Neutral Citation: [2016] IEHC 339

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 402 JR]

BETWEEN

F.U. (Nigeria) (AN INFANT SUING BY HER NEXT

FRIEND AND MOTHER B.U.)

APPLICANT

AND

THE MINISTER FOR JUSTICE, LAW RFORM AND DEFENCE, MARGARET LEVEY (SITTING AS THE REFUGEE APPEALS TRIBUNAL), IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on 17th day of June, 2016.

1. This is a telescoped hearing seeking, inter alia, an order of certiorari in respect of the decision of the Refugee Appeals Tribunal (hereinafter 'the RAT') to affirm the decision of the Refugee Applications Commissioner to refuse to grant the applicant refugee status. The decision of the RAT was made on 30th April, 2013, issued to the applicant on 3rd May, 2013, and received by the applicant on 8th May, 2013. The applicant argues that the RAT failed to employ a forward-looking test when considering the potential risk to the applicant of suffering female genital mutilation at the hands of her father's family. Secondly, a ground is advanced by the applicant's mother, and next friend, that she is under threat from a former governor of a Nigerian state, who wished to prevent the next friend from implicating him in certain financial irregularities to which she was privy. The applicant and her mother have been granted leave to remain within the state until 13th May, 2018.

Background

2. The applicant is a Nigerian national and was born on 25th February, 2006, in Lagos, Nigeria. The applicant applied for asylum along with her mother, B.U., and her two brothers in 2007. The affidavit of the applicant's mother states that the applicant travelled to Ireland in the company of her mother, who was born on 23rd September, 1980, in Nwagwa Keffi, Plateau State. The applicant arrived in the State on 23rd April, 2007, with her mother.

3. The applicant's mother gave evidence at the RAT hearing, which can be summarised as follows:-

The applicant's mother is an only child, her mother having died when she was four years old. The applicant's mother was given to another family to mind children for that family. The man of that family sexually abused the applicant's mother and, as a result, she fell pregnant with his child. She was then forced to marry a man called S., also known as A., who worked as a politician's bodyguard. S.'s friend, J., befriended B.U. and gave her a job working in the Houses of the Assembly in 2003. After two months, she went to A. and was subsequently sent to K. to work as a stock recorder. The applicant's mother alleges that serious financial impropriety and corruption was committed by the politician to whom S. provided protection; a former State governor in Nigeria. Four bank accounts were opened using the applicant's mother's name. B.U. married this man, known as Samson, with three ceremonies being undertaken to record the event officially. She stated that she stayed with him because it was "somewhere to stay. She didn't have any say. He called the shots." The applicant's mother was warned by the workers that she was not to comment on the politician's actions. A man put a knife to the applicant and warned her mother that she was to remain silent. This was a clear threat to the welfare of the applicant's life.

4. The applicant's mother went to the police in April, 2007 and they took a statement from her concerning these threats. She also called a co-worker and old-school acquaintance called A. and asked her to mind the applicant while her mother was at the police station. The police placed the applicant's mother behind bars and two police officers came to say that they would help her if she remained silent about the politician's actions. A special crime and fraud unit of the police force arrived at the station; this unit is known as the EFCC.

5. In the applicant's mother's s. 11 interview she was asked whether she knew the politician and she stated that she did not. She also stated that she could not identify the source of the money that was linked to the politician. She then provided the police with S.'s address. The next day, the police informed the applicant's mother that Samson's friend, J., had been killed by a bomb near a local mosque. The EFCC searched the applicant's mother's home and they found money hidden there. She stated that she did not know anything about this money. The EFCC also obtained access to bank accounts in B.U.'s name that contained funds. She again denied knowledge of this money. She remained in custody in the police station for a number of days.

6. The applicant's mother also alleges that the police raped her repeatedly in the police station over five days. She claims that she did not receive any food during this time. Eventually, a local pastor arrived at the station to provide some food and water to the applicant's mother. After this stint in custody, the applicant's mother was released and placed under house arrest. She then phoned A. and asked her to take the children to the applicant's grandparents' house.

7. The applicant's mother claims that she was confronted by a police officer called M. who stated that, if she gave him money, he would allow her to leave through the back gate. She did this and left, but the police officer was shot dead as a result of his actions. The applicant's mother believes that her co-workers blamed her for this death and she was advised to leave. A friend gave her a passport under a false name and she was again advised to leave. A. gave the applicant's mother a sum of money, which the applicant used to obtain passports for her children, including the minor applicant.

