IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001918
UI-2023-001871
UI-2023-001919
UI-2023-001872
UI-2023-001920
UI-2023-001873

First-tier Tribunal No: PA/52043/2022
PA/52043/2022
PA/51901/2022
PA/51902/2022
PA/51901/2022
PA/51902/2022

THE IMMIGRATION ACTS

Decision Issued:

11th January 2024

Before
UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

(1) M E
(2) S E
(3) E E
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr B Bundock, Counsel instructed by Barnes, Harrild and Dyer solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 20 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellants, likely to lead members of the public to identify the Appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellants appeal against the decision of First-tier Tribunal Judge Cohen dated 24 April 2023 ("the Decision"), dismissing on protection grounds their appeals against the Respondent's decision dated 9 May 2022 refusing their protection and human rights claims. Although Judge Cohen dismissed the appeals on protection (asylum and humanitarian protection) grounds, he allowed the Appellants' appeals on human rights (Article 8 ECHR) grounds. So it is that we have before us also cross-appeals by the Secretary of State against the allowing of the appeals on that basis. We refer to the parties as they were before the First-tier Tribunal.

2. The facts of these cases are largely uncontroversial and can be shortly stated. The Appellants are a mother and two daughters, nationals of Nigeria, who have been in the UK since 2012, having overstayed their visit visas. Previous applications to remain have been unsuccessful. The Appellants had previous appeals dismissed on human rights grounds in 2019 by First-tier Tribunal Judge Gibbs ("the Previous Appeal Decision").

3. On 19 August 2020, the Appellants claimed asylum. Their claims are predicated on a risk that, on return to Nigeria, the Second and Third Appellants would be subjected to female genital mutilation ("FGM"). Although both are now adults, it is said that they would still be at risk from the family of the First Appellant's former husband.

4. Judge Cohen rejected that claim largely on the basis that there would be no risk due to the effluxion of time and that in any event there is a sufficiency of protection in Nigeria or the option to relocate internally to Nigeria (in particular to Lagos) to avoid any risk. Judge Cohen accepted however that there would be very significant obstacles to integration in Nigeria (applying paragraph 276ADE(1)(vi) of the Immigration Rules – "Paragraph 276ADE") based mainly on the Appellants' mental health and lack of ties with Nigeria. The Judge therefore dismissed the appeals on protection grounds and allowed the appeal on human rights grounds.

5. Both parties have appealed the Decision. We take their grounds in turn.

6. The Appellants appeal the dismissal of their appeals on protection grounds on five grounds headed as follows:

Ground one: failure to consider the particular risk claimed by the Second and third Appellants.

Ground two: unlawful finding as to sufficiency of protection in Nigeria against FGM.

Ground three: unlawful approach to the evidence of the Appellants' expert.

Ground four: failure to adopt findings made in the Previous Appeal.

Ground five: irrational finding in relation to internal relocation.

7. The Respondent appeals the allowing of the Appellants' appeals on human rights grounds on four grounds summarised as follows:

   Ground one: inadequacy of reasons when departing from findings in the Previous Appeal Decision.

   Ground two: failure to consider the ability of the Appellants to integrate in Nigeria against the background of their situation in the UK.

   Ground three: making of contradictory findings in relation to impact of mental health problems on ability to integrate.

   Ground four: failure to carry out an assessment under Article 8 ECHR having regard to section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B").

