



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

Appeal Number: AA/03079/2014

THE IMMIGRATION ACTS

Heard at : Manchester Crown Court

**Determination
Promulgated**

On : 18 March 2016

On: 5 April 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**AIE
(ANONYMITY DIRECTION MADE)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Faryl, instructed by Protection of Human Rights IPL
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria born on [] 1987. She claims to have entered the United Kingdom on 12 December 2009. It seems that there was an

attempt to claim asylum through solicitors in 2010 but the solicitors' firm closed down and nothing further happened. On 3 December 2013 the appellant made a human rights claim which was refused on 12 February 2014 without a right of appeal. On 24 April 2014 her claim was reviewed and a decision made to maintain the refusal but with a right of appeal. A removal decision was made the same day.

The Appellant's Case

2. In a statement of additional grounds dated 16 March 2010 the appellant submitted that she feared return to Nigeria as her daughter was at risk of being forced to undergo female genital mutilation (FGM) in Nigeria. She had previously lost another daughter who died as a result of FGM.

3. The appellant's application of 3 December 2013 also relied on the same fear of return, in addition to reliance upon family and private life in the UK. In a statement dated 2 December 2013 accompanying her application, the appellant explained that she was given to her husband by her family when she was 15 years of age and was married in a customary ceremony. She gave birth to her first daughter in 2004 but she died whilst undergoing FGM. When she became pregnant again she decided to run away and, with the help of a sister from her church, travelled to Ireland, arriving in August 2005. She claimed asylum. Her daughter was born on 20 October 2005. She completed her secondary school education. Her asylum claim was refused in early 2009 and she was forced to leave her accommodation. She stayed with a Nigerian friend and then went to the UK to look for her father's brother in Birmingham but, when unsuccessful, went to London. She had since made contact with her uncle. She had limited contact with her family in Nigeria and only spoke to her mother. She would be at risk on return to her village because she had run away.

4. The appellant's application was refused by the respondent, initially on 7 February 2014, but then following a review, on 24 April 2014, on Article 8 grounds. With regard to asylum and Article 3, she was advised to make an asylum claim in person.

5. The appellant appealed against that decision and, in her grounds of appeal, referred again to her fear of her daughter being forced to undergo FGM. She referred also to being in danger in Nigeria as a result of owing money to the agents who arranged her departure in 2005.

6. In a subsequent statement of 2 June 2014 prepared for her appeal, the appellant claimed to have been trafficked to the UK and to fear return to Nigeria on that basis. She claimed to have lived with her uncle after her father died and her mother ran away to escape her husband's abuse. Her uncle's family treated her like a servant and abused her and on one occasion her cousin slashed her arm with a razor. She was sexually assaulted by an older man and then forced into marriage at the age of 15. Her husband raped and beat her. They had a daughter in January 2004 who died when circumcised at

seven days of age. The appellant said that she befriended a woman named Rosemary. In 2005 she became pregnant again and Rosemary arranged for agents to take her to Ireland. She was told that she would have to work in Ireland to pay off the fee of 40,000 Euros. She was taken to a Juju man who took some of her pubic hair and made her swear an oath. She was told that Juju would be used against her if she broke her oath to pay back the money and that she would have to pay a further 500 Euros to cancel the oath once the 40,000 Euros was paid off. She then flew with Rosemary to Ireland, arriving in August 2005 and Rosemary left her with a Nigerian family, with directions where to go to claim asylum. After she claimed asylum she was given NASS accommodation. She was contacted by telephone by one of the agents who told her it was time to start working to pay off the debt and she realised the job was prostitution. She refused to do that and they argued. She then hung up and smashed the SIM card and had not heard from them since. She was refused asylum in Ireland and then had no fixed address and eventually, in December 2009, bought a bus ticket to London using a student ID. She tried to claim asylum through solicitors. She was given accommodation through social services in Manchester and was assisted in making a human rights claim. If she returned to Nigeria she would be found by the traffickers and punished for not paying back the money. She also feared that her daughter would be forced to undergo FGM.

7. On 28 July 2014, a referral was made by the Home Office to the Competent Authority, as a result of the appellant's claim to have been trafficked to the UK. On 1 August 2014 a positive Reasonable Grounds decision was made. However, following a Conclusive Grounds Consideration it was decided, as a result of inconsistencies in the appellant's account, that she was not a victim of trafficking.

8. The appellant submitted a further statement for her appeal, dated 16 January 2015, in which she responded to the adverse credibility findings in the decision of the Competent Authorities.

