Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03161/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On the 17 August 2021	**On the 28 October 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OMO
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a female citizen of Nigeria born on 26 March 2019, appealed against a decision of the Secretary of State to refuse her application for leave to remain in the United Kingdom on protection or human rights grounds based upon a claimed fear that her in-laws will kill her and force her daughter to undergo Female Genital Mutilation (FGM).

2. The appellant's appeal against that decision was dismissed by a judge of the First-tier Tribunal but that decision set aside by Upper Tribunal Judge Rintoul in December 2019.

3. At a Case Management review hearing on 7 December 2020, held remotely, further directions were given for the hearing of this appeal leading to the matter coming before the Upper Tribunal today to enable it to substitute a decision to either allow or dismiss the appeal.

The Evidence

4. I have taken into account all the documentary and oral evidence provided in support of this appeal, including the appellant's written and oral evidence, the Entry Clearance Visa application form details, the proceedings issued in the Family Court in Manchester by the appellant seeking a FGM Protection Order (FGMPO), the report of the Social Worker confirming there are no real concerns about the care the appellant is providing for the children necessitating any statutory intervention to protect the children's welfare, and relevant country information.

5. Even if not specifically referred to below the content of all relevant evidence has been factored into the decision-making process.

Discussion

6. The appellant has three children including a daughter [HO] who was born in 2010 and who is the child the appellant claims is at risk of FGM.

7. The World Health Organisation defines FGM as 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons'. Although the procedure can be referred to by other terms, for the purposes of this decision it shall be referred to as FGM.

8. There are 4 types of FGM:
Female genital mutilation is classified into 4 major types:
'Type 1: Often referred to as clitoridectomy, this is the partial or total removal
of the clitoris (a small, sensitive and erectile part of the female genitals), and
in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).
'Type 2: Often referred to as excision, this is the partial or total removal of
the clitoris and the labia minora (the inner folds of the vulva), with or without
excision of the labia majora (the outer folds of skin of the vulva).
'Type 3: Often referred to as infibulation, this is the narrowing of the vaginal
opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).
'Type 4: This includes all other harmful procedures to the female genitalia for

non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

9. The most common types in Nigeria are Type 1 and Type 2.

10. The Convention reason is that identified in the respondent's current publication Country Policy and Information Note, Nigeria: Female Genital Mutilation, (FGM), Version 2.0, August 2019, as follows:

> 2.3.1 Women and girls in Nigeria, including those in fear of FGM, form a particular social group (PSG) within the meaning of the 1951 Refugee Convention. This is because they share a common characteristic – their gender – that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society as evidenced by widespread discrimination in the exercise of their fundamental rights.
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> 2.3.2 Although women and girls in Nigeria, including those fearing FGM, form a PSG, this does not mean that establishing such membership will be sufficient to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of their membership of such a group.

11. In relation to the prevalence of FGM in Nigeria it is written:

> 4. Prevalence of FGM in Nigeria
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> 4.1 Overview
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> 4.1.1 The statistical sources used in this CPIN stem primarily from two bodies of work, the first published in 2013 (National Population Commission - Nigeria Demographic and Health Survey of 2013) and the second in 2018 reporting on a survey undertaken for 2016-17 (The National Bureau of Statistics/United Nations Children's Fund (NBS/UNICEF), Multiple Indicator Cluster Survey (MICS), 2016-17). Both reports are widely cited by several of the sources used.
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> 4.1.2 It should be noted that as reported by UNICEF: 'Self-reported data on FGM/C need to be treated with caution for several reasons. First, women may be unwilling to disclose having undergone the procedure because of the sensitivity of the topic or the illegal status of the practice. In addition, they may be unaware that they have been cut or of the extent of the cutting, especially if FGM/C was performed at an early age. […] 'A key point to remember is that prevalence data for girls aged 0 to 14 reflect their current FGM/C status and do not reflect final prevalence for this age group.'
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> 4.1.3 In 2011, the prevalence rate for women aged 15-49 was 27% (UNICEF press release February 2019) 12. In 2013, that rate had dropped to 24.8% (Nigeria Demographic and Health Survey 2013) 13. In 2016/17, that rate had dropped further to 18.4% (MICS data).
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> 4.1.4 The National Bureau of Statistics/United Nations Children's Fund (NBS/UNICEF), Multiple Indicator Cluster Survey (MICS), 2016-17, February 2018 gave the following statistics: 18.4% of women aged 15-49 years report to have undergone some form of FGM/C. 25.3% of daughters aged 0-14 years report to have undergone some form of FGM/C.
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> 4.1.5 A UNICEF press release, 'Take action to eliminate female genital mutilation by 2030', dated 6 February 2019, stated: 'In 2015, world leaders overwhelmingly backed the elimination of female genital mutilation as one of the targets in the 2030 Agenda for Sustainable Development. This is an achievable goal, and we must act now to translate that political commitment into action. […] 'UNICEF and partners' interventions to ensure the elimination of FGM by 2030 has resulted in a break in the barrier against discussing FGM publicly. Religious leaders, community stakeholders and young people now speak out against this practice. Subsequently, last year, more than 309 communities publicly declared abandonment of the practice. '"Despite this decline, millions of girls

