Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: UI-2022-001906
PA/50100/2020; LP/00321/2021

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 6 October 2022	**On 25 November 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M McGarvey instructed by Crowley & Co Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Nigeria who was born on 3 May 1988. She arrived in the United Kingdom in October 2014 with entry clearance as a student. That leave expired on 31 December 2016 and the appellant overstayed.

3. In June 2016, the appellant's son was born in the UK and on 17 December 2019 the appellant's daughter was born in the UK.

4. On 7 October 2019, the appellant claimed asylum. The basis of the appellant's claim for asylum was twofold. First, she claimed to be at risk of serious harm from her paternal uncles in Nigeria due to a dispute over the inheritance of the family home following the death of her father in 1998. She claimed that, because her mother was not married to her father and that there was no will, her paternal uncles claimed ownership. As a result, there was an inheritance dispute which resulted in the appellant's mother leaving the house approximately in 2004 leaving the appellant and her brother, who is seven years younger than her, living there with her uncles. Secondly, the appellant claimed that her daughter faced a risk of Female Genital Mutilation ("FGM") on return to Nigeria. The appellant contended that she had undergone FGM as a young girl and, as a result of family pressure, despite her objection to it, FGM would be forced upon her daughter. She claimed that the children's father had deserted them in June 2019 and that she had no further contact with him.

5. On 14 February 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal. In a decision sent on 11 March 2022, Judge C H O'Rourke dismissed the appellant's appeal on all grounds.

7. First, the judge rejected the appellant's account that there had been a family dispute over inheriting the family home and that the appellant was, therefore, at risk of serious harm from her paternal uncles on return.

8. Secondly, the judge did not accept that there was a real risk that the appellant's daughter would be forced to undergo FGM on return to Nigeria.

9. Thirdly, the judge found that the appellant's removal, together with her children, to Nigeria would not breach Art 8 of the ECHR.

The Appeal to the Upper Tribunal

10. The appellant sought permission to appeal to the Upper Tribunal. The grounds raise essentially four grounds.

11. First, the judge erred in law in not giving "much weight" to an expert report prepared by Dr Amundsen, in particular on the basis that Dr Amundsen had failed to set out in his report that he acknowledged his duties as an expert to the Tribunal and that he was an independent expert (Ground 1).

12. Secondly, having decided not to attach "much weight" to the expert report, the judge assessed the risk to the appellant's daughter on return taking into account factors which were not supported by any country background evidence and which relied upon the judge's own opinion (Ground 2).

13. Thirdly, the judge had perversely and irrationally reached an adverse credibility finding in relation to the appellant's account of a family dispute and threat from her paternal uncles (Ground 3).

14. Finally, the grounds contend that the judge failed to have regard to the best interests of the appellant's children applying s.55 of the Borders, Citizenship and Immigration Act 2009 (Ground 4).

15. On 27 April 2022, the First-tier Tribunal (Judge Galloway) granted the appellant permission to appeal on all grounds.

16. The appeal was listed for hearing at the Cardiff Civil Justice Centre on 6 October 2022. The appellant was represented by Mr McGarvey and the respondent by Mr Bates.

The Judge's Reasons

17. Central to the appellant's case that her daughter would be forced to undergo FGM was a report, put forward by the appellant prepared by Dr Amundsen dated 20 July 2021 (at pages 145–164 of the digital bundle). The judge summarised Dr Amundsen's report at para 26 of his decision:

