IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03395/2020**

THE IMMIGRATION ACTS

Heard at Bradford Via Teams
On the 16th March 2022

Decision & Reasons Promulgated
On the 31st March 2022

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

AEB
(ANONYMITY DIRECTION MADE)
Respondent

Representation:
For the Appellant: Ms Young, Senior Home Office Presenting Officer
For the Respondent: Ms Cleghorn

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1986 and is a female citizen of Nigeria. She entered the United Kingdom in December 2019. By a decision dated 29 May 2019, the respondent refused the appellant international protection and the appellant appealed to the First-tier Tribunal, which in a decision promulgated on 3 March 2021, allowed the appeal on human rights (Article 8 ECHR) grounds but dismissed it on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal. The appellant has not challenged the asylum decision.

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2. The appellant is in the United Kingdom with her child (A) born in 2017. A suffers from cerebral palsy, epilepsy, delayed global development and visual impairment.

3. The first ground of appeal concerns the appellant's relationship with her husband. The respondent submits that the judge has made inconsistent and unfounded findings. At [13], when discussing the asylum appeal, which was based on a claimed fear that family members in Nigeria would circumcise A, the judge found that 'it is difficult to see why the appellant could not return to Nigeria with her husband and with the support of her husband and all of the other family members prevent Child A being circumcised…' However, at [16] the judge found that 'the appellant's relationship with her husband has broken down' and that it was 'highly unlikely' that 'the appellant and A 'will receive any support from A's father … in the event of them returning to Nigeria.' At [23], addressing A's medical problems, the judge found that 'nobody would be available in Nigeria to provide emotional, practical and financial help to the appellant and A'. The respondent submits that those findings are not consistent and also that there was no basis in the evidence for the finding that the marriage of the appellant and her husband had broken down.

4. Addressing that last submission, Ms Cleghorn, who appeared for the appellant, referred me to the appellant's witness statement in which she recorded that she and her husband are 'estranged'. As regards the other apparently inconsistent findings, she submitted that the respondent had conflated two separate matters; it had been possible for the judge to find that the husband would protect A from FGM whilst he would not otherwise help the child whose medical problems would be characterised in Nigeria society as evidence of demonic possession.

5. I am not persuaded by Ms Cleghorn's submissions. Any reader of the judge's decision and, of course, the parties in particular need to be able to understand the reasoning on which the decision has been founded. If the judge wished to make the finding that the husband would support the appellant to extent that he would prevent A from undergoing FGM but would otherwise shun A and her mother because of A's medical conditions then she should have done so expressly, giving reasons to explain what *prima facie* are contradictory positions for the husband to adopt, rather than to expect the parties to infer that was what she had found. I am less troubled by the finding regarding the breakdown of the marriage. There was evidence for the estrangement of the appellant and her husband and it was, perhaps, not unreasonable for the judge to conclude that, following the estrangement, the marriage had ended. However, that finding makes the judge's remarks about the husband's support in preventing FGM and indeed 'returning to Nigeria' with the appellant and A all the more problematic. In my opinion, the judge's findings are sufficiently confused to vitiate the her decision. Having said that, the appellant has not chosen to challenge the asylum outcome and I therefore see no reason to disturb that part of the decision.

6. I find that there is merit in the remaining grounds also. The Article 8 ECHR analysis is deficient in two respects. First, the judge fails to explain at [23] why the removal to Nigeria of the appellant and A together would amount to interference with their family life given that they would continue to enjoy that family life in Nigeria. In so far as Article 8 ECHR is engaged in the appeal, it is the private lives of the appellant and A that are relevant, not their family life and there is force too in the respondent's submission that the judge (wrongly) appears to treat A as a Qualifying Child under Nationality, Immigration and Asylum Act 2002 which she is not. The judge cites *EV (Philippines) [2014] EWCA Civ 874* at [27], noting that the 'ultimate question' is whether 'it is reasonable to expect the child to follow the parent with no right to remain to the country of origin.' However, by considering the circumstances of the appellant and A in terms of their family, rather then private, life, she has failed to answer the question.

7. Secondly, at [24], the judge finds that A requires 'the significant intervention of medical and health care professionals' but leaves the reader to assume that she means professionals in the United Kingdom; she makes no attempt to consider, if only to reject, the possibility that A may receive treatment in Nigeria. Ms Cleghorn submitted that the error was not material as the CPIN and other evidence indicated that provision of services to treat A in Nigeria was wholly inadequate. That may be the case but I do not consider that the judge is excused from analysing the evidence of medical provision in Nigeria and making findings simply because she considers that any readers of her decision are bound to share her own assumptions about the standards and availability of medical care in Nigeria.

8. For the reasons I have given, I find that the decision of the First-tier Tribunal should be set aside. I dismiss the appeal on asylum grounds. In respect of Article 8 ECHR, there needs to be a fresh fact-finding exercise given the failure of the Tribunal to make clear findings of fact. That exercise is better conducted in the First-tier Tribunal to which this appeal is returned for that Tribunal to remake the decision following a hearing. None of the findings of fact as regards Article 8 ECHR shall stand.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

I dismiss the appellant's appeal on asylum/Article 3 ECHR grounds.

The appeal on Article 8 ECHR grounds is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing.

Signed

Date: 16 March 2022
Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.