Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers:**
AA/02249/2014

AA/02250/2014

AA/02251/2014

AA/02252/2014

AA/02253/2014

AA/02254/2014

AA/02376/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th February 2016	**On 30th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

A A A O (FIRST APPELLANT)
O O O (SECOND APPELLANT)
A A O (THIRD APPELLANT)
A O O (FOURTH APPELLANT)
A O O (FIFTH APPELLANT)
O I O (SIXTH APPELLANT)
A O O O (SEVENTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Brown, Counsel
For the Respondent: Ms Savage, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria. Their dates of birth are 23rd February 1971, 2nd August 1975, 3rd August 2000, 1st September 2001, 20th June 2003, 1st March 2005, and 19th March 2012 respectively. The First two Appellants are husband and wife and the other five Appellants are their children. They appealed against the Respondent's decisions made on 20th March 2014 giving directions for their removal from the United Kingdom under Section 47 of the Immigration, Asylum and Nationality Act 2006 and refusing to grant asylum, humanitarian protection or a right to remain based on human rights.

2. I shall refer to the First Appellant as "the Appellant" throughout as the other six Appellants are his dependants.

3. Their appeals were heard by Judge of the First-tier Tribunal Lucas on 20th May and 17th June 2015. He dismissed their appeals on asylum grounds, on human rights grounds and on humanitarian protection grounds in a decision promulgated on 20th July 2015.

4. An application for permission to appeal was lodged and permission was refused by First-tier Tribunal Judge Cruthers on 30th July 2015. An application for permission to appeal to the Upper Tribunal was lodged and permission was granted by Deputy Upper Tribunal Judge Norton-Taylor on 16th October 2015. The permission states that it is arguable that the judge failed to deal adequately with relevant evidence when assessing the asylum claim and inadequate reasons were provided for adverse findings. The permission states that it is also arguable in respect of the Article 8 claims that the judge failed to adequately assess the particular circumstances of the children and in consequence their respective best interests as a whole.

5. There is a Rule 24 response dated 7th November 2015. This states that the First-tier Tribunal Judge directed himself appropriately and made reasonable sustainable findings that were open to him on the evidence before him and that there was and is a sufficiency of protection in Nigeria. The response states that the grounds advanced about the Appellant's and his family's claimed risk on return to their home area in Nigeria, and in the unlikely event of the family facing a real risk in their home area the possibility of internal relocation, have little merit. The response states that the First-tier Judge properly considered the objective and subjective evidence that was before him, including the expert evidence and properly engaged with the objective country information before him and made reasonable sustainable findings properly open to him based on that

evidence. The response states that the Appellants failed to discharge the burden of proof to the low standard required and it was properly open to the First-tier Judge, on the evidence before him, to find this. The response states that the judge properly considered the Section 55 best interests of the children and the case of **EA (Nigeria) [2011] UKUT 00315 (IAC)** and it was open to the First-tier Judge to find that those who are living in the United Kingdom in a temporary capacity with their families, must expect to return to their own country and that in this case the best interests of the children would not be adversely affected on return so as to engage Article 8 of ECHR.

The Hearing

6. The issues in this case are the fear of FGM on the Appellant's female children on return and the fear of tribal incisions on the Appellant's children on return and whether the family would be targeted on return.

7. Counsel for the Appellant submitted that this is an Article 8 claim and that the judge's findings in paragraphs 73 and 74 were not open to him. At paragraph 73 the Appellant's history is narrated. The judge states that his history undermines his asylum claim. Counsel submitted that the basis for this claim arose after the Appellant left Nigeria and came to the United Kingdom. Counsel submitted that at paragraph 74, to state that the Appellant waited till his family members were settled in the United Kingdom before claiming asylum, is not a lawful assessment of the claim.