> "26. i. Dr Amundsen is a senior researcher at an independent Norwegian research institution and his areas of research are in respect of several African countries, to include Nigeria. His published works relate to political and economic issues in that Country, although he states that he also has expertise in human rights abuses, risk of return and degrading treatment and torture. He makes no mention of being aware of his duties to the Tribunal as an independent expert, or of the requirements of the Tribunal's Practice Direction of December 2018, on this subject.
>
> ii. He sets out the general political and economic situation in Nigeria and recounts human rights abuses and the weakness of the rule of law [34-36].
>
> iii. The Ondo people are one of the largest Yoruba sub-groups and are *'rather traditionalist, still practising FGM and facial scarring …'*. [37]. He states that the prevalence of FGM among the Yoruba is still high, with an overall prevalence of 18.4%, which is about the national average, with World Health Organisation statistics from 2019 showing that 20% of women aged 15 to 49 had undergone

the procedure. He also states, however that a neighbouring state to Ondo, Osun State, had, in 2016, a 76% prevalence, based on an unreferenced report from an entity called the 'Daily Trust'.

iv. There is a clear trend of reduction in prevalence of the practice, nationwide, from approximately 30% to 18%, between 2008 and 2016/17. However that is not the case in Ondo State, where it *'seems not to have decreased'* (that latter opinion being based on an unreferenced Guardian article of 2018, itself referring to *'recent news reports from a local NGO'*). A 2013 study indicated that a third of Yoruba women supported the practice.

v. While attitudes are changing in Nigeria, attitudes in rural Nigeria remain unchanged.

vi. FGM is a federal criminal offence in Nigeria and several states have enacted legislation to prohibit it, to include Ondo State, but enforcement is minimal. There is unlikely to be sufficiency of protection against FGM.

vii. Dr Amundsen sets out the Appellant's account of her life in Nigeria and her fears on return (based on his reading of her asylum interview and statement of evidence form, although he makes no reference to having been provided with the refusal decision). He states *'furthermore, Ms Adekugbe has suffered abuse by her family in Nigeria. She has been threatened and beaten'*.

viii. He considers her fear of her daughter being subjected to FGM as being well-founded, based on the statistics he previously referred to and her account of her family and likely community pressure. Being under the age of five is also a particular vulnerability and he makes reference, in a 2012 Immigration and Refugee Board of Canada report, to force being used (on the victim). That same report, however, states that parents can refuse such practice on their daughters, playing a major part in such decision-making. If, however, the father and his family support the practice, it may be performed in the mother's absence and that it is *'common with illiterate young couples that the authority of the grandmother will prevail'*. It also states that educational level and economic status are relevant, with better-educated, urban, or more affluent parents being more resistant to the practice, but that family pressure may nonetheless be exerted. Dr Amundsen considers, however that the prevalence of the practice depends more on the ethnic group traditions, than on education and income.

ix. Refusal of the practice may result in the withdrawal of family and communal support, crucial to the Appellant, as a lone mother, in terms of accommodation and finding employment. Regardless of her qualification, she would find it very hard to find work, without such assistance. She may, therefore, find it impossible to resist such pressure from her family. For those reasons and others, relocation is not considered feasible. Again, in this context, Dr Amundsen takes, at face value and reiterates the Appellant's assertions as to her physical and mental vulnerabilities.

x. While he concludes that the Appellant's fear of FGM and family and community pressure in that respect is well-founded and that there would no sufficiency of protection, it is less certain that FGM would actually be enforced, when the Appellant would be against it. It

seems unlikely that she would be physically hurt for such resistance, but would be subject to economic pressure due to her lack of other options, in place of living with her family".

18. Then, at para 27, the judge considered what, if any, weight he should give to this report:

> "27. Conclusions on Expert Report. I don't give Dr Amundsen's report much weight, for the following reasons:
>
> i. He seems to have little idea as to the concept of being an independent expert witness and of his duties to the Tribunal.
>
> ii. He uncritically repeats and relies on the Appellant's account to support his conclusions, never considering the possibility of fabrication. As far as I can establish, he was not provided with the refusal decision, or if he was, took no account of it and which, if he had, may have moderated his opinion.
>
> iii. He seems to have no personal expertise in this matter, relying merely on his reading of other's reports, which, based on my concerns as to his independence, lead me to query the possible degree of selectivity in respect of such accounts.
>
> iv. Many of his references are quite aged, some from as long as ten years ago, when even his own conclusions are that there is a clear trend of reduction of the practice of FGM and therefore the value of such references is questionable".

