



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03492/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 30 October 2017

Decision & Reasons Promulgated
On 31 October 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A O

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mrs J Berlow-Rahman, of Berlow Rahman, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, who sought asylum, based on the risk to her daughter of FGM from her husband's family.
2. The respondent refused the claim for reasons explained in her letter dated 27 March 2017.
3. Designated First-tier Tribunal Judge Murray dismissed the appellant's appeal for reasons explained in her decision promulgated on 8 August 2017.

4. The appellant's grounds of appeal are stated in the application for permission to appeal dated 24 August 2017 (which in terms of the TP (UT) Rules 2008, rule 23 (1A), now stands as the notice of appeal to the UT).
5. Mrs Berlow-Rahman acknowledged that the grounds are rather expansive. She said that her core point went to ¶100 of the decision, and was encapsulated in the grant of permission.
6. At ¶100 the judge found "that the social work department and the police do not believe that the child's father will insist on FGM for the child".
7. The grant of permission says:

... contained in the documentary evidence ... are records made at a child protection review case conference held in Glasgow in April 2017. Those records show the child remains on the ... child protection register and that "there remains a significant possibility of father... leaving the UK with (the child) to return to Nigeria, with the intention of subjecting (the child) to FGM". They also show that a "storm marker" has been placed on the appellant's family home and that ports, airports and the Home Office have been advised with the "appropriate markers put in place".

It is arguable that the judge may have erred in concluding, against the weight of the evidence, that the social services authority and the police do not believe that a risk is present and that the overall assessment is, as a result, flawed.
8. Mrs Berlow-Rahman accepted that the case is unusual. The principal alleged likely persecutor in Nigeria (the appellant's husband) is in the UK, was a principal witness on her behalf, and has a direct stake in the success of the claim, being a dependant upon it. She submitted that the appellant's husband had been very honest in his evidence that he would not stand in the way in Nigeria of what he considered to be normal and acceptable cultural practice.
9. The appellant sought a remit to the FtT.
10. Mrs O'Brien said that the judge had given reasons for not accepting the appellant's case, in effect finding it to be a contrivance between her and her husband, and her error might be one of expression rather than of substance. Nevertheless, she accepted that the finding at ¶100, as put, went against the documentary evidence, and the matter was central.
11. Mrs O'Brien did not seek to preserve the outcome by the alternative findings on internal relocation, and conceded that the outcome should be as sought by the appellant.
12. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
13. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.

14. The member(s) of the FtT chosen to consider the case are not to include Designated Judge Murray.
15. The FtT did not make an anonymity direction, and the matter was not mentioned in the UT. However, in view of the nature of the allegations in relation to a young child, I have decided to make a direction.
16. 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.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

30 October 2017
Upper Tribunal Judge Macleman