Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/01477/2015**

HU/01478/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th July 2017	**On 2nd August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

BAMIDELE OLALEKAN SHOEBI
FADEKE VICTORIA SHOEBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr S Kotas

DECISION AND REASONS

1. These are the appellants' appeals against the decision of Judge Oliver made following a hearing at Hatton Cross on 19th October 2016.

Background

2. The appellants are citizens of Nigeria. The first appellant arrived in the UK on 8th September 2006 with leave to remain as a student which was

extended twice, his leave expiring on 31st May 2011. The second appellant joined him as his dependant on 14th January 2010. Since 31st May 2011 they have both overstayed.

3. Whilst in the UK they have had three children, a son aged 5, a daughter aged 3 and another daughter born on 4th January 2015. Following the birth of their third child they were granted leave to remain for a short period, to 13th April 2015 because of the postnatal interests of mother and child.

4. The appellants' case is based upon the risk of FGM in Nigeria to their two daughters. The judge noted that they had been specifically advised to make an application for asylum or breach of Article 3 obligations but had not done so. He said that no claim had been made for the good reason that internal relocation was generally a viable option. The second witness was asked why the family could not move to an area of Nigeria away from the family where FGM was not practised and she said that it would not be easy as they had not been in Nigeria for a long time and did not have anyone left there.

5. The judge concluded as follows:

> "The appellants' family life does not qualify under Appendix FM under either the partner or parent route. In respect of the former there will not be very significant obstacles to their return and it would not be unreasonable for the children, by returning, to remain with their parents. None of the children have resided in the UK for seven years. To the private lives of the appellants I give little weight.
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> I find that there are no exceptional circumstances which warrant consideration outside the Rules. If I am wrong as to this I find that there will be no interference with their family life since the family unit will not be broken. In any event this is a case where the public interest in immigration control makes their return proportionate."

The Grounds of Application

6. The appellant sought permission to appeal on the grounds that the judge had erred in his consideration by failing to consider the best interests of the children at any stage which was particularly troubling as there was potential for the female children to be exposed to the risk of FGM at the hands of their extended family members in the event that their parents elected to return to either of their home areas. The judge was wrong to concentrate on the failure of the family to claim asylum, failing to appreciate that the family were bound to raise concerns about FGM in their human rights appeal under Section 120 of the 2002 Act. His determination was cursory and flawed because he had failed to apply the undue harsh/reasonable criteria as set out in Januzi [2006] UKHL 5.

7. Permission to appeal was granted by Judge Andrew for the reasons stated in the grounds on 8th June 2017.

8. Prior to the hearing I received a letter from the appellants' representatives stating that they would not be attending on his behalf, although they continued to act and they were instructed that the appellant would be representing himself in person.

9. There was no appearance by the appellant.

10. Mr Kotas submitted that there was no error of law in this determination. The entire case was based on the risk of FGM which had been dealt with at length by the Immigration Judge. The children were extremely young and it was inconceivable that the judge would have found that their best interests lay in remaining in the UK when they clearly should be with their parents.

Findings and Conclusions

11. It is correct to say that there is no interest of a specific consideration of the children's best interests in this determination, which is regrettable. However in these particular circumstances, the error is not material.

12. It is quite clear from the witness statements that the appellants' case was based upon the risk of FGM to the two daughters.

13. In his statement the first appellant explained why he had lost track of time prior to the expiry of his visa and, as a result of his ongoing health problems, he was unable to secure employment with the British Army as he had hoped. He then stated that he and his wife belong to a very traditional tribe which strongly believes that FGM should be carried out on daughters, and although they as parents strongly oppose FGM they would be forced to undergo the procedure. There is also reference to the fact that his eldest son is now at school and he has never been to Nigeria. His second child is also at school and progressing well. They enjoy private life in the UK.

14. The second appellant reiterated the claim that they sought protection from the state for their daughters and that the eldest children have adjusted to school life in the UK.

15. The judge properly concentrated his attention on the main issue in the appeal which was the fear of FGM on the two daughters. He was correct to state that whilst he accepted that the second appellant had undergone FGM, the practice on the daughters could be prevented by their returning to one of the large areas in Nigeria where it was not widely practised.

16. He recorded the evidence in relation to relocation. The first appellant said that they could not go and live in a different area because they had not been anywhere else before and his wife said that it would not be easy because they had not been in Nigeria for a long while and they did not have anyone left there. That is a long way from establishing that it would be unduly harsh to expect the family to relocate.

17. The children are not qualifying children. They are Nigerian nationals and have lived in the UK for less than seven years. They are all extremely young, only one of school age, and their lives revolve around the family. Had the judge specifically turned his mind to the issue of best interests of the children there is only one conclusion that he could properly have come to. Their best interests clearly lie in staying with their parents and returning with them to their country of nationality.

18. There is no material error of law in this decision which shall stand.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Deborah Taylor

Signed Date 2 August 2017

Deputy Upper Tribunal Judge Taylor