



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

Appeal Number: AA/07442/2013

THE IMMIGRATION ACTS

Heard at Manchester

**Determination
Promulgated**

**On 1 September 2014 and 5 November
2014**

On 6 January 2015

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C I

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Presenting Officer

For the Respondent: Mr J Nicholson, instructed by Greater Manchester
Immigration Aid Unit

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Malik. For reasons given in his determination dated 31 December 2013, the judge allowed the appeal by the respondent (referred to in this determination as the claimant) who is a national of Nigeria born 1970. She claimed asylum on 20 July 2011 based on a fear as a former victim of trafficking and as the mother of a child who faced FGM.

In addition she feared harm from the person who brought her to the UK. She entered this country on 30 July 2005. Her daughter was born on 8 August 2011.

2. The Secretary of State gave directions for the claimant's removal on 22 July 2013. In an accompanying letter of 19 July she explained why she did not accept the protection claim. The reasons included the following:
 - (i) The claimant's correct identity is different from the one she now relies on in the having regard to the passport used in connection with her journey to the United Kingdom.
 - (ii) Her daughter did not face a real risk of FGM in Nigeria.
 - (iii) The authorities in Nigeria were able to provide the claimant with effective protection.
 - (iv) It was considered reasonable to expect the claimant to approach women's shelters for help on her return should this be required.
 - (v) Internal relocation is available away from Edo State where the claimant had lived. It was not accepted that the claimant faced a real risk of persecution by M C, the person who had arranged her journey to the United Kingdom in the light of the absence of recent contact and doubts whether an attack on her parents had taken place.
 - (vi) The claimant's case had been assessed by a competent authority (that she had been trafficked) and as to her future fear, the government in Nigeria had demonstrated willingness and an ability to counter trafficking; the claimant could report any problems to the police.
3. The FtT judge made the following findings:
 - (i) The claimant is of the identity claimed.
 - (ii) A J, the father of the claimant's child is not a German citizen nor was he exercising treaty rights as such in the United Kingdom. The judge was not satisfied on the evidence of the status of A J in the United Kingdom, his nationality or even that he is in the UK at all. He does not provide financial support for the child and the judge did not accept that the child and A J have contact such that the decision to remove interferes with their rights under Article 8.
 - (iii) The claimant's fear of FGM of her child upon returned to Nigeria by her family was unfounded.
 - (iv) As to trafficking, there was no evidence before the judge that the claimant was trafficked by a gang and no evidence that M C worked alone either. Re-locating would not necessarily provide the claimant with a safe haven.

- (v) The claimant would be returning with a young child as a former victim of trafficking with no family support and accordingly internal relocation was not an option.
 - (vi) The claimant would be at risk on return to Nigeria from traffickers or at risk of re-trafficking such that there would not be sufficiency of protection.
4. In her challenge to this determination, the Secretary of State makes the point that the claimant has had no contact with her trafficker since January 2006 and had only brought herself to the attention of the UKBA because her financial support had ended. The judge had also noted that there was no evidence of the death of the claimant's mother or evidence that the incident involving her had been brought to the attention of the police. The judge also noted that the competent authority had found that the claimant had failed to substantiate that she would be a danger from MC or other traffickers in the form of retribution or re-trafficking.
 5. The grounds of application also made reference to the other factors and argue that the judge had materially erred in failing to give adequate reasons why he had departed from the findings of the Tribunal in *PO (trafficked women) (Nigeria) CG* [2009] UKAIT 00046 as affirmed by the Court of Appeal in *PO (Nigeria) v SSHD* [2011] EWCA Civ 132. This was with reference to the evidence of Miss Olategu-Olagbegi the author for the report the FtT judge in the instant appeal had regard to.
 6. It is argued that the judge had made no clear findings regarding the fate of the claimant's parents who, if they had been treated as claimed, would be indicative of gang involvement. If there had been no gang involvement, it was arguable that the judge had erred in relying on the expert whose evidence on sufficiency of protection had been subject to criticism by the Court of Appeal.
 7. Mr McVeety's principal submission was that having rejected the credibility of the claimant with particular regard to FGM, the judge had appeared to have forgotten that aspect when accepting the evidence of the expert. It was as if these two aspects of the case had been separated.
 8. Mr Nicholson resisted this submission arguing that the judge had been entitled to rely on the expert whose expertise had been approved in part by the Court of Appeal.
 9. My conclusions are as follows.
 10. Mr McVeety is correct that although the judge had accepted the claimant's credibility as to her identity, he had rejected her case as not credible in quite forceful terms regarding the nationality of the father of her child, his status in the United Kingdom and A J's contact with the child. In addition and perhaps most significantly, the judge had rejected the factual basis on