8. Permission to appeal was refused to both parties by First-tier Tribunal Judge Bartlett on 18 May 2023 in the following terms so far as relevant:

> "..4. The appellants make numerous submissions which include but are not limited to a submission that the FTTJ's findings about internal relocation are inconsistent with the findings on human rights. Whilst there is some merit for the submission that there is an inconsistency because not all elements of the internal relocation test were considered, it is plain that this was not a material factor in the decision given the other findings that the appellants faced no risk and they were not credible in their claims. The other submissions are not more than a disagreement with the FTTJ's decision. The appellants' application for permission to appeal does not disclose an arguable error of law.
>
> 5. I find that the respondent's submission that the FTTJ misapplied Devaseelan is misplaced as the FTTJ sets out sustainable reasons for departing from the previous Decision. The respondent submits that the FTTJ failed to consider the fact that the appellant were not at risk of FGM and consider the expert evidence in this context when assessing the appellants' mental health issues. I find that this is not an arguable error of law. The FTTJ clearly sets out the reasons why mental health is considered important such as an overdose attempt and consideration of sectioning.

> 6. I find that there is no arguable error of law."

9. Both parties renewed their applications to this Tribunal on essentially the same grounds. Permission to appeal was granted on both applications by Upper Tribunal Judge Macleman on 14 July 2023 in the following terms so far as relevant:

> "..3. As to the appellants' renewed application, it is arguable that the tribunal failed to deal with distinct claims advanced by the 2nd and 3rd appellants, and there is arguable inconsistency between the findings on internal relocation and on integration.
>
> 4. As to the SSHD's renewed application, ground 2 qualifies for debate on the adequacy of underpinning for the FtT's conclusion on ability to integrate. This overlaps with ground 3 on whether the findings are self-contradictory. These matters, in turn, feed into ground 4 on the weight to be given to private life, applying section 117B.
>
> 5. The other grounds, from both sides, are not excluded.
>
> 6. The respondent is directed, within 14 days of the date this decision is issued, to state whether it is agreed that there was evidence and submissions on matters which the 2nd and 3rd appellants say were overlooked. The appellants may also wish to provide a copy of their record. Pending responses, I do not find it necessary at this stage to obtain a recording, judicial record or transcript of the hearing."

10. The matter comes before us to consider whether the Decision does contain errors of law. If we conclude that it does, we then have to consider whether to set it aside in consequence. If we do so, we either have to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

11. We had before us a multiplicity of bundles filed by the parties. In considering the parties' submissions, we were referred to a bundle prepared for the hearing before us by the Appellants and filed on 12 December 2023 ([AB/xx]) and an amended bundle also prepared by the Appellants and filed on 19 December 2023 ([AB2/xx]). We also had a rule 24 response filed by the Respondent dated 29 November 2023 and a helpful skeleton argument filed by Mr Bundock for the Appellants and dated 13 December 2023. That covers both the Appellants' grounds and the Appellants' response to the Respondent's grounds.

12. Having heard submissions from Mr Bundock and Mr Tufan, we indicated that we found there to be an error of law disclosed by the Appellants' grounds and would reserve our decision in relation to the Respondent's grounds. We indicated that we would set out our reasons for finding an error in writing and would at the same time provide our decision and reasons in relation to the Respondent's appeal. We therefore now turn to do this.

DISCUSSION

Appellants' grounds

13. We take the Appellants' grounds in the order of Mr Bundock's submissions.

Ground One

14. The Appellants contend that the Judge failed to consider an issue raised by them in relation to the Second and Third Appellants. It is said that those Appellants gave evidence that they would wish to marry and have children but would not do so if returned to Nigeria out of fear of FGM. Mr Bundock submitted that the background evidence showed that marriage and pregnancy were trigger points for the carrying out of FGM. As such, this raises an issue based on the case-law in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 ("HJ (Iran)").

15. Mr Bundock directed our attention to a witness statement of Mr Ronan Toal of Counsel who represented the Appellants before Judge Cohen which itself contains his note of part of the evidence given ([AB2/54-64]). That note clearly shows that the Second and Third Appellants were asked questions about their intentions to marry and have children and clearly gave evidence that they would not marry or have children for fear of FGM ([AB2/56 and 61]).

16. It was on this issue that the Respondent was directed by Judge Macleman to indicate whether it was agreed that the issue was raised and dealt with in evidence. Although not dealt with in the Respondent's Rule 24 response, Mr Tufan emailed the Tribunal and Appellants on 18 December 2023 conceding that the issue was raised in submissions. It was also accepted by him that Judge Cohen failed to deal with this issue in the Decision.

