Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05891/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 September 2018	**On 01 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MS J C O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi, Counsel instructed by Templeton Legal Services
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a national of Nigeria born on 4 September 1977. The appellant appealed to the First-tier Tribunal against the refusal of the respondent dated 28 April 2018 of her protection claim. In her decision promulgated on 3 July 2018, Judge of the First-tier Tribunal NMK Lawrence dismissed the appellant's appeal on all grounds.

2. The appellant appeals with permission on the following grounds:

Ground 1

Failure to consider material evidence in relation to the nature of non-state actors;

Ground 2

Failure to consider material evidence in relation to sufficiency of protection;

Ground 3

Failure to consider material factors in respect of the best interests of the child and Article 8.

Error of Law Discussion

3. Mr Pipi relied on his grounds of permission and on the witness statement of the appellant. including at page 16 of the appellant's bundle which set out her two grounds: the first being that the appellant claimed she had undergone Female Genital Mutilation (FGM) when she was 15 and secondly, when she was 18, had met a man who had looked after her and found her a job but her manager had paid her unwanted sexual attentions and she feared persecution at his hands. The appellant has a daughter by her current partner and she feared her daughter would be subject to FGM should the family unit return to Nigeria. The judge summarised the appellant's case at [10] and [11] of the decision and reasons.

4. The first ground argued that the judge failed to grapple with the threat of persecution by the community in respect of FGM and the risk to the appellant's daughter. In relation to the second ground both the written grounds and Mr Pipi relied on **Horvath [2000] UKHL 37** in terms of sufficiency of protection. The First-tier Tribunal set out the principles of **Horvath** at [19]. Mr Pipi drew my attention to the appellant's bundle including at page 116 and at paragraph 2.3.3, in respect to the high prevalence of FGM in various regions of Nigeria including in the south and west of the country, the appellant's home state of Imo State being in the south east. Ms Willocks-Briscoe confirmed it was not disputed that the appellant was from Imo State and such was set out in the appellant's interview at paragraph 46 which confirmed that she was from the Igbo Tribe.

5. It was Mr Pipi's submission that the judge's conclusions at [21] first of all did not make sense and secondly were inadequate in respect of sufficiency of protection. Mr Pipi further submitted that the judge failed to adequately assess the best interests of the appellant's child, in light of the background information, and he referred me to paragraph 2.3.6 at page 117 of the appellant's bundle including as to the prevalence of FGM amongst extended family and that this may increase or reduce the relevant risk which may arise from the prevalence of the practice among members of the ethnic group.

6. Paragraph 2.3.6 of the Respondent's COI Report, sets out the factors to be taken into account by decision makers when assessing the risk of FGM. Mr

Pipi submitted that it had been accepted by the First-tier Tribunal, at [4], that the appellant had undergone FGM; this was relevant to the assessment and he asserted that the judge did not grapple with this issue.

7. Ms Willocks-Briscoe submitted, in relation to [4] of the decision and reasons, where the judge stated that the appeal could be progressed on the basis that the appellant had had FGM performed, this was a hypothetical finding. It was incorrect to state that this meant that FGM would happen to the appellant's daughter. Ms Willocks-Briscoe submitted that the judge set out the relevant issues and, contrary to ground 1, the judge was clearly aware that one of the issues was whether the appellant's daughter would be at risk of FGM as identified at [11]. Ms Willocks-Briscoe relied on **EA [2017] EWCA Civ 10**. At paragraph 27 **EA** states as follows:

> "27. Decisions of Tribunals should not become formulaic and rarely benefit from copious citation of authorities. Arguments that reduce to the proposition that the FTT has failed to mention dicta from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffman said in **Paglowska v Paglowski [1999] 1 WLR 1360, 1372**, 'reasons should be read on the assumption that unless he has demonstrated to the contrary, the judge knew how he should perform his functions in which matters he should take into account'. He added that "an Appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textural analysis which enables them to claim that he misdirected himself'…."

8. It was her submission that the decision indicated the judge had made adequate findings that there was sufficiency of protection and the judge had correctly reminded himself that it was not 100% protection [21]. The judge properly directed himself to the problems with state protection in Nigeria, at [12] and [13]. In respect of the argument that the judge had not adequately engaged with the appellant's claims that she feared her own clan and FGM being performed on her daughter, the Presenting Officer submitted that the judge did adequately address this in his findings in relation to non-state actors. Ms Willocks-Briscoe further submitted that in respect of the report relied on by Mr Pipi in relation to the prevalence of FGM she, that report cited the 2013 UNICEF Report in relation to the percentage of FGM whereas the judge was dealing with 2015 legislation, the Violence Against Persons (Prohibition) Act 2015 and the judge noted at [12] that it is a federal offence and that FGM and other "harmful traditional practices" had been outlawed.

9. In respect of the child's best interests, she submitted these must be considered in light of the judge's findings that he had already made that there was a sufficiency of protection for the appellant and her daughter in Nigeria and that the judge need not repeat these findings. In the appellant's interview, including at question 136 where the appellant had stated that her parents did not support FGM at 155 where she stated that no one had approached her regarding circumcision and questions 205 and

206 where the appellant stated that her partner did not support circumcision and did not want their daughter to be circumcised, Ms Willocks-Briscoe submitted that this was a relevant factor which the judge would have had in mind in finding that there was sufficiency of protection.