8. The applicant believes that, if she returned with her children to Nigeria, she would not be protected by the police, as they *"can't protect you, they care about themselves…Regarding her children, they can get them too…Regarding Sophie she is afraid of circumcision for her. She will have it before she gets married."*

9. The RAT also questioned the applicant's mother regarding her travel to Ireland. It was stated that she first arrived in the United Kingdom, but she is not sure of the place where she arrived. From there, she came to Dublin.

10. The applicant's mother and the applicant made separate applications, firstly to the Office of the Refugee Appeals Commissioner (ORAC), with the daughter's application being brought by her mother and next friend. These applications were refused and recommendations were made that the applicant should not be granted refugee status.

The impugned Tribunal decision
11. The applicant appealed the recommendation of ORAC to the RAT. The RAT rejected the appeal on credibility grounds. In the RAT decision, it states that the:-

> "applicant's mother claims that she fears her daughter will be circumcised by her husband's family and also that because of her own situation her children (including the applicant) will be targeted."

12. The applicant's mother also claims that she would be killed by persons acting on behalf of the politician who used her bank accounts to launder money. The applicant's mother further contends that she will be pursued by the police and the EFCC, as she managed to escape from her period of house arrest. The RAT found that the applicant had failed to discharge the burden of proof in relation to credibility and found that:-

> "…the difficulty with it is that the applicant's mother was not circumcised and she indicated that at hearing. Thus this piece of fiction writing at Q21 merely highlights the mother's talent for adapting facts and using them as though they applied specifically to herself and by extension to her daughter the applicant herein. I do not accept this claim as credible and therefore there is clearly no future risk to the applicant herein."

13. The RAT also made reference to the decision in the applicant's mother's application in relation to credibility and stated:-

> "Credibility is established when the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts and therefore is, on balance, capable of being believed. This applicant has failed to discharge the burden of proof which is required under S11 A(v) of the Act and accordingly her application fails."

Applicant's submissions
14. Written submissions were filed by both the applicants and the respondents. Counsel on behalf of the applicant submit that the second-named respondent erred in fact and in law in failing to conduct an independent analysis of the applicant's claim in relation to female genital mutilation (FGM). Counsel submits that there is no reference made to FGM within the s. 6 analysis of the applicant's claim. This being so, according to the applicant's counsel, the analysis of the applicant's claim is based entirely upon the applicant's mother and the second-named respondent makes no analysis of the risk that the minor applicant may be subjected to FGM. The applicant submits that the RAT is obliged to carry out an assessment of the minor applicant's future risk of harm that is separate from that of her mother, where a different claim is raised in respect of the minor applicant. It is further contended by counsel for the applicant that the RAT did not make a reference to country-of-origin information submitted in support of the applicant's claim of FGM.

15. The applicant also submits that the impugned RAT decision is irrational because the second-named respondent did not assess the applicant's risk of harm from FGM. In particular, the s. 13 report prepared by ORAC refers to the percentage of girls in Nigeria subjected to FGM. It is the applicant's contention that such data supports the plausibility of the applicant's claim that she would be at risk of FGM and therefore, it was irrational of the second-named respondent not to have considered the risk of FGM facing the applicant.

16. It is also contended by the applicant that the second-named respondent states that she carefully considered all of the papers submitted to her but does not refer to any papers, submissions or country-of-origin reports in respect of FGM in the RAT decision. Furthermore, it is argued that the RAT failed to consider any of the legal submissions and/or supporting country-of-origin information in their analysis of the applicant's claim.

17. It was also submitted by the applicant that, despite the fact that the applicant's mother's claim about the governor politician and corruption was considered incredible and/or that she had not herself been subjected to FGM when she was a young girl, nonetheless the second-named applicant ought to have considered the minor applicant's risk of future persecution in the form of FGM.

18. Further submissions were filed by the applicant in response to the delivery of a written *ex-tempore* judgment of Hardiman J. in the Supreme Court decision in *O.A.Y.A. v Refugee Appeals Tribunal* [2011] IEHC 373. It is submitted by the applicants, in relation to the decision reached in *O.A.Y.A.*, that this decision is not authority for the proposition that the RAT does not have to consider a claimed fear of FGM in respect of the applicant.

19. The applicant argues further that the feared persecution on her mother's part, i.e. in relation to the corruption arising from the bank accounts in her name that were used to embezzle money for the former State governor, had, according to the applicant's counsel, nothing to do with this independent claim of a fear of FGM expressed in respect of her daughter. The applicant further contends that, unlike the situation pertaining to the *O.A.Y.A.* case, the disbelief of this claim put forward on behalf of the applicant's mother does not effectively rule out the credibility of a fear of FGM in respect of the child and was such that required independent analysis by the Tribunal Member and required her to at least engage with the country-of-origin information and ancillary submissions.