17. Mr Tufan submitted however that this error was not material because it was speculative as to the intentions of the Second and Third Appellants and that they could choose to marry someone opposed to FGM.

18. We indicated that we rejected Mr Tufan's submission in relation to materiality. Even if it may be open to a Judge to reject the evidence of the Second and Third Appellants for the reasons given by Mr Tufan or for other reasons, that does not mean that Judge Cohen did not err in failing to consider that issue. The HJ (Iran) principle is clearly relevant to the protection grounds raised and the Judge's failure to consider and determine that issue is therefore a material error.

Ground three

19. This ground focusses on the Judge's consideration of the evidence of the Appellants' country expert, Ms Adaobi Nkeokelonye, PhD. The expert's lengthy report dated 9 January 2022 ("the Country Expert Report") is to be found at [AB/59-148]).

20. As Mr Bundock pointed out, the Judge's analysis of the Country Expert Report is limited to one reference at [38] of the Decision where he says this:

> "I note that the appellants have submitted an expert report in support of their appeal. This however accepts the appellant's submissions at face value including of threats being made to them in the UK. The report acknowledges that there is a limited risk in Lagos. I do not find that the report significantly advances the appellant's claim before me."

21. Judge Cohen did summarise the Country Expert Report at [21] of the Decision as follows:

> "The expert report indicated that the appellant's accounts were consistent with objective evidence concerning Nigeria. There was still a real risk of the appellant's in-laws wishing to undertake FGM on her daughters and of them seeking harm to the appellant's [sic] upon return due to their resistance to the same. The authorities did not offer effective protection. The appellant could not realistically relocate within Nigeria to another area. The appellant's [sic] would be significantly disadvantaged by the fact that they had no family members who could support them upon return and no male protector. Unemployment was a significant issue and the appellants would be unlikely to be able to obtain employment and support themselves upon return. The previous immigration Judge was misconceived in respect of the conclusions that he reached. The appellant had provided a credible and consistent account which was in accordance with the objective evidence. FGM was widely practised in Nigeria. There are records of forced circumcisions on adult women in the country. FGM was widely practised in Delta State. The appellant's lack of knowledge of that state was not unusual. It was accepted that the appellants would be at risk at the hands of the appellant's ex-husband upon return."

22. Mr Bundock submitted that elements of what the expert is said to have recorded were inaccurate, suggesting that the Judge had not properly considered the Country Expert Report.

23. Mr Bundock first pointed out that the expert had clearly stated that it was beyond her remit to verify the truth of the Appellants' accounts (see in particular §151 at [AB/106]). In any event, he pointed out that the Appellants' factual accounts were largely unchallenged ([13] of the Decision where the Judge records the Respondent's acceptance of the Appellants' account that their ex-husband/father wished to subject them to FGM).

24. Mr Bundock also submitted that the expert had never referred to threats being made to the Appellants in the UK. That was not the Appellants' case. Their case was that there had been contact from

paternal family members via Facebook from which they had inferred ongoing interest. It was not said that threats had been made.

25. Mr Bundock also set out in detail at [17(d)] of his skeleton argument the evidence of the expert which had not been considered and which was relevant to the Appellants' protection case. That included evidence about gender inequality in Nigeria, whether the passage of time would lessen risk, the effect of the age of the Second and Third Appellants on risk, cultural norms and sufficiency of protection (which crosses over with the ground challenging the Judge's finding on that issue).