19. Having expressed that view that he could not give the report "much weight" for the reasons he set out at 27(i)–(iv), the judge went on to make findings of fact in relation to the appellant's credibility and claimed threat from her uncles [at paras 28–29] and then in relation to the risk to the appellant's daughter of forced FGM [at paras 30–31].

20. As regards the former, the judge said this at paras 28–29:

> "28. Threat from the Appellant's Uncles. I found the Appellant's account of her life in Nigeria and her subsequent lack of contact with friends and family deeply implausible, for the following reasons:
>
> i. She clearly comes (in relative terms) from a comparatively well-off family, based, on her account, of there being an 'inheritance' worth fighting for. The fact that she has had a full education, to teacher-training level and could then fund a journey to and further education in UK and arrived with a healthy bank balance further strengthens that view.
>
> ii. I simply don't believe her account as to having lost contact with both the very generous and solicitous friend of her late father and her brother and consider that she is asserting this in an attempt to support her account of abuse by her uncles and also of any future lack of support from the friend and her brother. She had no plausible explanation for her failure, now of over seven years, to re-establish contact after she had lost her phone in her first year in UK. The friend, on her account, had been very helpful and generous and it seems unlikely, only a year in that he would be

expecting repayment of the loan, particularly when, on her account, she had never discussed with him how she might repay it and she was still a student at that point. She therefore had no reason not to write to him and, at the same point, to ask him to give her brother her contact details, or to obtain his. She said in evidence that when she first came to UK she was considering returning, because of her brother, but despite this, on her account, did not inform him when she was leaving and has made no effort to contact him for approximately seven years.

iii. Nor did I consider it plausible that if the abuse she was receiving from her uncles was so severe that she would nonetheless have stayed with them for a further eight/ten years after her mother left, despite her having both her own income and no doubt the support of her father's friend. Nor, in that context, is it plausible that the uncles would have allowed her to stay, on free bed and board, when she had earnings of her own, if they were so malign towards her and so financially-motived.

29. I don't therefore accept her account in this respect, leading me to conclude that she does have supportive family and a friend or friends in Nigeria, whether they consist of her uncles, or brother, or her father's friend, or otherwise, but is choosing to hide that fact, to support her asylum claim and this subsequent appeal".

21. As regards the latter, the judge concluded that there was not a real risk to the appellant's daughter at paras 30–31 of his decision:

"30. FGM Risk to her Daughter. The following factors apply:

i. Her lack of credibility generally.

ii. The fact that she has been subjected to the practice and is of the Yoruba tribe.

iii. Her higher than average level of education and the time she has spent in UK, away from the practice of Nigerian customs.

iv. Her daughter being under the age of five.

v. The evidence that where parents refuse the practice it is very unlikely to be carried out, although that may result in familial ostracism and also the fact that she has sole responsibility for her daughter.

vi. That on her account, there are no 'matriarchal' figures in the immediate family, who tend to be the main instigators of FGM.

vii. That the practice is in decline.

viii. That there is no evidence of other young females in the extended family having been subject to the practice.

31. Conclusion. I conclude that the risk to the Appellant's daughter is not sufficient to meet the 'reasonable likelihood' threshold, for the following reasons:

i. There is no matriarchal figure in the immediate family to instigate such a practice and no evidence of its recent practice in the wider family.

ii. On the Appellant's account, she had (and I believe would continue to have) the support of her father's friend, should there be any pressure applied to her.

iii. She is educated, articulate, with experience of life outside Nigeria and with sole responsibility for her daughter and would therefore refuse such a practice, if proposed, either in her home city, or elsewhere. She would, I consider, have the support of her younger brother and whatever other family she has in Nigeria, in resisting any pressure that might be applied.

iv. The practice is in steep decline and the tolerance of it will undoubtedly have greatly changed since she was subjected to it, approximately thirty years ago".