8. Counsel referred to the five grounds in the application for permission to appeal. She submitted that the Appellant left Nigeria to study and to get away from his domineering father and intended going to Canada to stay when his studies ended and it was only when he was in the United Kingdom and his father died that he realised he could not return to Nigeria. She submitted that the Appellant was not cross-examined about this. She submitted that the judge has not given proper reasons for rejecting the Appellant's explanations of why he did not return to Nigeria. The situation arose when he was in the United Kingdom and that is why he claimed asylum when he did.

9. Counsel submitted that the judge failed to take proper account of relevant evidence about the Appellant's children being cut by their grandfather without the knowledge of their parents. She submitted that the judge has not explained why he found it not to be credible that the Appellant would not have been aware of this. She submitted that what the judge did not take into account was that the children were staying with their grandfather when this happened. She submitted that there is not only the evidence of the children about this, Professor Sarah Creighton also mentions incisions on one child's abdomen. She submitted that the judge should have taken this into this account.

10. Counsel then referred to the judge's conclusion that FGM and ritual cleansing would not or could not occur without the permission of the First and Second Appellants and submitted that this finding is not based on any evidence before the judge and is inconsistent with the evidence relied on by the Appellant. I was referred to the expert report of Ms Bisi Olateru-Olagbegi who states that the King of the Yoruba kinship families must ensure that men and women in their domain adhere to the traditions and customs of their communities and royal household. She submitted that this applies to this Appellant and his family. She submitted that the expert report states that permission of the parents is not necessary and the judge gave no adequate reasons for rejecting the expert report on this. She submitted that the Appellant and his family do not form part of the general public in Nigeria, they are a special case.

11. Counsel referred to the judge's failure to carry out a lawful assessment under Section 55 of the 2009 Act. She referred to the five children, the eldest of whom, at the date of the hearing, was 16 and the youngest 4. She submitted that when the youngest child was born in the UK both parents had leave to remain and the other children have been in the United Kingdom for six and a half years. She submitted that the judge did not give proper weight to the children's letters stating that they do not wish to return to Nigeria. She submitted that no adequate assessment was made on Article 8 outside the Rules and no adequate assessment was made relating to Section 55. She submitted that the judge did not properly consider the cases of **EV Philippines [2014] EWCA Civ 874** and **MK (India) [2011] UKUT 00475 (IAC)**.

12. Counsel submitted that the judge did not deal with Section 117B of Part 5A of the 2002 Act and public interest. I pointed out that public interest is referred to at paragraph 91 of the decision, although there is no explicit reference to Section 117B. Counsel submitted that the Appellant's immigration history has to be taken into account. I pointed out that the Appellant was a student in the United Kingdom and his stay here was therefore always precarious. Counsel submitted that he did not overstay and he speaks English. It was only after his student leave expired and he was waiting to hear about his extension that he applied for asylum. Counsel submitted that when the children's education is considered and the length of their stay in the United Kingdom (two of them were born in the United Kingdom) this must be given considerable weight. She submitted that the situation when the Appellant left Nigeria was different to when he claimed asylum. She submitted that the Appellant's father had been pressurising him to have his daughters subjected to FGM and his children subjected to ritual cleansing. She submitted that when the Appellant and his family were in the United Kingdom they were safe but once the Appellant's studies were over he had no reason to remain in the United Kingdom and if he returned to Nigeria his children would be in danger. She submitted that the situation evolved while the Appellant was

in the United Kingdom and the Appellant eventually realised he could not return to Nigeria.

13. The Presenting Officer submitted that she is relying on her Rule 24 response. She submitted that the decision is detailed and everything that was before the judge has been set out therein. She submitted that the judge has taken all matters into account and has applied the relevant standard of proof and come to sustainable conclusions.

