



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01845/2019

### **THE IMMIGRATION ACTS**

Heard at Field House  
On 22<sup>nd</sup> July 2019

Decision & Reasons Promulgated  
On 28<sup>th</sup> August 2019

#### **Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

#### **Between**

MS K F  
(ANONYMITY DIRECTION MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

#### **Representation:**

For the appellant: Ms K Wass, Counsel, instructed by David Benson,  
Solicitors.

For the respondent: Ms S Cunha, Senior Presenting Officer

### **DECISION AND REASONS**

#### **Introduction**

1. The appellant is a national of Nigeria born in July 1981. She is from the Aruba tribe and is a Muslim. She is educated to degree level.
2. She came to the United Kingdom on a number of occasions from 2007. She was arrested in October 2017 for using a French passport

so that she could work. She was sentenced to 6 months imprisonment on 2 November 2017 .

3. She made a claim for protection on the 24th November 2017. The claim was she fears that her family and former partner will subject her to FGM against her will and that he will be forced to marry.
4. She gave an account of how she and her twin sister were taken by their uncle in September 2007 to his village and FGM was performed on her sister. The appellant said she was detained for several months. She managed to avoid FGM happening to her. She subsequently came to the United Kingdom, joining her then partner. She returned to Nigeria on a number of occasions since. Her claim was refused on 29<sup>th</sup> January 2019. The respondent did not accept the claim was true.

#### The First tier Tribunal

5. Her appeal was heard before Judge of the First-tier Tribunal Reid at Taylor House on 27 March 2019. In a decision promulgated on 10 April 2019 it was dismissed. The judge said that on the chronology the appellant and her twin sister were 26 years of age when taken by their uncle. This was considerably older than the norm for FGM according to the country information. The judge noted the high rate of FGM amongst her tribe albeit it was more widespread amongst the Christian community. The judge did not find it plausible that at the age of 37 the appellant would now be at risk of FGM. The appellant had said this occurred with all the members of her family including her aunt who now lived in London. This was irrespective of age. The judge commented that her aunt did not attend the hearing nor was there a statement from her.
6. The judge questioned why FGM was performed on her sister and not her. There were discrepancies in the timelines given as to whether or not she was detained by her family before or after the procedure was proposed.
7. The judge pointed out the appellant was able to apply for a visit Visa in 2008 but did not leave Nigeria immediately. She also returned to Nigeria in 2009 for a visit.
8. In support of her claim she produced a death certificate attached to an email eight days before the appeal. The certificate said that her sister died as a result of FGM; having been unwell as a consequence for 12 years. The judge was critical of the absence of confirmation from the hospital as to the cause of death, bearing in mind the principles of Tanveer Ahmed IAT 2002.
9. The judge referred to the timing of the claim, pointing out it was made over 12 years after the claimed events which she said made

her leave Nigeria and which she claimed to still fear. The claim was made only after she was arrested and convicted for using the French passport.

10. The judge also rejected her claim of being forced into marriage. She said the relationship had ended in 2011 and her then partner had not been in direct touch with the appellant since. At the time of hearing she had been in a relationship with another Nigerian since 2015.

### The Upper Tribunal

11. Permission to appeal was granted on the basis it was arguable the judge had taken the appellant's delay in claiming protection as the starting point in the assessment of her credibility. It was also arguable the judge erred in the consideration of events in September 2007 and in the assessment of the death certificate produced.
12. The respondent has filed a rule 24 response opposing the appeal. It was contended that the judge was entitled to find the appellant's credibility damaged by the circumstances of her claim: being made only after her arrest in 2017. In any event this was not the only adverse credibility points taken. The appellant's credibility was in issue and the assessment of this was a matter for the judge.
13. Ms Wass at hearing said the main thrust of the appeal related to how the judge considered section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The remaining grounds were not argued in detail.
14. On the section 8 point the judge began with a heading 'Findings' at paragraph 25 and in the following paragraph referred to the appellant's delay in claiming under the heading 'Timing and circumstances of the appellant's application for asylum'. She submitted that the judge had therefore taken this delay as a starting point in the assessment of credibility. I was referred to JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878 where the Court of Appeal considered the application of section 8.
15. The First tier Tribunal in that appeal considered the question of credibility in considerable detail. The section headed "Findings of fact" began with a reference to Section 8 and went on to state that very serious damage has been sustained to the appellant's credibility by virtue of its operation. The Court of Appeal acknowledged that the First-tier Tribunal had conducted a very detailed assessment of matters relevant to credibility, other than section 8 matters, and the Tribunal did state that it was looking at the evidence in the round. The positioning of the section 8 reference

in the determination was not considered fatal. However, the court concluded that there was a real risk that section 8 matters were given a status of their own rather than being taken into account, as they shall have been, as part of a global assessment of credibility.

