



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03116/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 6<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

A B  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Bandegani, Counsel; instructed by Luqmani Thompson

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Lewis dismissing her appeal against the decision of the Secretary of State of 16<sup>th</sup> March 2017 to refuse her claim for protection in the UK and her claim premised upon her human rights. The decision of Judge Lewis was appealed and permission was granted by Upper Tribunal Judge Reeds in the following terms:

“It is arguable that the findings made by the judge were inconsistent. At paragraph 42 it appears that the judge found her account to be broadly consistent and he previously found that she had been subjected herself to FGM. However at

paragraph 49, having made reference to other factors reached the conclusion that he was in 'some considerable doubt as to the truth of the narrative account'. It is arguably unclear as to what the judge accepted and what was rejected.

It is further arguable that in reaching the conclusion that there was no risk to the Appellant on return to Nigeria because her family were not present there, it fails to take into account the Appellant's evidence as to extended family remaining there and the factual account that she had been kept in Nigeria as part of the forced marriage process. It was also arguable as the grounds of paragraph 16 set out, that there was no assessment of risk of harm from her family or their contacts there despite having been held there.

Furthermore there was no assessment of here circumstances in Togo given that it appears to be accepted that she lived for the majority of her life in Nigeria.

I grant permission on all grounds."

2. I was not provided with a Rule 24 response from the Respondent but was given the indication that the appeal was resisted.

### **Error of Law**

3. At the close of submissions I reserved my decision which I shall now give. I do find that there is an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
4. As argued in the Grounds of Appeal at first blush there appears to be an inconsistency regarding the findings of fact from the First-tier Tribunal Judge (*cf.* §42 versus §50 of the decision). I am grateful to Mr Bandegani, who did not draft the grounds, but embellished upon them in a proper and correct fashion by accepting that there was no inconsistency in the judge's findings, however emphasising that the judge had made a finding at §50 that he 'cannot rule out the possibility that the Appellant has defied her father's wishes'. The criticism as I may then summarise it is that the judge ignored the risks from the extended family in Nigeria at §51 of his decision and only considered the threat from the direct family. In terms of the errors in the judge's decision they were identified by Mr Bandegani as follows, namely that, firstly, the judge had failed to take into account the extended family the Appellant has in Nigeria, secondly that the Appellant was kept in Nigeria for several months as part of the forced marriage process and thirdly, that the Appellant's father could freely travel to Nigeria as a national of that country, and finally that the father had retained contacts in Nigeria. This, as it was put, were fundamental aspects of the Appellant's case which were not visible in any global assessment of the risk to the Appellant applying the threshold of anxious scrutiny to the evidence.
5. Dealing with the first complaint, in terms of §51 it is true to say that the judge has observed that there is no pressure or threat thereof from the family in Nigeria however it is incorrect to suggest that there is no family there at all as the Appellant does have extended family in Nigeria as the evidence reflects. Details of this are rehearsed in §16 of the Grounds of Appeal wherein it is confirmed that the Appellant has only ever lived in Ibaden in Nigeria and was kept there as part of the forced marriage process.

It is also correct that there is no assessment as to whether she would be at risk of harm from her, or her ex-partner's, family or contacts there despite the fact that she was held there for some months previously while false representations were made to the authorities about her which indicates a level of sophistication and commitment from her and her ex-partner's family's contacts there.

6. Turning from there to the third complaint made it is plain by extension from that omission that there is no comprehensive assessment of the reasonableness of internal flight in Nigeria and the fact of her being kept for forced marriage purposes previously, as such the assessment of internal flight is incomplete and therefore these omissions do collectively reveal a material error in the judge's decision thus far.
7. In terms of the second and fourth complaints as summarised, it is true to note that the decision at §58(i) carries no assessment of the risk of a breach of Article 8 in terms of the Appellant's Convention rights on return to Togo, which is a material error given that the Appellant has as the judge observes, spent most of her life in Togo, and only a matter of months in Nigeria, which omission is compounded by the fact that there are no removal directions set for *either* country at present, and as such I accept that it was incumbent upon the judge to assess the risk on return in terms of Article 8 to *both* Nigeria and Togo as well. Given that this was a matter that that was the subject of written submissions (by way of skeleton argument) and oral submissions (by previous counsel in closing submissions), I do find that there is a further material omission which has rendered the Article 8 assessment incomplete and therefore erroneous.
8. Although I do not place weight upon it, I also note as a matter of formality that there is an omission to consider the trafficking and objective evidence contained in the supplementary bundle as well which was also the subject of submissions by previous Counsel.
9. Given the above findings and the failure to consider the risk that would emanate to the Appellant on return to Nigeria from the extended family as well as in terms of her internal relocation (and therefore sufficiency of protection from where she may relocate etc.), it is possible that the judge may have concluded differently upon the appeal had he considered these various factors in a comprehensive assessment of the matter at the close of his findings. Thus, I am just satisfied that material errors exist such that the decision is unsafe, particularly in the context of a protection claim and the threat of irreversible harm which must be assessed comprehensively, whether it is to be accepted upon remittal, or not.
10. In light of the above findings I set aside the decision of the First-tier Tribunal.

### **Directions**

11. The appeal to the Upper Tribunal is allowed.
12. The appeal is to be remitted to either Hatton Cross or Harmondsworth for a further hearing *de novo*.

13. Standard directions are to be given.
14. The appeal to be listed for three hours.
15. It is unclear at present how many witnesses will be called however I anticipate the Appellant will at least be called. If the instructed solicitors obtain instructions which would alter the time estimate they are encouraged to write to the resident judge at Hatton Cross or Harmondsworth to indicate any variation to the time estimate for the hearing which may affect the listing.
16. Furthermore, I do not have an indication at present as to whether an interpreter is required again, if the instructed solicitors do require an interpreter to be booked for the Appellant they are encouraged to write to the resident judge at the earliest opportunity to facilitate this logistical need.
17. No further directions are given.

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

18. 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

Deputy Upper Tribunal Judge Saini