22. At para 32, the judge found that if, contrary to his finding the appellant's daughter would be at risk of forced FGM, she would obtain a sufficiency of protection from the Nigerian state. But, of course, that finding was immaterial to the outcome of the appeal given the judge's conclusions in paras 30–31 that the appellant's daughter would not be at risk.

23. Then at para 33, the judge considered the possibility of internal relocation, again on the basis of a contrary position to that of his principal finding that the appellant's daughter would not be at risk in the home area, and, albeit not with absolute clarity, concluded that relocation was an option.

24. Finally, at para 34 the judge reached the conclusion that the appellant's removal would not breach Art 8.

The Submissions

The Appellant

25. On behalf of the appellant, Mr McGarvey relied on the grounds of appeal although he focused upon what I have identified as Grounds 1 and 2.

26. First, he submitted that the judge erred in law by giving inadequate weight to the report of the expert, Dr Amundsen.

27. Mr McGarvey submitted that Dr Amundsen was clearly an expert. However, he accepted that Dr Amundsen's report failed to set out matters relevant to his duty to the Tribunal as an independent expert as set out in Part 10 of the Senior President's "Practice Direction: Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal" (10 February 2010). Nevertheless, Mr McGarvey submitted that the judge had been wrong to discount the weight to be given to Dr Amundsen's report.

28. Secondly, Mr McGarvey submitted that at paras 31 and 32 of his decision, the judge took into account a number of factors without reference to Dr Amundsen's report (which he had decided could not be given much

weight) and the (then) applicable *CPIN*, "Nigeria: Female Genital Mutilation (FGM)" (August 2019). Mr McGarvey pointed out that that *CPIN* had been replaced by a more recent *CPIN* in July 2022 but, of course, that was not in effect at the time of the judge's decision. Mr McGarvey, in particular, submitted that not all the factors set out in para 30(vi) of the judge's decision were included in the listed factors set out in para 2.4.13 of the *CPIN*, in particular that there was no "matriarchal figure" in the family which the judge took into account at para 31(i) as a factor leading to his finding that there was a real risk or reasonable likelihood that the appellant's daughter would be subject to FGM. Mr McGarvey submitted that this factor might have some resonance in Dr Amundsen's report (at page 8 of that report) where Dr Amundsen stated that in certain circumstances "the grandmother will demand that FGM be performed on her granddaughter ...". Mr McGarvey submitted, however, that the relevance of a matriarchal figure arose in the context of uneducated parents; that was not the case here as the appellant was educated, being a qualified teacher in Nigeria.

29. In addition, in his reply, Mr McGarvey submitted that para 2.4.7 of the *CPIN* did not support the view that the risk of FGM was necessarily lower in urban areas and the judge had wrongly considered there to be, over time, a lower prevalence rate of FGM in Nigeria.

30. I raised with Mr McGarvey at the end of his reply, whether he relied upon the grounds to the extent that they challenged the judge's adverse credibility finding, and rejection of the appellant's account, in relation to her claim that there was a dispute with her paternal uncles and that as a consequence she was at risk on return, i.e. Ground 3. Mr McGarvey indicated that he was in some difficulty in pursuing a challenge to the judge's findings at paras 28 and 29 of his decision in that regard.

31. Finally, Mr McGarvey did not raise the final issue in the grounds (Ground 4), namely whether the judge had properly taken into account the best interests of the children under Art 8 applying s.55 of the 2009 Act.

32. On that last point, Mr McGarvey was clearly right to do so as it is plain from para 34 that the judge specifically referred to s.55 and the best interests of the appellant's children. He concluded that their best interests, returning to Nigeria with the appellant in the circumstances that the judge had found would exist on return, were not sufficient to establish any breach of Art 8 of the ECHR. In the light of that, I need say no more about ground 4.

