



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01775/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2019**

**Determination Promulgated
On 11 June 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**F M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, Counsel
(instructed by Londinium Solicitors)

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge O'Brien on 30 April 2019 against the determination of First-tier Tribunal Judge S L Farmer who had dismissed the appeal of the Appellant against the refusal of her international protection claim. The decision and reasons was promulgated on 28 March 2019.
2. The Appellant is a national of Nigeria, born on 7 February 1983. The Appellant entered the United Kingdom as a visitor on 26 January 2011 but soon became an overstayer. She has two United Kingdom born children, a son and a daughter., neither of them "qualifying children" under Home Office policy. The daughter's father warned of FGM in 2018. The Appellant claimed asylum on 23 August 2018, asserting *inter alia* a fear of family in Nigeria. Her claim was refused by the Secretary of State on 8 February 2019.
3. Judge Farmer provided a detailed summary of the Appellant's claim at [12] of her decision. The Appellant is Yoruba and Christian. She was previously in a relationship with Mr Michael Alerebo whose Delta/Ibo family approve of traditional mutilation, and who (it was said) wanted to perform FGM on the Appellant's daughter. The Appellant had claimed asylum as she was afraid that her daughter might be taken to Nigeria for FGM.
4. The Appellant's identity was accepted by the Respondent, but Judge Farmer otherwise found that the Appellant's credibility was generally low and, also having heard evidence from Mr Alerebo, entirely lacking on the key issues. There was no real risk on return, as FGM could be avoided in Nigeria in any event by relocation. There were no exceptional circumstances and the children's best interests were not compromised by going to Nigeria with their healthy mother. The appeal was accordingly dismissed.
5. Permission to appeal was granted by First-tier Tribunal Judge O'Brien because he considered it was arguable that the judge had failed to mention or make any findings on the fact that the Appellant was HIV+ which was a material factor in the best interests of the children and the proportionality of removal.

Submissions

6. Mr Parkin for the Appellant relied on the grounds and grant of permission to appeal. The tribunal referred him to the skeleton argument from the First-tier Tribunal hearing. Mr Parkin accepted (after perusal of the skeleton argument) that no reliance on the Appellant's HIV+ status had been raised. On instructions he renewed the application to adjourn for the submission of additional evidence to the Upper Tribunal which had been refused by the Principal Resident Judge on 5 June 2019. The tribunal refused the renewed application as no new matter had been raised and the tribunal considered that the error of law issue could be fairly and justly resolved on the evidence which had been before the First-tier Tribunal judge, in accordance with standard practice from no special reason to deviate had been shown.
7. Mr Parkin submitted that it was obvious from the reasons for refusal letter that the Appellant's HIV+ status was an issue, regardless of the skeleton argument. While that condition might not have reached the Article 3 ECHR threshold, it was relevant to the Article 8 ECHR claim and had a bearing on the position of the children if returned to Nigeria. The other issue, the risk from the Appellant's former partner in Nigeria, was not as strong but should have been addressed. The justice of the case meant that the decision and reasons should be set aside for failure to deal with all of the evidence and to make proper findings. The appeal should be heard again in the First-tier Tribunal by another judge.
8. Mr Tufan for the Secretary of State for the Home Department opposed the appeal. The judge had dealt with the Appellant's claim adequately. The Appellant's HIV+ status simply had not been a live issue. There had been no country evidence put before the judge and in any event it was now well known that HIV+ was no longer a serious problem. The onwards appeal should be dismissed.
9. There was nothing which Mr Parkin wished to add by way of reply.

No error of law finding

10. In the tribunal's view, the determination of First-tier Tribunal Judge Farmer was unimpeachable and, as Mr Tufan submitted, covered all live elements of the Appellant's claim. Indeed, the grounds of onwards appeal were seriously misleading on the HIV+ point, because there was nothing on that which the judge had been asked to determine. Not only

was there no mention of the Appellant's HIV+ status in the skeleton argument, there was no mention of it in the Appellant's own witness statement. Permission to appeal should not have been granted.

11. The claim that the judge had not taken no account of the fact that the Appellant is HIV+ is based on a misreading of the determination. The Appellant had declared her HIV+ status at section 2.1 of her asylum application and that was not in dispute. At section 2.3 of the same form the Appellant stated that she was "fine". The subject is addressed in the reasons for refusal letter at [107ff] and the Appellant mounted no challenge to that. The judge refers to the reasons for refusal letter at [4] of her decision. The Appellant produced no country background evidence for Nigeria which suggested that she might encounter any difficulty in obtaining medicine, nor any medical evidence which suggested that there would be any other problem for her arising from her HIV+ status.
12. At [16] the judge states that all of the evidence had been considered by her, including medical evidence, whether or not specifically mentioned. At [33] the judge recorded that the Appellant stated that she was in good health and there was nothing to suggest that she would be unable to work. The Appellant's HIV+ status was not raised by the Appellant as an element of her appeal at any stage. It was for the Appellant to provide evidence as to how her HIV+ status might affect her children on return, and for any such point to be developed in submissions, foreshadowed in the skeleton argument if the First-tier Tribunal judge was required to decide any such question. The Appellant's solicitors are experienced specialists in the IAC's jurisdiction and there was no evidence to indicate that her appeal (such as it was) had not been fully prepared. There was no error of law by the judge here.
13. As to the claimed threat to the Appellant from a previous partner in Nigeria, Mr Parkin accepted that it was not a strong argument. The finding that the Appellant was not a credible witness was sufficient to dispose of that claim entirely, requiring no examination of other viable alternatives such relocation as well as the sufficiency of protection.
14. Neither of the children are qualifying children. The judge addressed their position in substantial and entirely sufficient detail: see [48ff] of the determination. There was nothing

else to factor in when the evidence showed that their mother the Appellant was in good health and able to look after her children in a cultural context with which the Appellant was familiar.

15. Thus in the end the submissions advanced for the Appellant in the onwards grounds of appeal amounted at best to disagreement with the very experienced judge's decision. The tribunal finds that the onwards appeal has no proper basis and that there was no error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 6 June 2019

Deputy Upper Tribunal Judge Manuell