



Upper Tribunal

(Immigration and Asylum Chamber)  
AA/03994/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at Crown Square, Manchester

Decision & Reasons

Promulgated

On 14<sup>th</sup> March 2016

On 11<sup>th</sup> April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

[O A]

(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq (Solicitor: Adam Solicitors)

For the Respondent: Miss Johnson (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Hindson, in which he refused the Appellant's appeal on Asylum, Humanitarian Protection and Human Rights grounds. His decision was promulgated on the 3<sup>rd</sup> June 2015. The Appellant has sought to appeal that decision to the Upper Tribunal and permission to appeal has been granted

by Upper Tribunal Judge Lindsley on the 26th August 2015.

2. Within the two sets of Grounds of Appeal it is argued that the Judge's approach to the primary issue of credibility was subject to legal error. It is stated that the core reason for doubting the Appellant's integrity was set out between paragraphs 25 and 26 of the decision and that the First-tier Tribunal Judge did not accept that a police report submitted by the Appellant's husband as part of his asylum claim reflected the fear expressed. It was argued that given that the documents were only partially copied by the Secretary of State for the Home Department and were held on the Respondent's husband's file that that document should not to have been held against the Appellant. It is argued that the Respondent chose not to produce the husband's file or to avail the Court of the full document and that in those circumstances, bearing in mind the potential prejudice likely to be suffered by the Appellant, the fair and lawful approach would have been to place no weight on that document. It is argued that the Respondent had a straightforward opportunity to rebut the Appellant's assertion that the whole document had not been produced by bringing the husband's file to Court, but failed to do so.
3. It is further argued that the rest of the findings suffer from a lack of detail and the appropriate consideration of the factual evidence. It is argued that there is no evidence at all to the Appellant's explanation of her initial visit to the UK as a visitor and that the evidence of an important witness [Mr O] was not referred to or reconciled with the findings. It is argued that he is a first-hand witness of impeccable bona fides and that his evidence was unchallenged. It is argued that the approach of credibility is flawed due to the lack of adequate reasoning. It is further argued that within paragraph 8 of the witness statement the Appellant had referred to herself as having been forcibly circumcised and her family and tribal origins and the risk that flowed towards her children, not just emanating from her husband's side of the family, but also from her own family as a result of her having been circumcising and this is not considered at all by the First-tier Tribunal Judge.
4. Within the grant of permission to appeal by Upper Tribunal Judge Lindsley,

it was noted how the Appellant is a citizen of Nigeria who had claimed asylum in the UK on the basis that her children would be at risk of FGM if returned to Nigeria. Upper Tribunal Judge Lindsley found that it was arguable that the First-tier Tribunal had erred in law in being procedurally unfair in not adjourning the hearing so that the full police report could be presented to the Tribunal, if it was not believed that this was part of the document, as contended by the Appellant and that if it were held in an active asylum matter it should not have entailed any significant delay in processing the appeal and that if it transpired that what was before the Tribunal was only part of the document as argued by the Appellant then the credibility assessment performed by the Tribunal may well have been different. She found that it was also arguable that the decision was flawed for want of any consideration of the witness evidence of [S O] and that in turn the credibility assessment of the Appellant was arguably flawed by failing to consider this evidence in the round and this may have had a material effect on the outcome. It was found that all grounds could be argued.

5. Within the Respondent's Rule 24 reply, it is argued that the First-tier Tribunal Judge directed himself appropriately and that the Judge's findings were properly reasoned and were sufficient in the assessment of the Appellant's credibility.
6. In his oral submissions Mr Sadiq relied upon all of the Grounds of Appeal. He argued that the First-tier Tribunal Judge had failed to take account of really important evidence in the form of that the evidence of [Mr O] and that a witness statement had been provided by him and he had given evidence on core issues. He argued that [Mr O] had given evidence as to how the Appellant had had to relocate whilst in Nigeria to a house belonging to [Mr O]'s wife as a result of the problems that she had experienced and how, before she made an application for asylum in the UK, he advised her within the UK that she should go to the Home Office. He argued that [Mr O]'s bona fides had not been questioned, but his evidence not been dealt with in a meaningful manner.
7. In respect of the police report, Mr Sadiq argued that the police report was

on the husband's asylum file but that the Secretary of State had failed to produce it and that she should have produced it, if she wanted to rebut the contention put forward by the Appellant that it was an incomplete document. He argued the Appellant in such circumstances should not been criticised given that the Tribunal did not have the complete document.

