



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04891/2018

THE IMMIGRATION ACTS

Heard at Field House
On 12th September 2018

Decision & Reasons Promulgated
On 24th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MISS G I O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sesay, Solicitor

For the Respondent: Miss Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 21st September 1993. The Appellant made application asking to be recognised as a refugee on the basis of her membership of a

particular social group, namely a woman in fear of female genital mutilation (FGM). Her application was refused by the Secretary of State on 29th March 2018.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Hendry on 16th May 2018. In a very extensive Decision and Reasons promulgated on 21st June 2018 the Appellant's appeal was dismissed on protection grounds but was allowed on human rights grounds pursuant to Article 8 of the European Convention on Human Rights.
3. On 2nd July 2018 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the judge erred in his proportionality assessment and failed to make any clear findings of what are the more usual ties that would prevent the Appellant returning to Nigeria. Further, they contend that the judge had not considered that there was an option for the Appellant's mother and brother to return to Nigeria with the Appellant if they chose to do so, or that the Appellant could remain in contact with those in the UK via modern methods of communication. It was consequently submitted that the judge's proportionality assessment was flawed and as such he had made a material error. In addition Grounds of Appeal were lodged by the Appellant's representatives in response to the refusal on the protection appeal. I only briefly address that, for on 25th July 2017 Designated Judge of the First-tier Tribunal McClure refused permission to appeal and that refusal was upheld by Upper Tribunal Judge Smith on 16th August 2018. Consequently there is no appeal before me relating to the protection claim.
4. However, on the human rights appeal Designated Judge McClure in a separate decision dated 25th July 2018 granted permission to appeal.
5. It is that grant of permission that comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. This is an appeal by the Secretary of State. For the purpose of continuity throughout the appeal process Miss G I O is referred to herein as "the Appellant" and the Secretary of State as "the Respondent". The Appellant appears by her instructed solicitor Mr Sesay. Mr Sesay is familiar with this matter having appeared before the First-tier Tribunal. The Respondent appears by her Home Office Presenting Officer, Miss Willocks-Briscoe. In addition Mr Sesay replies on a Rule 24 response which is undated but which is brought to the attention of the Secretary of State's representative.

Submission/Discussion

6. Miss Willocks-Briscoe notes that on the protection claim the Appellant was found not to be at risk on return and submits that even though that is a finding within the protection claim, it goes to the heart of the matter because it addresses the issue of relocation. She submits that there are no clear reasons given as to why the Appellant's claim has succeeded and submits that the test is one of proportionality and that the judge has failed to give due consideration to this before considering the claim outside the Rules. It is her submission that time spent in the UK is not sufficient and that this case is not special. She submits that the judge has failed to take all matters into account when carrying out the balancing exercise and that there were arguments made

(referred to at paragraph 148 of the judge's decision) which the judge has failed to consider when carrying out the proportionality exercise.

7. In response Mr Sesay submits that the grounds pleaded are actually slightly different from the submissions made by Miss Willocks-Briscoe and that the main point is to be found at paragraph 5 of the Grounds of Appeal. Those grounds contend that the judge has failed to thoroughly consider and apply *Kugathas* and that just because the Appellant has been in the UK for a long time does not make it disproportionate to remove her. Mr Sesay refutes such contentions pointing out that the judge has not consented solely in allowing the appeal on the health position of the Appellant's mother, and takes me through the decision starting with paragraphs 26 to 33 which gives a history and sets out the assistance provided by the Appellant to her mother and thereafter goes on to discuss the family connection and the closeness of that connection at paragraphs 43 to 45. He takes me to a trio of authorities, namely *Kugathas [2003] EWCA Civ 31*, *Ghising [2012] UKUT 00160* and finally to *Gurung [2013] EWCA Civ 8*. Whilst accepting that cases of this nature turn on the facts of each case, he emphasises that these are issues which those authorities endorse and that the judge has considered the facts and that the decision was open to him. He takes me to *Kugathas* and to the finding therein:-

"There is no presumption that a person has a family life, even with the members of a person's immediate family. The court has to scrutinise the relevant factors. Such factors include identifying who are the near relatives of the Appellant, the nature of the links between them and the Appellant, the age of the Appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life."

8. It is Mr Sesay's submission that this is exactly what the judge has done and he takes me to various paragraphs, both from the witness statement of the Appellant and her mother that were before the First-tier Tribunal Judge. He reminds me that the First-tier Judge had the benefit of hearing oral testimony from the Appellant's mother and that he has made findings thereafter on a balanced and proportionate approach and has come to conclusions which are eminently sustainable. He asked me to dismiss the appeal.

The Law

9. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. 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 of argument. Disagreement with an Immigration Judge's factual conclusion, 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 which 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 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.

Findings on Error of Law

11. It is the submission of the Appellant that the First-tier Tribunal Judge correctly applied the principles of *Kugathas* and that the judge made clear findings of fact that were reasonably open to her at paragraphs 110, 112, 114 to 120 and 126 to 139. I am satisfied that that is a fair reflection of this case. The decision as set out by the First-tier Tribunal Judge is very detailed and sets out to address both the position on human rights grounds, and to address the protection claim. The judge has noted the authorities in considerable detail and considered all three authorities that had been raised before me on this hearing.
12. The judge has looked very carefully at the family scenario. She has noted that the Appellant left Nigeria when she was 12, but even at that time she had not seen her father since she was aged 3, and that she knew no-one in Nigeria because, having been 12 when she came to the UK, she has now lived in the UK for some twelve years herself. Consequently the judge concluded, having considered all the evidence, namely the length of time spent in the UK, the Appellant's age when she arrived, her mother's health needs and the general family life, that her application for leave to remain would not interfere disproportionately with her right to family and private life under Article 8. That is a decision that was totally open to the judge. The decision is well-argued and well-reasoned. In short the appeal of the Secretary of State amounts to little more than disagreement. In such circumstances there is no error of law disclosed and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal discloses no material error of law and the decision of the First-Tier Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity direction will remain in place.

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 her or any member of her 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 D N Harris

20 September 2018

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

20 September 2018