**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/01425/2018

**THE IMMIGRATION ACTS**

| **Heard at Manchester CJC** | **Decision & Reasons Promulgated** |
|---|---|
| **On 27 June 2019** | **On 23 July 2019** |

**Before**

**DR H H STOREY**
**JUDGE OF THE UPPER TRIBUNAL**

**Between**

**M M S**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr M Schwenk, Counsel, instructed by Fisher Day Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. In a decision sent on 24 January 2019 Judge Williams of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Nigeria, against a decision made by the respondent on 3 January 2018 refusing her protection claim. The basis of her claim was that she would be at risk on return because the head of her husband's family, Pa Bello, was a powerful man who was a member of the Ogboni cult and had ordered her and her husband to bring her daughter, F, to him to be subjected to FGM. She now has two daughters who would face risk of FGM on return.

2. The judge accepted that Pa Bello existed and had been described in a newspaper report as "a strong finance yet notorious Godfather and staunch supporter of the former governor". The judge also accepted that the appellant herself had undergone FGM and that it was reasonably likely the appellant's niece had been "forcibly circumcised". However, the judge did not accept that the appellant or her daughters were at any risk of FGM or other adverse attention from family members or Pa Bello. In this context, the judge did not accept that the evidence established that the appellant's husband's family were linked with Pa Bello or that threatening letters purported to come from him were reliable.

3. The appellant's grounds, ably developed by Mr Schwenk, first contend that the judge's finding that Pa Bello was not in a family relationship with the appellant's husband's family represented an attempt to go behind the concession of the respondent that Pa Bello was both the head of the appellant's husband's family and has a political profile. Formally noting that the respondent no longer relied on his Rule 24 notice, Mr Bates accepted that the judge had indeed wrongly gone behind a concession regarding the role of Pa Bello made in the present and previous refusal decisions. Those letters are far from clear on this matter, but I think Mr Bates was right to take the view that there are passages in them which proceed on the assumption that Pa Bello's role was accepted. However, I am not persuaded this error material since, despite rejecting Pa Bello's involvement with the family, the judge went on to assess the appellant's claim on the basis that he had such a role. At paragraph 25 the judge set out a number of reasons for finding that, even assuming Pa Bello had threatened that the appellant's daughter would be forced by him and the family to undergo FGM:-

   (i) the appellant's daughter had been able to remain in the appellant's home area for over four years since the threat was made and had never made any attempt to circumcise F when he had had every opportunity;

   (ii) the appellant's husband's behaviour did not indicate that he had any concerns for F's safety from circumcision over this period; and the fact that both he and the appellant were educated and were opposed to FGM was likely to mean they would have acted (and would keep on acting) to ensure that;

   (iii) the appellant had been confident enough to leave F with her brother and sister-in-law and travel to the UK for two weeks in November/December 2009;

   (iv) the appellant felt it safe enough to attend a wedding with her husband's family in 2010 which she would not reasonably have done if she truly feared for her daughter;

(v) if as claimed Pa Bello had conducted a house invasion in February 2011, he would clearly have been able there and then to ensure FGM was carried out; and

(vi) if Pa Bello had actually wanted to inflict FGM on F, he would have acted to do so during her first 5 years (between 2007 to 2012) when most FGMs were carried out on young girls, not waited until she was older.

4. I consider these findings were reasonably open to the judge and were ones that were not based on a rejection of Pa Bello's involvement with the family.

5. It is argued in the grounds that the respondent had accepted that the husband's family had also harassed and threatened the appellant. That is the case, but I do not consider that the judge's above assessment failed to take that into account. The judge's essential point was that any threats made had not been acted on and did not demonstrate that the appellant and her daughter were at risk before they left, or that they would be (along with the second daughter) at risk now.

6. The appellant's grounds also take issue with the failure of the judge to attach significant weight to the accepted fact that the appellant's niece had been forcibly subjected to FGM or to the fact that F, since learning about this, had become very fearful that the same fate would happen to her. However, the judge plainly took into account the adverse experiences of the appellant's niece and was entitled for the reasons he gave, to conclude that the same fate would not befall her daughters. The judge was also clearly aware of the younger daughter's expressed fears, making reference in paragraph 26 to the 'Guardian' project report commissioned by the appellant's solicitors. It was clearly open to the judge to consider that the evidence as a whole indicated that, notwithstanding such fears, the appellant and her husband would be able to secure their daughter's safety.

