Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13689/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 28 September 2018	**On 8 January 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

CA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard, instructed by Fountain Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant CA, was born in 1980 and is a female citizen of Nigeria. Following a number of applications to remain in the United Kingdom, the appellant applied for asylum in April 2017. She has three dependent children living with her in the United Kingdom. By a decision dated 8 December 2017, the appellant was refused international protection. She appealed to the First-tier Tribunal (Judge Bart-Stewart) which, in a decision promulgated on 14 June 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Although he did not formally withdraw any of the grounds, Mr Howard, who appeared for the appellant, made oral submissions only on Ground 3 of the grounds of appeal. This ground concerns Article 8 ECHR outside the Immigration Rules and the application of *MA (Pakistan) [2016] EWCA Civ 705.*

3. I shall deal briefly with the grounds challenging the decision on asylum and Article 3, ECHR grounds. The grounds have no merit. Before the First-tier Tribunal, the appellant claimed that her children would suffer FGM (female genital mutilation) upon return to Nigeria. The grounds of appeal to the Upper Tribunal claim that the judge had "inadequately considered the vulnerabilities that the appellant's children have" and assert that the appellant, who is Yoruba, is from an area of Nigeria where the prevalence of FGM is 50%. I find that the judge has carried out an exhaustive analysis of the asylum and Article 3 grounds. She found that Articles 2 and 3 were not engaged [50]. She did not accept that the appellant's family would cause harm to the children [48]. There is no evidence that the appellant's son would be subjected to forced marking [44]. Insofar as the grounds of appeal challenge the asylum and Article 2/3 findings, I conclude that they are without merit.

4. Mr Howard dealt exclusively in his submissions with the remaining ground of appeal on Article 8, ECHR grounds. Of the appellant's three children, her eldest child has been living in the United Kingdom for more than seven years and is therefore a "qualifying child" for the purposes of Section 117 of the 2002 Act (as amended):

5. Neither Section 117B(6) nor *MA (Pakistan)* impose an absolute bar upon the removal of a "qualifying child" from the United Kingdom with his or her family. Such a removal is subject to the test of reasonableness. The grounds of appeal as drafted inaccurately state [3.4] that the judge had erred "in the assessment as to why it would be reasonable to expect the appellant's children to leave the United Kingdom." What is said in the grounds is inaccurate because only one of the children is a "qualifying child" and in addition the ground is little more than a bare assertion that the judge had not carried out a proper analysis. In his submissions, Mr Howard elaborated upon that somewhat inadequate ground. He submitted the starting point in the appeal should be "strong reasons" (see *MA (Pakistan)*) and that more than had been stated by the judge in her decision was required to justify the removal of a qualifying child. He submitted that the judge's analysis had "started in the middle" rather than with the balance at the outset shifted towards the appellant on account of the fact that her child was a "qualifying child."

6. Mr McVeety, for the Secretary of State, submitted that there was a strong public interest in the removal of the appellant who had arrived in the United Kingdom on a visit visa and never returned. He submitted that the judge's decision could not be characterised as perverse; it was a decision available to her on the evidence.

7. I agree with Mr McVeety. The judge has commenced her analysis with the correct statement that the eldest child qualifies under Section 117B(6) of the Act [51]. Her analysis adopts a proper staged approach as provided for in *Razgar* [2004] 0027 UKHL. She notes [55] that the appellant and her husband had entered the United Kingdom together and have remained unlawfully for ten years. Further, they had chosen to start a family knowing that their status was unlawful and they continue to "grow their family after the husband's various claims were refused and in full knowledge that they had no right to remain in the UK." As regards the children themselves (including the eldest child) the judge records that they are Nigerian nationals and that their best interests are met by remaining with their parents. They had no separate claim to remain in the United Kingdom. There is a functioning healthcare and education system in Nigeria. Significantly, the judge found that the children are "not at an age where they would have strong ties outside the family." Indeed, I cannot see that any evidence was put before the judge to suggest otherwise. The judge also cites *EV (Philippines)* [2014] EWCA Civ 874 at [58-60]:

> "In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?
>
> On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.
>
> That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

8. Judge Bradshaw concluded it was "entirely reasonable for the appellant's children to relocate with their parents to their country of nationality which is Nigeria. The decision is not a violation of Article 8, ECHR".

9. As I have noted above, the decision which the judge made was available to her in law and on the facts as she found them. She has provided strong and cogent reasons for reaching the decision which she has achieved. Another judge, faced with the same facts, may have come to a different

decision but that is not the point. The Upper Tribunal should hesitate before interfering with a First-tier Tribunal decision where a judge has considered all the relevant evidence, has left out of account irrelevant matters, has applied the law accurately and has judicially exercised a discretion available to him or her. I find that that is what has occurred in this instance. Mr Howard did not seek to suggest that the judge's only option, on the facts, had been to allow the appeal. It follows from that, if the judge's decision was not perverse, it is only susceptible to successful challenge on the basis that the judge has carried out a flawed analysis of the evidence. I find that that is not the case for the reasons I give above. I have not concluded that the judge has erred in law for the reasons asserted in the grounds or at all.

Notice of Decision

10. This appeal is dismissed.

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 their 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 28 November 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 28 November 2018

Upper Tribunal Judge Lane