Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/41443/2014
IA/41445/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 13 August 2015	**On 9 November 2015**

Before

UPPER TRIBUNAL JUDGE PITT

Between

NHO
NA
(ANONYMITY DIRECTION)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Pipe, Counsel instructed by Gracefields Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Gribble dated 3 February 2015 which refused the asylum and human rights claims of the applicant and her minor child.

2. The background to this matter is that after coming to the UK as a student the appellant, a Nigerian national, married another Nigerian national by proxy. They had a daughter together. She and her partner separated and in 2011 the appellant applied for a prohibited steps order preventing her

husband from removing their child from her care or from the UK. The husband then applied for contact and this was granted on a limited basis. He attended for one contact session in 2013 but thereafter had no contact at all with the appellant or the daughter. The appellant heard he had gone back to Nigeria.

3. The appellant claimed asylum as she feared that she would face mistreatment from her husband on return to Nigeria. Her claim was based on threats made to her by her husband after she prevented him from having unsupervised contact with their daughter. He said that he would "get her" when she returned to Nigeria and obtain assistance from his family in doing so. On another occasion he had said that if she did not agree that he should take their child to live with him he would "deal" with her. She had no immigration status at that time and the husband had also threatened her by stating that if she did not agree to his having contact with his daughter he would inform the Home Office in order to have her and her daughter deported so that he could take custody of the child.

4. The appellant also maintained that her daughter would face the risk of female genital mutilation (FGM) if returned to Nigeria as it was a practice followed by her husband's family. He had mentioned the practice during her pregnancy. It was not a matter that formed any part of the prohibited steps or contact order proceedings in the Family Court at any time, however, not being mentioned until May 2014.

5. Judge Gribble did not find that either the appellant or her daughter would be at risk of any form of mistreatment from the father or anyone else in Nigeria if they returned. She also found that the appellant's daughter would not be at risk of Article 3 ECHR mistreatment as a result of developmental delays she suffered having been born prematurely. The decision also refused the Article 8 claim.

6. To my mind the points raised in the written grounds of appeal are not far from those described in the head note of the case of **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC)** which states:

> "Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First-tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet."

7. The appellant here maintains that she would be at risk from her husband if returned to Nigeria. As found by Judge Gribble and not disputed before me, it was the appellant's evidence that there had been no contact from the husband for over two years. The husband's threats to her had been made after they had separated and she had taken action to prevent him from having unsupervised contact with the child. Although provision had been made by the Family Courts he did not pursue contact with the child after one contact session in January 2013.

8. The appellant's evidence about FGM was that the father made passing comments to it on one or two occasions when she was pregnant, had later "laughed it off" and stated that "it's not a big thing" ([28]). She accepted

that the fact that she had not undergone FGM was not a concern to her husband [34]. As above, it was not something that the appellant ever raised as a concern at any time in the Family Court proceedings. She also accepted that although country evidence and her own expert report referred to her ethnic group practising FGM this was not a universal practice, her own parents had not agreed with it and she had not undergone FGM or been threatened with it ([24],[42],[37]). Her ethnic group "would support her in respect of FGM for her daughter if she could stay somewhere" [37].

9. Concerning the FGM claim, First-tier Tribunal Judge Gribble at [52] placed significant weight on the appellant's evidence at the hearing which "at its highest suggests there was a throwaway remark made by the Father during the First Appellant's pregnancy which was not taken seriously by her". At [53] Judge Gribble found that FGM was not a genuine concern to the appellant as if that was so it was not credible that she would not have mentioned it during the Family Court proceedings. She did not accept the appellant's explanation that she did not mention FGM earlier as she thought that the prohibited steps order was sufficient protection. Judge Gribble did not find it credible that no mention of FGM was made until the appellant's appeal statement dated 22 May 2104.

10. The appellant also stated that her mother remained in Nigeria but her husband had not tried to contact her mother to find out where she and the daughter were and did not know where her mother lived in Lagos ([38], [49]). Judge Gribble also found that the appellant had not given consistent evidence as to the financial support provided by her husband, his whereabouts in Nigeria and whether he intended her harm ([43],[44], [63]). Her credibility was undermined where she had not claimed asylum earlier ([65]).

11. All of those findings were entirely open to the First-tier Tribunal Judge and were not the subject of a direct challenge before me.

12. When considered against those matters, the grounds of appeal do not have sufficient materiality. The grounds first challenge the finding of Judge Gribble at [53] that:

> "I do not believe the First Appellant when she says she told her Solicitor and was advised not to mention it [FGM], Solicitors in family work have safeguarding responsibilities. FGM is a crime in the UK and I do not accept that if the Solicitor was aware it was an issue, they would have not made it the primary issue and involved Social Services and the Police."