and women are still faced with the scourge of genital mutilation every year in Nigeria. There is, therefore, an urgent need for decision makers and political leaders to take concrete action towards ending the harmful practice of FGM in Nigeria", said Mohamed Fall, UNICEF Country representative.'

4.1.6 The 2013 UNICEF FGM Statistical Overview report categorised Nigeria as a 'moderately low prevalence country' for FGM with 27% of girls and women aged 15-49 having been cut and that 'In […] Nigeria, prevalence has dropped by about half [to 19%] among adolescent girls [15-19 year olds].'

4.1.7 Many in their 2018 report stated: '[…] 20 million women and girls in Nigeria have undergone FGM. This represents 10% of the global total. 'The highest prevalence is in South East and South West Zones.'

4.1.8 According to the 2013 NDHS [Nigeria Demographic and Health Survey] findings, 25% of Nigerian women are circumcised.

4.1.9 The 2019 UNICEF country profile report also noted that in Nigeria the prevalence of FGM varied significantly by state, and that almost eight out of ten adolescent girls who experienced the practice were cut before the age of five. Over half of girls and women and boys and men think FGM should stop and there is evidence of significant generational change in the prevalence of FGM in Nigeria as women aged 45-49 are more than twice as likely to have been cut than girls aged 15-19.

12. In relation to her claim to have been cut when a child, the appellant has provided a letter from her GP dated 13 June 2017 in which it is written:

"I can confirm that she was examined by a GP from a previous surgery on 18 November 2016 and I am writing this letter based on that consultation. The doctor has noted that O had female genital mutilation, which happened when she was 5 years old."

13. The summary of the appellant's claim for international protection set out in the Reasons for Refusal letter is in the following terms:

C. When your daughter was aged one, your in-laws brought up the issue of FGM being performed on your daughter. You told them you would not let your daughter "go through what I went through." (AIR Q39,40). Your in-laws began threatening to take your children and perform FGM on your daughter whether you were "dead or alive" (AIR Q43). The family continued to come to your house once a month and from 2013 they came "all the time". Your mother-in-law would often spend weekends in your house "AIR Q55,56).

D. Your mother spoke to your mother in law about this issue because she "is not happy about it" and your mother was humiliated by your in-laws (AIR Q45).

E. You did not report the threats from your in-laws to the police (AIR Q47).

F. You relocated to Lagos to avoid problems from your in-laws (AIR Q78). Your sister in law located you after three or four months and you fought. She used an iron to burn your hand (AIR Q78-81).

G. Your husband "did not know whether to side with me or his family" (AIR Q50). His indecisiveness caused him to relocate to the UK in 2012 (AIR Q82). His family disowned him for "not taking action over his daughter" (AIR Q21).

H You have not seen or spoken to your husband since 24 – 10 – 2016 (AIR Q21).