7. Even if I had not found the judge's findings on the lack of real risk in the appellant's home area sustainable, I would still not have found any material error, in view of the fact that the judge went on to consider whether, in the alternative, the appellant and her family would have a viable internal relocation alternative. The judge stated at paragraph 31:

> "31. Fourthly, it would be reasonable for the family to internally relocate away from the appellant's husband's family in Akeokuta and Lagos (such as the Federal Capital Territory of Abuja, where the VAPP Act is effective – AB 291); having regard to the size of Nigeria/the large cities the family would not be discoverable and could re-establish themselves. The appellant is a Muslim which is the largest religious group in Nigeria. Moreover, the appellant speaks Yoruba and English. Both the appellant and her husband have work experience both in Nigeria and in the United Kingdom.

> The appellant's own relatives remain in Nigeria will be able to provide the appellant with emotional and practical support. Moreover, the appellant's parents are opposed to FGM and will be to provide a further level of protection. The appellant lived in Nigeria with her child without any harm and I am satisfied that the appellant's husband's family would not have the interest nor the ability or inclination to locate the appellant if her family returned to Nigeria."

8. Mr Schwenk, in amplification of the written grounds, argues that this finding and reasoning failed to grapple with the fact that Pa Bello had been accepted by the respondent to be a "Godfather" with power and influence and being a member of the Ogboni cult. The principal drawback to this submission is that the appellant failed to produce any evidence to indicate that Pa Bello, a non-state actor, had power or influence beyond the appellant's home area or that, if he did, the authorities in other parts of Nigeria could not provide sufficient protection against it. It was not for the respondent to prove that this man did not have such power and influence.

9. The appellant's grounds also challenge the judge's treatment of the appellant's and her children's Article 8 circumstances both under and outside the Immigration Rules.

10. One aspect of the judge's decision that is challenged is that the judge did not properly address the test of very significant obstacles. It is correct to say that when addressing the issue of very significant obstacles, starting at paragraph 39, the judge in fact concentrates on the reasonableness test. But Mr Schwenk has not identified any relevant factor going to the very significant obstacles test that the judge did not in fact address and evaluate, albeit in the course of assessing reasonableness. I see no legal error in this deficiency.

11. Insofar as Mr Schwenk appeared to suggest that the judge failed to factor into either the reasonableness or very significant obstacles tests the fact that the appellant had two daughters at risk of FGM, ignores that the judge had made clear findings that this was not the case.

12. The principal thrust of the appellant's grounds in relation to Article 8 tis hat despite (i) stating that he would assess the appellant's case on the basis that both children were de facto qualifying children (see paragraph 39); and (ii) despite properly noting that as a result "strong reasons" had to be shown for requiring the children to leave, the judge failed to identify any strong or powerful reasons. Mr Schwenk accepted that the judge was entitled to treat the existence of strong reasons as a cumulative exercise, but submitted that all of the factors identified were not "strong" or "powerful" but rather "run-of-the-mill". I cannot agree.

13. Firstly, the judge's approach was entirely consistent with the Upper Tribunal guidance given in **MT and ET** [2018] UKUT 88 (IAC).

14. Second, in paragraph 44 the judge properly considered a number of factors that indicated the existence of strong or powerful reasons: the parent's lack of immigration status taken together with the fact that it was in the children's best interests to remain with their parents; that the family would be returned as a unit; that the children had close relatives in Nigeria (including on their mother's side); that the children's lives, given their ages, were still mainly focused on their parents; that there were no health difficulties, that they speak English/Yoruba – widely spoken in Nigeria; and that the children will have the benefit of help from their parents in adapting to the educational system and cultural context of Nigeria.

15. In my view such factors taken cumulatively were clearly capable of operating as strong or powerful reasons and clearly sufficient to outweigh the accepted disruption, uncertainty and distress the family's return to Nigeria would cause the children (see paragraph 49).

16. Just because the appellant's immigration history was not particularly poor, did not mean that the judge was obliged to demote the considerations be applied to a lower level than "powerful" or "strong".

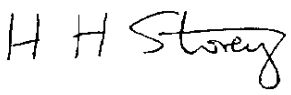
17. To say "no reasonable judge" could have taken the view the judge did is quite misplaced.

18. For all the above reasons I conclude that the judge did not materially err in law. Accordingly his decision must stand.

**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: 10 July 2019



Dr H H Storey
Judge of the Upper Tribunal