Upper Tribunal
(Immigration and Asylum Chamber)Appeal Number: PA/03017/2019 (V)

THE IMMIGRATION ACTS

Heard by Skype for business	**Decision & Reasons Promulgated**
On the 10 February 2021	**On 01 March 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

X
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, Counsel instructed on behalf of the appellant.
For the Respondent: Ms Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Dearden) (hereinafter referred to as the "FtTJ") promulgated on the 28 January 2020, in which the appellant's appeal against the decision to refuse her protection claim was dismissed. It is common ground that the appellant has been granted discretionary leave until a date in September 2021.

2. The FtTJ did not make an anonymity order but upon a written application made to the Upper Tribunal made on the 6 February 2020, Upper Tribunal Judge Norton-Taylor made an anonymity order as set out in the directions. Neither party have made any further submissions regarding this and for the purposes of this decision I maintain the order. Accordingly for the purposes of anonymity I shall refer to the appellant as "X" and her child as "Y".

3. The direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 shall continue as the proceedings relate to the circumstances of a minor and also a protection claim. 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 her family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

4. The hearing took place on 10 February 2021, by means of *Skype for Business*. which has been consented to and not object1d to by the parties. A face -to- face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

5. The appellant is a national of Nigeria. The appellant's immigration history is set out within the decision of the FtTJ, the accompanying papers and the decision letter of the Secretary of State dated 15 March 2019. It is not necessary for me to set out the factual evidence in any detail.

6. The appellant whilst in Nigeria held a Bachelor of Science degree in community health and in 2016 completed her master's degree in Public Health. For the three years prior to arrival in the United Kingdom she worked as a community health officer.

7. While studying at university for her master's degree she met a man with whom she had a relationship and the couple embarked on IVF treatment in 2016 with the appellant becoming pregnant with quadruplets.

8. When it was discovered that she was expecting quadruplets, the appellant was informed by her doctors in Nigeria that they could not

cope with such complicated birth and such a high-risk pregnancy (as set out in the press records and tv programme records).

9. The appellant had a visa for the US where she had a friend, and it is said that she went to America for a medical procedure. It is not known what type of visa had been granted but it is recorded that the immigration officers at the airport upon arrival refused her entry and she was immediately turned round and put on the next flight to Nigeria. The press records make reference to the immigration officers not being satisfied that the appellant had produced documentary evidence to demonstrate that she could meet the financial expenditure for any medical treatment.

10. There is no dispute that whilst en route to Nigeria via London, the appellant had a medical emergency, that she went into labour and had to disembark in London and was admitted to a hospital. Despite the medical interventions that were undertaken, only one of the four children survived, and Y was born on the xxxx.

11. During her time in hospital, the appellant participated in a TV programme which broadcast information concerning her pregnancy and treatment. The arrival of the appellant, her condition and treatment and the high cost of the treatment to the NHS was also the subject of some newspaper articles.

12. On 7 April 2017, the appellant claimed asylum. The respondent considered the basis of her claim in a decision letter of 15 March 2019 but for the reasons set out in the decision letter the Secretary of State refused her asylum claim but granted her discretionary leave until September 2021.

13. The appellant appealed that decision before the FtT (Judge Dearden).

<u>The appeal before the First-tier Tribunal:</u>

14. The appellant's appeal against the respondent's decision to refuse her protection claim came before the First-tier Tribunal (Judge Dearden) on the 23 January 2020.

15. In a determination promulgated on 28 January 2020, the FtTJ dismissed the appeal. The issues identified before the tribunal related to fear of harm to the appellant and her child owing to public perception of her child's illness, fear of harm to the appellant and her child as a result of the public perception of the media attention (publicity) surrounding her case, and fear of harm to her and her child owing to the public perception of her own mental health difficulties.

16. The FtTJ had the assistance of a medical report relating to the appellant and as recorded at [11] in accordance with the medical evidence and the practice direction, the FtTJ treated the appellant as

a vulnerable witness. The appellant gave brief oral testimony and the judge heard submissions from each of the advocates.