14. The Presenting Officer referred to the first Ground of Appeal which states that the judge's decision is perverse and she submitted that this is an extremely high challenge and there is nothing perverse or irrational in the First-tier Judge's findings. She referred to paragraphs 73 and 74 of the decision in which the judge sets out the Appellant's immigration history and refers to the late stage at which asylum was claimed. She submitted that the judge was entitled to come to the conclusion he did. The immigration history in the refusal letter has not been disputed by the Appellant. The judge took into account the fact that the Appellant had intended going to Canada to stay. She submitted that the fact that the Appellant was not questioned about his immigration history does not mean that the appeal went ahead on a procedurally unfair basis. The judge is not required to put every point to the Appellant. She submitted that the judge made his decision after he had considered all the evidence before him and the first Ground fails entirely as there is no material error.

15. With regard to the second Ground of Appeal the Presenting Officer submitted that the judge took into account the children's evidence. He refers to this at paragraph 41 of the decision. At paragraph 75 of the decision he states that he is putting no weight on the assertion that the children of the Appellant were cut by their grandfather in Nigeria without any knowledge of their parents. She submitted that he has given reasons for this finding and has found that this part of the claim is unrealistic and has only recently been added to the Appellant's evidence. The judge finds that the Appellant is trying to create a risk that does not exist to bolster his claim. She submitted that the Appellant merely disagrees with the judge's decision after the judge has properly assessed the evidence. She submitted that the judge states he has taken all the evidence into account. He does not need to refer specifically to Professor Creighton's letter in which she states that incisions on one of the children could be consistent with traditional cuts. The Presenting Officer submitted that the judge has given reasons for giving the children's evidence about the cuts little weight and he cannot be criticised for this finding.

16. With regard to the third ground, the Presenting Officer submitted that when the judge states that parental consent is required for ritual cleansing and FGM the Appellant had to show that the children would be at risk of this on return. The First-tier Judge has stated that on the evidence before

him he is not satisfied that there will be any risk to the children. He has taken into account the written evidence, the oral evidence and the expert report relating to this and I was referred to paragraphs 79, 80 and 82 of the decision. The judge refers to State protection in Nigeria and refers in particular to the urban areas, such as Lagos, being socially and commercially advanced with a developed police force and criminal justice system. At paragraph 47 the judge refers to the Appellant stating that he had protected his children before from FGM. The Appellant's wife has said that she fears the Appellant will give in to his family in Nigeria. The Presenting Officer submitted that that supports the finding that consent is required so the judge was right to find that the children can be protected. The judge refers to the expert report at paragraphs 79 and 83. Counsel states that this is not a normal family but the Presenting Officer submitted that the judge has considered the specific facts of this case and has found that the family can go to live in a city in Nigeria and can withhold consent for FGM and ritual cutting and the police can help them.

17. The Presenting Officer then went on to Grounds 4 and 5 and the best interests of the children. She submitted that with regard to Ground 5 this is a mere disagreement with the judge's decision. At paragraph 89 of the decision the judge has taken the children's best interests into account. He states that the older children of the Appellant adapted to life in the UK after their arrival in 2008 and there is no reason why they could not readapt to life in Nigeria on return and that these children and the two youngest children will have the support of their parents in Nigeria. They can relocate as a family unit and the children's best interests will be well served by the support and nurture of an established family unit. She submitted that at the date of the hearing the children had been in the United Kingdom for less than seven years and she submitted that all the evidence was taken into account by the judge in his decision.

18. The terms of the Immigration Rules cannot be satisfied in this case. The Judge had to decide whether anything had not been properly dealt with under the Rules. She submitted that it is only if that is the case that the claim requires to be considered outside the Rules. I was referred to paragraphs 87 to 91 of the decision and the fact that the First-tier Judge did consider Article 8 outside the Rules. She submitted that this must go in the Appellant's favour as based on the evidence, the judge did not require to consider Article 8 outside the Rules.

19. With regard to Section 117B of Part 5A of the 2002 Act she submitted that although this is not specifically mentioned, its substance has been considered. At paragraph 91 public interest is considered. The Appellant came to the United Kingdom on a student visa and had no legitimate expectation of being able to remain in the United Kingdom. The Presenting Officer submitted that at all times his leave and his family's leave was precarious.

