Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/13268/2016**
PA/13128/2016

THE IMMIGRATION ACTS

Heard at : Field House	**Decision Promulgated**
On : 17 November 2017	**On : 21 November 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

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(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No Appearance
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse their protection and human rights claim. Although separate decisions were given in the appellants' appeals in the First-tier Tribunal, the grounds seeking permission were the same for both appellants and the grant of permission was made in one decision and accordingly I have not seen the need to issue two separate decisions.

2. The appellants are citizens of Nigeria and are sister and brother, born on 14 January 2000 and 5 June 1997 respectively. They arrived together in the UK on 3 April 2013 with visas as unaccompanied children to visit their sponsor, their grandfather, valid until 18 July 2013. On 23 August 2013 they claimed asylum. Their claims were refused, the first appellant's on 7 October 2016 and the second appellant's on 16 November 2016. They appealed those decisions and their appeals were heard in the First-tier Tribunal on 29 March 2017 and were dismissed in decisions promulgated on 10 April 2017.

The Appellants' Case

3. The appellants' claim is based upon the circumstances of the first appellant who states that she fears being subjected to female circumcision if returned to Nigeria. It is claimed that on New Year's Day 2013 she overheard her parents and extended family members saying that she would be circumcised when she turned 14 years of age as it was family tradition and tradition in their tribe, the Isoko tribe. She told her parents that she did not want to be circumcised but was told that it would be done whether or not she agreed. Her parents dropped her and her brother to the airport to come to the UK to visit their grandfather. He had applied for a visa for them but had subsequently passed away in October or November 2012. The second appellant claimed that in December 2013, when they contacted their parents, they told him and his sister that they had to return to Nigeria for the circumcision.

4. It was noted, in refusing the first appellant's claim, that when asked about her fear of returning to Nigeria she initially stated that it was boring there and there was no light and that sometimes the water stopped, and when asked if there were other reasons said no. It was only when asked a third time that she mentioned fearing being subjected to circumcision. The respondent noted further that, whilst the appellants' claim was that they had had no contact with their parents since December 2013, Home Office records and information requested from the British Embassy in Lagos showed that their mother had been issued with a visit visa for the UK in 2005 and that she had not returned to Nigeria since leaving the country. The records therefore contradicted the appellants' account of their mother being present during the conversation regarding circumcision and of having last seen their mother when she dropped them off at the airport and thus damaged their credibility. The respondent considered, furthermore, that the appellants' account of their parents intending to get the first appellant circumcised by force, and being aware of how she felt about that, was inconsistent with their claim that their parents allowed them to leave Nigeria. Accordingly the respondent did not accept the account of the appellants' fear of return to Nigeria and did not accept that they were at risk on return. It was considered in any event that there was a sufficiency of protection and internal flight alternative available to the appellants. The respondent did not accept that the appellants' removal would breach their human rights.

5. The appellants' appeals against the respondent's decisions were heard by First-tier Tribunal Judge Sullivan. The judge issued separate decisions for each appellant given their different ages, as the first appellant was a minor. The

appellants did not appear before the judge but were represented. Their representative advised the judge that the appellants were hesitant to attend in the absence of a witness statement and that no witness statements had been prepared. The respondent produced additional evidence which had been served on the appellants' representative that morning and the appellants' representative stated that he had not seen the respondent's appeal bundles.

6. The appellants' representative renewed an adjournment request previously made in writing and refused, to instruct an expert to prepare a report in relation to FGM in Nigeria and to enable the respondent to serve the required bundles on the appellants' solicitors. The appellants' representative also advised the judge that there were no witness statements from the appellants because they were hesitant to make statements without having an expert report to back them up. The judge refused the adjournment request and put the case back until later in the day to enable the appellants to attend but they did not attend. She then proceeded to hear submissions from both legal representatives.

7. The judge did not accept the appellants' claim. She was satisfied, from the evidence produced by the respondent that the appellants' mother was not in Nigeria in January 2013 when the conversation about female circumcision was said to have taken place. She was not satisfied that the appellants were from a community or place where there was a prevalence of FGM or that the first appellant was at an age when FGM was most commonly practised. She did not accept that the appellant was threatened with FGM at the age of 14 and was not satisfied that she would be at risk of FGM at the current time. In any event she considered that the appellants could relocate to another part of Nigeria. The judge considered that the appellants had established a family life in the UK with the uncle with whom they resided and with each other, and that both appellants had established a private life in the UK, but she concluded that any interference would be proportionate and would not breach Article 8 of the ECHR. She accordingly dismissed the appeals on all grounds.

