Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/33186/2014
IA/33188/2014
IA/33184/2014
IA/33189/2014

THE IMMIGRATION ACTS

Heard at Glasgow
on 7 July 2015

Decision & Reasons Promulgated
On 13 July 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HAFSAT AYO JIMOH
MOHAMMED JIMOH
AMIRA ABOLA MOBOLAJI JIMOH
SHERIFFDEEN DAYO MOHAMMED JIMOH

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mrs E Narh, of Imperial Visas Limited, Croydon
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are a wife, husband and two children, all citizens of Nigeria. They appeal against a determination by First-Tier Tribunal Judge Boyd, promulgated on 3 March 2015, dismissing their appeals under the Immigration Rules and under Article 8 of the ECHR.

2. As to the Immigration Rules, the grounds of appeal to the Upper Tribunal led the Judge granting permission to think it arguable that the Judge based his decision on a point in the refusal notice about a bank statement, when that point had been abandoned by the respondent. Mrs O'Brien was able to demonstrate that this was misconceived. The reference recorded at paragraph 7 of the determination was historic. The respondent's decision under appeal was not based on use of a false bank statement. It turned on the finding that claimed earnings from self-employment did not arise from genuine employment, for reasons specified in detail at pages 2 to 5 of the decision. That was the issue considered by the Judge in his determination at paragraphs 20 to 29, leading to the conclusions that the appellant had not established her financial circumstances and was not entitled to any points in relation to previous earnings. At best the grounds of appeal to the Upper Tribunal (insofar as they make any point about those findings) amount only to disagreement.

3. Mrs Narh acknowledged that there had been confusion around this issue. Nevertheless, her final submission was that there had been a concession by the Presenting Officer which should have led to the appeal being allowed under the Immigration Rules.

4. There is no basis for that submission. The point recorded at paragraph 7 of the determination has nothing to do with the substance of the outcome under the Immigration Rules. In that outcome, no legal error has been indicated.

5. The second point on which permission was granted is that the Judge "engaged with the risk of FGM [to the female child appellant] on return to Nigeria", when earlier in proceedings it had been directed that this element was not part of the appeal, and so there might have been procedural unfairness in failing to allow the appellants a reasonable opportunity to submit further evidence [which, I note, they did not ask for in the First-tier Tribunal].

6. Mrs Narh submitted on this ground as follows. The Judge should not have engaged at all with the issue of FGM, but should have left the matter for the respondent to decide. The first appellant has since claimed asylum at an asylum screening unit, on 13 April 2015. She is waiting to be called for substantive interview on that claim, when she plans to raise the issue. The determination should be set aside on that point and the matter left to be resolved in course of the asylum claim.

7. Mrs O'Brien said that the Judge was asked to consider Article 8 outwith the Rules, which inevitably involved consideration of the best interests of the children and of the materials regarding FGM which had been placed before him. The Judge had not gone wrong in finding that the claim was not made out on the materials before him. It was unsatisfactory that there were now two sets of proceedings in which this was raised but as the matter had not been tackled head on in the present proceedings it was

unlikely that the further claim would be certified as clearly unfounded on this basis. In any event, there was no error of law by the Judge on the case put to him and the determination should stand.

8. The records from the First-Tier Tribunal are not entirely clear. The notices of decision to the appellants invite them to state all their possible grounds of appeal. An FGM issue does not appear to have been raised in the initial grounds of appeal to the First-Tier Tribunal. A record of proceedings on 29 October 2014 suggests that the first appellant sought to amend her grounds to include issues of the best interests of the children, but this was refused and the case adjourned. The records read rather as if the respondent sought to resist the inclusion of this issue in the proceedings. The matter has also been confused by changes of representation of the appellants. It is not clear how many changes there were, or at what stages those changes took place. A record of proceedings of 10 December 2014 records a further adjournment and the Judge has clearly written, "Parties agreed – FGM element of claim is not part of this appeal".

9. The important point for present purposes is that the appellants raised the matter at the hearing on 28 January 2015 (when they were not represented by Mrs Narh but by a Ms Taiwo) by asking (paragraph 30) for consideration of the best interests of the children and of Article 8 of the ECHR outside the Rules. It does not appear to have been put to the Judge that he could consider such issues separately from any risk of FGM. I do not see how (if he had been asked) the matter could sensibly have been isolated and ignored. To consider the best interests of the children inevitably involved taking account of materials produced by the appellants about FGM risks in Nigeria. The appellants cannot now complain that the Judge did what they asked him to do. It is not said that he came to the wrong decision on the evidence before him. The appellants did not ask to add to that evidence.

10. This is all rather unsatisfactory. It is not desirable that such matters should be developed in concurrent sets of proceedings. The final resolution perhaps remains to be accomplished through the impending asylum claims. That should not be prejudiced by the half-hearted presentation in these proceedings. However, the responsibility lay with the appellants for the presentation of their case, and the only question for the Upper Tribunal however is whether the First-Tier Tribunal went wrong as a matter of law by determining the Article 8 ECHR issue as it did on the evidence before it. The Judge had to decide the case put, including Article 8, and there could not realistically have been any other outcome. The determination of the First-Tier Tribunal shall stand.

Upper Tribunal Judge Macleman

10 July 2015