The Respondent

33. On behalf of the respondent, Mr Bates submitted that the judge had been entitled to give Dr Amundsen's report not "much weight" as he had failed to comply with Part 10 of the Senior Presidents' Practice Direction even if his expertise was established. Mr Bates relied upon the UT's decision in AAW (expert evidence - weight) Somalia [2015] UKUT 673 (IAC) and the

summary in the headnote that a failure to comply with the Practice Direction could affect the weight to be given to expert evidence. Mr Bates submitted that the judge had been entitled at para 27(i) to conclude that, in failing to set out the relevant matters in Part 10 of the Practice Direction, Dr Amundsen had failed to establish his "independence" as an expert witness and that he understood his duties to the Tribunal.

34. Further, Mr Bates submitted that the judge had been entitled to take into account, in assessing the weight to be given to the report, that the expert had uncritically relied upon the appellant's account. Mr Bates acknowledged Mr McGarvey's observation that, in fact, the judge had been provided with a copy of the refusal decision. Mr Bates also submitted that the judge was entitled to take into account that the expert had "no personal expertise" and that some of his references were "quite aged".

35. Secondly, in any event, Mr Bates submitted that, in setting out the relevant factors in reaching his finding that the appellant had not established that there was a real risk that her daughter would be forced to undergo FGM, in fact the judge at paras 30 and 31 of his decision had derived those factors from the expert report. Mr Bates submitted that the judge was entitled to do this even though he indicated that he was giving not "much weight" to the report. Mr Bates, in particular, pointed out that Dr Amundsen referred to the role of a "matriarchal" figure at page 14 of his report and, in this case, there was in fact no such figure in the appellant or her daughter's lives. Mr Bates submitted that the judge had properly dealt with the relevant factors consistently with the expert report and, indeed, the applicable *CPIN*.

Discussion

Ground 1

36. I begin with the issue of Dr Amundsen's report. That report was put forward by the appellant and relied upon before the judge as the report of an expert amounting to expert evidence.

37. Part 10 of the Senior President's Practice Statement sets out the role and function of an expert and the proper form and content of an expert's report.

38. As regards the role and function of an expert, paras 10.1–10.8 are as follows:

> "10.1 A party who instructs an expert must provide clear and precise instructions to the expert, together with all relevant information concerning the nature of the appellant's case, including the appellant's immigration history, the reasons why the appellant's claim or application has been refused by the respondent and copies of any relevant previous reports prepared in respect of the appellant.
>
> 10.2 It is the duty of an expert to help the Tribunal on matters within the expert's own expertise. This duty is paramount and overrides any

obligations to the person from whom the expert has received instructions or by whom the expert is paid.

10.3 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

10.4 An expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise, and should not assume the role of an advocate.

10.5 An expert should consider all material facts, including those which might detract from his or her opinion.

10.6 An expert should make it clear:-

(a) when a question or issue falls outside his or her expertise; and

(b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

10.7 If, after producing a report, an expert changes his or her view on any material matter, that change of view should be communicated to the parties without delay, and when appropriate to the Tribunal.

10.8 An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions".

39. As will be clear from this, the role of an expert is to provide independent expert opinion to the Tribunal, objectively based and unbiased without reference to any particular party upon whose behalf the evidence is tendered in evidence.

40. As regards the report of an expert para 10.9 sets out what such a report should include as follows:

"10.9 An expert's report must:-

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert has relied on in making the report;

(c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision;

(f) where there is a range of opinion on the matters dealt with in the report:

(i) summarise the range of opinion, so far as reasonably practicable, and

(ii) give reasons for the expert's own opinion;

(g) contain a summary of the conclusions reached;

(h) if the expert is not able to give an opinion without qualification, state the qualification; and

(j) contain a statement that the expert understands his or her duty to the Tribunal, and has complied and will continue to comply with that duty".

41. Finally, at para 10.10 the Practice Statement states that:

> "10.10 An expert's report must be verified by a Statement of Truth as well as containing the statements required in paragraph 10.9(h) and (j)".

