



IAC-AH-CJ-V1

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

Appeal Numbers: DA/01388/2013
DA/01389/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 14 June 2016

**Decision &
Promulgated
On 11 May 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**FE (FIRST APPELLANT)
NE (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Mair, instructed by Howells Solicitors

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

DECISION AND REASONS

1. The appellants, FE and NE, were born in 1985 and 2013 respectively and are female citizens of Nigeria. The second appellant is the first appellant's daughter. A decision was taken in June 2013 to deport the first appellant

under Section 3(5)(a) of the Immigration Act 1971. The appellants appealed to the First-tier Tribunal (Judge Reed; Mrs Endersby) which, in a decision promulgated on 18 February 2014, dismissed the appeal. The appellants appealed to the First-tier Tribunal and, when their application for permission was refused, to the Upper Tribunal. That Tribunal also refused the appellants permission to appeal so the appellants applied for judicial review. The application for judicial review came before Mr Justice Walker in June and October 2015. Walker J delivered his judgment on 11 February 2016. *Inter alia*, the court quashed the refusal of permission in the Upper Tribunal and returned the matter to the Upper Tribunal for further consideration. Permission was granted by Mr Ockelton (Vice President) on 1 March 2016 and came before the Upper Tribunal at Bradford on 14 June 2016.

2. I am grateful to Miss Mair for providing both myself and Mr Diwnycz with a copy of Walker J's judgment. In the light of that judgment, Mr Diwnycz told me that, whilst he was not authorised to concede the appeal, he wished to make no submissions whatever with a view to supporting the First-tier Tribunal's decision. In the circumstances, therefore, I shall be brief. The First-tier Tribunal's decision which was promulgated on 18 February 2014 is set aside. None of the findings of fact shall stand. I have reached that decision for the following reasons.
3. There were three grounds of claim before the High Court on judicial review. These grounds reflect the basis upon which the appellants had challenged the determination of the First-tier Tribunal. Walker J found that the judicial review claim should succeed on all three grounds. The first concerns procedural unfairness; the First-tier Tribunal sought to "go behind" a concession clearly made before it by the Presenting Officer to the effect that the appellant was a victim of trafficking from Nigeria to the United Kingdom. Secondly, the Tribunal had failed to appropriate proper weight to expert evidence before it relied upon by the appellants on the basis that the evidence had been discredited in earlier proceedings before the Court of Appeal (*PO (Nigeria)* [2011] EWCA Civ 132). The appellants had asserted that, although the decision of the Upper Tribunal in *PO* had been set aside by the Court of Appeal, the expert evidence, upon which the present appellants also sought to rely, had been unfairly rejected by the First-tier Tribunal.
4. I do not intend to quote Walker J's decision at length but it is plainly apparent that he found the grounds of application (and, by extension, the grounds of appeal against the First-tier Tribunal's decision) to have been made out such that the refusal of permission to the Upper Tribunal should be quashed; beyond that, my reading of the judgment leaves little if no room for the Secretary of State to seek to argue that the First-tier Tribunal did not err in law such that its decision falls to be set aside.
5. Both parties accept that the first appellant is a victim of female genital mutilation (FGM). I also record that the Secretary of State does not now seek to withdraw the concession made by the Presenting Officer before

the First-tier Tribunal, namely that the first appellant has been a victim of trafficking from Nigeria. It is against the background of that factual matrix that the next Tribunal will remake the decision concentrating, in particular, upon the extent of any risk facing both appellants on return to Nigeria.

Notice of Amended Decision

6. The determination of the First-tier Tribunal which was promulgated on 18 February 2014 is set aside. None of the findings of fact shall stand. However, the First-tier Tribunal, to which this appeal is returned to remake the decision, shall do so on the basis that the first appellant was trafficked from Nigeria to the United Kingdom.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Note: This decision was amended and re-promulgated on 9 May 2017

Signed

Re-promulgated on 9 May 2017

Upper Tribunal Judge Clive Lane