UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: IA/53534/2013**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 6 May 2015	**On: 1 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ELSIE OGECHUKWU ARINZEH
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: **No representative**; **no attendance**
For the Respondent: **Mr E Tufan, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. The appellant appeals with leave from the decision of First-tier Tribunal Judge Hussain who dismissed the appellant's appeal brought on Human Rights grounds against the decision of the respondent to refuse to vary her leave to remain in the UK.

2. On 23 March 2015 the appellant was sent a notice of hearing setting out the date, time and place. The notice was sent to her address on record.

3. The matter was stood down until 3.15pm. There was no representative for the appellant on record.

4. I am satisfied that the appellant has been properly notified of the hearing. I also consider that it is in the interests of justice to proceed with the hearing.

5. The appellant is a national of Nigeria, born on 22 July 1978. She has a daughter, Destiny Nmachi Arinzeh, also a Nigerian national, born on 25 January 2012.

6. Originally there were two appeals before the First-tier Tribunal. One related to the appellant's daughter. Although the application had originally been made on behalf of her daughter, Judge Hussain found that she had no right of appeal as she was born in the UK and consequently had no leave to vary [2]. The appeal before the first tier Tribunal accordingly proceeded with regard to the appellant, Ms Elsie Ogechukwu Arinzeh.

7. On 27 February 2015, Designated First-tier Tribunal Judge Zucker granted the appellant permission to appeal on the basis that there is some evidence that the children (the appellant has more than one child) are to be admitted to the United States of America to join their biological father; it is arguable that it would be in the best interests of the children to be allowed to remain in the UK to facilitate any further enquiries which may be required by the United States authorities rather than remove the appellant and her children which may cause disproportionate delay.

8. In his determination Judge Hussain set out the appellant's case. She claimed to have no connection with Nigeria. He referred to a letter dated 25 February 2013 to the effect that she feared that if returned to Nigeria, her only daughter would be forced to undergo female genital mutilation (FGM) against her will and she would be unable to protect her.

9. The appellant attended the hearing before the first-tier tribunal. She gave evidence, adopting a witness statement as her evidence in chief. She contended that she entered the UK as a student in October 2009. She claimed she had remained here and had established a connection with the UK. She has immediate and extended family members who reside here. She has lost her connections with Nigeria. She has developed a strong, irrevocable private life in the UK [6].

10. Her close family members are in the UK and are close to each other. She has been a valuable asset to the Church and to the community generally [7].

11. Her children do not speak "her language." She also fears FGM for her daughter. Nor can she prevent them from being bitten by mosquitoes. She said that the father of her children is in America [8].

12. The appellant was cross-examined. She had returned to Nigeria in 2011 as her father died. She stayed in her village house. Her mother is old and lives in the village, as does a sibling [11].

13. She said that the father of her children is in America. He has filed papers for them to go to America. They are waiting for an interview. There was no statement from the father, however, and the Judge noted that she did not explain his absence [12]. The Judge had regard to other witnesses whose evidence he summarised at [14-16].

14. Judge Hussain accepted that she had family life with her two daughters in the UK [25]. He “got the impression” that the father of the children is an American citizen who lives there. The appellant's evidence was that he had filed papers for her and the children to join him in America.

15. None of the children is a British citizen. He found that there would be no interference with the appellant's family life if she were to be removed from the UK. Although she had established private life in the UK, he found that there were no obstacles to her resuming ties with others in similar situations if returned to Nigeria. The claim to FGM was an afterthought [26]. In the original January representations there had been no reference to FGM, nor was it contained in the appellant's written statement that she made.

16. In the event, Judge Hussain found that there was no coherent explanation as to why her daughter would be forced to go through the procedure. She had not asserted that either her mother or brother in Nigeria would force her daughter to go through that procedure. The idea that people in the village would take it upon themselves to force her to undergo the procedure was “wholly implausible.” [27]

17. In the application for permission to appeal to the Upper Tribunal, the appellant presented a narrative statement containing her submissions.

18. As part of the application to appeal, she sought to adduce further evidence that she married an American citizen, Mr Chukwuemeka Frederic Ukonne in a ceremony held on 1 May 2014 at the Newham Registry Office in the UK.

19. Their two children were born in the UK.

20. She produced a document from the Department of Homeland Security, USA, to the effect that on 5 June 2014, Mr Ukonne filed a petition for them to join him in the US. The reference number relating to the petition is set out. She asserts that the petition was approved on 15 October 2014 “giving clearance for his children and wife's US residence visa to be granted from the US Embassy in UK.” She stated that she and her children are waiting for an interview at the US Embassy in the UK relating to the grant of their residence visas.

