



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

Appeal Numbers: IA/34630/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 17th July 2014**

**Determination
Promulgated
On 24th July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OLIVIA NKEECHI ONONUJU

Respondent

Representation:

Appellant: Mr McVeety, Senior Home Office Presenting Officer
Respondent: Mrs Bassiri, instructed by Michael and Company Legal Services

DETERMINATION AND REASONS

1. By a decision dated 12 August 2013 made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), the Respondent's application for leave to remain in the United Kingdom on the basis of her family and private life was refused. At the stage of her appeal to the First-tier Tribunal (the "*FtT*") a further dimension was added to the

Respondent's case, by the mechanism of amended grounds of appeal. These grounds invoked protection under Articles 2 and 3 ECHR and are summarised in [4] of the FtT's determination as follows:

"..... She feared that her child would be mutilated through FGM and that there is a real prospect that they will get into a lot of difficulties with family members and that the authorities will not step in to prevent any mishap."

In passing, I record that there was no application on behalf of the Secretary of State to adjourn the hearing at first instance. In the event, the appeal was allowed under Articles 3 and 8 ECHR.

2. At this juncture, I draw attention to two pieces of evidence in particular. The first is the Respondent's witness statement, which contains the following passages:

"When my daughter was born [in the United Kingdom on 05 May 2012] my family in Nigeria asked me to bring her to Nigeria to go through female genital circumcision. I bluntly refused to subject my daughter to this evil and dangerous practice. Since then I have had calls from my family members persuading and threatening me to return home with my daughter. I have also received letters and emails to visit home with my daughter for them to conduct the rituals in line with family traditions

The idea of going home with my daughter meant that I would be putting her in danger; this trip would have given my family the opportunity to accomplish their aim to attack my daughter, as I have no place to live and wait for the outcome of the application [for settlement, from abroad] other than the family home. The application process may drag on for months as is common with visa applications."

In the next section of her statement, the Appellant explained at some little length why she could not leave her daughter with her husband in the United Kingdom, the main factors being the child's age and dependency on her mother and the father's involvement in full time studies. Furthermore, the Appellant is the only income earner. The evidence also included a detailed letter from the Appellant's mother emphasising the powerful family expectations relating to what the Appellant describes as *"this evil and dangerous practice"*. This letter speaks of, *inter alia*, *"our communities the entire community your uncle and elders traditional cutting [and] outcast."* The evidence considered by the FtT also included two reports on the subject of female genital circumcision in Nigeria.

3. At the conclusion of the hearing, I gave an *ex tempore* judgment, which I now summarise. The appeal proceeded on three grounds. The first was

that the finding in [25] of the FtT's determination was insufficiently reasoned. This states, in the relevant passage:

"I accept firstly that the Appellant failed to mention this whole issue of FGM to her legal advisers until after the refusal of her application. I still find it very strange that such an enormous concern regarding return was not raised by her but I accept that nonetheless it is credible in this case that she did not."

This finding must be considered in its full context. This includes the following passage in [21]:

"She did not think she had to raise it with her lawyers and the letter from her mother was sent well before the appeal was lodged."

And in [23], the Judge stated:

"I have considered all the evidence in the round and I make the following findings."

This was followed by:

"[24] I accept that the Appellant and her spouse have provided generally a credible account in their oral and written evidence."

This is an omnibus finding of unmistakable significance, as it applies to and embraces everything which follows, including the credibility finding in [25]. Viewed in its full context, I am satisfied that the finding in [25] is adequately reasoned.

4. The second ground of appeal criticised the findings of the FtT in [27] and [28] of the determination on the same ground viz that they are inadequately reasoned. There is an extensive series of findings in [27] and [28]. They relate to various aspects of the Respondent's account and claims. On all of these issues, the fundamental question for the FtT was whether the Appellant was telling the truth. In determining this question, it was incumbent on the Tribunal to evaluate all the evidence in the round. I am satisfied that, as stated in [23], *supra*, the Tribunal did so. Indeed, there was no contention to the contrary. I consider that the key to a review of the findings contained in [27] and [28] of the determination by this Appellate Tribunal is the omnibus finding rehearsed in [24], *supra*. In short, the reason for these further findings is the Judge's acceptance of the veracity of the Appellant's account. This is apparent on the face of the determination. Thus I consider these findings to be adequately reasoned.
5. The third ground of appeal was that the FtT failed to make a finding on the issue of internal relocation. This ground of appeal prompted a careful review of the course of the hearing at first instance. There was no evidence before this Tribunal that this was an issue before the FtT, in

circumstances where the Judge rehearsed the evidence at some little length, including the cross examination of the Appellant, in [12] - [19]. Furthermore, there was nothing on the file to indicate that this was a live issue. As I observed at the hearing, if this issue had been raised one would have expected quite extensive questioning bearing on matters such as choices, viability, practicability, connections, experience, qualifications, available support and resources generally. One would also have expected to find some indication of this in the Judge's summary of the evidence. However, there is none. The only mention of relocation is a brief one in the final sentence of [21], which summarises the submissions on behalf of the Appellant and tends to suggest that while the matter was ventilated, it emerged only in submissions - and then briefly - and not in questioning by either representative or by the Tribunal itself. Given this analysis, I am satisfied that it was not incumbent on the Judge to make a finding on this discrete issue.

6. In the alternative, when one juxtaposes the Judge's omnibus finding about the Appellant's credibility with the various elements of the evidence which I have highlighted in [2] above, I consider the correct analysis to be that, by inference, the Judge (since he accepted the Appellant's account and claims), found that internal relocation was not a reasonable option. In the further alternative, if there is any substance in the error of law for which the Appellant contends in this respect, I am satisfied that it is not material, as it is abundantly clear from the determination as a whole that the Judge would have made this finding.
7. Accordingly, I conclude that the grounds of appeal have no merit.

DECISION

8. I dismiss the appeal and affirm the decision of the FtT.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 17 July 2014