14. The appellant's claim was rejected by the Secretary of State for the following reasons set out in the Refusal Letter:

29. You claim that when your daughter was born in 2010, your in-laws told you that they would have FGM performed on her when she reached five years of age (AIR Q17,25). You claim that you told your in-laws that they could not

perform FGM on your daughter and they did not trouble you again about the matter until your daughter turned one (AIR 38,39).

30. You then stated that when your daughter turned one, your in-laws are brought up the issue of FGM being performed on her again. You told them that you would not let your daughter "go through what I went through" (AIR Q39,40). You claim that your in-laws began threatening to take your children and perform FGM on your daughter whether you were "dead or alive" (AIR Q43). The family continued to come to your house once a month and from 2013 they came. "All the time." Your mother-in-law would often spend weekends in your house (AIR Q55,56).
31. You were asked how your in-laws treated your daughter whilst you are in Nigeria and you stated, "I didn't let my children go to my mother-in-law whenever they came to visit. I always kept them in their room." (AIR Q95). You claim that even on the occasions when your mother-in-law stayed with you for a weekend, you are able to prevent the children from being left alone with her (AIR Q96). According to the account you have given, you were previously able to protect your children from your in-laws. In addition to this, your mother-in-law stayed with you and your children on a number of occasions but did not "take the children" as she had threatened. This does not demonstrate that your in-laws have the ability to, or interest in, taking your children from you and performing FGM on your daughter, when they had the opportunity to do so.
32. You claim that you relocated to Lagos to avoid problems from your in-laws (AIR Q78), however your sister-in-law located you after three or four months and you fought. She used an iron to burn your hand (AIR Q78-81). It is noted earlier in your asylum interview when you are asked why you believe your in-laws would kill you if you stopped your daughter from having FGM, he responded, "my husband's sister it was performed for her, for her daughter and her daughter died in the process, so his sister wants people to not allow any daughter not to go to the same process as well" (AIR Q59). This is inconsistent with your claim that your sister-in-law tracked you down, fought with you and burnt your hand with an iron, giving you previously claimed she was of the view that she did not want anyone to go through FGM.
33. When you appealed your previous asylum decision, you submitted what you claim are two threatening letters you received from your father-in-law. It is noted that one of the letters, 26 May 2014, it states "it is over three years now that you have been avoiding me just because I asked you to bring your daughter for circumcision as our tradition requires"(Letter form AAO). This is inconsistent with your claim that your in-laws "always come to my house in the form of paying me visits but they would make threats to me" (AIR Q55). Furthermore, it is considered inconsistent that your in-laws threatened you continuously for five years rather than actually carrying out their threats when they had ample opportunity to do so if they so wished.
34. The letters that you have submitted are photocopies are not originals, and it is not possible to verify who is actually written the letters, or how you are able to obtain the letters. It is noted that you made no reference to these alleged threatening letters in your initial SCR or AIR, therefore if you had these letters in your possession since you arrived in the UK it is unclear why you did not submit them at your SCR, AIR or prior to your initial asylum decision being made. Due to the above and taken in the round with your claim, little weight will be placed on them.
35. You claim that your husband did not know whether to side with you or his parents in relation to the FGM of your daughter, so he fled to the UK (AIR Q50,82,87). If your in-laws wanted to carry out FGM on your daughter, it is inconsistent that they did not take action on their threats, especially when your husband left the country, leaving you to look after two children alone.
36. You have submitted an FGM Protection Order from the Family Court at Manchester which you applied for against your husband, which states, "The Respondent is forbidden, whether by himself or by encouraging, assisting or agreeing with any other person whatsoever, from entering into any arrangements to the female genital mutilation or any preparatory acts of

female genital mutilation of [HO] or otherwise interfering with either directly or indirectly". It is noted that you, by your own account stated that your husband was unable to take either yours or his family's side on the FGM matter in Nigeria, showing he had no strong opinion that FGM must be performed. It is noted in your asylum interview that you stated you used to call your husband when he came to the UK to tell him how his family were treating you. You stated "he always told me that I should try and protect his children for him" (AIR 85). Further to this, you stated that you last spoke to your husband on 24 October 2016 and have had no contact since (AIR2 Q4), taking all of the aforementioned into consideration it is unclear why you then sort out and FGM protection order for your daughter, against your husband on 7 February 2017.

