



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04862/2014**

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 September 2015**

**Decision & Reasons
Promulgated
On 4 February 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ZR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, ZR, was born in 1983 and is a female citizen of Nigeria. The appellant has a child, B, who was born in 2010. The respondent accepts that the appellant has been subjected to female genital cutting (FGC). However, the respondent refused the appellant's asylum application and the appellant appealed to the First-tier Tribunal (Judge Shimmin) which, in a decision promulgated on 6 October 2014 dismissed the appeal on all grounds. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. The first ground criticises the judge for having allegedly failed to consider background evidence in his determination of the asylum appeal. It was asserted that women are not safe outside the home in areas beyond Abuja and the fact of the appellant's education in the United Kingdom was not relevant. Her status as a single mother would also make her more vulnerable. That ground is little more than a disagreement with findings available to the judge on the evidence before me. The judge accepted [42] that there is discrimination against women in Nigeria and sexual harassment. The judge noted the appellant's qualifications in mental health nursing obtained in the United Kingdom. He found that she would be likely to obtain a good job in the medical profession in Nigeria and was unable to accept that the child B would be subjected to FGC. The appellant failed to specify what parts of the background country material indicate that the appellant and child in this instance would be exposed to a real risk in Nigeria. I am satisfied that the judge has considered the background material together with all the other evidence and that he has reached findings available to him.
3. The second ground concerns Article 8 ECHR. The judge relied on *Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)* and concluded that the appellant and B could not meet the private and family life requirements of the Immigration Rules [52]. The judge stated that he had "analysed their position" and was unable to identify any exceptional or compelling circumstances. The grounds complain that there were no threshold criteria for the engagement of Article 8 which the judge should have considered in any event. However, I find that the suggestion (relying on *Gulshan*) that there was some form of two stage test to be followed is misguided; either the appellant could succeed on the facts under Article 8 ECHR or she could not.
4. The judge's analysis of Article 8 is admittedly brief. However, there was no need for the judge to go through the same evidence which has failed to satisfy the Immigration Rules if it is apparent that that evidence is incapable of satisfying the requirements of Article 8 (*Singh [2015] EWCA Civ 74*). In the present case, the judge has considered the public interest concerned with the removal of the appellant and B. He records that the appellant has "for a considerable period" enjoyed the education system in the United Kingdom without payment and that both the appellant and B have used the services of the National Health Service "to the economic disadvantage of the UK." Further, the appellant has committed an offence and has been sentenced to a period of imprisonment. The judge considered the provisions of Section 117B of the 2002 Act (as amended) and found that he should give little weight to the appellant's private life. He considered the best interests of B as he was required to by Section 55 of the Borders, Citizenship and Immigration Act 2009. B would not be "substantially affected by relocation to Nigeria" [45]. B does not live with her father but does have contact with him and the judge noted that B's father has no immigration status and may himself have to return to Nigeria [46].

5. Although the judge refers to *Gulshan* and appears to have considered [52] refraining from any Article 8 assessment, he did nonetheless consider Article 8. His assessment is brief but there was no need for him to set out again the circumstances of the appellant and B which he had described earlier in his decision. He has, quite properly, sought to identify the public interest in this case. His conclusions as regards Section 55 (that B has no particular ties to the United Kingdom, that her essential social cultural ties remain at this stage with her mother and that she would not be “substantially affected by relocation in Nigeria”) were plainly available to him on the evidence. The appellant and B might only succeed under Article 8 outside the Immigration Rules insofar as their circumstances did not fall within the private and family life provisions of the Rules. It was significant also that the grounds of appeal complain of a failure of process; there was no attempt made in the grounds to identify those circumstances of the appellant or B which fell outside the Immigration Rules analysis but which should have tipped the balance of the proportionality exercise for Article 8 outside the rules in their favour. In the circumstances, I find that the judge has not erred in law and I shall not set aside his decision.
6. I was grateful for the appellant attending the court and letting me have her views regarding the prospect of returning to Nigeria. I am well aware that she is passionately opposed to the idea of return both for herself and her child but, for the reasons which I have set out above, I do not intend to interfere with or change the decision of the First-tier Tribunal.

Notice of Decision

This appeal is dismissed.

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 20 January 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 January 2016

Upper Tribunal Judge Clive Lane