Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08076/2018**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 21 December 2018	**On 15 February 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EBO
(ANONYMITY DIRECTED)

Respondent

Representation:
For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)
For the Respondent: Mr J Dingley (Legal Representative)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which it made following a hearing of 10 September 2018 and which it sent to the parties on 19 September 2018; whereupon it allowed the claimant's appeal from the Secretary of State's decision of 11 June 2018 refusing to grant her international protection.

2. The claimant was granted anonymity by the tribunal. The tribunal did not explain why it was doing so but it seems to me one of its key considerations must have been a perceived need to protect the privacy of the claimant's three minor children. Nothing was said about anonymity

before me but, in the circumstances, I have decided to maintain the status quo and to continue the grant of anonymity.

3. Shorn of all but essential detail, the background circumstances are as follows: The claimant, who was born on 19 October 1981, is a national of Nigeria. She has, as already noted, three minor children, two of whom are male and one of whom is female. She had made a previous unsuccessful claim for asylum but, in November 2017, submissions were sent to the Secretary of State, on her behalf, seeking international protection on asylum grounds on the basis that if she were to be returned to Nigeria she would be at risk there at the hands of her former partner and that her daughter would be at risk of being subjected to female genital mutilation (FGM). The Secretary of State, however, did not believe the claimant had given a truthful account and thought that neither of the risks she claimed would arise. Further, the Secretary of State thought that there would be a sufficiency of protection and, even failing that, there would be the availability of an internal flight alternative within Nigeria.

4. Unlike the Secretary of State, the tribunal concluded that the claimant had given a credible account of events. It accepted that she would be at risk at the hands of her former partner, that domestic violence was a widespread problem in Nigeria and that her daughter would be at risk of being subjected to FGM. The tribunal concluded on my reading (see below) that there would not be a sufficiency of protection and that it would be unreasonable or unduly harsh to expect the claimant and her three children to relocate, as a family unit, within Nigeria. As to all of that it said this:

> " 33. I find that her account is consistent with the objective evidence of widespread gender discrimination against women and ineffective enforcement of laws preventing domestic violence. The Home Office COI on Women in Nigeria Fearing Gender-based Harm of Violence dated August 2016 recorded that domestic violence against women is widespread, underreported and often considered socially acceptable. Regardless of their level of education respondents indicated that they did not want to report cases of domestic violence to the police citing police mishandling and cultural inhibition. The US State Department Country Report noted that the police often refused to intervene into domestic disputes blamed the victim for provoking the abuse.
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> 34. Furthermore, despite requests from the Appellant, the Respondent has not provided any indication about [the ex-partner's] immigration status. Her account that he married a British woman and has children appears to be borne out by the Cafcass Safeguarding Letter which refers to enquiries made of the police force in Maidenhead where he was living that revealed that his ex-partner, with whom he has two children, had contacted the police in 2016 reporting that she was at risk of honour-based violence, and that she had found out that he was already married with another family. This woman had given information that he works as a healthcare professional. Taking account of this, I find it reasonably likely that he had acquired leave to remain in the UK and therefore can travel between this country and Nigeria.
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> 35. I accept that [the ex-partner] would become aware if the Appellant and the children were returned to Nigeria because of the ongoing Children Act proceedings and bearing in mind his previous violence and abuse I find that she would be at risk from him and his family if she is returned to Benin. I am not convinced that her daughter is at risk of FGM; the Appellant is an intelligent and resourceful young woman and I would expect that if [the ex-partner] and his family attempted to take the child or harm her that she would put cultural sensitivities aside and avail herself of the protection from the authorities. However, in the context of the family court in this country having made an FGM Protection Order, and applying the lower standard of proof, I find that the Appellant's daughter is at risk.
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> 36. I do not accept that the Appellant's ex-partner and his family have the influence or power to trace her and the children wherever they may live in Nigeria. There is no cogent evidence that he or his family have the means or ability to trace her throughout the vast country of Nigeria. Whilst I accept that it would be unreasonable for her to move to the Muslim north of the country she has lived and worked in Lagos in the past and as an intelligent, educated woman I find that if she was returning by herself it would be reasonable for her to relocate within Nigeria.

> 37. However, she is responsible for three small children, and there is some evidence that her eldest son has already been adversely affected by the problems between his parents. I must give prime consideration to the welfare of the children, although to some extent this is an academic exercise because in granting 2½ years discretionary leave to remain, the Respondent has already presumably accepted that EX.1 of the Immigration Rules has been satisfied in relation to the eldest child. The Appellant has been out of employment in Nigeria for many years and her license to practice as a midwife has now lapsed. I accepted that it would be hard for her to find work to support herself and the children. The eldest child has now lived in the UK for over seven years and the two younger children have known nothing other than life in the UK. I accept that without family support it would be unduly harsh for the Appellant and her children to internally relocate within Nigeria."