26. Mr Bundock also pointed out that the Country Expert Report did not say that there was a limited risk of FGM in Lagos. The closest one comes to any distinction based on geographical location is a comment at §163 ([AB/109]) that FGM is more prevalent in urban areas than in rural areas. Although Mr Bundock accepted that there is reference at §204 of the Country Expert Report to the establishing of gender help desks by police in Lagos, that paragraph goes on to say that these are ineffective for victims who are told to go home to settle what are seen as family issues. Mr Bundock also drew our attention to the Respondent's Country Policy Information Note entitled Nigeria: Female Genital Mutilation (FGM) (version 3 dated July 2022) ("the CPIN") at [AB/754-813] and the table at [AB/782-3] which shows that 23.7% of women in Lagos had experienced FGM.

27. In summary, Mr Bundock submitted that the Country Expert Report cut across all the issues including sufficiency of protection, the impact of the passage of time and internal relocation. As such, the Judge's failure to deal adequately with this evidence was an error which impacted also on the Appellants' other grounds.

28. Other than reference to §204 of the Country Expert Report (with which we have dealt above) and a repetition of the Judge's findings at [38] of the Decision, the Respondent's Rule 24 has little to say about this ground. The only point made by Mr Tufan in response to this submission was that the Appellants' own evidence did not show that FGM was a general, societal problem and that the figure of 23.7% did not indicate whether these were forced FGMs. However, once again, he accepted that the Judge had not considered this evidence.

29. For those reasons, we accept that the Appellants' third ground is made out.

Ground four

30. This ground turns on Judge Cohen's treatment of the Previous Appeal Decision applying the Devaseelan guidance.

31. At [33] to [35] of the Decision, Judge Cohen said this:

> "33. I note the findings of the previous Immigration Judge. Whilst that was in a human rights claim, the issues that the appellant claims to fear as part of her asylum claim, are identical to those raised and considered in respect of the human rights claim. I therefore find that the previous Immigration Judge's findings are of relevance in respect of my determination. The previous Immigration Judge noted that no attack had been made on the appellant's credibility but found that the appellants did not have a current well-founded fear of persecution upon return to Nigeria.
>
> 34. I note that the appellants claim that an approach was made to them utilising Facebook from an anonymous source since they were in the UK. The second and third appellants' evidence concerning this claim was vague in the extreme. The claimed threats came a significant period of time ago. There is no evidence to substantiate this claim and I disbelieve it. I note that the appellants remained in Nigeria between 2003 and 2012 without any attacks being made upon them or any significant attempt made in order to carry out FGM on the second or third appellants. I do not find it credible that the appellant's ex-husband's family would seek to carry out any such threat some 20 years after the appellant's ex-husband separated from the first appellant.
>
> 35. I find the fact that the appellants were able to remain in Nigeria for nine years following the separation without any significant contact from the appellant's husband's family to be indicative of the fact that there is no real prospect of the appellant suffering persecution or a breach of their human rights at the hands of the appellant's ex-husband upon return to Nigeria."

32. The Previous Appeal Decision of First-tier Tribunal Judge L K Gibbs dated 20 January 2019 appears at [AB/1104-1112]. It is pointed out that at [8] of the Previous Appeal Decision, Judge Gibbs was "satisfied that the family of the first appellant's ex-husband (the father of the second and third appellants) want the second and third appellants to undergo FGM" but found that there would not be a risk on return as the family would not discover that the Appellants had returned to Nigeria.

33. The Appellants' short point under this ground is that Judge Cohen failed to give adequate reasons for departing from Judge Gibbs' finding about the wishes of the family of the Appellants' ex-husband/father.

34. Taken alone we would not have found an error under this ground. Judge Cohen has had regard to Judge Gibbs' finding that the Appellants would not be at risk on return but has given his own reasons for finding that the risk had been overtaken by the passage of time. It was open to him to do so.

35. However, we have accepted that the Country Expert Report has some relevance to the point about risk due to the effluxion of time and we find an error made out by the Judge's failure to have regard to that report when reaching his findings as to the reduction of risk over time.

Ground two

36. We observe that none of the above errors whether taken together or separately could be material if it were open to the Judge on the evidence taken and considered as a whole to find that there is a sufficiency of protection against FGM in Nigeria or that the Appellants could move elsewhere in Nigeria to avoid the risk they claim.

