Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08019/2014
IA/08023/2014
IA/08024/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21st July 2014	**On 17th September 2014**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

A A (FIRST APPELLANT)
N E I (SECOND APPELLANT)
A (THIRD APPELLANT)

Appellants

(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Lee, Counsel instructed by Rotherham & Co Solicitors
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants are all citizens of Nigeria. They are A A born on 7th October 1974, his wife N E I born on 7th September 1983, and their child, O E A, a female born on 25th October 2010. The second Appellant first arrived in

the UK on 17th September 2007 when she was given leave to enter as a student eventually until 15th April 2012. The first Appellant entered the UK some time in 2008, and married his wife, the second Appellant, on 5th December 2009. Their daughter was born on 25th October 2010. The Appellants made various unsuccessful applications for leave to remain, and eventually on 28th January 2014 their applications for leave to remain on human rights grounds were refused and at the same time it was decided to remove the Appellants under the provisions of Section 10 Immigration and Asylum Act 1999. The Appellants appealed, and their appeals were heard by Judge of the First-tier Tribunal Rose (the Judge) sitting in Birmingham on 1st May 2014. He decided to dismiss the appeals under the Immigration Rules, but to allow them on asylum and human rights grounds for the reasons given in his Determination dated 3rd May 2014. The Respondent sought leave to appeal that decision, and on 29th May 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge allowed the appeal on asylum and human rights grounds because he found that if returned to Nigeria, the Appellants would live in the village of the second Appellant where there was a real risk that the third Appellant would be subjected to Female Genital Mutilation (FGM). The Judge considered the possibility of internal relocation, but found that:

> "in my judgment, it would be unduly harsh to expect the first and second Appellants to take the third Appellant to live in a part of the country other than the second Appellant's home village, and the Appellants cannot reasonably be expected to stay in any such part".

The Judge reached his conclusion because he found that the Appellants had no money to take with them to Nigeria, and that they had no connections with individuals who could be expected to support them outside of the second Appellant's village. Therefore the Appellants would face a very uncertain future outside the second Appellant's village, particularly because the first Appellant had no particular skills which would assist him to find employment. It would not be in the best interests of the third Appellant, a child, to return to Nigeria.

4. At the hearing, Mr Kandola submitted that the Judge had erred in law in his decision. Mr Kandola referred to the grounds of application and argued that the Judge had given inadequate reasons for his decision that the Appellants had to return to the village of the second Appellant and could not relocate elsewhere. Further, the Judge had erred in concluding that the first Appellant had no particular skills with which to find employment in Nigeria. The Judge had failed to take into account the studies carried out and the qualifications obtained by the first Appellant during his time in the UK which had allowed him to support himself and his family whilst in the

UK. The Judge had also failed to take into account the possible availability of voluntary return funds. Finally, the Judge had failed to take account of the evidence contained in paragraph 3.20.9 of the Operational Guidance Note which said that those at risk of FGM from their relatives in Nigeria could safely relocate to another part of Nigeria where they could not be traced.

5. In response, Mr Lee argued that there had been no such error of law. The Judge had given sufficient reasons for his decision, and the grounds relied upon by the Respondent amounted to no more than a disagreement with that decision. The Respondent was now asking for reasons for reasons. There was no challenge to the decision of the Judge that the third Appellant would be at risk of FGM in the family's home village, and it was accepted that it would be in her best interest not to return there. The grounds of application sought to impose an impossible standard. The Judge had come to a conclusion open to him on the evidence, and had given sufficient reasons for it at paragraphs 38 to 41 of the Determination. The Judge had clearly taken account of the Operational Guidance Note.

6. I found that there was an error of law in the decision of the Judge so that it should be set aside. The Judge allowed the appeal on the basis that the third Appellant was at risk of FGM in her family's village. It was therefore behoven upon the Judge to consider whether the third Appellant and her parents would be safe elsewhere in Nigeria, and whether it would be reasonable by way of not being unduly harsh to relocate there. The Judge stated in his Determination that he would address that possibility, but in my judgment failed to give adequate reasons for his conclusion. Those reasons were merely that the Appellants had no money, the first Appellant had no skills with which to find employment, and that the Appellant had no connections outside the family village to turn to for support. These reasons failed to take account of the circumstances of the Appellants in the UK, where they were able to support themselves, and also the background evidence provided by paragraph 3.20.9 of the Operational Guidance Note, the relevant part of which states as follows:

> "however in general those who are unable, or owing to fear unwilling, to avail themselves of the protection of the authorities can safely relocate to another part of Nigeria where the family members who are pressurising them to undergo FGM would be unlikely to trace them. Women in this situation would if they choose to do so also be able to seek protection from women's NGOs in the new location".

7. I therefore set aside the decision of the Judge.

8. I then decided not to proceed to remake the decision but instead to remit the appeal to the First-tier to be heard afresh on the basis that the finding of the Judge that the third Appellant would be at risk of FGM on return to the Appellant's family village in Nigeria will be preserved. I decided to remit the appeal to the First-tier because it is probable that when the appeal is reheard it will be necessary to deal with the Article 8 rights of the

Appellants about which no evidence was given at the first hearing. This is in accordance with paragraph 7.2(b) of the Practice Statements.

Decision

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

I set aside the decision for it to be remade in the First-tier.

Anonymity

The First-tier Tribunal made an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 which I continue.

Signed Date

Upper Tribunal Judge Renton