Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09444/2013

THE IMMIGRATION ACTS

Heard at Birmingham, Sheldon Court
On 9th May 2014

Determination Promulgated
On 13th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR M.B.A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi (Counsel)
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Birk promulgated on 27th February 2014, following a hearing at Birmingham Sheldon Court on 10th February 2014. In the determination, the judge allowed the appeal of the Appellant. The Secretary of State applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

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The Appellant

2. The Appellant is a male, a citizen of Nigeria, who was born on 19th April 1980. He arrived in the UK on 1st October 2005 on a student visa. When his application for leave to remain was refused on 28th April 2011 outside the Immigration Rules, he claimed for asylum on 17th August 2011. That claim for asylum was dismissed by the Respondent on 26th September 2013. The Appellant has five dependants, consisting of his partner, and their four children. It is a feature of this case that on 17th April 2013, the Appellant's partner was accepted by the Respondent as being a victim of sexual exploitation by virtue of human trafficking (paragraph 3).

The Appellant's Claim

3. The Appellant's claim is that his father is an imam in Nigeria. He has married seven wives. He has many children. Many of his children are not even known to the Appellant. In 2004, the Appellant went to study in the UK. He had a relationship with M A, who was a Christian, and they had two sets of twins. When the father found out he used to support them because he had promised that the Appellant would be married to another woman in Nigeria. The Appellant is from the Yoruba tribe and women from this tribe undergo FGM and his family members have tribal markings (paragraph 6). The Appellant's claim now is that he fears that his father will beat or kill him on return because of his relationship with a Christian woman and the family will force his daughters to undergo scarring and FGM as well as forced marriage (see paragraph 7).

The Judge's Findings

4. The judge accepted that the Appellant has a sister who has been subjected to tribal markings and FGM. His daughters on return will be expected to undergo the same. There was a risk from the father's extensive influence (paragraph 26). Accordingly, the Appellant had established a well-founded fear of persecution upon return (paragraph 28). The appeal was allowed on the basis that he was a refugee under the Refugee Convention. Consideration was also given to the Appellant's Article 8 claims (paragraph 31) and the appeal was allowed on that basis also. The judge in particular pointed out that "due to the findings that I have made with regards to the daughter's risk of FGM I find that they could not enjoy family life with the serious threat being ever present" (paragraph 36).

Grounds of Application

5. The Grounds of Application state that the judge erred in allowing the appeal because the findings at paragraphs 23 to 27 are insufficiently reasoned (together with paragraph 36). No proper weight is accorded to the fact that the Appellant's evidence was rejected in the refusal letter (at paragraph 23). There were negative credibility findings (at paragraph 22). The judge did not deal with the issue of sufficiency of protection in Nigeria in the proper manner.

6. On 10th March 2014 permission to appeal was granted. However, it is significant that it was limited on the basis that “permission to appeal is granted, limited to the issue of risk on return, naturally incorporating sufficiency of protection and internal relocation, and also their implications for the Article 8 proportionality assessment”. Significantly, it was stated that “the judicial findings of fact are sound and are to stand” (paragraph 4).

7. The Secretary of State did not appeal the restricted basis of the grant of permission.

Submissions

8. At the hearing before me, Mr Smart, appearing on behalf of the Respondent, submitted that on the question of “sufficiency of protection” and “internal relocation” the plain fact was that Nigeria was a “white list country” such that there would be no risk of lack of protection. Mr Smart drew to my attention three cases in particular. First, there was **Obasi [2007] EWHC 381** which established that the Nigerian authorities and the police do make efforts to tackle crime even now there is corruption. The judge did not consider this in the instant case. Second, there was **Maryam Umar [2008] EWHC 2385** which considered domestic violence, and the Appellant’s contention that the police do not intervene to protect women as they are poorly paid, poorly resourced, and ill-equipped to deal with violent crime, but the court held that this did not support the contention that the police would not intervene. Third, there was **BL (Ogboni Cult) Nigeria [2002] UKIAT 01708** which also established that there is no basis for saying that the police or the authorities will not, or cannot, exercise control, or refuse to investigate or deal, with Satanic/ritualistic ceremonies (at paragraph 20). Accordingly, even if the country was known for corruption, this did not mean that this was the same as saying that there was no availability of sufficiency of protection.

9. For his part, Mr Azmi relied upon his Rule 24 response of 7th April 2014. He submitted that the judge did not simply look at a single issue, such as police activity or inactivity, but focused firmly on the risk that came from a overbearing and oppressive father, who was an imam. The nub of the judge’s conclusions lay at paragraph 26 of the determination. This consisted of three essential elements. First, the judge referred to the fact that tribal markings and FGM were a feature of the practice of the Yuroba tribe and had been followed by this family. Second, the judge emphasised that “this risk is compounded by his father’s influence and position and the practice of the Yuroba tribe to engage in such practices”. Third, the judge referred to “a very high risk that his father’s network of family, friends and associates that he will be located in Nigeria and brought to the attention of his father”. It was only after all of this, that the judge then referred to the COI Report to the effect that “the government lack effective mechanism to investigate and punish abuse and corruption” (paragraph 26). Therefore, this was a well-rounded and careful finding of relevant facts. In any event, the judge also then considered the Article 8 position and allowed the appeal on the basis that the children, who consisted of girls, would not be able to enjoy a family life given the risk of FGM that was clearly prevalent

and stood to be applied to them if they returned (paragraph 36).

10. There was no reply from Mr Smart, who adopted his primary submissions.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. It is well-established that for this Tribunal to intervene there must be a clear case of the Tribunal below having reached a decision that can properly be categorised as "perverse" or "irrational" and that this is "a high hurdle" (see **R (Iran) [2005]**).

12. In this case, the judge does not simply say that on the basis of the COI Report the government lack effective mechanism to investigate and punish abuse and corruption. Nor, does the judge refer to the fact that the corruption in itself prevents the effective prosecution of crimes. What the judge does say is that, it is clear that tribal markings and FGM are practised by the Yoruba tribe, to which tribe the appellant and his family belong.

13. But more importantly, the judge also refers to the fact that the appellant's sister had been subjected to the same practices of tribal markings and FGM (paragraph 26). In addition, it was the judge's clear finding, that given the circumstances of this family, which contained a father who was a strict follower of his religion, and indeed an imam, this was a practice that was indeed likely to be visited upon the children when they returned.

14. The chances of the Appellant avoiding that was limited because of "a very high risk that his father's network of family, friends and associates" would be able to carry out the wishes of the father. Such a case is different from that of pure domestic violence or of the practice of Satanic rituals, both of which are contrary to law in Nigeria.

15. The use of tribal markings and of FGM, even if also contrary to the law in Nigeria, is a practice that is deeply embedded in such a society, and it was open to the judge, on the basis of the analysis and evaluation carried out of the facts, to conclude in the way that she did. This Tribunal can only intervene if there was no rational basis for such a conclusion. Accordingly, there is no error of law.

Decision

There is no material error of law in the original judge's decision. The determination shall stand. An anonymity Order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 9th May 2014