37. Your account is internally inconsistent, therefore it is not accepted that you have had problems with your in-laws and husband in relation to performing FGM on your daughter, and subsequent threats from in-laws.

15. In addition to the matters noted in the Refusal Letter, in her application for entry clearance for herself and the three children the appellant gave her home address details where she claimed to have lived for 4 years and 2 months as a property in Osogbo, Osun State, Nigeria.

16. The same address was given by the appellant as her last address in Nigeria in her SEF interview dated 27 March 2017 at question 10.

17. The relevance of this evidence is that Osun is an inland state in south-western Nigeria whose capital is Osogbo, not an address in Lagos, yet the appellant claims to have been in Lagos for 3-4 months (Q81 SEF) and to have relocated there to protect her children from the risk of FGM (Q78).

18. The appellant also claims she had to sell all her properties and close her business in order to use money to apply for a visa (Q101) but in her oral evidence claimed tenants were in the family home/property.

19. When it was put to the appellant by Mr Tan that her claim to have been forced to relocate to Lagos where she had been threatened by her sister-in-law was not true, based upon the evidence in relation to where the appellant told the Entry Clearance Officer (ECO) and confirmed in the SEF she actually lived in Nigeria, the appellant's attempts to persuade the Tribunal otherwise were wholly unconvincing.

20. There is merit in the submission of Mr Tan that the details provided in the Visa application form, relating to place of residence and economic activity, will have been checked by the ECO, especially in light of concerns regarding the prevalence of fraud by some applying to enter the United Kingdom from Nigeria. The printout of the Visa application details provided in the Home Office bundle clearly shows that the requisite checks were undertaken and that the Visa was issued as the ECO was satisfied that what had been claimed in the Visa application form was true. This will have included the appellant's stated permanent residential address and contact details in Nigeria.

21. It is also of note that in reply to question 22 of the Visa application form, following the provision of the permanent residential address and contact details in Nigeria at question 20, in which the appellant was

asked whether her preferred contact details differed from those given in reply to question 20, the appellant answered "no".

22. Whilst the appellant may at some point have travelled to Lagos as this may have been the point of departure through the international airport to fly to the United Kingdom, I do not find her claim to have had to flee there as a result of problems in her home area or to have been threatened by family members or otherwise whilst in Lagos is true even to the lower standard applicable in an appeal of this nature. The evidence does not support such a claim as identified in the Refusal Letter and above.

23. It is not disputed that FGM occurs within Nigeria, and even though the appellant's claim of what she asserts happened to her is not true and that she has not established a real risk on the basis of the claim it is still necessary to consider whether as she has a female child there will be a real risk of FGM on return from which the State will not offer adequate protection.