5. The appeal was thus allowed. But that was not the end of the matter because the Secretary of State sought permission to appeal contending (I paraphrase and summarise) that the tribunal had erred through making inconsistent findings as to whether or not there would be a sufficiency of protection for the claimant's daughter with respect to the risk of FGM; through failing to carry out a sufficiently holistic assessment regarding internal flight and instead focusing in that context only upon what might be in "the best interests of the children"; and in making perverse or irrational findings. The granting Judge relevantly said this:

> " 2. The grounds assert that the First-tier Tribunal Judge made contradictory findings of fact, finding both that there would be a sufficiency of protection for the appellant on return in relation to the risk to her daughter of FGM and that she would nevertheless be at risk. It is argued that having found that the appellant would be able to avail herself of protection, the appellant should not be found to have a well-founded fear of persecution. It is further argued that the Judge applied the wrong test when determining that internal relocation would be unduly harsh for the appellant. It is submitted that the Judge looked at the best interests of the children and the fact that they had leave to remain here rather than focusing on the circumstances in Nigeria. It is further submitted that the Judge made contradictory and irrational findings in relation to sufficiency of protection and her ability to find employment on return.
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> 3. It is arguable that the First-tier Tribunal make contradictory findings in relation to sufficiency of protection at [35] for the reasons set out in the grounds. Whilst the Judge was correct to consider the best interests of the children in considering whether they could internally relocate I do not refuse permission in relation to the ground that the Judge's findings on internal flight were contradictory."

6. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law in making its decision. Representation at that hearing was as stated above and I am grateful to each representative. But the hearing was a short one. Mr Diwnycz, for the Secretary of State, said that he would not seek to go beyond what was stated in the written grounds. He did not seek to amplify them or elaborate upon them. He accepted that the grounds as expressed did not contain a challenge to the tribunal's conclusion that the claimant herself would be at risk on return. I did not find it necessary to trouble Mr Dingley.

7. As I informed the parties at the end of the hearing, I have concluded that the tribunal did not make an error of law. I accept that paragraph 35 of the tribunal's written reasons (set out above) could have been more clearly worded. But it is necessary to read the tribunal's written reasons as a whole. It clearly found at paragraph 35, notwithstanding any risk to the claimant's daughter, that the claimant was herself at risk, at the hands of her former partner, on the basis that he had been violent towards her in the past and would be so again. There was an issue as to his location but the tribunal accepted that he would become aware of it if she were to be returned to Nigeria and it must have been finding, though it did not say so in terms, that he would track her down. The tribunal did not actually say, in terms, that it was finding the authorities would not provide her with a sufficiency of protection with respect to the risk from the former partner. But it can be inferred without very much difficulty, given what it had to say about what the background country material

indicated, that there would not be such a sufficiency of protection. It must have regarded that as being established from the matters it mentioned at paragraph 33 such that it did not need to effectively repeat itself as to that point at paragraph 35. So, once that is realised, it matters not whether what it said about the risk to the daughter or the sufficiency of protection from that risk to her was contradictory or not. The claimant had succeeded herself irrespective of the position of her children.

8. Additionally and in any event, whilst what the tribunal had to say with respect to the availability of protection for the claimant's daughter was somewhat unclear, I infer that what it was intending to say was that there was a risk of her being subjected to FGM; she would in response to such a risk seek the protection of the authorities (which is not to say that they would afford such protection); but that applying the lower standard such protection would not be available. But even if I am wrong about that it does not matter because of what has been found with respect to the risk to the claimant.

9. Moving on to the other grounds, I do not accept that the tribunal focused solely upon the interests of the children when assessing internal flight at paragraph 37 of its written reasons. Its consideration as to internal flight was succinct but, nevertheless, sufficiently holistic. It was open to it to take into account the difficulties the claimant herself would have in finding employment given that her licence to practice as a midwife had lapsed and that she would have to combine any employment with the task of supporting and looking after her children. That was an important consideration. It was open to the tribunal to conclude that internal flight would be unduly harsh for the reasons it gave. As to the contention that the tribunal had made perverse or irrational findings, Mr Diwnycz accepted that there was a high threshold and he did not, in fact, say anything by way of seeking to persuade me that it had been reached in this case. But anyway, I do not detect the difficulty with the findings that is suggested in the grounds. As I have explained, I have taken the view that although paragraph 35 as expressed is a little confusing, what was said was not contradictory when properly understood. The tribunal was not saying that the fact the claimant would have to look after her children when relocating to a different part of Nigeria meant that she would somehow lose her skills and intelligence which would be relevant to her ability to seek employment. Rather, it was saying that notwithstanding her skills and intelligence the task of finding employment would be more difficult through her having to look after those children. There is nothing at all irrational or perverse about that.

10. For the above reasons then, I have concluded that the tribunal did not make an error of law. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Decision

The First-tier Tribunal did not make an error of law. Accordingly, its decision shall stand.

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the claimant or any of her family members. Failure to comply may lead to contempt of court proceedings.

Signed: Date: 28 December 2018

Upper Tribunal Judge Hemingway