13. The appellant maintains that she did not state at the hearing that she told her solicitor about the risk of FGM but was told not to mention it to either CAFCASS or the family courts. She relies on a witness statement from the barrister who represented her at the First-tier Tribunal hearing.

14. I accept that the appellant did not say that her solicitor in the Family Court proceedings had advised her not to mention the risk of FGM. In the context of the other findings as to why there was no real risk to the child of FGM this is not a material matter, however. It remained open to the First-tier

Tribunal to find that not mentioning FGM during those proceedings, whatever the reason, undermined the appellant's claim that she believed this to be a real risk. The judge was equally entitled to find that the claim of a risk of FGM was undermined by the father having made no attempt to contact the appellant or her child from January 2013 onwards even though the Family Court had authorised access. There is the further matter that the appellant only mentioned a risk from the ex-partner's aunts at the hearing stating only then that they would have a significant degree of influence on whether the daughter was subjected to FGM or not. The First-tier Tribunal Judge was also entitled at [59] to place weight on the fact that the appellant's own evidence about the practice within her tribe, the Igbo, the same as her husband, differed significantly from the country evidence presented, the appellant not having been subjected to FGM.

15. There were therefore numerous reasons why the First-tier Tribunal Judge did not find that the appellant's daughter would be at risk of FGM on return. Those findings were not tainted by the misrecording of the appellant's evidence as regards whether she was advised by a solicitor to talk about FGM during the family court proceedings.

16. The grounds go on to challenge the finding of the First-tier Tribunal at [54] that "the First Appellant appeared not to have cooperated with CAFCASS". That finding was open to Judge Gribble where the material before her showed that the appellant had not responded to two attempts by CAFCASS to contact her. Further, the judge indicates specifically at [54] that this was "a side issue" and properly read the determination does not show that she placed significant weight on the point. It mischaracterises the decision to state that it shows that she was biased against the appellant or took the side of her ex-partner in the family proceedings. The challenge contained in paragraph 6 of the grounds of appeal has no merit therefore.

17. The grounds go on at paragraph 7 to allege that the First-tier Tribunal misrecorded and then placed weight on evidence concerning whether the ex-partner was living with his aunts who would wish to carry out FGM on the daughter. The appellant maintains that she did not say that he lived with his aunts. It remains the case that the appellant's evidence about the aunts was introduced only on the day of the hearing and was rejected at [57] for that reason. There can be no objection to that finding. Even accepting that the judge was mistaken as to this part of the appellant's evidence, there was good reason to reject the evidence about the aunts where it was provided so late and any mistake is not material, certainly not in the context of all the other reasons that led to the adverse credibility finding and finding of no risk to the appellant and her daughter.

18. At the hearing Mr Pipe characterised the written grounds as really containing three main challenges, the first to the approach to the evidence from CAFCASS, the second to the judge's recording of the appellant's evidence and the third being the assessment of the best interests of the child.

19. As I have found above, the First-tier Tribunal Judge was not incorrect or "irrational" to conclude that the appellant had not always cooperated with CAFCASS given what is stated in their reports as to her failure to respond to contact from them on two occasions. Mr Pipe also sought to argue that the judge acted improperly at [55] in finding that the appellant had encouraged her ex-partner to send threatening emails in order to support her claim and protect her immigration status. The difficulty there is that the allegation is recorded on the face of the documents from the Family Court proceedings and where that is so it was open to the First-tier Tribunal Judge to place weight on it. I have dealt above with the First-tier Tribunal Judge's mistakes as to the appellant's oral evidence.

20. The final aspect of the challenge concerned the manner in which the First-tier Tribunal approached the first appellant's daughter who has had developmental difficulties because of her premature birth. The grounds allege that the First-tier Tribunal did not properly assess the best interests of the child where an assessment of her relationship with her cousins in the UK was not included. I did not find that could be a strong argument where, here, it was clearly in the best interests of the child, still quite young, to remain with her mother wherever that may be and there being little evidence of particular closeness, dependency or importance in her relationships outside of that with her mother.

21. The grounds also allege that the First-tier Tribunal failed to take into account the evidence about the difficulties experienced by the appellant's daughter but that cannot be right where the judge sets out specifically at 12 to 14 all of the evidence that she took into account which included that from the child's school and her medical records. The First-tier Tribunal Judge was not obliged to adjourn in order to await the outcome of further assessment by the local authority of any special educational needs where, at the time of the hearing, it was entirely speculative as to what those might be and the child had not received speech therapy for approximately a year by that time.

22. For all of those reasons I did not find that the grounds had merit and did not find that the decision of the First-tier Tribunal showed material error.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

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: 3 November 2015

Upper Tribunal Judge Pitt