24. In relation to the differing regions in Nigeria it is written in the CPIN relating to FGM referred to above:

> 4.6 By region
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> The NBS/UNICEF, Multiple Indicator Cluster Survey (MICS), 2016-17, February 2018 shows the following data with regard FGM by region. For women aged 15-49 years the highest prevalence is shown in the South East and South West zones with 32.5% and 41.1% respectively, followed by South 23.3% and North West 19.3%. The lowest rates are found in the North Central 8.6% and North East 1.4%. Urban areas in Nigeria account for 23.4% of women who have undergone FGM compared to 15.6% in rural areas
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> 4.6.1 The same report demonstrates that for girls aged 0-14 years the highest prevalence is North West with 56%, followed by South West, North Central and South East with 21.6%, 16.1% and 12.7% respectively. The lowest rates are found in the South with 6.1% and North East 1.4%. In contrast to women aged 15-49 years, urban areas in Nigeria account for 20.5% of girls who have undergone FGM compared to 28.8% in rural areas.
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> 4.6.2 The report also breaks these zones down further into 37 states (see NBS/UNICEF, Multiple Indicator Cluster Survey (MICS), 2016-17).
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> 4.6.3 The 28 Too Many FGM in Nigeria Country Profile, largely using the Nigeria 2013 DHS figures, noted: 'Specific practices in relation to FGM and its prevalence vary across all regions, ethnic groups and religions in Nigeria. There is a variation in FGM prevalence according to place of residence, with 32.3% of women living in urban areas having undergone FGM, compared with 19.3% of women living in rural areas. There is also variation across Nigeria's six Zones and 36 states. South East and South West Zones have the highest prevalence (49% and 47.5% respectively). This is further evidenced by Ebonyi State in South East and Osun State in South West having the highest prevalence by state (74.2% and 76.6% respectively). North East is the Zone with the lowest prevalence, at 2.9%, and Katsina (in North West Zone) is the state with the lowest prevalence, at 0.1%.'
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> 4.6.4 However, the same report also notes the following on data reliability and regional prevalence: 'Prevalence by place of residence is not necessarily an indicator of where FGM is carried out, as a woman may have lived in a different area at the time she underwent FGM. This is particularly relevant in relation to the urban/rural split, as girls or women now living in urban areas may have undergone FGM in their

familial village and relocated upon marriage. […] In Nigeria, although the prevalence of FGM appears to be highest among the wealthier, better-educated women who live in urban areas, these same women are the least likely to have their daughters cut before the age of 15, which suggests a decline in the practice from generation to generation in these families. This same group of women is also most in favour of discontinuing the practice. Conversely, although the prevalence of FGM is lowest among poorer women with little or no education who live in rural areas, these women are more likely to have their daughters cut. In other words, this cohort is the most likely to continue the practice, and shows the highest level of support for the continuation of FGM.'

4.6.5 The 2013 Nigeria Demographic and Health Survey (DHS 2013) stated that 'Infibulation is more prevalent in Nasarawa, Kaduna, and Bayelsa than in other states.'

4.6.6 The same source further noted that: 'Thirty-two percent of urban women are circumcised, as compared with 19 percent of rural women. There are also urban-rural differences in the proportion of women who had cutting with flesh removed (65 percent and 60 percent, respectively). More women in the southern zones than the northern zones are circumcised. Osun has the highest prevalence of circumcised women (77 percent), followed by Ebonyi (74 percent) and Ekiti (72 percent); Katsina has the lowest prevalence (0.1percent). The practice of sewing the genital area closed after cutting is most prevalent in Nasarawa (22 percent), Kaduna (21 percent), and Bayelsa (20 percent).

25. The appellant's home area is in the south-west of Nigeria, one of the regions where the percentage of girls who are subject to FGM is higher than in other regions. Whilst the appellant was herself cut as a child it is clear that she does not agree with this happening to her daughter.

26. It is also clear that the appellant was able to afford to come to the United Kingdom, ran her own business in Nigeria, married into a family with connections, and stated in reply to AIR question 53 that her husband never mentioned that if they had a daughter, she will be expected to have FGM performed on her. The fear expressed by the appellant to Nigeria is from her in-laws.

27. The appellant claims to have had no contact with her husband, who is in the United Kingdom since 2016 yet the appellant is aware of his location as she confirmed in her evidence to the Tribunal that he had been served with the FGM Protection Order obtained from the Family Court in Manchester.

28. The recent decision of the Upper Tribunal of Re FGM - GW (FGM and FGMPOs) Sierra Leone CG [2021] UKUT 00108 (IAC) considered the existence of a FGM Protection Order, the headnote of which relating to the law and therefore of general application reads:

1) Under the Female Genital Mutilation Act 2003, as amended, a Female Genital Mutilation Prevention Order ("FGMPO") may be issued by a Family Court to protect against a domestic or extraterritorial threat of FGM.

2) Where a person ("P") seeks international protection in reliance on a threat of FGM in a country to which she might otherwise be lawfully removed, the fact that an FGMPO is made to protect P against such a threat is likely to be a relevant consideration in the assessment of P's protection claim. That is particularly so when the FGMPO has extraterritorial effect in the proposed country of return.