20. She submitted that everything was considered by the judge in his decision and there is no material error of law.

21. Counsel for the Appellant submitted that this is not an irrationality challenge. She submitted that the decision made by the judge was not open to him. She submitted that it is not for the First-tier Judge to accept everything the Appellant says but if he rejects what the Appellant says he has to give reasons for doing so and she submitted that he has not done this, particularly as the Appellant's need to claim asylum arose after he left Nigeria.

22. Counsel submitted that relevant evidence was not taken into account about the cuts made to the Appellant's children. I was referred to paragraph 41 which refers to one of the children's statements in which he states that he is better off in London than Nigeria. She submitted that the judge does not deal with the children's wishes and has given inadequate reasons for not accepting the children's evidence. She submitted that Dr Creighton reported on the incisions and this is supportive of the Appellant's account. She referred to the low standard of proof in the asylum claim and submitted that it is reasonably likely that the children were cut by their grandfather.

23. She submitted that Dr Creighton's letter arrived between the dates of the first part of the hearing and the second part of the hearing and was before the judge.

24. She submitted that the judge was wrong to state that ritual cleansing cannot occur without permission. This goes against the evidence before him. She submitted that the fact the Appellant's wife stated she is afraid her husband will succumb to pressure does not indicate that circumcision and ritual cutting can only go ahead with consent of parents.

25. With regard to Article 8 I was asked to consider the skeleton argument, the relevant case law set out therein and the evidence of the children. She submitted that the First-tier Judge did not analyse the claim or give proper reasons for his decision. I was referred to the cases of **MK (Sierra Leone) [2015] UKUT 00223 (IAC)** and **JO and Others (Nigeria) [2014] UKUT 00517 (IAC)**. These cases state that analysis is required. She submitted that the judge has not properly considered the best interests of these children whose separate needs all require to be taken into account. The Home Office policy is that every child matters and the terms of the said case of **EV Philippines** must be taken into account.

26. With regard to Section 117B Counsel submitted that the judge has to consider every aspect of the claim. The family members all speak English, they are financially independent and to say their position here is precarious is not enough. She submitted that all the categories of 117B have not been properly considered by the judge.

27. I was asked to find that there are material errors of law in the judge's decision and set the decision aside.

Decision and Reasons

28. The Appellant's argument is that he came to the United Kingdom as a student and studied from 2007 until 2013 and it was only in 2013 that he realised he could not return to Nigeria so he claimed asylum at that point. His representative submits that this situation evolved while he was in the United Kingdom. The Appellant states that he is a Yoruba prince of the Sataloya ruling house of Ode-Remo in Ogun State. This is why his representative is submitting that his is not a normal case and why his case is different when sufficiency of protection is considered. The Appellant's claim is that on return he will have no choice but to have his children subjected to FGM and ritual cutting because his father was raised in the full traditions of the Sataloya ruling house. The Appellant's father died on 9th September 2013. It is clear from the evidence that the Appellant and his wife are opposed to ritual cleansing and FGM.

29. All of these matters have been considered by the judge in his decision. The judge has stated that he does not believe the children's evidence that their grandfather cut them when they were in Nigeria staying with him and the Appellant and his wife were unaware of this. This was new evidence and the judge found it had only been provided to bolster the claim and it is not true. Counsel states that Professor Creighton's report supports the children's evidence. The judge has considered all the evidence before him including the children's evidence and has given proper reasons and explanations in his decision at paragraph 75 of why he does not believe this happened. He was entitled to this finding and his explanation for reaching it is adequate.

30. The Appellant's evidence is that his tribe blame him for his father's death because he did not get his children cut. He states he cannot internally relocate as his family name is well-known. At paragraph 72 of the decision the judge sets out the basic issues in this claim. The judge does not state that FGM and ritual cutting cannot go ahead without the parents' consent, what he states at paragraph 80 is that the parents have the ability to consent or not consent to their children undergoing any harm in Nigeria. The Appellant's wife's evidence is that the Appellant has previously stopped this happening to the children and she now fears that he will succumb to pressure from his family. Based on this the judge was entitled to find that the parents would be able to stop this happening to their children. At paragraph 85 the judge refers to there being no risk on return to Nigeria for the Appellant and his family. He refers to State protection and also the option of relocating to another part of that country. He finds that Nigeria is a big country and the Appellants do not require to return to their home area in Nigeria if they truly believe they would be in danger

there. This does not mean that they cannot return to Nigeria. He has considered their special position.