37. Sufficiency of protection is the subject of the Appellants' ground two. Judge Cohen dealt with this issue and internal relocation at [32] of the Decision as follows:

> "Therefore, taking the appellant's claim at its highest, the appellant fears her husband's family members upon return to Nigeria. The appellant has not raised a claim of those family members having any significant influence in the country. Having regard to the objective evidence contained in the country information and guidance report version 3.0 published in August 2016 entitled Nigeria: Women fearing gender-based harm or violence I note that a number of laws exist to protect women against violence ad have been strengthened by the Violence Against Persons (Prohibition) Act 2015. This shows a determination to tackle violence against women, provide stiffer penalties for a number of gender-based offences and make it easier for women to seek recourse and protection. It is acknowledged that laws were often not effectively implemented in practice. The police force however is working with other agencies to improve its response and attitude to gender-based violence. It is concluded that in general the Nigerian authorities are willing and able to provide protection from non-state agents. A person's reluctance to seek protection does not mean that effective protection is not available. The onus is on the person to demonstrate that the state is not willing and able to provide them with effective protection. In the appellant's case, this has not been done. The appellant has not provided any compelling argument as to why she would be unable to seek the protection of the authorities in Nigeria, where FGM has been ruled illegal or of the authorities failing in their duty or ability to offer sufficient protection to the appellant and her daughters. I note, from the country policy and information note, Nigeria: Female Genital Mutilation, that less than half of women in Nigeria have undergone FGM and the evidence suggests that the practice is declining. There are however regional variations. Different factors including religion, ethnicity and education influence the prevalence of the practice. In general, effective state protection is likely to be available. FGM is unlawful in Nigeria. Implementation of the law is uneven. There is no indication of a general inability or unwillingness of the state to provide effective protection. The onus is on the person to demonstrate that in their particular circumstances the state is not willing and able to provide them with effective protection. If a person is at real risk of FGM in their home area, in general they will be able to relocate to another part of Nigeria where they would not be at risk and in general, it would not be unduly harsh for them to do so. In the light of these factors and noting the objective evidence I find that effective protection exists for the appellant in Nigeria, and I find that her asylum claim is bound to fail for this reason."

38. The Appellants' second ground is in effect a submission that the Judge failed to take into account relevant considerations/evidence and as such that his finding that the Nigerian state is able and willing effectively to protect is irrational.

39. We do not accept that the Judge was not entitled to find that there is sufficient protection merely because laws are not effectively implemented on a regular basis. The Judge took that factor into account. We accept that it may not be a rational reason for finding sufficiency of protection that less than half of women have been subjected to the practice of FGM, but it is certainly relevant that there is evidence that the practice is declining.

40. We accept however that it was relevant to this issue that there has not been a single prosecution of FGM perpetrators as disclosed by the CPIN. The Judge did not take account of that factor. Nor did the Judge say what he made of evidence in the CPIN that the police often treat FGM cases as family affairs and refuse to intervene for that reason (§2.5.7 at [AB/764]). As we have already noted when dealing with the Appellant's third ground, the Judge failed to take into account what is said in the Country Expert Report about the level of state protection. The Appellants refer in particular to paragraphs 91 and 201 of that report at [AB/88 and 116]. We accept that the Judge has therefore failed to take into account relevant evidence when reaching his finding that there is sufficient protection in Nigeria.

41. Of greater significance is the fact that the Judge took it upon himself to refer in this regard to an out-of-date country information report which was not put before him by either party. The Judge referred at the start of [32] of the Decision to a 2016 country information report. The Appellants point out that this had been withdrawn and replaced by the CPIN which was put in evidence before Judge Cohen. Judge Cohen did not apparently invite submissions on this older country information report and there appears to have been no reason for him to rely on that in circumstances where a more recent version was made available to him.