10. Mr Pipi in reply submitted out that although the 2017 COIR report at page 116 of the appellant's bundle referred to the 2013 UNICEF Report this was in the 2017 respondent's report which the Home Office relied on which suggested that there was no change of circumstances. Although it was true that the family did not support FGM, this had not stopped the appellant suffering FGM. Mr Pipi further submitted that the judge did not deal with the issue of internal relocation and did not adequately address the appellant's arguments in respect of difficulties she could face on return in respect of her daughter which is supported by the objective evidence which the judge did not engage with.

Error of Law Conclusions

11. I am satisfied that the judge failed to give adequate reasons for reaching the conclusions he did and failed to make adequate findings on the relevant issues. In respect of ground one, although the judge makes limited findings in relation to the appellant's fear of Mr AM, including that 'she cannot explain how those will be able to find her on her return to Nigeria, even if her account is to be believed' and that the appellant's account is 'too fanciful' to be believed, the judge has failed to make any adequate findings in respect of the appellant's claim that her daughter will be subjected to FGM on return to Nigeria.

12. The judge, at [4], accepted that the 'appellant could be progressed on the basis that the appellant had had FGM performed'. Ms Willocks-Briscoe submitted that this was a hypothetical finding. Although the wording of [4] might suggest that was intended to be the approach, the judge failed to make any further adequate findings on the appellant's claims as to her history of FGM, other than a reference, at [22], that the appellant 'claims she has had FGM performed when she was 15 years of age' in the context of a claimed risk of a 'second FGM'.

13. The appellant states at paragraph 11 of her witness statement that she was forced to undergo female genital mutilation at the age of 15 "as my parents were not keen to do so due to the dreadful experience young girls went through and the fact many girls also died as a result of the practice". She went on to state that "pressure mounted on my parents but I had no choice but to be circumcised as well, and for this reason I was circumcised with six other girls whose parents were equally adamant for their daughters to go through that dreadful process."

14. Without further findings it is unclear what the judge's conclusions were in respect of the appellant's claimed history. Although he regards the claim in relation to Mr AM to be 'fanciful' there are no other negative credibility findings and no reasoning to indicate why the appellant's claimed history is rejected, if indeed that is the case.

15. In that context, there is merit in the first ground as the First-tier Tribunal fails to make adequate findings both as to the appellant's claims of past persecution and her fears in respect of her daughter and FGM. Although the judge addresses sufficiency of protection at [16] and following and these findings purport to address 'FGM & Non-State Actor', it is not sufficiently clear on what factual basis these findings are being reached: the judge has failed to make findings of fact as to what parts of the appellant's evidence are accepted or rejected in respect of both her own account and her fear that the Mgibidi clan would impose FGM on her child on return.

16. In respect of the second ground, similarly although the judge devotes much of his findings to sufficiency of protection, such findings are inadequate without the findings of fact which ought to underpin the consideration of sufficiency of protection. Although it is not disputed that Nigerian authorities enacted new legislation in 2015, the judge himself points out the inadequacies in this legislation, at [12] and [13]. Although the judge is correct in his conclusion that sufficiency of protection need not be 'complete' protection, that in itself is not adequate, without more, to resolve a protection claim. The judge fails to give any adequate reasons why 'it appears' to him that the system put in place by the Nigerian authorities will provide sufficient protection, particularly in light of the stated difficulties with the 2015 legislation which the references at [12] and [13] and the appellant's own claimed history of FGM.

17. There are no findings as to the impact, if any, of the factors relevant in assessing risk of FGM, including as set out in the respondent's COIR (page 117 of the appellant's bundle) including, in addition to her claimed history of FGM, the relevance of the appellant's ethnic background, where she had lived in Nigeria before she left, her age and her and her parents' education, the practice of the extended family and the views of the family towards FGM. Although, as noted above, both the appellant and her partner are opposed to FGM, there is a lack of any adequate findings as to the relevance of these views including in the context of the appellant's claim that her own parents opposed FGM. In this context the judge erred in his approach to sufficiency of protection in the appellant's home area.

18. The materiality of that error is compounded by the lack of any adequate findings in relation to internal relocation. The judge's only reference to relocation, at [14], that the appellant 'cannot explain how those will be able to find her on her return to Nigeria, even if her account is to be believed' is made in the context of the judge's discussion of the appellant's claimed fear of the individual Mr AM. The respondent in the Reasons for Refusal letter dated 20 April 2018, although it was not accepted that the appellant had undergone FGM (paragraph 32) considered the claimed risk to the appellant and her family. This included a consideration at paragraphs 61 and following of internal relocation, given that the appellant asserted she feared returning to Lagos and Ihala. Although the appellant asserted that her fear in relation to FGM covered the whole of Nigeria, the judge fails to make any adequate findings as to whether this claim was accepted and if not, whether it would be unduly

harsh to expect the appellant to relocate. The judge's reference, at [21] to a system of 'national protection' is, in the absence of factual findings and in the context of the appellant's claims and the background information, insufficient. I am satisfied therefore that the judge's findings on sufficiency of protection materially err, such that the decision falls to be set aside.

19. Equally, in respect of ground 3, in the context of the inadequacy of the findings, particularly in the context of FGM, the judge's subsequent findings on Article 8 which although on the face of it appear to be comprehensive, do not address the issue of the claimed risk of FGM to the appellant's daughter (and the relevance to the best interests assessment of any requirement for the family to relocate internally).

20. The decision of the First-tier Tribunal contain an error of law and is set aside. No findings of fact are preserved. The nature of fact finding required is such that the decision is remitted to the First-tier Tribunal, other than judge NMK Lawrence, for a hearing de novo.

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 his 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 26 September 2018
Deputy Upper Tribunal Judge Hutchinson