42. Para 10.11 then sets out the form of that "Statement of Truth".

43. The importance of complying with the Practice Statement (or its equivalent in civil litigation) was emphasised by the Court of Appeal in R (HK & Ors) v SSHD [2017] EWCA Civ 1871 where, at [63], Sales LJ (as he then was) (with whom Lindblom LJ and Sir Stephen Richards agreed) said this:

> "63. These are important provisions, because they emphasise the neutral and even-handed approach which an expert is supposed to follow in assessing evidence in a case and expressing his opinion. They also emphasise the personal responsibility which an expert witness has to ensure that his report complies with this approach. ...".

44. The provisions relate not only to whether an individual can properly be called 'an expert' (and his or her opinion taken into account accordingly) but also whether the evidence which they give to a Tribunal properly recognises their independence and that their obligations are to the Tribunal and not to any particular party. This is emphasised in para 10.9(j) reflecting the duty acknowledged in para 10.2.

45. In AAW, to which Mr Bates referred me, UTJ Southern said this in relation to an expert's failure to comply with the Practice Direction at [25]:

> "25. A witness, if put forward as an expert witness, will not be treated as such if he or she does not meet the requirements demanded by the Senior President's Practice Direction. That does not mean that his or her evidence falls to be disregarded, but any opinion offered that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness is likely to be afforded little weight by the Tribunal. In particular, a witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an informed advocate for the case of one of the parties to the proceedings rather than an independent expert witness".

46. Although Judge Southern gave a particular example of a report which could lead a Tribunal to consider that the expert was an "informed advocate" rather than an independent expert, the general point in AAW and R (HK & Ors) is that the rigors of the Practice Statement in relation to what should be considered to be an "expert report" seek to provide reassurance to a Tribunal (or Court) that the individual is not only writing as an expert, but is writing as an independent expert to assist the Tribunal rather than writing a position piece or paper advocating a certain position. That reassurance is given by the expert setting out the detailed requirements in his or her report of their qualifications, the material upon which they relied, the instructions they were given and to which their report responds, and, most importantly, that they understand that their duty is to provide objective opinion to assist the Tribunal. All of this is reinforced by the requirement that the report be verified by a "Statement of Truth".

47. There is no proper basis for doubting Dr Amundsen's expertise. Dr Amundsen's report plainly sets out his expertise and experience and cites numerous references (at pages 15 and 16–18 of his report respectively). He clearly has that based upon his academic background and academic work. That he is an expert cannot be doubted. I do not agree with the judge's comment in para 27(iii) that his report is any less expert, or suggests any lack of independence, because it is not based upon "personal expertise" by which I assume the judge means personal experience. An expert, in a particular area, may well draw upon written work by other experts, in particular within the academic community, in reaching expert opinions of their own.

48. In my judgment, however, the report does fall short in a number of significant respects in complying with Part 10 of the Practice Direction. First, it does not set out the instructions from the appellant's representatives to which the document purports to respond. Secondly, the report does not set out any acknowledgment by Dr Amundsen of his duty to the Tribunal and that he is preparing an objective, independent report for the Tribunal and not for the appellant and her representatives. Finally, there is no "Statement of Truth". These deficiencies are significant in that the judge, without Dr Amundsen providing further elaboration, in writing or potentially giving oral evidence to this effect, could not be satisfied that Dr Amundsen was acting independently and objectively and on the basis of his duty to the Tribunal without some indication in the report that that was the basis upon which the report was written. The judge was simply left 'in the dark' on this crucial issue.

49. Consequently, consistent with the views expressed in the case law, the judge was entitled because of this non-compliance with Part 10 of the Practice Statement to give Dr Amundsen's report less weight than would otherwise have been the case if the Practice Direction had been complied with. As AAW makes plain at [26] the judge would have been wrong to "disregard" the report but was entitled to give it less weight or, as the judge put it in para 27(i), not "much weight".

