in Lagos and in those circumstances the First-tier Tribunal arguably erred in law in finding that the family could internally relocate to Lagos. Secondly she considered it was arguable that the employment conditions in Lagos for the Appellant are worse by reason of her inability to advertise her services which arises out of a fear of persecution which it was accepted to be well-founded in her home area and if tracked down by her husband/his family in Lagos.
6. On 26<sup>th</sup> July 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears in person. The Secretary of State appears by her Home Office Presenting Officer Mr Diwnycz.

### **Submissions/Discussion**

7. I explained in detail to the Appellant that I was not rehearing this matter that it was necessary for her to show that there were material errors of law in the decision of the First-tier Tribunal Judge. I did indicate however that I would listen without interruption to anything the Appellant had to say. The Appellant responded that the thrust of her appeal is to protect her daughter from being subjected to FGM by her husband and that for her to return with her daughter to Nigeria would be extremely risky to the child. She emphasised that she has to go through Lagos Airport and that members of her husband's family work at the airport and it is highly

probable in her view that she would come to their attention. She is concerned that returning her to Lagos would not enable her to protect her daughter. She relied on an e-mail which postdates the decision of the First-tier Tribunal Judge dated 15<sup>th</sup> August to the Home Office. Within that e-mail the Appellant's husband states that he comes from a Royal family, that he requires his daughter "as soon as possible and that she belongs to him not her." He openly states within that e-mail that the Appellant's daughter must be circumcised before she becomes a teenager.

8. I am further helped by Mr Diwnycz who indicates that there is also on file a report by way of referral to Social Services which although dated November 2016 should in fact read November 2017 and which therefore was not before the First-tier Tribunal Judge expressing concern for the wellbeing of the Appellant and her daughter. He indicates that in such circumstances he will do no more than leave it to me to decide thus acknowledges that these documents would not and could not have been available to the First-tier Tribunal Judge that they may well have made a difference to the First-tier Tribunal Judge's decision.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

11. My starting point has to be that the First-tier Tribunal Judge has to have materially erred in law for me to set this matter aside. Judge Brunnen is an extremely experienced and competent judge. He has looked at the

evidence very carefully. However it is arguable that the only way that the Appellant would be able to support herself and her daughter would be by way of advertising her presence in Lagos and particularly bearing in mind that the Appellant's husband's family work at the airport it may not be practical for her to relocate there.

12. There are also two extremely telling pieces of additional evidence that are before me that were not before the First-tier Tribunal Judge. They are the e-mail from the Appellant's husband openly stating his intention to have his daughter subjected to FGM and secondly the report from Social Services. Had the judge had those documents in front of him he may have come to a different conclusion. We are dealing here with the prospect of serious harm to a child. It would be a failing of the Tribunal Service for this information not to be considered. In such circumstances the correct approach is to set aside the decision of the First-tier Tribunal Judge and to remit at the hearing back for the First-tier Tribunal.
13. I hope that the Appellant will read this decision in full. It is not for the Tribunal to direct whether or not the Appellant has or has not legal representation. I further understand the financial constraints under which the Appellant feels she may be placed. However two features arise from this appeal of which she should be aware. Firstly she is only going to get this one opportunity to show to the court that her appeal should succeed. She should ensure full and proper evidence is before the court and it must be to her advantage and particularly to the advantage of her daughter who is the person she fears would be at risk, for her to ensure that she is properly legally represented. Secondly the Appellant should be made aware that just because there is additional information that does not mean that another judge would not come to exactly the same decision as that of the First-tier Tribunal Judge. All the more reason for her to take steps to be legally represented. The Tribunal cannot of course force her to do so but she must be aware of the risks she runs in acting in person if she chooses not to do so. Directions for the rehearing of this matter are set out below.

## **Decision and Directions**

The decision of the First-tier Tribunal contains a material error of law and is set aside with none of the findings of fact to stand. Directions for the rehearing of this matter are set out below.

- (1) The finding that the decision of the First-tier Tribunal Judge contains a material error of law and is set aside. The Appellant's appeal is remitted to the First-tier Tribunal sitting at Manchester on the first available date 42 days hence with an ELH of three hours. The hearing is to be before any Immigration Judge other than Immigration Judge Brunnen.
- (2) That there be leave to either party to file and serve a bundle of objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing.

- (3) That in the event that the Appellant requires an interpreter she/her legal representatives must notify the Tribunal within fourteen days of receipt of these directions.

The First-tier Tribunal granted the Appellant anonymity. No application is made to vary that order and the anonymity direction will remain in place.

**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 him or any member of their 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 9<sup>th</sup> January 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 9<sup>th</sup> January 2018

Deputy Upper Tribunal Judge D N Harris