17. The FtTJ's analysis and assessment of the case are set out at paragraph 27 under particular headings relating to the issues identified by the advocates. At paragraph 27 (1) A, the FtTJ considered the evidence which is relevant to the claim that the appellant and/or her child would be at risk of persecutory harm in Nigeria because of the huge debt incurred as a result of treatment provided by the NHS and the publicity which surrounded her appeal. On his analysis of the evidence and in accordance with the appellant's own expert, the judge found that the BBC did not broadcast in Nigeria and that the reports in the bundle concerned events which had taken place over three years ago. Whilst the term "health tourism" had been used in the report, many of the articles were sympathetic to the appellant and whilst it was suggested that she had made money by selling her account the newspapers, the judge found that the appellant was silent as to whether she was paid for any cooperation. He considered the photographic evidence but concluded that he was unable to link the photograph with the appellant. He finally concluded that there was little chance of anyone in Nigeria, three years after the event linking the appellant with a large NHS bill. Later on in his decision at paragraph 27 (2) A, the FtTJ returned to this issue and cited the expert report set out at paragraph 9.3 that it was likely that "only a relatively small percentage of people may be aware of her case."

18. At paragraph 27 (1) (B) the FtTJ considered the medical condition of the appellant did so in the context of a psychiatric report provided by a consultant (not a treating physician). The FtTJ noted that the treatment the appellant was undergoing was for a prescription for an antidepressant and that at the time of the examination she was undergoing a severe depressive episode and it had not been disclosed whether that had continued through to the date of the hearing. The conclusion from the report was that she needed to continue consultations with her GP and to undergo CBT. On the evidence before him the judge concluded that there was medical treatment available to the appellant in Nigeria.

19. At paragraph 27 (1) (C) the FtTJ gave further consideration to the psychiatric report and the issue raised as to whether she would have to live independently. On the evidence the judge concluded that the appellant had stated that her family in Nigeria were "annoyed" and stopped communication with her when it was revealed that she ran up a bill, but the judge found that when considering the evidence it did not mean that the relationship between the appellant, her parents and siblings was completely and utterly broken, merely that it was strained. The judge made reference to views of her husband and that the press reports had indicated that he could not afford to fly to the United Kingdom. The judge considered that he was capable of

supporting himself in Nigeria and that he bore a huge responsibility for jointly taking part in the IVF treatment and bore responsibility towards their child. In conclusion, the judge found that she had family and husband upon whom she could rely upon return to Nigeria and that they would be able to support her.

20. At paragraph 27 (1) (D) the FtTJ addressed the psychiatric report in the context of her removal from the United Kingdom and any medical consequences that may result. The judge undertook an analysis of the medical evidence in did so in the light of the decision in J [2005] EWCA Civ 629 and reached the conclusion that on the evidence arrangements could be made to meet any fears at the various stages and that the appellant had people upon whom she could rely on if returned Nigeria and that suitable arrangements be made between psychiatric services in the UK and in Nigeria. At paragraph 27(1) (E) the FtTJ addressed the availability of medical treatment in Nigeria in the context of article 3 and the relevant case law.

21. At paragraph 27(2)(A)-(E), the FtTJ addressed the circumstances of the appellant's child (referred to as "Y"). He considered the circumstances by reference to the expert report and in the light of the medical reports. As set out at (A) the medical reports relied upon by the expert were out of date and inconsistent with the appellant's recent evidence and also as recorded at (B) there was no up-to-date medical evidence detailing Y's medical condition nor was there any prognosis as to any future problems that he may have. The FtTJ assessed the evidence and found that Y was fed by a tube concealed underneath his clothing but that there was nothing as at the date of hearing about his appearance that would reveal that he was disabled to the extent that would lead to a real risk of persecution or serious harm. At (C) the FtTJ addressed the expert report concerning the level of violence to those perceived as witches or possessed by evil spirits and at (D) made reference to witchcraft accusations and persecutions in Nigeria. However by reference to the particular circumstances of child Y, he found that the tube would be concealed underneath his clothing, and he would be able to rely upon his family members including the appellant's parents and sibling. The judge found that whilst the appellant had low level psychiatric difficulties, she was a woman of considerable intelligence having 2 degrees and having held regular significant employment (in community health and public health). Whilst he accepted there had been medical trauma in the past, he considered that it would be reasonable to expect her to recover with her family in Nigeria. At section (E) the FtTJ considered that Y would not be perceived as someone exhibiting "special supernatural powers" and considered this in the light of the expert evidence but that there was no risk of that occurring. Reference was made to protection by the state against the backdrop of the appellant's personal circumstances and at (G) again referred to the available treatment to the appellant in Nigeria.

