



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

Appeal Number: PA/12845/2016

**THE IMMIGRATION ACTS**

**Heard at: Columbus House,  
Newport  
On: 22 January 2018**

**Decision & Reasons  
Promulgated  
On: 21 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**HOA**  
(anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Ms L Fenney, NLS Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Suffield-Thompson in which she allowed the appeal of the Appellant, a citizen of Nigeria born on 6 January 1983, against the Secretary of State's decision to refuse her application for asylum. This appeal is brought by the Secretary of State but to avoid confusion I have referred to the parties in the manner they were referred to before the First-tier Tribunal.

2. The Appellant arrived in the United Kingdom on 18 February 2012 as a student and was granted leave to remain until 12 October 2013. On 9 September 2013 she applied for a Residence Card as the spouse of an EEA national. This was a sham marriage and the application for a Residence Card was fraudulent. The Appellant was charged and convicted of the offence of conspiracy to facilitate the commission of a breach of immigration law and sentenced to 22 months imprisonment. The Respondent issued a Notice of Liability to Deportation and in response the Appellant made representations on human rights and protection grounds. On 26 November 2014 a deportation decision was made against the Appellant's daughter [HI] (born on [ ] 2014). On 7 November 2016 a decision was made to deport the Appellant and to refuse her human rights and protection claim and her application for a Residence Card. The Appellant appealed this decision with her daughter as her dependent. This is the appeal that came before Judge Suffield-Thompson on 10 February 2017 and was allowed. The Respondent's application for permission to appeal against the First-tier Tribunal Judge's decision was refused by First-tier Tribunal Judge Adio on 14 June 2017 but on renewal to the Upper Tribunal was granted on 25 August 2017 by Upper Tribunal Judge Kekic in the following terms

"The respondent challenges the decision of First-tier Tribunal Judge Suffield-Thompson to allow the appellant's deportation appeal on asylum and human rights grounds. The appellant claimed she feared Boko Haram if returned to Nigeria and also that her daughter would be subjected to FGM.

The grounds argue that the judge erred in his credibility assessment and on the issues of sufficiency of protection and internal relocation.

For the reasons set out in both sets of the respondent's grounds for permission, it is arguable that the judge made errors of law. Permission is granted and all the grounds may be argued.

### **Background**

3. The Appellant's immigration history is detailed above. She is a 35-year-old citizen of Nigeria. She came to the United Kingdom lawfully as a student and her presence remained lawful for one year. Having been convicted of serious criminal offences and being notified of her liability to deportation the Appellant made a protection claim. The claim as summarised at screening interview was

*"I was abused as a child and I fear being abused again and I also fear for my new daughter with Boko Haram and my*

*country's 'policy' with FGM. This in line with the general lack of security and safety".*

This was expanded upon at her asylum interview. Her claim was refused by way of a very detailed refusal letter. At the appeal hearing the Judge notes (paragraph 35) that the key disputed matter

*"... is to establish the credibility of the Appellant".*

She finds (paragraph 41) that the Appellant is

*"... happy to mislead the authorities when it suits her purpose".*

Referring to her fear of her step-father the Judge finds (at paragraph 42)

*"... that this story is told by the Appellant in her attempt to remain in the UK".*

Turning to the issue of FGM and the Appellant's claimed fears for her daughter the Judge looks at the corroborative evidence from the Appellant's mother and finds

*"... these letters have been written and sent at the instigation of the Appellant to bolster her case".*

The Judge then goes on to consider background evidence and finds (at paragraph 54) that the Appellant

*"... does have a legitimate and well-founded fear that her child will be the subject of FGM"*

and that she would not be able to rely on state protection. At paragraph 56 the Judge finds

*"As the Appellant would be financially dependent on her mother and step father I find it more likely than not that she would be unable to prevent her child being subjected to FGM if that is what her mother decided should happen".*

The Judge goes on to consider the Appellant's claim to have been sexually abused by her step father against the background evidence and finds that the Appellant

*"... would be very vulnerable in that household where her step-father had and is still likely to have control over her in some way of another" (paragraph 59).*

4. The grounds of appeal submit that the finding at paragraph 56 and the finding that she was abused by her step father is not well reasoned. It is submitted that the finding of lack of sufficiency of protection is inconsistent with the objective evidence which

shows that FGM is illegal in Nigeria. The finding that there is no internal relocation alternative gives inadequate reasons as to why it would be unduly harsh for the Appellant to relocate.