42. Mr Tufan accepted that the Judge should not have done this. That is also accepted in the Rule 24 response. It is however also pointed out that the Judge did also refer to the CPIN. However, as we have already noted, the Judge did not take into account all relevant evidence from the CPIN.

43. We accept it was procedurally unfair for the Judge to rely on evidence not put before him by the parties and to which they could not have known that he would refer. Moreover, that evidence was out-of-date and had been replaced by the CPIN. Whilst we accept that the Judge has had some regard to the CPIN, it is difficult to ascertain what parts of his reasoning rely on outdated evidence, and which are based on the CPIN. In any event, we accept that the Judge failed to have regard to

relevant evidence when assessing the sufficiency of protection. Accordingly, the second ground is made out.

Ground five

44. We have already set out the Judge's findings in relation to internal relocation as those appear in the final sentences of [32] of the Decision. As the Appellants' fifth ground points out, having reached the finding that the Appellants could return safely to Lagos, the Judge simply failed to apply the case-law in relation to internal relocation before reaching the conclusion that it would not be unduly harsh for them to relocate there.

45. There is some crossover in this regard with the Respondent's grounds of appeal. As is pointed out in the Appellants' ground five, the analysis carried out by the Judge when considering whether there would be very significant obstacles to integration in Nigeria is in part at least the assessment which he should have conducted when considering internal relocation. That assessment led to a positive conclusion in the Appellants' favour.

46. The Judge dealt with the issue whether there would be very significant obstacles to the Appellants' integration (under Paragraph 276ADE(1)(vi)) at [50] of the Decision as follows:

> "The respondent went on to consider the appellant's application under rule 276ADE of the Immigration Rules. The appellant has not resided in the UK for 20 years or more. She is not a minor. The appellant lived for the majority of her life in Nigeria. She is a 50+-year-old woman. However, the appellant has significant physical health problems. She suffers from arthritis and other physical elements. She has received significant medical input in the UK and is on the waiting list for an operation. She previously engaged in petty trading. I do not find that she is capable of returning to Nigeria and finding any form of significant employment, being able to fund accommodation or supporting herself or her daughters. The appellant's daughters both have mental health issues. This is particularly the case for the third appellant. She has in the past expressed suicidal ideation. She has taken an overdose. She was close to being sectioned. She has developed a physical health issue involving vomiting which her doctors believe is related to a mental health problem and has no physical cause. The psychiatric report indicates that she would suffer a significant deterioration in her mental health if returned to Nigeria. I do not find that the second or third appellants could return to Nigeria and find work or integrate into a country that they have not lived in for over a decade. I find that in the light of the appellants' personal circumstances that they would upon return become destitute and I find that they have lost all links with Nigeria. The appellants have no close family members remaining in Nigeria upon return who could offer them support or accommodation. The appellants have been supported by close friends and church family in the UK. I do not find that it would be reasonable to expect these parties to support the appellants upon return to Nigeria. I find that the appellants have no remaining links

> with Nigeria and find that the appellants would face very significant obstacles to their integration into Nigeria upon return."

47. We can deal with the Appellants' fifth ground very shortly. The factors set out in the second part of that paragraph were clearly relevant to whether the Appellants could internally relocate within Nigeria. The Judge therefore failed properly to apply the law which applies to that issue by ignoring those factors at [32] of the Decision. Mr Tufan rightly did not seek to suggest otherwise.

Conclusion on Appellants' grounds

48. We find that there is an error of law in the Judge's determination of the appeals on protection grounds (which relates to both the Refugee Convention and humanitarian protection claims although the latter is unlikely to be determinative of these appeals). There is some overlap between the grounds. We find an error on all grounds.

49. It follows that we set aside [30] to [47] of the Decision which contain the Judge's finding on protection grounds. We discussed with Mr Bundock whether we should preserve the Judge's record of the evidence at [19] to [27] of the Decision. However, we agree with him that this is not appropriate as that section includes the Judge's record of the Country Expert Report which we have accepted is not entirely accurate.

