



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

Appeal Number: DA 00458 2013

THE IMMIGRATION ACTS

Heard at Field House

On 15 October 2013

**Determination
Promulgated**

On 22 October 2013

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JULIE ODIGIE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Goldborough, Solicitor, instructed by Cleveland & Co Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Nigeria against a decision to make her the subject of a deportation order following her being sentenced to twelve months' imprisonment for offences of dishonesty. In simple terms she told lies to establish herself in the United Kingdom and she got caught. The First-tier Tribunal heard arguments and considered carefully points that were made but decided that the appeal against the decision to make the appellant the subject of a deportation order had to be dismissed.
2. The appellant has lived in the United Kingdom since 2004. Her stay has been entirely without permission.
3. There are really two criticisms made in the grounds supporting the application for permission to appeal. The first is that no proper regard was taken of the appellant's fear that her daughter would be subject to FGM in

the event of their return and the second is that the First-tier Tribunal did not have proper regard to the interests of the appellant's children when it made its decision. There are two children here to consider, a girl who was born in 2007 and a boy who was born in 2009.


4. There really is no merit of any kind in the criticism of the Tribunal for its consideration of the claim that there was a risk of the appellant's daughter being subject to FGM. The Tribunal clearly appreciated the background material and recognised that FGM is a risk for some women in Nigeria, although it is a practice that is declining and is a practice that is more prevalent amongst certain communities and families. It noted there was no evidence that began to show there was a particular risk for the appellant's daughter and concluded entirely realistically on the material before it that this was not a real issue in the case.
5. Mr Goldborough addressed me in measured terms and referred me helpfully to the background material, particularly the Operational Guidance Notes, but I find it impossible to see anything to criticise in the Tribunal's findings on this point which were properly underpinned by a lawful adverse credibility finding.
6. The second criticism has theoretical attraction. The Tribunal correctly directed itself to have regard to the best interests of the appellant's children, but did not make many findings, and in a perfect world the determination would have been improved by a short paragraph or so dealing expressly with how removal would impact upon the interests of the children. That was not done. It was a fair criticism and I am quite sure this is the reason for permission to appeal being granted.
7. However, when the determination is considered more thoroughly than is warranted when an application for permission to appeal is considered, it is plain that the criticism is without substance. The children do not have any particularly strong elements to their private and family lives in the United Kingdom. In the absence of evidence suggesting otherwise it must be assumed that the most important relationship is with their mother. There is no evidence, for example, of strong social contacts, although these would be unlikely for small children, or particular medical or educational needs might possibly have supported a different conclusion. There is evidence of children settled in the United Kingdom and in the case of the older child doing well at school. This was all recognised by the Tribunal and commented upon expressly. It is quite clear to me that the Tribunal, although perhaps slightly at fault for not addressing the evidence specifically, had regard to all material points and made a conclusion wholly consistent with the evidence before it and the established case law, namely that generally small children are best off living with their mother. There is no contraindication in the evidence and neither was it argued before me, and I can see no substantial criticism against the decision that has been made.
8. It follows therefore that although I have looked at the points that have been raised I find no material error in the decision of the First-tier Tribunal and I dismiss the appeal before me today.

9. I am grateful to Mr Goldborough for putting his submissions in a measured and realistic way.

Decision

The Appellant's appeal against the decision of the First-tier Tribunal is dismissed. The decision of the First-tier Tribunal shall stand.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', is written over a horizontal line.

Dated 21 October 2013