### **Submissions**

5. At the hearing before me Mr Richards appeared for the Secretary of State and Ms Fenney represented the Appellant. There was no rule 24 response and no skeleton arguments were submitted.
6. Mr Richards said that the grounds are lengthy and detailed and highlight the credibility issue. The Judge does not make sufficiently clear findings as to why there was a subjectively good reason to fear FGM given her adverse credibility findings. A key issue was the recent correspondence from the Appellant's mother referred to at paragraph 44 - a letter written and sent to bolster the Appellant's claim. At paragraph 53 the Judge quotes some authorities but makes findings that are not supported by those authorities. She fails to deal with sufficiency of protection other than by a general reference at paragraph 55. Internal relocation is dealt with at paragraph 60 in an equally generalised manner. The Judge fails to deal with the fact that the Appellant is an educated woman who had a thriving career in Nigeria as a banker. She could resume her career and relocate if necessary.
7. For the Appellant Ms Fenney said that the Judge was aware of the credibility issue relating to the Appellant but was assessing the risk to the Appellant's daughter. The Judge makes clear findings. If the Appellant is returned to Nigeria to the same situation living with her mother and step-father, she faces the potential of her daughter being abused and subject to FGM. The Judge's reasoning is sound.

### **Decision**

8. In my judgement the grounds are made out. The Judge makes strong adverse credibility findings including that the Appellant will say anything to suit her own purposes, that she has contrived a story to stay in the UK and that she has instigated the submission of letters from her mother to falsely corroborate that story. Those adverse credibility findings extend to a specific finding that the Appellant's claim to fear her step-father is a story told by the Appellant to enhance her claim to stay. Despite this specific finding the Judge goes on to say that she would be vulnerable if she returned to live with her step-father. This is a wholly inconsistent finding and one that has a material effect on the decision to allow the appeal because part of the reason why the Judge finds it would be unsafe for the Appellant and her daughter to return is her finding that there would be no alternative other than to live with the Appellant's mother and step-father.

9. There are similar difficulties with the Judge's findings in relation to the likelihood of the Appellant's daughter being subjected to FGM. Firstly, the Judge finds that the letter written by the Appellant's mother to support her claim is one

*"... written and sent at the instigation of the Appellant to bolster her case".*

The clear implication is that the Appellant has sufficient influence over her mother to cause her to submit false evidence. The Judge goes on to find at paragraph 47

*"On the basis that the Appellant was subjected to FGM does not mean automatically mean (sic) that this is what her mother would do to her grandchild as many years have passed and it may well be that the mother has now changed her views. However, I have nothing before me to say that this is the case".*

Despite this finding the Judge, having considered objective evidence showing, inter alia, that 27% of girls and women had undergone FGM in Nigeria, goes on to find

*"... this Appellant does have a legitimate and well-founded fear that her child will be the subject of FGM".*

In my judgment this finding has no reasoned or logical basis particularly given the fact that it must be clear from the whole basis of the Appellant's claim that the Appellant, an educated woman who has influence over her mother, is against FGM and would seek to protect her daughter against being subjected to it.

10. These two matters are fundamental to the decision to allow this appeal. The Judge's findings in these respects are not adequately reasoned and this inadequate reasoning amounts to a material error of law. I allow the Respondent's appeal and I set aside the decision of the First-tier Tribunal.

### **Summary**

11. The decision of the First-tier Tribunal involved the making of material errors of law.
12. I allow the Respondent's appeal. The error of law is such that I am satisfied that the Appellant's appeal has not been fully considered by the First-tier Tribunal and as such the appropriate course in accordance with the President's guidance is to remit the matter to the First-tier Tribunal for hearing de novo.

**Date: 16 February**

**2018  
J F W Phillips  
Deputy Judge of the Upper Tribunal**