16. The Court of Appeal went on to consider the prescriptive nature of section 8. The court said that the sovereignty of Parliament had to be respected even in the context of the Convention. Section 8 could be construed in a way which did not offend against constitutional principles. It is not to be read as a direction on how the fact-finding should be conducted. Nor is it to be applied at the expense of an overall assessment. Section 8 factors are to be taken into account in assessing credibility and are capable of damaging it but the section does not dictate that relevant damage to credibility inevitably result. Section 8 is no more than a reminder to fact-finding tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility.
17. Ms Cunha continued to oppose the appeal. In preparing the decision the judge had placed the section 8 factors at the forefront of the decision. This related to how the decision was structured. However, the judge dealt with the substantive claim in detail. The judge had regard to the country information about FGM. The judge pointed to the typical age when this occurs and the fact the appellant was a Muslim amongst whom the practice was not so prevalent. The judge gave reasons for rejecting her claim about her uncle's actions. She submitted that the judge took into account all of the evidence and looked at matters in the round. The judge did not emphasise her delay in claiming.
18. In response, Ms Wass argued that the judge erred by starting consideration of the claim with the section 8 features instead of considering the overall claim.

### Consideration

19. Central to the appeal was the appellant's credibility. At paragraph 3 the judge sets out in detail the points taken in the refusal letter. This included reference to background information about FGM and the appellant's circumstances. Inconsistencies about the claimed threat from her former partner were referred to. There was the issue of her delay in making claim. The judge sets out the evidence at the hearing and the submissions from the representatives, including comment about the late production of a death certificate said to relate to her sister and the appellant's unawareness of her illness.
20. The judge sets out the conclusions from paragraph 26 onwards. The first point made relates to the delay and circumstances of the claim. I do not see any material error of law in the fact that this is at

the forefront of the decision. In preparing the decision the judge has to start somewhere and this was the most obvious point. If the decision is read as a whole this was only one factor taken by the judge in the overall assessment. The judge progresses to consider the account that she and her sister were taken by their uncle for FGM. This was a key episode in the claim. The judge considers this in detail.

21. The judge starts by considering the appellant's age when she claimed she and her sister were taken. The judge refers to the country information and noted that she was considerably older than the norm for FGM but that did not make her claim in plausible. The judge also had regard to her tribal and religious origins, alluding to the country information. The judge made the point however that the older the appellant was then the less plausible was her claim. This is a logical point bearing in mind the underlying reasons advanced for FGM.
22. The appellant had made the point that in her family FGM did occur at ages outside the norm. In support of this she referred to her aunt. The judge then made the point that her aunt was living in London and not been called as a witness to confirm this point.
23. The judge then refers to the claim of being taken away with her sister. There was a factual inconsistency in the account in relation to how long she was for and when FGM took place on her sister.
24. The judge then referred to her delay in leaving Nigeria even though she had a visit Visa obtained with the help of her then partner. The judge then commented on the fact that notwithstanding her claim of events in Nigeria she returned there. The judge then dealt with the claim that she continued to receive threats from family members after she came to the United Kingdom through her aunt. The judge then deals in detail with her claim about her sister's death. This is set out in paragraph 44 onwards. The judge then deals in detail with her account about her partner in the United Kingdom. The judge turns to her current situation and the prospect of return to Nigeria.
25. It is clear from the decision that the judge has carefully analysed the issues arising. Before reaching a conclusion the judge has had regard to a multiplicity of factors. The judge has not been blinkered by the sole fact of delay but has given numerous reasons justifying the finding that the appellant was not credible and her removal was justified. The judge did not specifically emphasise section 8 albeit the circumstances and delay were significant factors.
26. The other points raised in the application for permission were not argued at hearing. In any event, I find no substance in them. I find the judge dealt directly with the evidence in relation to the appellant

sister. My conclusion is that no material error of law has been demonstrated.

Decision

I find no material error of law established in the decision of Judge of the First-tier Tribunal Reid. Consequently, that decision dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly.

Date: 27 August 2019