22. In conclusion, the judge, having assessed the psychiatric evidence and the physical condition of her son alongside the expert evidence, he was not satisfied that the appellant demonstrated that return to Nigeria would result in a real risk of persecutory harm to either the appellant or her child. The FtTJ therefore dismissed the appeal.

23. The appellant has discretionary leave until September 2021.

24. Permission to appeal was sought and on 4 May 2020, permission to appeal was refused by FtTJ Beach but on renewal of the application was granted by UTJ Bruce.

The hearing before the Upper Tribunal:

25. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on the 15 July 2020, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face -to face -hearing. On 1 September 2020 directions were given for a remote hearing to take place and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given on behalf of the parties by their advocates.

26. Mr Holmes, of Counsel, who had appeared before the FtTJ, appeared on behalf of the appellant, and relied upon the written grounds of appeal and his skeleton argument dated 6 October 2020.

27. There was a written response filed on behalf of the respondent dated 8 July 2020. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

28. The appellant advances 5 grounds of appeal. I intend to consider each of the grounds separately and address the submissions made by the advocates under each ground.

Decision on error of law:

Ground 1:

29. The first ground advanced on behalf of the appellant is that the judge failed to ask the correct question when considering at paragraph 27 (2) (B) of his decision whether the appellant's son disability may give rise to persecutory treatment on return to Nigeria.

30. Mr Holmes submits that the focus of the judge was on whether the disability could be discerned from the appellant's son's appearance. He submits that this is too narrow an approach and that the relevant

question was whether the disability would come to the attention of others in the community by any means.

31. In his oral submissions, Mr Holmes submitted that there may be a number of ways in which an individual would become aware of the child's disability, for example, at attendance at school he will need assistance and also that on a future date he will need further medical care and therefore there would be additional factors and therefore the judge's enquiry did not go far enough.

32. Ms Pettersen on behalf of the respondent made the following submissions. Firstly, the appellant's submission ignore the fact that at his age his focus was primarily on his mother and family and that his mother as his primary carer would largely control any interactions that he would have with the community. Secondly, the submission made ignores the lack of evidence before the judge who had stated there was no medical evidence giving any details of the child's up-to-date medical condition (see paragraph 27 (2) (B). Thirdly, she submits the judge was required to consider the circumstances as at the date of the hearing and the appellant cannot point to circumstances in a school setting where there was no evidence to base such a scenario.

33. I have considered with care the submissions made by the advocates. I am satisfied that there is no error in the decision of the FtTJ on the basis advanced on behalf the appellant.

34. The grounds only seek to challenge part of the FtTJ's analysis by reference to paragraph 27(2) (B) entitled "gastric tube "but the grounds do not make reference to the other part of the analysis which included analysis of the expert report.

35. The FtTJ considered the expert report (related to witchcraft and the risk of harm as a result of the child's disability) at paragraphs 27 (1) (A-E) of his decision. The judge noted the general contents of the expert report and that the children labelled as witches in Nigeria were described as being abandoned, shunned by society, and alleged to be at risk of inhuman abuse but the judge was entitled to consider that report in the context of the appellant's child's condition.

36. I observe that the grounds do not seek to challenge the FtTJ's assessment of the expert report. As the judge set out, the report was based on medical information provided about the appellant's son which was out of date (see paragraph 27 (2) (A) and which was not consistent with the appellant's own evidence.