3) Where P is subject to immigration control, a judge sitting in the family jurisdiction cannot restrain the Secretary of State for the Home Department from removing P from the United Kingdom. That applies equally to FGMPOs as it does to other orders issued in family proceedings.

4) Neither the respondent nor a judicial decision-maker considering P's claim for international protection is bound by an FGMPO or by the judgment which precedes it. That decision has no precedential effect in the protection appeal: SSHD v Suffolk County Council & Ors [2020] EWCA Civ 731; [2020] 3 WLR 742.

5) Neither the FGMPO nor the judgment in the family proceedings provides a default position or a starting point, in the Devaseelan [2003] Imm AR 1 sense, for the assessment of the claim for international protection; and principles of judicial comity do not require a judicial decision-maker who is considering P's claim for international protection to reach the same findings of fact as the judge who made an FGMPO to protect P.

6) An FGMPO made in favour of P is, instead, a potentially relevant matter in the assessment of P's claim for international protection. To determine the weight which should properly be given to the FGMPO, a judicial decision-maker should consider:
   (i) the extent to which the Family Court's assessment addresses ('maps over') the same or similar factual issues to those considered in the protection appeal;
   (ii) the extent and the cogency of any reasons given by the Family Court for making the order; and
   (iii) the similarity of the evidence before the Family Court and the judicial decision-maker in the protection appeal.

7) Even in cases in which it is appropriate to attach significant weight to judicial assessment in the family proceedings of the risk of FGM in the proposed country of return, it remains for the judicial decision-maker in the protection appeal to consider whether there might be a sufficiency of protection or an internal relocation alternative in that country. In considering the former question, the existence of an extraterritorial FGMPO might in itself provide a measure of protection on return.

8) Where P seeks international protection in reliance on a risk of FGM and her claim is refused by the respondent, the fact that an FGMPO is subsequently made in P's favour is not a new matter for the purpose of s85 of the Nationality, Immigration and Asylum Act 2002.

29. In relation to the FGM Protection Order made in relation to this matter the terms of the order, made by a Family Judge having heard submissions from the appellant's solicitor and having read the appellant statement of 7 February 2017, and without notice to the appellant's husband (the respondent in the action), are in the following form:

1) If necessary leave is granted to the appellant to bring this application under Section 73 of the Serious Crime Act 2015/Female Genital Mutilation Act 2003
2) The Respondent is forbidden, whether by himself or by encouraging, assisting or agreeing with any other person whatsoever, from entering into any arrangements in relation to the female genital mutilation (female circumcision) or any preparatory act, female genital mutilation (female circumcision) of [HO] (13/11/2010) whether within this jurisdiction, or outside of it.

3) The Respondent is forbidden, whether by himself or by encouraging, assisting or agreeing with any other person whatsoever from removing or attempting to remove [HO] (13/11/2010) from the jurisdiction of England and Wales.
4) The Respondent is forbidden, whether by himself or by encouraging, instructing or assisting any other person whatsoever in this jurisdiction or outside it, from using or threatening violence upon, or intimidating, harassing, molesting or otherwise interfering with [HO] (13/11/2010) or otherwise interfering with either directly or indirectly.
5) Any passports or identity cards of [HO] (13/11/2010) shall be surrendered immediately to the Applicant's Solicitors on service of the order.
6) The Respondent is forbidden from applying for any new passport or other travel documents or identity card for [HO] from the UK HM Passport Office or from any other UK or foreign passport agency. Or any Nigerian passport agency.
7) The Respondent is forbidden from purchasing, counselling or procuring any tickets to travel for [HO] (13/11/2010) for travel outside of England and Wales. Any tickets to travel outside of England and Wales already purchased for [HO] (13/11/2010) must be surrendered forthwith to the Applicant's solicitors.

30. The order is said to remain in force until varied or discharged by the Family Court and is an order made on an enduring basis.