50. For these reasons, therefore, I reject Mr McGarvey's submissions that the judge was wrong in concluding that Dr Amundsen's report should not be given "much weight".

Ground 2

51. Turning now to Mr McGarvey's second submission, I do not accept that the judge, in paras 30 and 31 of his decision, took into account factors which he was not entitled to do and which were not based on the background evidence.

52. First, para 2.4.13 of the *CPIN* states as follows:

> "2.4.13 The factors to be considered by decision makers when assessing risk include but are not limited to:
>
> - the ethnic background of the girl/woman taking into account high levels of intermarriage;
> - the prevalence of FGM amongst the extended family, as this may increase or reduce the relevant risk which may arise from the prevalence of the practice amongst members of the ethnic group in general;
> - the region of Nigeria she lived before coming to the UK;
> - whether she lived in an urban or rural area before coming to the UK;
> - her age;
> - her and her parents' education;
> - the practice of the ethnic group and extended family into which she has married (if married)".

53. Second, at para 2.4.14 the *CPIN* continues:

> "2.4.14 Each case will need to be considered on its facts, taking into account the factors above, to determine whether a girl or women is vulnerable to FGM or further mutilation which would amount to persecution".

54. In my judgment, the factors taken into account by the judge at paras 30 and 31 consist of factors identified in Dr Amundsen's report, which the judge was entitled to give *some* weight to, and were consistent with the *CPIN* at paras 2.4.13 and 2.4.14.

55. Mr McGarvey made some criticism of the judge taking into account that there was "no matriarchal figure in the immediate family" as that could not be seen in para 2.4.13. The *CPIN* states that the relevant factors are not exclusively those listed or "limited" to those factors. However, it does have resonance in Dr Amundsen's report (at page 8) where it is stated:

> "In cases where the mother opposes FGM for her daughter but the father and his family support it, they will perform FGM in the mother's absence or 'intimidate her into allowing [it to be performed on her daughter]' (ibid.). It is 'common' with illiterate young couples that the authority of the grandmother will prevail, and the grandmother will demand that FGM be performed on her granddaughter (ibid.)".

56. Mr McGarvey commented that this dealt with "illiterate young couples" which did not include the appellant who was educated and a teacher. With respect, Mr McGarvey's point is misdirected for two reasons. First, the whole passage is premised on a situation where a child's mother opposes FGM *but* her father and family support it. Here, of course, the appellant's own evidence was that her daughter's father had deserted them in June 2019 and she had had no contact with him since. There was no evidence that the father would have any influence, or indeed interest in, the appellant's daughter on return. Secondly, the thrust of Dr Amundsen's comment concerns a situation where a matriarchal figure might well exercise authority to override the opposition of, for example the mother, to enforce FGM. Whether or not that only applies to cases where a couple (here at least the appellant) is illiterate, is irrelevant because there is no matriarchal figure to impose her views over those of the appellant. The appellant's mother left the family home, on the appellant's evidence, in approximately 2004 and has not been involved thereafter with the appellant. There is no evidence of any other matriarchal figure. At paras 30(vi) and 30(i) the judge was, quite consistently with this evidence, simply recognising that there is "no matriarchal figure" who could seek to override the appellant's objection to FGM being preformed on her daughter.

57. Further, I do not accept Mr McGarvey's submission that the judge has, contrary to the *CPIN* or indeed Dr Amundsen's report if taken into account, wrongly had regard to the fact that the appellant will live in an urban environment or that prevalence was .

58. The judge summarised Dr Amundsen's report on the prevalence of the practice of FGM at para 26(iii)–(iv) identifying a trend of reduction in the prevalence of the practice nationwide between 2008 and 2016/2017. Likewise, at para 2.4.10, the *CPIN* states that:

> "FGM prevalence among Yoruba and Igbo women is 45.4% and 29.2% respectively which shows a decline since 2013".