37. Furthermore, as a judge noted at paragraph 27 (2) (B), despite the reports provided on behalf of the appellant, there was no medical report in relation to the appellant's son which was up-to-date or gave

any further prognosis as to his condition. The only medical evidence available to the expert and before the tribunal was a letter dated 4/6/18 referring to him as "remaining oxygen dependent due to chronic lung damage due to prematurity" and that he had a "nano gastric tube". There was a letter dated 25/2/19 was referred to the child as being "ex-Prem" (meaning X premature baby) with improving chronic lung disease who may need it a gastrostomy. None of that evidence was up to date nor did it set out any prognosis for the child for the future in terms of any disability or condition.

38. Against that background the judge was correct to identify that the only up-to-date evidence of any disability the child may have, came from the appellant herself who referred to him being fed via a gastric tube under his clothing and that there was nothing else beyond that which revealed any disability.

39. I also observe that the judge noted the submission made on behalf the appellant at paragraph [25] which is recorded as follows "I was asked to accept however that the gastric tube marked him out as different." It is therefore not surprising that the judge expressly addressed the issue of the gastric tube on account of the submission raising this issue explicitly.

40. The FtTJ also set out at paragraph 27 (2)(D) by reference to the expert report, that there would be nothing to identify to anyone outside of the family that he had a disability and that this would be managed by his mother who had training, both practical and academically in community health management.

41. This was significant because the expert report referred to the children at risk with specific disabilities such as being communication challenges, learning difficulties, children with autism (see paragraph 13.1 and 13.2) and identified disabilities which the appellant's child did not have and as the judge properly identified, the expert report was in any event relying upon evidence was out of date.

42. In my judgment the FtTJ properly considered the evidence including the expert report within his decision properly identifying the weaknesses in that report most notably in the context of the appellant's child's disability. It was therefore open to the FtTJ to reach the findings he did that there was no real risk of Y being subjected to persecution or serious harm on account of his medical condition.

43. Consequently there is no error as asserted in ground 1.

Ground 2:

44. As to ground 2, it is submitted that there was consensus in the background evidence as the treatment facing those with disabilities in Nigeria and that the Human Rights Watch report ("HRW") set out in the appellant's bundle was not mentioned in the FtTJ's assessment despite it providing support for the material discussed in the country background evidence.

45. I am satisfied that there is no material error of law in the decision by any failure to reference the HRW report.

46. I can find no reference to any submission made which highlighted this particular report. Furthermore, as set out in my analysis of ground 1, the judge properly had regard to the generalised background evidence set out in the report of the expert Mr Foxley concerning the treatment of those with mental health problems and disabilities in the context of children and adults.

47. Mr Holmes identifies in the grounds the following matters from the HRW report:

    (a) there is "misconception" that mental health conditions "are caused by evil spirits or supernatural forces";
    (b) the restraint of mental health patients by change their beds or similar, including children, in some cases without supervision;
    (c) the use of chains is found to be standard, both adults and children, in 27 of 28 facilities visited;
    (d) such restraint can be fixed any period of time, for example 10 months with periods of detention reaching up to 15 years;
    (e) in 28 facilities the residents were exclusively detained and lawfully
    (f) treatment infection in patients includes physical abuse, forced medication and electroconvulsive therapy without consent.

48. Mr Holmes submits that the report was directly material to the issues.

49. When the HRW report is read in its entirety, in my judgement that material is generalised background evidence, and the judge was entitled consider the evidence as to risk based on this particular child and the evidence before the Tribunal concerning his disability. As the respondent submitted, the HRW report principally referred to people with mental health conditions, the highlighted examples relate to those in "rehabilitation centres" and "traditional healing centres". The evidence before the judge did not state that the appellant's child had any mental health difficulties. Indeed as the FtTJ noted the medical evidence concerning Y was demonstrably lacking.

50. Furthermore, the judge considered the circumstances of the appellant's child in the light of his mother's background in community health. The appellant had worked in community health three years prior to her arrival in the UK and also had a BSC degree and a

Master's degree in public health and therefore the judge's assessment was that Y would be able to rely upon his mother's background in public health and thus there was no basis for finding that the child would be required to be placed or would be placed in any rehabilitation centre or traditional healing centre.

51. The ground is advanced on the basis of the treatment facing those with disabilities (see paragraph 24 the skeleton argument produced by Mr Holmes). This was in the context of the appellant's child having a disability.

