

3. The Secretary of State did not accept the claim, given the internal inconsistencies in her account together with its implausibilities. The Secretary of State concluded also that there would be a sufficiency of protection for the daughter and/or that it would be open to her to relocate within Nigeria to a place where she would not be at risk
4. The Secretary of State considered also at paragraphs 99 to 104 of the refusal letter that, having had regard to Section 55 of the UK Borders Act 2009, there was no reason to consider that relocation to Nigeria would be unreasonable or have a detrimental effect.
5. The judge heard evidence from the appellant and submissions from both representatives. He observed in his decision [12] that the Preliminary Information Questionnaire (“PIQ”) had not been included in the respondent’s bundle. A direction was given to the parties to file this after the hearing and it was supplied by the appellant’s solicitors.
6. The judge did not accept that the appellant was credible, noting [39] that a significant detail in her story appeared only in the PIQ and was not repeated elsewhere. The judge did not accept the appellant’s account was true nor did he accept that the daughter was at risk of FGM.
7. The judge made no findings with respect to Section 55 of the 2009 Act save for noting [38] that he had given anxious scrutiny to the facts and interests of child claimant to be central and noting the requirement that Section 55 places on the Home Office.
8. The appellant sought permission to appeal that the judge had erred:-
 - (1) In making credibility findings with respect to a point he derived from the PIQ without giving the appellant an opportunity to reply to that
 - (2) In finding and relying upon a contradiction at [41] which did not exist;
 - (3) In finding that the arrangements the appellant had made for leaving Nigeria were implausible.
9. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 2 June 2021.
10. Ms Cunha accepted that the judge had erred in taking into account in assessing credibility on the basis of a point that had not been put to the appellant
11. In my view she was right to do so. The difference in evidence between the PIQ and what was said later was not one which had been relied upon by the Secretary of State in her refusal letter which postdated the PIQ and subsequent interview. At no point during the hearing or prior to that was it put to the appellant that there was a discrepancy which required explanation and she was not given an opportunity to respond to that allegation or to make submissions on the point.

12. It is difficult to think of a clearer example of procedural unfairness.
13. Given that the judge relied on the discrepancy as being significant in his assessment of credibility, I consider that this was a procedural error which amounts to an error of law and vitiates the whole of the credibility findings, and for that reason is material. Accordingly, and as the appellant has as a result not had a fair hearing, the decision falls to be set aside in its entirety and to be remade.
14. In the circumstances, it is unnecessary for me to make any findings with respect to Section 55 of the UK Borders Act 2009. That will be a matter for the First-tier Tribunal when the appeal is reheard.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues to be made

Signed

Date 21 February 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.