31. The appellant confirmed a copy of the order had been served upon her husband but there does not appear to have been any further proceedings and in particular no challenge to the order made or evidence filed resulting in a contested hearing in which the Family Court was required to assess the evidence and come to a judgement on any disputed facts supported by adequate reasons. The document seen by the Tribunal suggests that the only basis on which the order was made is on the content of the appellant's witness statement of 7 February 2017 and there being no challenge by the appellant's husband to the terms of the order and the restrictions it placed upon him.

32. What the order does, as it remains in force, is provide protection for the child HO both in the UK and in Nigeria. The appellant also claims she and her husband are separated with no evidence that he has any direct contact with or influence over the children's lives in any event.

33. The appellant claims if returned to Nigeria there is no effective protection from the State.

34. At section of CPIN: FGM at 6.4 it is written:

6.4 Protection - Enforcement and effectiveness of the law

6.4.1 The US SD Human Rights Report noted: 'Federal law criminalizes female circumcision or genital mutilation, but the federal government took no legal action to curb the practice. While 12 states banned FGM/C, once a state legislature criminalizes FGM/C, NGOs found they had to convince local authorities that state laws apply in their districts.'

6.4.2 EASO country guidance, Nigeria, February 2019, stated 'Federal legislation prohibits FGM/C of a girl or a woman and relevant state legislation is in place in several Nigerian states. However, no legal action to curb the practice is reported.'

6.4.3 The 2018 DFAT report stated: 'The federal government publicly opposes FGM, but it has not criminalised the practice [this statement conflicts with other information provided in this report with regard the VAPP Act 2015 which prohibits female circumcision, making it a federal offence]. The government has predominantly focused on public education campaigns run by the Ministry of Health. Some southern states, including Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers States, have criminalised FGM under state law. Several other

states are introducing similar legislation. Several international and local NGOs are also working to reduce the practice in Nigeria, including the World Health Organisation, United Nations International Children Emergency Fund and the African Union. 'DFAT assesses as credible advice from local sources that it remains extremely difficult for women and girls to obtain protection from FGM. Despite an increase in reports received by the Nigerian Police Force (NPF) and the National Human Rights Commission (NHRC), strong community support for the practice and traditional attitudes of police suggest FGM is likely to continue.'

6.4.4 The Organisation for Economic Co-operation and Development (OECD) Social Institutions and Gender Index, citing various sources, stated: 'Under the Violence against Persons Prohibition (VAPP) Act 2015, female genital mutilation (FGM) is prohibited, penalizing those who perform the act with varying lengths of imprisonment and a fine. Moreover, those who engages another to perform FGM may also be prosecuted. While the VAPP Act applies within the Federal Capital Territory, it still needs to be passed in each of the 36 States of the Federation in order to become national law. To date, some states have passed the VAPP Act, however others have not, particularly those where FGM is prevalent. Reportedly, 12 states have banned FGM including the Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers States.'

6.4.5 28 Too Many Nigeria: The Law and FGM', June 2018 and citing other sources noted that: 'Civil society is concerned that the law is not yet deterring the traditional cutters who rely on FGM to maintain their income and status in the community, and that the law will push the practice underground. It is also suggested that medicalised FGM, which the law does not directly address, is on the increase in Nigeria and there is an urgent need to engage key medical regulatory bodies such as the Nigerian Medical Association.'

6.4.6 Citing several sources OECD in 'Social Institutions and Gender Index', 2019, stated 'The government and local NGOs and women's groups have made efforts to raise public awareness about the health risks of FGM. Other states default to customary law where FGM is legal and widely practiced. Given the lack of uniformity in law, ineffective monitoring mechanisms of the practice, minimal penalties for practicing FGM and overall public lack of awareness of the law, FGM continues to be prevalent in the country.'

