



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

Appeal Number: PA/01877/2019

THE IMMIGRATION ACTS

**Heard at Manchester
On 22nd July 2019**

**Decision & Reasons Promulgated
On 05th August 2019**

Before

Upper Tribunal Judge Chalkley

Between

**BLESSING [I]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel of Counsel

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria, born on 11th March 1981. She claims to have entered the United Kingdom originally in 2001. She claimed asylum on 11th October, 2017 and the claims were refused on 14th February, 2019.
2. She has two daughters, one born on 18th December 2012 and another born on 27th June 2018, both are dependent on her claim.

3. The appellant appears to have at some stage been deported back to Nigeria and she travelled again to the United Kingdom with an aunt in 2006. She claims that she returned to Nigeria in 2012, remaining there for two years before coming back to the United Kingdom.
4. The appellant claims that she was born and lived in Benin and left Nigeria because she was afraid of the Ogboni and the Asigidi cults. Her father, she claimed, was a member of both. The appellant observed rituals performed by her father which she found to be inhumane. This involved killing animals and using their blood for various activities. The appellant travelled to the United Kingdom on false documents and stayed with a female friend of her uncle. She then lived with a friend called Stefano. The appellant used his credit card to buy food. It was a stolen card and Stefano and the appellant were convicted of theft and the appellant was imprisoned for three months. Following her release from prison she was deported, together with Stefano in 2002.
5. The appellant lived with a cousin and then subsequently with an aunt who cared for the appellant following the appellant's mother's death. The aunt held Nigerian and Italian nationality and took the appellant to live in Benin where the appellant had grown up. The appellant travelled to the United Kingdom in 2006 with her aunt and received a residence card in 2010. The appellant was contacted and told where her father had died in December, 2011. The friends of hers told her that she should go home and worship for her father's spirit. The appellant returned to Nigeria she claims in March, 2012 despite the fact that her father had died some three months earlier. She says that her father's funeral took place two days after she returned to her home area of Benin and she attended his home disguised in a burka. During the funeral ceremony she claims she was shocked to discover that her father's corpse had been mutilated, in that his eyes and tongue had been removed. She was told by a lady present at the funeral that removal of the eyes and the tongue were part of the cult's traditions. Other cult members she claimed ate them to give them power. The appellant threw sand at the coffin and as she did so her veil blew up and people identified her.
6. Three days after her father's funeral a member of the Asigidi cult approached her. Since she was the only child of her father, it was claimed that she had to take over the leadership position. The appellant claimed that she would have been killed if she refused. She was told that she was a man who had been reincarnated as a female. As a result she had to be cleaned. She would be seen as a princess or goddess. The appellant told cult members that she did not want this role and they gave her time to accept it. If she did not she was told that she would be killed.
7. The appellant travelled to Lagos to join her friend. She remained in Lagos for a week but cult members found her and visited her. She heard cult members asking for her. The appellant ran out of the house from the backyard and went to a hotel and booked a ticket to fly back to London

the next day. The appellant met a friend while she was staying with her friend in Lagos. His name is Wilfred Edward. He is also a national of Nigeria and he came to the United Kingdom shortly after the appellant in March, 2012. They began a relationship and as a result the appellant gave birth to her first daughter. The appellant is still in a relationship with Mr Edward, but she does not live with him because he could not afford to support his family. He has no leave to remain in the United Kingdom. He it is claimed sees his children at least twice a month. He calls the appellant several times a day.

8. The appellant claims that she cannot return to Nigeria for two reasons. Firstly because she would be forced to join the cult and secondly because her daughters would be forced to undergo FGM. The appellant appealed the respondent's decision and her appeal was heard by First-tier Tribunal Judge Lloyd in Manchester on 11th April, 2019. Judge Lloyd made various credibility findings and concluded that the appellant could return and live safely in Nigeria away from the cult members and that her children would not be at risk of FGM, since there is in Nigeria effective state protection likely to be available to her. In paragraph 57 of the determination the judge found that the appellant could live in a different part of Nigeria. Unfortunately the judge did not apply the correct test and decide whether or not it would be *unreasonable* for the appellant to go and live in another part of Nigeria.
9. In paragraph 59 she applied the following test. She said
"I accept that living elsewhere will not be an easy option for the family, but it remains unreasonable for the appellant to seek the surrogate protection of the international community rather than relocating within her own country".
10. That is not the correct test. The correct test is whether or not the appellant can reasonably and without undue hardship be expected to relocate having regard to his or her circumstances. The determination was challenged because of various credibility findings made by the judge which it is said were unfair. It was also challenged on the basis of the judge's considerations of Article 8. I have not been able to find any error of law in what the judge said in relation to Article 8. Counsel agreed with me that there was in fact no evidence placed before the judge to suggest that it would be unreasonable for the appellant's oldest child to leave the United Kingdom. The determination was also challenged in connection with the assessment of risk of FGM to the appellant's daughters. The judge failed to consider the background evidence before her that suggests that the practice of FGM in Nigeria is still prevalent and the authorities do not provide a sufficiency of protection. With very great respect the evidence was that they do provide an element of protection. The fact that FGM still occurs does not mean that it is not adequate. The judge has I believe erred however in relation to the question of internal relocation and for that reason I set aside the whole of the determination.

11. I should point out that at paragraphs 42 and 43 the judge refers to findings made by a First-tier Tribunal Judge in connection with an earlier hearing. Those findings are still relevant and of course *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * UKIAT 00702* applies to them. I concluded that the determination should be set aside and the hearing be remade by a judge other than Judge Lloyd. The matter is remitted to the First-tier Tribunal for that purpose, given that the appellant has been denied a fair hearing. Three hours should be allowed for the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley

Dated 26 July 2019