



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: LP/00310/2020
[PA/50521/2020]

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 December 2021**

**Decision & Reasons Promulgated
On 17th January 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AOA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wilford

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a female citizen of Nigeria who was born in 1984. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 24 June 2020 refusing her claim for international protection. The appellant's step daughter (Z) and her own children, (O and I) claim asylum as her dependants. The First-tier Tribunal, in a decision dated 21 December 2020, dismissed the appeal. The judge rejected the appellant's claim to have lost touch with her husband in Nigeria and that the children are at risk of FGM in Nigeria at the hands of OOM, the cousin of Z's natural mother. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal.

The burden and standard of proof

3. At [46], the judge wrote, 'it is reasonably likely that [the appellant] knows [her husband's] whereabouts as she has failed to establish he is not simply at home.' Again at [49], the judge wrote, 'I am satisfied that it is reasonably likely [the appellant] knows where [her husband] is and she can return to him.' The standard of proof of 'reasonable likelihood' applies to the evidence adduced by the appellant to prove that she has a well-founded fear of persecution for a Convention reason. The appellant argues that, by applying that same standard of proof to the assertion of the respondent (i.e. that the appellant is in touch with her husband in Nigeria) the judge reversed the burden of proof. Instead of asking himself whether the appellant's claim that her husband is missing is true, the judge had considered 'whether there was a reasonable likelihood that the exact opposite was true' (grounds, [9]).
4. I am not satisfied that the judge has erred in law such that his decision should be set aside. The challenge in Ground 1 concentrates on the semantic significance of the judge's finding at the expense of its substance. The second part of the finding which is challenged (*'she has failed to establish he is not simply at home'*) is uncontroversial by reference to the reasoning in the grounds whilst the first part (*'it is reasonably likely that [the appellant] knows [her husband's] whereabouts'*) is no different in meaning from 'it is reasonably likely that the appellant's claim that she has lost touch with her husband is untrue'; it is another way of saying the same thing and has the advantage of avoiding the use of double negatives. I have no doubt that the judge has simply prefaced several of his findings of fact with the words 'I find it reasonably likely that...' to reinforce his statement at [7-9] that he applied the appropriate standard of proof. The use of the words has no greater significance in the judge's analysis than that.

'Real risk' and internal flight

5. The second ground cites paragraph 339K of HC 395 (as amended):
339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
6. The judge found that attempts had been made by OOM to subject Z to FGM in the past [37]. However, at [48] the judge gave a number of detailed reasons why he considered that only OOM would have any interest in the appellant or Z. He found that OOM's interest would be 'less intense' given the passage of time and that the fact that OOM had failed to take opportunities in the past to harm Z showed that the risk now was not sufficient to amount to a *real* risk. The appellant argues that the judge failed to apply paragraph 339K and failed also to make clear findings of

fact on incidents of threat which the application claims occurred in 2015, 2017 and 2019.

7. The ground is without merit. Paragraph 339K indicates that previous harm (which I accept can include, as here, the threat of harm) will be regarded as a serious indication of future risk but I am satisfied that the judge has given 'good reasons' for finding that the harm will not be repeated. I consider that the Tribunal's findings that the appellant will have the support of her husband in Nigeria, that OOM had not killed Z's mother, that the incidents of past threat were not as serious ('intense') as the appellant claims and that that the passage of time will have had an effect on OOM's resolve to harm the children are all 'good reasons' in this context. The claim that the judge has erred by not considering any possible threat from members of OOM's family is not established. As the grounds acknowledge [5], OOM is the only identified individual who it is claimed has been a threat in the past; it is unclear how, even if the judge considered the possible threat from other unidentified individuals, how his decision would have been different. Moreover, whatever the level of future threat from OOM or others, the judge's findings that (i) the appellant would have the support of her husband (ii) that OOM would have no knowledge that the family had returned to Nigeria (iii) the family can live 'in Lagos or ... other large cities and change Z's school' (i.e. exercise the option of internal flight) are effectively determinative of the appeal. Finally, the assertion in the grounds at [21] that the judge failed to carry out a holistic assessment of the evidence and to find that the threat from OOM is 'gradually escalating' is not made out. I am satisfied that the judge has considered all the evidence before reaching his findings whilst the appellant's characterisation of the nature of the threat posed by OOM represents nothing more than a disagreement with the reasoned findings of the judge.
8. For the reasons I have given above, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed

Date 9 December 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the

appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.