6.4.7 28 Too Many Nigeria: The Law and FGM', June 2018 and citing other sources noted that: 'The details of anti-FGM legislation are not yet widely known or understood by many, including local police, and the public generally do not generally have access to the law or justice stakeholders. A recent survey by a local NGO, Society for the Improvement of Rural People (SIRP), among its community of the southern state of Enugu, found that 95% of respondents had not heard of the VAPP Act. […] Where public information is available, it is not always translated into local languages. Anti-FGM projects are also hampered by a lack of enforcement of the law at the local level and the continuing challenge of violence against women across Nigeria. It is noted that the lack of both reported cases of FGM and information-sharing across the country is due to the reluctance of families to report FGM and risk going to court, and the absence of a centralised information-gathering and reporting system. Civil society identifies a need for local police and judiciary to be sensitised around anti-FGM legislation, but there are positive signs in some states where laws are in place; for instance law-enforcement agencies, including the police, the Nigeria Security and Civil Defence Corps (NSCDC) and Nigeria Immigration Services (NIS), have received training in Osun where FGM prevalence is highest at 76.6%.'

6.4.8 A Nigeria Observer News article from June 2016 noted: 'The Chief Judge while advising that emphasis be laid on sensitizing the people on the health implications of the practice however noted that the challenge of enforcement of the law stems from the fact that the practice is accepted by some traditions and customs as a rite of passage. '[…] the commissioner of Police, Edo State, Mr. Chris Ezike represented by DCP Walter Inyang rebuffed the allegation that the police had failed in arresting offenders of the FGM law. He stressed that the major reason the police were yet to either charge or convict anyone guilty

of FGM, was because there have been no reported complaints from anyone on the issue as the police cannot act in vacuum in such regard. However, there have been some claims that even where such incidents have been reported to the police in the past, they have been inclined to perceive such as issues within traditional domains that are better resolved without police intervention.'

6.4.9 The Freedom House 2018 Freedom in the World Report noted: 'Despite the existence of strict laws against rape, domestic violence, female genital mutilation, and child marriage, these offenses remain widespread, with low rates of reporting and prosecution.' This repeated their assessment from their 2016 and 2017 reports.

6.4.10 An Immigration and Refugee Board of Canada response to information request from January 2016 noted: 'The Regional Director for Africa of the ICRW [International Center for Research on Women] stated that "evidence of [the VAPP's] enforcement since it came into force has not yet emerged" and that "[t]he most significant impact [of the law] has been in the form of publicity"... According to the same source however, [c]riminalisation of entrenched cultural practices has its limitations. While legal safeguards are an important step towards ending FGM, they are not enough to eliminate it. Ending violence against women and girls requires investment, not just laws written in statute books.'

35. As noted in paragraph 6.4.4 above "12 states have banned FGM including the Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers States". Osun is the appellant's home state. Although it cannot be said there is yet a sufficiency of protection throughout the whole of Nigeria the appellant fails to establish a real risk of the children being subjected to FGM on return to her home area from which the authorities will not provide an effective means of protection in accordance with the Horvath principles. It is also the case that within her home area the appellant has her own family members, including her mother and brothers as indicated in her reply to questions asked of her in her asylum interview.

36. The appellant's claim that she fears her daughters will be subject to FGM as soon as they are return to Nigeria is a claim that has not been substantiated even to the lower standard of proof applicable to an appeal of this nature on the facts.

37. In relation to the question of internal flight, which would only be applicable if the appellant had established a real risk of harm in her home area, the appellant only claimed she could not safely return to a different part Nigeria as she fears that the head of the family will find them sooner or later.

38. The primary finding in this appeal is that the appellant has not established a credible real risk in her home area from which the authorities would not provide the required degree of protection. In the alternative, if the appellant did not wish to return to her home area it has not been made out there is no viable reasonable internal relocation to another part of Nigeria such as Lagos. Although the appellant has children she has family support in Nigeria, commercial experience, and has not established that her claims in relation to the core issues in this appeal are credible. This is particularly so in relation to the appellant's claim that she was tracked down by family members in Lagos and threatened prior to coming to the United Kingdom, which has not been found to be a credible claim.

39. Undertaking the necessary holistic assessment required in an appeal of this nature, applying the lower standard of proof, and accepting that the appellant may want to remain in the United Kingdom with the children, I do not find the appellant has established an entitlement to a grant of international protection on any basis. The appeal must therefore be dismissed.

Decision

40. I dismiss the appeal.

Anonymity.

41. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 23 September 2021