



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/05760/2014  
AA/05761/2014  
AA/05762/2014

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 1<sup>st</sup> December 2015

Decision & Reasons Promulgated  
On 20<sup>th</sup> January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

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EO

JGO  
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms K Smith of Counsel instructed by Paragon Law  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

## **DECISION AND DIRECTIONS**

1. On 7<sup>th</sup> September 2015 Upper Tribunal Judge Grubb gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Mather in which she dismissed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellants who are all citizens of Nigeria. The first appellant is the mother of the second and third appellants who are her minor son and daughter respectively.
2. Judge Grubb thought it arguable that the judge had failed to give adequate reasons for her findings on credibility and risk on return and it was just arguable that the judge had failed to give proper consideration to the psychiatric and expert evidence. He also thought that the arguable errors in making the adverse credibility findings would have impacted on the judge's assessment of the risk of FGM on return. Permission was granted on all grounds.
3. At the hearing before me in the Upper Tribunal, Ms Smith confirmed that the appellant relied upon the grounds. In particular she drew attention to paragraph 5 which identifies six areas of the decision (paragraphs 26, 28, 33, 37 and 34) where reasoning was claimed to be inadequate. The grounds also contend, in the alternative, that the judge failed to have proper regard to corroborative evidence and reached conclusions before giving consideration to the expert and country evidence. It is also argued that the judge failed to engage with the evidence to support the claim that the third appellant would be at risk of FGM bearing in mind that the first appellant had been subjected to that treatment and the absence of laws in Nigeria to protect against it. The grounds also submit that the judge did not apply the undue harshness test to internal relocation and failed to make the best interests of the child appellants a primary consideration.
4. At the hearing Ms Smith also pointed out that the judge appeared to have omitted to give consideration to the Multi Agency information from page 24 onwards of the appellant's main bundle dealing with threats to the family.
5. Mr McVeety indicated that the respondent relied upon the terms of the response dated 18<sup>th</sup> September 2015 which alleges that the judge had given "copious" reasoning for her conclusions from paragraph 20 onwards of the decision having directed herself appropriately. The findings in relation to the threat of FGM should also be seen in the light of adverse credibility findings. However, Mr McVeety nevertheless agreed that there was an inadequacy of reasoning in relation to the areas of evidence identified in paragraph 5 of the grounds. He further agreed that there was nothing to suggest that the compiler of the Medical Report, Dr Kumar, had considered whether or not the appellant was telling the truth. He also conceded that the judge had made no reference to the Multi Agency Report.
6. After considering the matter for a few moments I announced that I was satisfied that the decision showed material errors on points of law such that it should be set aside. My reasons for that conclusion follow.

7. The judge's adverse credibility findings commence at paragraph 26 of the decision. Those set out in subsequent paragraphs 28, 33, 34 and 37 (about such material matters as a kidnapping, domestic violence and state of health) each contain statements to the effect that evidence is not accepted and is inconsistent but no reasons are given for those conclusions. Despite the detailed summary of the evidence in other parts of the decision there is no reference to any specific inconsistencies in that evidence which might justify the conclusions.
8. It is also evident that the conclusions reached from paragraph 26 onwards did not, on the face of it, take into consideration other evidence in the round particularly the Medical Report by Dr Kumar and a specialist report by Ms Nwogu. In *M (DRC)* [2003] UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss an expert report. Further, in *FS (Treatment of expert evidence) Somalia* [2009] UKAIT 00004 the Tribunal decided that Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even-handed and impartial manner. It may, on occasions, be appropriate to reject the conclusions reached by an expert but what is crucial is that a reasoned explanation is given for so doing. In paragraph 38 of the decision the judge rejected the conclusions reached by Dr Kumar and Ms Nwogu on the sole basis that the appellant was not telling the truth. The judge did not identify the parts of the reports which might be relevant whether the appellant was credible or not and might stand alone from adverse credibility conclusions. In this respect it has to be borne in mind that Ms Nwogu completed her report on the basis of the general situation in Nigeria in addition to that put forward by the appellant.
9. As to the consideration of internal relocation the judge's conclusions (paragraph 39) are also unreasoned. Whilst the judge refers to the undue harshness test, no clear reasons are given for concluding that the appellants could relocate without it being unduly harsh for them to do so.
10. For the reasons I have given, the decision of the First-tier Tribunal shows material errors on points of law relating to the credibility findings and so the decision must be set aside.
11. As it will be necessary at the re-making of the decision to examine the evidence afresh, the provisions of paragraph 7.2 of the Practice Statement for the Upper Tribunal made by the Senior President of Tribunals on 25<sup>th</sup> September 2012 applies. It is therefore appropriate that the appeal should be re-heard by the First-tier Tribunal.

### **Anonymity**

12. An anonymity direction was made by the First-tier Tribunal and, taking into consideration the circumstances of this appeal, I consider it appropriate to make the following direction in the Upper Tribunal:

#### **DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

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

Deputy Upper Tribunal Judge Garratt

**DIRECTIONS**

13. The appeal is remitted to the First-tier Tribunal for a fresh hearing.
14. The hearing will take place at the Stoke Hearing Centre.
15. No interpreter will be provided for the hearing unless representatives indicate to the contrary.
16. The appeal should not be heard by Judge Mather.
17. The hearing will take place on a date to be specified by the Resident Judge.

Signed

Date

Deputy Upper Tribunal Judge Garratt