52. I have therefore addressed that ground in the particular context as set out above. Mr Holmes did not make any oral submissions in support of the ground but stated that he relied upon the written grounds and skeleton argument.

53. However, in the event of there being any ambiguity raised as to whether it was being said that the evidence was relevant to the appellant's circumstances and her mental health, I am equally satisfied that there is no material error of law in that context either.

54. The judge carefully considered the medical evidence advanced on behalf of the appellant and at (B) set out the salient parts of the consultant psychiatrist's report. The FtTJ's analysis of the psychiatric evidence has not been challenged in the grounds. The judge found that at the time of the report the appellant was undergoing a severe depressive episode but that it had not been said that the episode had continued as to the date of the hearing. The judge identified that the only treatment the appellant was undergoing was a prescription for an antidepressant drug and that the doctor considered that for future treatment she should continue consultations with her GP and undergo cognitive behavioural therapy.

55. The psychiatric report referred to medical treatment for mental health being "widely available in Nigeria" (see page 180 AB;para11 of the report) which was a point echoed in the decision letter and in the decision of the judge (see decision at paragraph 27 (2) (B)).

56. Whilst the doctor considered that she was vulnerable as a "lone woman", the judge addressed this at paragraph 2(2) (C) finding that she was not a lone woman nor would she be required to live independently of family members. At section D of his decision, the judge address the consequences of removal in the context of the medical report. Again the grounds do not seek to challenge the FtTJ's analysis of the medical evidence and this paragraph referring to the consequences of removal upon the appellant and the safeguards/support that was likely to be put in place, both in the UK and in Nigeria.

57. The grounds also do not address the question of how, in the light of the medical evidence, the generalised material in the HRW report would have any bearing on the risk to this particular appellant. The FtTJ reached the conclusion that on the evidence, the appellant had a relatively low level of mental health needs and there was no evidence of psychosis. The evidence in the HRW report as I have stated when read is aptly described as generalised evidence concerning the treatment of those with mental health difficulties and that those with such conditions, (actual or perceived) who have been placed in facilities usually by relatives and that they may be shackled (page 270 and 221) and that there was violence in rehabilitation centres (page 223).

58. In the light of the analysis of the medical evidence which expressly referred to this particular appellant's condition, which has not been challenged on the grounds, in my judgement the ground fails to identify how such generalised material could possibly undermine the judge's assessment of the risk to the appellant.

59. I am satisfied that the grounds do not demonstrate any material error of law in the decision of the FtTJ.

Ground 3:

60. As regards ground 3, it is submitted that the judge made two mistakes of fact or in the alternative, failed to have regard to material evidence.

61. Mr Holmes on behalf of the appellant identifies the first mistake of fact at paragraph 19 where he submits the judge suggested that she had travelled to the US to give birth by stating that "I very much doubt whether (the appellant) informed that US immigration authorities that she wished to enter so that she could give birth to quadruplets."

62. He submits that the appellant's evidence was that she had not suggested that she had gone to the US to give birth but that she was going for a medical procedure (set out at question 18 of the interview). Mr Holmes further makes the point that the children were born a month after the attempted trip and were born prematurely and therefore this further detracts from the suggestion that the trip to the US had been to give birth.

63. The second mistake of fact or failure to consider material evidence relates to paragraph 27 (1) (c) and the judge's consideration of the appellant's husband where the judge stated; "the appellant is silent as to the view of her husband regarding the situation… The only information I have about the husband comes in the press reports

which indicate that he cannot afford the flight to the United Kingdom. … The husband…. bears a huge responsibility for jointly taking part in the IVF treatment… He also bears a responsibility towards the sole surviving child."

64. Mr Holmes submits that the FtTJ failed to have regard to the appellant's direct evidence at question 26 that the relationship broke down because the father of the child took the view that medical care should be withdrawn on account of the expense. Therefore he submits the appellant was not "silent" about her husband, but the evidence suggested that her husband place little weight on the child's welfare.