21. She thus contended in the grounds seeking permission to appeal that the Tribunal should grant her a period of between 12-18 months to await the appointment of the US Embassy in the UK in order to attend the interview.

22. The appellant has, as noted, also adduced three Department of Homeland Security, USA “Approval Notices.” It is stated that the petitions in respect of the petitioner's wife and children “have been approved.” The beneficiaries will in due course be contacted concerning further immigrant visa processing steps.

23. It is stated in the Notices that the approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa for admission to the USA. It is emphasised in bold that the form is not a visa, nor may be used in place of a visa.

24. Although Judge Hussain heard the appeal on 23 July 2014, he did not promulgate his decision until 28 November 2014. It is evident from the Department of Homeland Security, USA “approval notice” that the 'notice date' was 15 October 2014. There had been no attempt however to bring the notices to the attention of the Tribunal.

25. Instead, the appellant's solicitors wrote to the Tribunal on several occasions in November 2014 asking about the position of the appellant's appeal as they had heard nothing from the Tribunal since the hearing on 23 July 2014. The clerk to the Tribunal contacted the Judge, who stated that he would promulgate the decision as soon as possible. The date of the clerk's letter to the solicitors was 26 November 2014. The decision was promulgated two days later.

26. On 4 December 2014, the appellant's husband wrote to the “First-tier Tribunal” asking for “an extension of time to allow his family to process the approved immigration visas to join him in America”. As already noted, the forms referred to expressly state that they are not visas.

27. The appellant was sent directions by the Upper Tribunal in which the parties, including the appellant, were directed to serve on the Tribunal and the other party 21 days after the directions were sent all the documentary evidence upon which it is intended to rely pursuant to Rule 15(2A) of the Rules and whether it is intended to develop the grounds of appeal. In addition, it was directed that any further evidence including supplementary oral evidence that the Upper Tribunal may need to consider if a decision is made to re-make the decision, can be so considered at the hearing.

28. However, no further evidence has been sent.

29. The parties were informed that a failure to serve evidence as required by these directions and/or Rule 15(2A) might lead the Upper Tribunal to refuse to admit that evidence.

Assessment

30. There has been no application to adduce the “approval notices” to which I have referred. Nor has any supplementary evidence been filed by the appellant.

31. In granting permission, Judge Zucker stated that on the basis that there is some evidence that the children are to be admitted to the United States to join their father, it is arguable that it would be in their best interests to be allowed to remain in the UK to facilitate any further enquiries.

32. Apart from the fact that no application under the rules to admit the further evidence has been filed, there is no explanation as to why this evidence could not have been produced to the First-tier Tribunal Judge and the respondent prior to the promulgation of the decision.

33. As at the date of Judge Hussain’s decision, however, he properly had regard to the evidence before him. It was asserted that the father of the appellant's children is in America [8]. It is also asserted that he has filed papers for them to go to America and that they are waiting for an interview. However, there was no statement from the father and no documentation was filed supporting the appellant's assertion.

34. The Judge noted that the appellant's evidence was that the children's father had filed papers for her and the children to join him in America [24]. He noted that in none of the written representations nor in the witness statement was “any clue” given as to the paternity of the two children. The Judge stated that he got the impression from the hearing that the father of the children is an American citizen who lives there.

35. That was the sum total of the evidence before the Judge.

36. The Judge had regard to the appellant's claims with regard to paragraph 276ADE (vi) of the Rules. He did not accept that the appellant had lost all ties with Nigeria [21]. He has set out his reasons for that conclusion. That finding is not challenged by the appellant.

37. Nor is there any separate ground of appeal challenging the Judge's findings with regard to the daughter being forced to undergo FGM, which he found not to be plausible or supported with any objective evidence [21]. He noted that there was no supporting statement from the alleged father of the children [24].

38. He accepted that the appellant has family life with her two daughters in the UK. There was nothing preventing the enjoyment of family life with them wherever it is that she is to be removed. The children were not British citizens. There would be no interference with the appellant's family life if removed from the UK.

39. In assessing the proportionality of her proposed removal, he found that there were no obstacles to the appellant resuming ties with others in similar situations if removed to Nigeria. Her children are young and capable of adapting to life in the home country [26]. He found that there was no real risk of her daughter being forced to undergo FGM [28].

40. There was however no evidence before Judge Hussain that the children “are to be admitted into the US to join their father.”

41. I accordingly find that the Judge has given proper reasons, based on the evidence before him, for refusing the appellant's appeal.

42. The respondent will no doubt have regard to the Notices produced from the Department of Homeland Security, USA, referred to above, pending any decision to effect her removal.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any error on a point of law and shall accordingly stand.

The appellant's appeal is dismissed

No anonymity direction is made.

Signed Date 29/5/2015
Deputy Upper Tribunal Judge Mailer