50. We agreed also with Mr Bundock's submission that the appeals should be remitted irrespective of our view of the Respondent's grounds. As he pointed out, we have accepted that there was some procedural unfairness. All the evidence which is mainly concerned with the protection grounds will have to be revisited for the reasons we have given. Accordingly, there are a number of factual findings which will need to be made even if the Appellants' claim has been accepted in large part by the Respondent.

Respondent's grounds

51. The Appellants' appeals were allowed in the main based on the Judge's findings that there would be very significant obstacles to the Appellants' integration in Nigeria (see [51] of the Decision). We accept that the Judge did go on to consider the human rights grounds under Article 8 ECHR. However, although he has perhaps not explained as clearly as he might have done at [56] of the Decision why he found that the Appellants' removal would not be in the public interest in maintaining effective immigration control, as the Appellants succeeded under Paragraph 276ADE(1)(vi), any failure to have proper regard to Section 117B could not be material. Put another way, Section 117B has no part to play when determining whether Paragraph 276ADE(1)(vi) is met. That disposes of the Respondent's fourth ground.

52. The Respondent's other three grounds can be taken together as all concern the Judge's reasoning when reaching the conclusion that Paragraph 276ADE(1)(vi) was met.

53. We do not consider the Respondent's second ground to be made out. There is a difference between the Appellants' situation in the UK and that which pertains in Nigeria, particularly in light of their claimed fear of FGM. That the Appellants may be able to cope in a foreign country notwithstanding their health issues but with the support of organisations here does not translate to the considerations which apply when looking at their ability to integrate in Nigeria, particularly in light of their protection claim. The two assessments are different.

54. We had thought that due to the overlap between the Appellants' ground five and the Respondent's grounds of challenge to the conclusion that Paragraph 276ADE(1)(vi) is met, we might need to set aside [50] of the Decision in any event. We were however persuaded by Mr Bundock that this was not the right way to look at the overlap. As he pointed out, if the Appellants are right that the considerations set out in [50] of the Decision should be applied equally to the issue of internal relocation, then they should succeed on both aspects. We do not have to set aside the favourable findings at [50] of the Decision and nor do we have to set aside the allowing of the appeal on that basis.

55. However, having carefully considered the Respondent's other two grounds (grounds one and three) we consider those to be made out.

56. Ground one concerns the application of the Devaseelan guidance. The Previous Appeal Decision dates from early 2019. The hearing before Judge Cohen took place about four years later.

57. Judge Gibbs dealt with the Paragraph 276ADE(1)(vi) issue at [12] to [15] of the Previous Appeal Decision as follows:

> "12. Further, I am satisfied that the first appellant has shown herself to be a resilient and resourceful person. She brought her two children to the UK (the second appellant was thirteen and the third appellant was eighteen) and she has ensured that they have been educated in this country and has made a home for them despite none of them having status. I am also satisfied that she has previously worked in Nigeria and there is no evidence before me that she could not re-establish her business. She also would have less responsibility as her daughters are now both adults.
>
> 13. I find that the second appellant has attended secondary school and college in the UK and has achieved numerous qualifications all of which I am satisfied she will be able to use in order to pursue further studies or obtain employment in Nigeria. Her sister, the third appellant has also had the benefit of education in the UK and has achieved numerous qualifications that she too can utilise on return to Nigeria.

> 14. Although I acknowledge that the second and third appellants have developed ties in the UK the fact remains that they have lived for the majority of their lives in Nigeria. I find that the evidence before me of their hard working attitudes is something that will give them an advantage when they return to Nigeria and they will have the support of their mother whilst they re-adjust to life there. Whilst I understand that all of the appellants would prefer to live in the UK I am not satisfied that there is sufficient evidence before me that they would face very significant obstacles to integration on return to Nigeria.
>
> 15. Further, given their circumstances as I find them to be I am satisfied that, on the balance of probabilities, were they to encounter any threats from the first appellant's ex partner's family (and I am not persuaded that they will) they could access police protection. I am not therefore satisfied that the appellants meet paragraph 276ADE(1)(vi) of the Immigration Rules."