65. I have considered the evidence before the judge and have considered the points identified by Mr Holmes and have done so in their particular context. Dealing with the first point, I am not satisfied that there is an error of any materiality. Mr Holmes relies upon paragraph 19 and submits that the judge suggests there that the appellant had travelled to the UK to give birth. However paragraph 19 is contained in the section entitled "appellant's case" and where the judge is plainly setting out the factual parts of the case which did not form any part of his eventual analysis or findings of fact.

66. Furthermore, what the judge had stated at paragraph 19 was not in error but was supported by evidence in the appellant's bundle which was contained in the press reports. As the respondent identifies, at page 28 it was recorded "she claims that she planned to have babies in Chicago after being warned that the Nigerian hospital did not have the facilities to care for the child." Similarly at pages 35, 39 and 44, and further reports made reference to the appellant intending to give birth in the United States. An article at page 48 referred to her "scheduling to give birth in the United States". Paragraph 59 also recorded that she had said that her doctor had warned her against having the four babies in Nigeria.

67. Whilst Mr Holmes submits that that information may not necessarily have come from the appellant, one of the sources comes from a direct quote attributable to the appellant (page 28).

68. Furthermore, the judge was not in error when he stated at the first part of the sentence which is not recorded in the grounds where he said, "the appellant does not tell me the basis upon which she applied to enter the USA…". While she had a valid Visa, her evidence interview was that the Visa was one that she had obtained in January 2016, valid for two years, but no proper explanation was given as to the basis upon which the visa was granted. The inference that it was not a medical Visa is based on the fact that when she arrived (as set out in the press reports and in interview), she did not have sufficient

evidence of her finances to pay for any medical treatment and was refused entry (see pages 61 and 64 of the appellant's bundle).

69. As to the second point, the judge was not an error in identifying that in the newspaper reports the evidence concerning her husband was to the effect that he wanted to be with his wife but could not do so because of lack of funding to travel. The appellant expressly stated in answer to such a question concerning his whereabouts "will you give him a visa and money to come" (see page 59 of the appellant's bundle).

70. However, Mr Holmes is right to state that at question 26 in the interview which took place in 2017, she said her husband did not have the money to pay for the children's treatment and that thereafter he had blocked her calls and emails. Whilst that was the evidence in 2017, the judge was right to say that the appellant had not stated whether she was separated or divorced from her husband in evidence given two years later in 2019.

71. In my judgement, the issue is whether the failure to consider the replies at Q18 and/or Q26 was material to the overall assessment made by the judge. As to Q26, even if it could be said at the date of the interview that that her husband had been blocking her calls, the judge did not assess the support the appellant would have in Nigeria solely on the basis of the support that she would have from her husband. At part [C] of his decision, the judge considered more recent evidence set out in the psychiatric report concerning other family members who were reported as being "annoyed" when being told about the appellant running up the debt in the United Kingdom. The judge carefully considered that evidence but reached the conclusion that the use of the word "annoyed" did not mean that the relationship between the appellant, her parents and sibling was "completely and utterly broken, merely that it is strained." The judge therefore made findings on the evidence and he was entitled to reach the conclusion that the appellant would likely have support and assistance from family members in Nigeria, even if it did not include her husband.

72. As I have set out the judge was not wrong when he stated that the appellant had not said whether she was separated or divorced from her husband and whilst the evidence in the interview made reference to her husband blocking her calls, the evidence given two years later in 2019 was silent on whether they were separated or whether a divorce was in contemplation.

73. When looking at the issue in the context of the claim as a whole, I am not satisfied that even if the judge did overlook the answer at question 26, that this undermined the other findings he made of support available to the appellant from her other family members and that as she herself was health professional both practically in terms of

expertise and through her academic qualifications, that she was in a better placed position than others who did not have the experience or expertise in this area (see paragraph 27 (2) (D).

Ground 4:

74. Ground 4 has an overlap with ground 3. Mr Holmes submits that the judge had referred to a number of irrelevant factors at paragraph 27 (1) (A) and that as this was not a case where credibility was part of each party's case, the judge was wrong to take such factors or matters into account. He submitted that there was no dispute as to the relevant material facts which were that the appellant had given birth to quadruplets, she had become pregnant through IVF, three children had died upon birth and that her surviving child is unwell. Therefore he submits, that the matters set out by the judge were of no relevance to the issues and it was difficult to see how credibility issues arose from such factors.

