Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06032/2016**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Decision Promulgated**
On 31 July 2017	**On 8 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

I N O-N

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzam of Burton and Burton Solicitors

For the Respondent: Mrs Obomi

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity order was made previously and shall continue
2. The Appellant was born on 18 May 1980 and is a national of Nigeria.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Tully promulgated on 29 December 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 3 June 2016 to refuse the Appellants protection claim which was based on her claim to be at risk on return of domestic violence and enforced FGM for her and her daughter from her husband and his family.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Tully ("the Judge") dismissed the appeal against the Respondent's decision .
6. Grounds of appeal were lodged arguing: that the Judge was in error in that :
   (a) Her assessment that there was sufficiency of protection available in Nigeria was unjustified by the material before her which showed unwillingness and ineffectiveness on the part of the authorities.
   (b) With respect to internal relocation the Judge failed to take into account K and others (FGM) The Gambia CG [2013] UKUT 62 (IAC) and give cogent reasons for finding that internal relocation would be available or unduly harsh
   (c) The Judge failed to take into account the best interests of the children.
   (d) The Judge failed to take into account the risk to the Appellant if her husband was returned to Nigeria.
7. On 10 April 2017 First-tier Tribunal Judge Grant-Hutchison refused permission to appeal. The application was renewed. In a decision dated 10 May 2017 Upper Tribunal Judge Smith granted permission 'principally on the sufficiency of protection point' while noting that the error may not be material if the findings on internal relocation were sustainable. He noted that the grounds in relation to human rights were weaker but he did not limit the grant of permission.

8. At the hearing I heard submissions from Mr Mohzam on behalf of the Appellant that :

   (a) The Judge gave inadequate reasons in respect of sufficiency of protection given the background material in the Appellants bundle.

   (b) The Judges consideration of internal protection and whether it was unduly harsh was not adequately reasoned.

   (c) The husband could cause further problems if he were returned.

(d) There was no adequate assessment of the children being at risk and their best interests were inadequately considered.

9. On behalf of the Respondent Mrs Obomi submitted that :

(a) She relied on the Rule 24 notice.

(b) The Judge had directed herself appropriately and made no material error.

(c) The Judge accepted that the Appellant was at risk in her home area and considered all of the evidence in relation to sufficiency of protection and was entitled to reach the conclusions she did.

(d) Even if she was wrong she considered internal relocation and gave sustainable reasons for finding that relocation was not unduly harsh.

(e) She set out clear findings in relation to the children.

The Law

10. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every

possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

13. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision. I am satisfied that this was what the Judge did in this case.

14. Having accepted that the Appellant and her daughter would face threats on return to her home area, Benin, from her husband's family only as she considered that in the absence of any evidence to the contrary it was speculative to consider the risk of her husband returning to Nigeria. That was a finding I am satisfied she was entitled to make.

15. The Judge then went on to consider her circumstances if she returned and found that she could return to live with her family (paragraphs 26-28) as she found her claim to be estranged from her family was inconsistent with what she had told Social Services. She was entitled to find that with their support and living an hour away from her husband's family it was unlikely they would abduct her for the purpose of FGM now. This was a finding that was reasoned and open to her.

16. Neverthless in what she found to be an unlikely event she then went on to consider the adequacy of state protection in this context noting the background material in the refusal letter at paragraphs 15-21 that FGM had been criminalised and there was a police force in Nigeria but nevertheless recognising the Appellants case that corruption affected the effectiveness of state protection but found that there was no evidence before her to suggest her husbands family had the power or influence required to subvert the police.

17. While not specifically setting out the principles in Horvath [2001] 1 AC 489 she would have been entitled to note that in that case Lord Craig endorsed the formulation of Stuart Smith LJ in the court below on the level of protection required and said "*In my judgment there must be in force in the country in question a criminal law which makes violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. There must be a reasonable willingness by the law enforcement agencies, that is the police and courts, to detect prosecute and punish offenders".* However, in relation to unwillingness, he pointed out that inefficiency and incompetence by the police and law enforcement officials are not the same as unwillingness; there may be various sound reasons why criminals are not brought to justice; and the corruption, sympathy and weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection. The Judge was entitled to conclude at paragraphs 28-29 that the Appellant had failed to demonstrate that in her case the police would be unwilling to act on the laws criminalising FGM.

18. I am satisfied that the Judge took into account the Appellants personal circumstances in assessing whether she could avail herself of the protection available: she was a well-educated woman , she had herself avoided FGM and was clearly protective of her daughters interests, would be living an hour from her husbands family and have the support of her own family (paragraphs 28-29) and concluded that the Appellant had failed to demonstrate that in her case the police would be unwilling to act on the laws criminalising FGM. I am satisfied she gave adequate reasons for this conclusion

19. However while I find her reasoning to be adequate she went on to consider in the alternative whether the Appellant could internally relocate to Lagos or Abuja at paragraphs 30-36 directing herself appropriately as to the relevant legal test in Januzi v SSHD [2006] UKHL 5 . I am satisfied that the Judge took into account the Appellants personal circumstances: she spoke the language, was well educated to degree level and had a good employment record, would have financial support with a relocation package, was in generally good health and her children would return with her and there was a functioning education system in Nigeria. I am satisfied that the Judge gave adequate reasons for her finding.

20. In relation to the children's best interests the Judge carried out a very detailed analysis under Article 8at paragraphs 41-60specifically identifying the best interests of the children at paragraphs 54-58 directing herself correctly that these were not a trump card.

21. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

22. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

24. **The appeal is dismissed.**

25. **Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.**

Signed Date 7.8.2017

Deputy Upper Tribunal Judge Birrell