59. The appellant is, of course, Yoruba.

60. The *CPIN* also recognises that the prevalence rate varies between urban and rural areas, regions, ethnic groups and religions. So, at 2.4.7–2.4.9 it is stated that:

> "2.4.7 However, prevalence varies across urban/rural areas, regions, ethnic groups and religions. Women living in urban areas are reported to be more likely to have undergone FGM, compared with women living in rural areas, while girls 0-14 years old living in rural areas are reported to have a higher incidence of FGM for that age range compared to girls in urban areas.

> However, prevalence by place of residence is not necessarily an indicator of where FGM is carried out, as a woman may have lived in a different area at the time she underwent FGM (see Prevalence by region).
>
> 2.4.8 There is also variation across different regions of Nigeria. The highest prevalence rates for women 15-49 years are in the south east and south west of the country (32.5% and 41.1% respectively). This compares with the north east of the country which has the lowest prevalence (1.4%), there are also prevalence's by state (see Prevalence of FGM in Nigeria).
>
> 2.4.9 Although FGM is more common in the southern, predominantly Christian regions, it is practiced within both Christian and Muslim communities across the country (see Prevalence: By religion)."

61. It is in that context that at para 2.4.12 it is stated that:

> "Prevalence rates can cover several factors (age, ethnicity, education) and these may overlap. However, it does not necessarily follow that a woman or girl is at increased risk because of these factors independently. Those from ethnic groups with a high incidence may not be at risk, while those from ethnic groups with a low incidence may be at risk".

62. Thereafter, the *CPIN* sets out the factors - "not limited" - to be taken into account at para 2.4.13 which I have set out above.

63. The judge adopted a comprehensive assessment of the relevant factors. In my judgment, the judge did not fail properly to take into account background evidence or, given the sustainable finding in relation to Dr Amundsen's report, the expert evidence concerning the incidence of FGM in Nigeria.

64. As regards Dr Amundsen's overall views relied on by the appellant and set out by the judge at para 26, it is worth noting that Dr Amundsen's statements are based, in part, upon the fact that the appellant has "limited formal education, despite having a college education and being a nursery teacher, and has limited job experience and also that she would have no family support in Nigeria". The former assumption is difficult to sustain given the appellant's educational background and that she worked as a nursery teacher in Nigeria before coming to the UK. The latter assumption is simply contrary to the judge's findings in paras 28–29 rejecting the appellant's account of a dispute with her family (in particular her paternal uncles) and recognising the support that she received from a close friend. Unlike Dr Amundsen's assumption, the judge at para 29 did not accept that the appellant would not have a supportive family and friends in Nigeria on return.

65. In nay event, even though Dr Amundsen concludes the appellant's claim is "well-founded", some what contradictorily, in his conclusions he states that:

> "However, regarding the question of whether family/community members will actually enforce FGM on her daughter, when [the appellant], as the parent, is against the practice, is less certain".

66. In my judgment, the judge did not err in law, and reach an irrational finding at paras 30 and 31 that, having regard to all the appellant's circumstances, it was not established that there was a real risk that her daughter would be subjected to forced FGM against the appellant's wishes on return to Nigeria.

Ground 3

67. As regards the judge's finding that he did not accept the appellant's account of a dispute with her paternal uncles, Mr McGarvey did not press his ground, namely that the judge's reasoning and findings at paras 28–29 were unreasonable or irrational. The grounds themselves do not articulate the specific challenge other than to state that the judge relied upon "peripheral" matters in reaching his adverse finding. Nothing more specific is stated in the grounds and, of course, Mr McGarvey did not add anything in his oral submissions. I am satisfied that the judge's findings were reasonably and rationally open to him for the reasons he gave at paras 28–29.

Conclusion

68. In the result, the judge did not err in law in dismissing the appellant's asylum claim.

Decision

69. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore stands.

70. The appellant's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
17 October 2022