75. The respondent submits that the points raised on behalf of the appellant do not suggest any bias, apparent or otherwise on the part of judge and if those factors were irrelevant, which is the point made in the grounds (set out both at paragraph 7 of the grounds and paragraph 9 of the skeleton argument), it it cannot be said that there was any material error.

76. Mr Holmes counters by way of reply that the irrelevant factors became relevant because it affected the judge's view of the appellant's credibility and thus could possibly have infected his factual findings.

77. I have given careful consideration to this submission and have reflected upon the decision of the judge and the evidence. The part relied upon by Mr Holmes is that set out at paragraph 27 (1)(A) where the judge was considering the issue of publicity and whether the appellant would be at risk of persecutory treatment in Nigeria as a result of the debt that she had incurred from the medical treatment in the UK. For the reasons the judge set out at that paragraph, he found that she would not be at risk in Nigeria from any publicity, relying partly on the expert evidence of Mr Foxley set out at paragraph 9.3 of his report and as further analysed in the judge's decision at paragraph 27 (2) (A). The grounds do not challenge that assessment or the conclusions that she would not be at risk of persecutory treatment due to any publicity surrounding the circumstances in which she gave birth in the United Kingdom. It is after those unchallenged findings that the judge went on to express thoughts about the lack of evidence from the appellant. The judge stated "one wonders why she embarked on IVF treatment in 2016 when her date of birth is xxxxx. The appellant does not tell me whether she deliberately had four eggs fertilised, when she was advised to have

four eggs fertilised, or whether her doctors were unlucky or incompetent."

78. When looking at those matters, they seem to me to reflect the judge thinking out loud. I accept that some of the matters set out had no relevance to any issues such as why she embarked on IVF treatment in 2016 in the light of her age, or whether she had four eggs fertilised or not or whether she declared to the aircraft operators her medical condition. To some extent, the judge was right that there were a number of unanswered questions which he identified such as whether there were any links between her employment in the hospital and her IVF treatment and nor did she have any further explanation as to the way in which she had sought entry to the US.

79. It seems to me that the important issue is whether any of that thinking out loud had any material relevance or impact upon the judge's assessment or factual findings.

80. Having carefully looked at the analysis of the evidence, much of it being unchallenged in the grounds, I have concluded that those matters had no material bearing on the issues that the judge went on to determine.

81. As can be seen plainly from the decision, those thoughts or questions followed his factual findings on the issue of publicity which in turn partly relied upon the appellant's own expert evidence. The judge found that the BBC did not broadcast in Nigeria (a point set out in the expert report at paragraph 9.3 "it is likely that only a relatively small percentage of people may be aware of her case"), and that the reports provided by the newspapers were all dated around 1 February 2017 which meant that the events described were three years old. The judge considered the contents of those news reports and whilst the term "health tourism" had been used, the judge concluded that "in many ways are sympathetic, because the appellant was on her way back to Nigeria at the time the medical emergency arose." The judge also made reference to a photograph of the appellant in one of the reports, but that he was unable to link the photograph with the appellant's appearance. Thus he concluded that there was "little chance of anyone in Nigeria, three years after the event, linking the appellant with a large NHS bill."

82. Therefore the unanswered queries he pondered upon had no material effect upon that analysis which was firmly based on the evidence and also is unchallenged in the grounds.

83. The respondent submits that there is no allegation of bias that has been made on behalf of the appellant and that is the position. The respondent also submits that the appellant's argument fails because ground 3 expressly states that credibility was not an issue and

therefore it must follow that such thinking out loud was therefore wholly irrelevant. The respondent also submits that neither the skeleton argument nor the grounds elaborate further as to what findings, if any, were affected by the judge's reference to those unanswered questions. I agree with those submissions, and at its highest, Mr Holmes in his oral submissions sought to identify the finding made by the judge concerning family support as one that could potentially be affected. However in my judgement even if it could be said the judge's thinking aloud did affect the credibility generally of the appellant, when looking at the issue of family support, the judge was expressly considering the later evidence given by the appellant herself to the psychiatrist concerning her family and their feelings of being "annoyed". He went on to set out how that could be considered in the context of factual circumstances and in my view, it was reasonably open to the judge to conclude that the description given by the appellant did not mean that the family were likely not offer support and help to her. That was a finding that also had not been challenged in the grounds. It follows that it has not been demonstrated that the finding as to family support was affected by any of the questions the judge raised.