9. The appellant's appeal was heard by Judge Malik in the First-tier Tribunal on 29 January 2015 and was dismissed in a decision promulgated on 10 February 2015. Judge Malik referred to the decision of the Competent Authorities in the Conclusive Grounds Consideration. She went on to consider the appellant's claim herself and found it to be implausible, inconsistent and lacking in credibility, noting in particular the fact that the appellant had made no mention, in her earlier statements, of having been trafficked. She concluded that the appellant had fabricated her claim to have been trafficked to the UK and found that she would be at no risk on return to Nigeria on that basis. With regard to the appellant's claim to fear her daughter being subjected to FGM, the judge found that there would be no risk on return in that regard and that the appellant and her daughter could relocate to another part of the country. The judge went on to consider the appellant's Article 8 claim but found that her removal, and that of her daughter, would not be disproportionate. She dismissed the appeal on all grounds.

10. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on the grounds that the judge's rejection of the appellant's account of having been trafficked owing to her delay in mentioning that aspect of her claim failed to take account of the reasons for the delay; that the judge misunderstood the expert's evidence in relation to the scarring on the appellant's body; that the judge had erred in her findings in regard to availability of protection by accessing women's shelters; and that the judge's findings on the best interests of the child were flawed.

11. Permission to appeal to the Upper Tribunal was granted on 12 March 2015.

12. Before me, Ms Faryl submitted that the judge had confused the different areas of scarring on the appellant's body and had failed to note the expert's opinion that the scarring on her back and upper chest was consistent with her account of the Juju. The judge had failed to take account of the appellant's explanation for not having previously mentioned being trafficked to the UK. The judge ought to have considered the views of the appellant's child in making her findings on her best interests.

13. Ms Johnstone submitted that the scarring did not show that the appellant had been trafficked and the judge was entitled to conclude as she did. The judge, in concluding that the appellant's child could go back to Nigeria with her, had considered all relevant matters. The judge's decision should be upheld.

14. Ms Faryl, in response, reiterated the points previously made.

Consideration and findings.

15. The first assertion made in the grounds was that the judge had failed to give consideration to the appellant's explanation for having previously made no mention of being trafficked. However that is plainly not the case, as the judge gave detailed consideration to the appellant's explanation, at [43] to [46]. She provided cogent reasons for rejecting the explanations given by the appellant and was entitled to reject her account for the reasons given.

16. It is asserted on behalf of the appellant that the judge misunderstood the views of the expert, Dr Lord, in regard to the appellant's scarring. It is asserted that, in concluding that the scars identified by Dr Lord could be explained by the appellant's account of having been slashed with a razor by her cousin, the judge confused the scars on the appellant's arm with those on her back and upper chest, which Dr Lord attributed to other causes. Ms Faryl submitted that Dr Lord's opinion at paragraph 38 in regard to the scars on the appellant's back and upper chest, as being traditional marks which could be used in voodoo ceremonies, supported the appellant's claim to have been subjected to Juju, and thus supported her account of being trafficked. She submitted that the judge had failed to understand that.

17. However I do not agree with Ms Faryl. Whilst the judge considered that the appellant's account of having been slashed by a razor went some way to explaining some of her scars, it was clearly not the case that her finding at [50] was that that explained all of the scarring on the appellant's body. The judge specifically referred to Dr Lord's opinion that some of the scars were diagnostic of tribal scars. She concluded that that did not advance the appellant's claim to have been trafficked. Indeed, it is relevant to note that in her more detailed statement of 2 June 2014 the appellant did not claim to have been scarred as part of the Juju ceremony and neither did she make such a claim when cross-examined before the judge. There was no attempt by the appellant's own representative to question her about the scarring at the hearing, as is clear from the record of the evidence at [29] , [38] and [40] of the judge's decision. In the circumstances the judge was entitled to draw the conclusions that she did in regard to the appellant's scarring and, having identified various inconsistencies and discrepancies in the appellant's account, was entitled to reject her entire account of having been trafficked to the UK.

18. Ms Faryl did not advance the second ground of appeal before me. In any event I find no error of law in the judge's findings in regard to the risk to the appellant's daughter of FGM. The judge considered the matter carefully at [50] to [52], taking account of relevant country information, and gave cogent reasons for concluding that the appellant could safely and reasonably relocate to another part of Nigeria with her daughter.

19. As regards the last ground of appeal, it seems to me that the judge gave detailed and careful consideration to the best interests of the appellant's daughter when considering Article 8 outside the immigration rules. The judge considered all relevant matters, including the length of time the child had been in the UK, the ties that she had formed here and the circumstances to which she would be returning in Nigeria. For the reasons cogently given, the judge was entitled to conclude that the removal to Nigeria of the appellant and her daughter would not breach their human rights.

20. For all of these reasons I find no errors of law in the judge's decision.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure

to comply with this direction could give rise to contempt of court proceedings.

Signed
Date

Upper Tribunal Judge Kebede