which the claimant had advanced her fear of FGM on her child. He concluded that the fear “by her family to be unfounded”.

11. The judge then turned to the issue of trafficking at [23] in his determination. After noting the observations by the Competent Authority including its credibility concerns but also its conclusion that there was sufficient evidence on balance that the claimant was a victim of trafficking, the judge noted that the claimant was not however under the control of a trafficker at the time of referral. He noted that the claimant had no contact with the trafficker since January 2006, a period of almost five years and that she had been ‘free’ from her traffickers in the UK for just under five years. The Competent Authority had found that the claimant had brought herself to the attention of UKBA because her financial support had ended and not because of any reasons relating to her trafficking here. The judge also noted that the Competent Authority had found the claimant had failed to substantiate she would be in danger from M C or other traffickers in the form of retribution of re-trafficking.
12. The claimant had maintained that she would nevertheless be at risk on return as a victim and noted the support for this in the findings of the expert witness of Bisi Olateru-Olagbegi in the context of the guidance in *PO* (trafficked women) Nigeria. The judge noted the claim that two/three men had killed the claimant’s mother, kidnapped her father and caused such fear to her siblings that they ran away on the instruction of M C and concluded that it was likely that the trafficking would have been carried out by a collection of individuals.
13. The reason given for rejection of the FGM claim was because of the timing when this concern first arose and also because of contradictory evidence by the claimant over the circumstances of her family and whether they would be present to implement it. Without resolving what had happened to the family, the judge also concluded that it was improbable that the family would be able to locate the claimant to carry out FGM on her child.
14. The judge noted that the Competent Authority had concluded that the claimant was not under the control of a trafficker as noted in [24] and also that she had failed to substantiate that she would be in danger from M C or other traffickers as noted at [25]. The judge then turned to the report by Bisi Olateru-Olagbegi who, as well as advancing a case that the claimant would not escape from societal pressure of FGM, also considered that it was very likely she had been trafficked into the United Kingdom by an organised criminal gang.
15. At [29] of the determination the judge observed:

“The expert evidence, which I accept, highlights that the passage of time away from Nigeria is not necessarily a barrier to reprisals from traffickers and whilst I acknowledge the appellant has been in the UK since 2005, her claim is that in 2008 her family were persecuted as a direct result of her escape. The respondent considers relocation will

provide a safe option to the appellant (and her child) and *whilst there is no evidence before me that the appellant was trafficked by a gang, there is also no evidence before me that M C worked alone either.* The expert evidence indicates, and which I accept, that activities of this nature involve a number of individuals, thus I find relocating would not necessarily provide the appellant with a safe haven.” (emphasis added).

16. There is no clear finding on the factual issue whether the claimant’s family suffered any ill- treatment. If the claimant’s parents did not suffered the fate claimed, this may well impact on the concerns expressed by the expert and the correctness of the judge accepting the conclusions in the report. I consider as a consequence of this error means the determination cannot stand. In the circumstances I do not consider it would be appropriate to seek to preserve any of the findings reached by the judge apart from those as to the status and role of A J set out in paragraphs [19] and [20]. Accordingly it is appropriate that the matter be re-heard afresh before the First-tier Tribunal.
17. The appeal by the Secretary of State in the Upper Tribunal is allowed and the case remitted for further consideration by the First-tier Tribunal.
18. By way of footnote it was necessary to reconvene the hearing on 5 November. This was because the expert report and decision of the Competent Authority had been mislaid by the administration of the Upper Tribunal. The loss was an internal one and it is not considered that there was any risk of data protection breach as a result.

Signed

Date 6 January 2015



Upper Tribunal Judge Dawson