Ground 5:

84. Dealing with ground 5, it is submitted on behalf of the appellant that the judge failed to apply the correct test were looking at the issue of sufficiency of protection (see paragraph 27 (2) (F)).

85. The written grounds assert that it is unclear what test the judge was applying. In his oral submissions, Mr Holmes submitted that the judge gave inadequate consideration to the issue and that it was relevant to the expert report at paragraph 17.3. At that paragraph, the expert states that the legislation available did not reduce the belief in witchcraft or provide a deterrent to accusations of witchcraft and related violence.

86. I asked Mr Holmes to confirm the context in which ground 5 was set and he confirmed that the issue was focused on the position of the child and that sufficiency of protection was in relation to that issue.

87. Having given careful consideration of the submission, I am satisfied that it fails to properly consider the decision of the FtTJ as a whole and the context in which the issue of sufficiency protection was in fact considered.

88. The FtTJ considered the risk to the appellant from members of the community due to adverse publicity concerning the debt incurred set out at paragraph 27 (1) (A). Again, there is no challenge to the assessment made by the judge. I have set out earlier in this decision the factual findings made by the judge and that were made by

reference to the material in the appellant's bundle including the newspaper reports but also in the context of the expert report of Mr Foxley. He therefore concluded that in the light of the evidence, and the length of delay that there was little chance of anyone in Nigeria linking the appellant to such a large bill. Therefore based on those factual findings, the appellant was not in need of any protection and was supported by the expert report at paragraph 9.3 and the analysis further set out by the judge at paragraph 27 (1) (a).

89. Mr Holmes however puts it in the context of the child and the risk of being perceived as a witch. However, again, the issue of sufficiency protection has to be considered in the context of the FtTJ's factual assessment which was that notwithstanding the report of Mr Foxley and the generalised evidence, that this particular child and on the basis of his characteristics and the medical evidence, that he would not be at risk of harm because there was nothing to mark him out as disabled (see section entitled "gastric tube").

90. At paragraph 27 (c) the FtTJ considered the general evidence relating to the persecution of disabled children and that the expert had collated 67 reports. The judge considered that whilst this was "67 children to many" but in a population of 197,000,000 67 cases did not amount to a "real risk" and the FtTJ stated "no state can guarantee hundred percent protection; I am looking at protection to a practical standard under the Horvath guidelines."

91. At section E of his decision, the judge further considered how the child would be perceived but for the reasons set out there found that there was no real risk of any harm occurring.

92. Therefore whatever the judge had stated at section F in respect of state protection, on the factual findings made, the appellant's child was not at real risk of being persecuted as a result of his disability, perceived or actual, in the context of witchcraft in the country. That being the case, it was not necessary for the judge to make any further assessment of the issue of sufficiency of protection. I am therefore satisfied that ground 5 is not made out.

93. As identified by the judge this was a most unusual case and I am satisfied that when the decision is read as a whole and in the context of the evidence that was before the judge, this was a decision that was properly open to him to reach. The grounds do not, in my judgement, demonstrate any error of law of any materiality to undermine what was a careful consideration of the circumstances of both the appellant and her child and in the context of the traumatic circumstances following her arrival in the United Kingdom.

94. For the reasons given above, I am satisfied that the decision of the FtTJ did not make an error on a point of law and therefore the decision stands. The appeal is dismissed.

Notice of Decision.

95. The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision stands.

Signed Upper Tribunal Judge Reeds

Dated 15 February 2021

Direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008: an anonymity order has been made as the proceedings relate to the circumstances of a minor and a protection claim. 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 her family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.