31. The asylum claim is based on the family being targeted because of who they are. This has been properly considered by the judge. He has explained how he comes to his decision and has made out his case. Reasons have been given for his findings and he has considered all of the evidence before him and has given weight to relevant evidence. At paragraph 83 he explains why he is giving little weight to the expert report of Bisi Olateru Olagbegi and at paragraph 84 his views on the claim and the expert report are made abundantly clear. There is no error of law in the judge's decision relating the Appellant's humanitarian protection claims.

32. The judge has then considered the best interests of the children. He notes that the terms of the Immigration Rules cannot be satisfied. Article 8 within the Rules cannot be satisfied. The best interests of a child can be outweighed by the cumulative effect of other considerations.

33. The judge notes that when the Appellant came to the United Kingdom he came as a student with no legitimate expectation of being able to remain here. His family came to join him here. They had no legitimate expectation of being able to remain here, (paragraph 73). The older children in this case have lived in Nigeria. They adapted to life in the United Kingdom and can adapt to life on return to Nigeria. The judge finds the children who were born here can adapt to life in Nigeria. Their main interest is their parents and their parents will be returning with them and they will remain in their family unit. These important issues have been considered by the judge. The case of **EV Philippines** lists what is in the best interests of children. The judge finds their best interests are to be with their parents who have no right to be in the United Kingdom. All of this has been explained in the decision. The judge clearly does not believe that the situation evolved. His decision reflects that he finds the Appellant's situation was as it was when he first came as a student when he left his spouse and children in Nigeria for a year.

34. It seems that there is nothing compelling in this claim which requires it to be considered outside the Immigration Rules. Everything that has been put forward is covered by the Rules but the judge considered the claim outside the Immigration Rules. This was not necessary but to do so is not an error of law.

35. When proportionality is considered under Article 8 outside the Rules the fact that the claims cannot succeed under the Rules must weigh against the Appellants. The Appellants have built up a family and private life in the United Kingdom but if the family all return to Nigeria as a unit their family life will not be disturbed. All of this is considered by the judge at

paragraphs 88, 89 and 90. There will be disruption to the education of the children but the judge notes that there is an education system in Nigeria. He finds that the children will not be adversely affected so as to engage Article 8 of ECHR.

36. At paragraph 91, public interest is considered and although the judge does not refer to Section 117B specifically, its substance is considered in the decision. When effective immigration control is considered this must weigh against the Appellants. The Appellant's family is in the United Kingdom and is accessing free education and presumably free healthcare. This must go against public interest. It is true that they can all speak English. The children have probably integrated into society. But when 117B(5) is taken into account little weight should be given to a private life established by a person at time when his immigration status is precarious and that is the situation here. Although these matters are not narrated in detail by the judge it is clear that they have been taken into account in his decision. In paragraph 91 the judge states that the reality is that the individual self-interest of the Appellant and his family and in particular their clear desire to remain in the UK is subject to the broader public interest in effective immigration control. He states that there is nothing which displaces that public interest in this case and so the Article 8 claim is dismissed.

37. I find that everything has been properly considered by the judge and that the grounds of application are in the main a mere disagreement with the judge's decision. The grounds are lengthy and case law is referred to but when the skeleton argument is dissected the judge's decision cannot be faulted. Proper reasons have been given for his findings.

Notice of Decision

38. There is no material error of law in the First-tier Tribunal decision promulgated on 20th July 2015. The decision must stand.

39. Anonymity has been directed.

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

Deputy Upper Tribunal Judge I A M Murray