8. Mr Sadiq further argued that within the Appellant's witness statement at paragraph 8 she detailed not only the fear that she had of her husband's family performing forced circumcision on her children, but that she also described her fear of her own family given that she herself had suffered FGM at the hands of her own family. He submitted that this argument had not been considered by the First-tier Tribunal Judge.
9. In her submissions on behalf of the Secretary of State Ms Johnson relied upon the Rule 24 reply and argued that the findings of the Judge were open to him on the evidence and the Judge had rejected the Appellant's credibility. She argued that the Respondent was not withholding the document, but she could not confirm or deny whether or not the Respondent actually held the original, which the Appellant said that he given to the Home Office. She said that the Appellant's statement did not state that the original was being held. She argued that there had been no request for the husband's file, but in any event it was open to the Tribunal to make finding from the copy provided, that the police report was a one-page document that sets out a completely different basis for the Appellant's husband having been kidnapped than that now contended for by the Appellant.
10. She argued that the Judge was entitled to conclude that the Appellant was not at risk from her husband's family and that the Judge was entitled to find that the Appellant had sought to come to the UK, simply for financial betterment. She asked that if the Tribunal were not able to make a finding in respect of the police report, then she asked that an adjournment be granted, but I rejected that application, given that the Secretary of State had already had sufficient opportunity of producing the police report from the husband's asylum file, even though the two files were not linked, given

that it was clear from the both original appeal hearing, from the grounds of appeal and the grant of permission, that the contents of that document were in issue. The interests of justice therefore dictated that the appeal continue and that an adjournment should not be granted, when the Respondent had clearly chosen to produce the original document in support of her position.

11. In his submissions in reply Mr Sadiq did say that a fax had been sent to the Respondent prior to the first appeal asking for the full police report and he asked me to find that if there was a material error of law, that the matter be remitted back to the First-tier Tribunal for rehearing de novo before a different First-tier Tribunal Judge, given the credibility issue.

My findings on error of law and materiality

12. First-tier Tribunal Judge Hindson in dealing with the police report at [25] found specifically that he did not accept that the Appellant's husband had been kidnapped at the behest of [R A], her husband's uncle and now head of the family, whom it was alleged threatened the Appellant's children with FGM, demanding to know where the Appellant and her children were. The Judge at [25] found the police report was completely at odds with that claim and the police report described her husband having been kidnapped and tortured to get him to reveal his bank account pin number. The First-tier Judge noted that the husband claimed that the police report was handed by him to the immigration officer and that it was said that it was a two-page document, but one-page was missing. However, the First-tier Judge did not accept that and found specifically that the text came to a conclusion and that the Appellant has been had been advised to report the matter to his local police station and then it has the name of the police inspector.
13. In this regard, although only a copy of the police report has been provided by the Respondent, the Judge gave clear sufficient and adequate reasons for his finding that the police report was a one-page document.

14. However, I do not consider that adequate or sufficient reasons have been

given by First-tier Tribunal Judge Hindson for rejecting the police report on the grounds of it being entirely at odds with the account provided by the Appellant of her husband being kidnapped at the behest of [R A], in order to reveal the whereabouts of the Appellant's children, given that the copy of the police report specifically stated that on the 20th October 2014 about 11:15 p.m. four men had come and they demanded the ATM pin, his international passport and also asked of his children. It stated that as he could not answer their questions they had taken him to a building, where a hot iron rod been placed on his back, such that he sustained injury. The fact that the police report refers to the kidnappers having "also asked of his children", as well as demanding his ATM pin and passport has not been considered or explained by the Judge. The Judge has either thereby failed to take account of material evidence in this regard, or if he has taken account of that part of the document he has failed to adequately explain his reasoning regarding the meaning of that part. The Judge has therefore materially erred in law in his consideration of the police report.

15. The Judge in his review of the evidence between [10 and 13] set out that he had read the witness statements from the Appellant, her husband and [S O], and heard evidence from them and that he had taken careful account of the documentary evidence. He stated that he had considered all the evidence in the round, but that he had to be selective with his references to the evidence when giving reasons in respect of his findings. Although, the Judge has not make any findings in respect of the evidence of [Mr S O], I do accept that he had taken that evidence into account in reaching his decision.

16. Further, I do accept that at paragraph 8 of her statement the Appellant made it clear that she believed the danger of forced circumcision came not only from her husband's family, but that she also stated specifically "I would like to be clear that the danger of forced circumcision is also danger from my family. Neither my husband nor I believe in it. I was circumcised. I recall how horrendous it was and the emotional trauma over it effects me every day. I remember the horrible physical pain and remember not understanding why I was having to endure such a terrible thing. This is a family tradition in both my family and my husband's family. Particularly in

my family, the practice is as a result of a commitment to a tribal tradition. We are Yoruba. I know that is only matter of time before I would have had problems in relation to my own family over the circumcision of the children.”

17. First-tier Tribunal Judge Hindson, as has been contended by Mr Sadiq on behalf the Appellant, has not dealt with this issue in his decision and has therefore failed to make findings on a material issue within the Appellant’s asylum claim. This again amounts to a material error of law.

18. The decision of First-tier Tribunal Judge Hindson therefore does contain material errors of law, such that the decision should be set aside. Given those errors do go to the core question of credibility, the matter should be remitted back to the First-tier Tribunal for rehearing *de novo*, before any Judge other than First-tier Tribunal Judge Hindson.

Notice of Decision

The decision of First-tier Tribunal Judge Hindson does contain material errors of law and is set aside;

The matter is remitted back to the First-tier Tribunal for rehearing *de novo*, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Hindson.

Signed



Deputy Upper Tribunal Judge McGinty  
2016

Dated 15th March