58. Whilst we accept that the Appellants' circumstances may have changed in the four years between the appeals and that these appeals also and principally raise protection grounds, we also accept the Respondent's point that the findings in the Previous Appeal Decision ought to have formed the starting point for Judge Cohen's assessment of the Paragraph 276ADE(1)(vi). He needed to provide reasons for departing from the earlier findings which were on the same ground albeit we accept somewhat different evidence.

59. Mr Bundock suggested in his submissions that Judge Gibbs in the Previous Appeal Decision had not made findings about Paragraph 276ADE(1)(vi) because that was conceded. However, we can find no such concession on the face of the Previous Appeal Decision and the fact remains that Judge Gibbs did make findings that Paragraph 276ADE(1)(vi) was not met. We accept his point that there was evidence before Judge Cohen which was not before Judge Gibbs such as three psychiatric assessments. Those could give Judge Cohen a reason to depart from Judge Gibbs' findings. They did not however give him a reason not to take into account the earlier findings as a starting point. We therefore consider the Respondent's first ground to be made out.

60. The Respondent's ground three argues that there are contradictions between the Judge's findings and within the evidence.

61. At [53] of the Decision, the Judge said this about the Appellants' health issues:

> "I have found above that there are significant compassionate circumstances in respect of the appellants cases. I find that the first appellant suffers from significant physical health issues. I find that the third appellant in particular suffers from significant mental health issues which manifest in a physical health problem. I do not find that the appellants could return to Nigeria, integrate into that country, find employment, find or fund accommodation or settle. I find that they would suffer a significant deterioration to their physical and mental

> health if returned, particularly in the case of the third appellant and I find that observing the effects upon her would have a detrimental effect upon the first and second appellants in turn."

62. The first point made by the Respondent is that there is an inconsistency between those findings and the Judge's conclusion that the Appellants could return to Nigeria when assessing the protection claim. As we have already noted, there is some overlap between this and the Appellants' fifth ground but does not mean that we should find this ground to be made out.

63. Although not pleaded as such, however, we accept that there is some overlap with the Respondent's first ground as the Judge has failed to take into account in his findings the findings in the Previous Appeal Decision.

64. Finally, we also accept the Respondent's point regarding the psychiatric evidence. It is pointed out for example that the psychiatric reports conclude that the Second and Third Appellants would not be able to work on return to Nigeria but record that both have successfully studied in the UK ([22] of the Decision). It is also pointed out that the medical evidence (to be found at [AB/149-168], [AB/311-332] and [AB/545-568]) relies in large part on what is made of the claims to be at risk from FGM on return to Nigeria. As such, it is difficult to dissociate the human rights claim from the protection claim.

65. For those reasons, we find that the Respondent's grounds one and three disclose errors of law and it is for that reason also appropriate to set aside the Judge's findings on the human rights grounds and the allowing of the appeals on that basis.

CONCLUSION

66. We have found errors of law to be disclosed by both the Appellants' and the Respondent's grounds. For those reasons, we set aside the Decision in its entirety with no findings preserved. For the reasons we have already given, we consider it appropriate to remit the appeals to the First-tier Tribunal for re-determination. The appeals need to be reconsidered entirely afresh.

NOTICE OF DECISION

The decision of Judge Cohen dated 24 Aprill 2023 contains errors of law which are material. We set that decision aside in its entirety and remit the appeals to the First-tier Tribunal for re-hearing before a Judge other than First-tier Tribunal Judge Cohen or First-tier Tribunal Judge L K Gibbs (who determined previous appeals brought by the same Appellants).

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 January 2024