8. The appellant sought permission to appeal Judge Sullivan's decision to the Upper Tribunal on the basis of her refusal to adjourn the hearing despite the fact that new material had been served on the appellants by the respondent upon which their solicitors had had no opportunity to take instructions and which formed a central part in the judge's adverse findings. It was asserted that this gave rise to procedural unfairness.

9. Permission to appeal was initially refused in the First-tier Tribunal but was subsequently granted by the Upper Tribunal on 18 September 2017.

Appeal hearing

10. The appellants did not appear at the hearing before me. Their legal representatives had advised the Tribunal, in a letter dated 13 October 2017, that they had withdrawn their instructions and that they therefore no longer acted for them. There was no explanation for the appellants' absence. I was satisfied that the appellants were aware of the hearing as the notice of hearing

had been served upon them at their home address as well as on their legal representatives. I therefore saw no reason not to proceed with the appeals. Mr Melvin made brief submissions, relying upon the respondent's rule 24 response.

Consideration and findings.

11. It is plainly the case that Judge Sullivan gave detailed consideration to the adjournment request made on behalf of the appellants and addressed the matter at length in her decision at [18] to [33]. She referred to, and plainly had full regard to, the approach in Nwaigwe (adjournment: fairness) [2014] UKUT 00418. The judge plainly gave careful consideration to the question of procedural unfairness, having particular regard to the fact that one of the appellants was a child. The judge noted that the appellants had been in possession of all the key documents for some time and were therefore fully aware of the respondent's case against them. She noted that the appellants had had a responsible adult, their uncle, to guide them and they had also had the benefit of legal representation. The judge considered that the appellants had had plenty of opportunity to instruct an expert and to prepare witness statements and she was satisfied, in any event, that there was adequate background information relevant to their case without the need for expert evidence. For all of those reasons it seems to me that the judge was fully entitled to conclude that no proper explanation had been given for the appellants' failure to attend the hearing and no proper reason had been given as to why the appeals should not proceed in their absence.

12. I have given careful consideration to the additional materials produced by the respondent at the hearing, and have myself assessed the question of procedural unfairness in light of those materials. Aside from the respondent's country information report for Nigeria for August 2016, a document in the public domain that evidence consists of the application details for RO, the appellants' mother, and the CID case notes relating to RO. Those documents show that Ms O was issued with a visit visa for the UK in May 2005 following an interview in March 2005, that she made applications in the UK in 2010 for a certificate of approval for marriage and for an EEA residence card, that she made a human rights claim in the UK in June 2012 which was refused, that she was served with removal papers in June 2012, that she made a points based application in September 2013 and that she subsequently failed to report and was listed as an absconder from January 2014.

13. It is asserted in the grounds that it was unfair of the judge to accord weight to those documents, which formed the central part of her adverse findings in the appellants' claim, when the appellants had had no opportunity to see the documents and give their instructions to their solicitors. However, as Mr Melvin submitted, the appellants were already fully aware of the respondent's case that their mother was in the UK, as that was set out in the refusal reasons served on them several months prior to the appeal hearing and referred to in their grounds of appeal before the First-tier Tribunal. Furthermore, as Judge Sullivan said at [49], when addressing the respondent's

evidence, the matter of Ms Okoro's presence and applications made in the UK was put to the first appellant in her interview, at [156] to [169], and she had therefore had ample opportunity to address the matter. Accordingly the new material produced at the hearing added nothing material to what was already known by the appellants and it was certainly not a matter of new issues being raised at the hearing, as the grounds suggest.

14. For all of these reasons it is undoubtedly the case that Judge Sullivan had regard to all relevant matters in considering the adjournment request and approached the relevant issues appropriately and fairly. I am entirely in agreement with the respondent's view expressed in the rule 24 response that it is inconceivable that the judge should be charged with procedural error in such circumstances. The judge was entirely entitled to make the adverse credibility findings that she did about the appellants' claim in relation to FGM and in any event provided full and proper reasons, based upon the background evidence before her, as to why they would not be at risk in Nigeria on that basis. The conclusions that she reached were fully and properly open to her on the evidence.

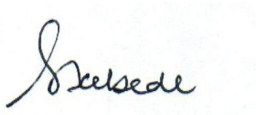
15. For all of these reasons I find no error of law in the judge's decision requiring it to be set aside. I uphold the judge's decision.

DECISION

16. The appellants' appeals are accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision to dismiss the appellants' appeals therefore stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I maintain that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede Dated: 20 November 2017