20. At paragraph 13 of the applicant's further submissions dated 9th November, 2015, it is stated:-

> "..the primary submission of the applicants is that it isn't accurate or correct to say that the Supreme Court decision in O.A.Y.A. indicates that the Tribunal Member does not have to consider a claim of FGM in relation to a child because the mother of the child was not believed about a different unrelated claim in relation to a threat of persecution emanating from an entirely different source."

21. It is also submitted that the country-of-origin evidence shows that cultural attitudes in respect of FGM would, in many areas of Nigeria, still be prevalent and some victims would not possess the courage to take their stance against circumcision to the community

leaders and that, in some instances, internal relocation may be available. The custom of FGM circumcision is tribal-led or familial and the procedure is usually carried out by a circumcision practitioner and by 'traditional birth attendants'. The pressure to have this procedure performed, it is argued by counsel for the applicant, comes from the family unit within the Igbo and Yoruba tribes, of which the applicant is a member. Therefore, it appears that the applicant argues that the Tribunal Member could have decided to pursue an internal relocation ruling but did not do so, even when it was a live alternative in the matter for decision before the Tribunal.

22. Finally, in respect of the fear of persecution claim proffered by the applicant, due to the prevalence of FGM within the Igbo tribe in Nigeria, the applicant argues that the RAT should not have dismissed this claim summarily on the basis that the applicant's mother's credibility, in relation to issues surrounding the mother's own application, was not accepted by the RAT.

Respondent's submissions
23. The contention has been re-iterated that the applicant's mother allowed her own bank account to be used by persons acting on the former governor's behalf and that she had stated this to the Economic and Financial Crimes Commission (EFCC), who then wanted to question the applicant's mother about this event. As a result, an unknown group acting at the behest of the former governor was stated to be pursuing the applicant's mother.

24. The respondents quote from the applicant's questionnaire, which was completed on her behalf by the applicant's mother. At Q. 21, it is stated:-

> "… my tribal group…awaits me as traditions dictate (sic) that every woman born in my kindred (sic) must be circumcised… So my mum would not like me to go through this painful process which she passed through, that has left her to be ashamed of her body and has also left her with no sexual pleasures and making (sic) her feel less womanly [emphasis added]".

25. In the s. 11 interview, the applicant's mother stated:-

> "…[i]t is a normal thing that every woman has to undergo circumcision (emphasis added)".

26. The respondents highlight in their submissions the fact that the applicant's mother appealed the ORAC recommendation in her case to the RAT and therein submitted that she had been subjected to FGM when she was a young girl. The respondents then outline how *"…[a] complete volte face occurred at the Tribunal hearing, where the Applicant's Mother admitted that she had never been subjected to FGM…Clearly, the statement that the details so provided were "true and accurate" was manifestly not the case, because the Applicant's mother failed to disclose in that affidavit that she had not been subject to FGM, contrary to what she had stated in the questionnaire lodged with the Commissioner."*

27. The respondents rely upon the decision of Cooke J. in *Oladineji (A minor) v Refugee Applications Commissioner* [2009] IEHC 478 where it was established that the RAT was entitled to apply its findings on the mother's case to that of the applicant child, given that the claims of the mother overlapped with those of the child in an application for refugee status.

28. In *Oladineji*, the applicant unsuccessfully sought an order of certiorari quashing the findings reached by ORAC in its report that had recommended that she should not be declared a refugee because her fear was the same as her mother's, and her mother's fear had been found not to be well-founded. In an earlier extract from his judgment, Cooke J. beginning at para. 8 of the judgment stated as follows:-

> "8…First, it is not strictly true that the applicant's case has not received individual consideration or investigation by reason only of the fact that no distinct investigation into the child's personal circumstances was carried out. The child's personal circumstances were perfectly clear and straightforward. She was born on the 12th June, 2008. She has never been to Nigeria. She has never met her father's family and knows nothing of it or of their threats. Her life now and for the next few years at least is bound up with and dependent upon that of her parents and on the decisions and choices that they may make for the family. The child's only case for claiming asylum is the case made by her parents for themselves and for her sisters. Had she been born earlier she would have been included, no doubt, in the mother's claim and thus be in precisely the same position as she will be if the Section 13 report is allowed to proceed to appeal before the Tribunal and joined with the mother's pending appeal…
>
> It must be borne in mind that the function and duty of the Commissioner is to examine the application, to interview the applicant, to carry out any enquiries that might be appropriate to verify the claim made and then to report on this to the Minister with the recommendation as to whether the applicant has or has not established the ingredients of refugee status. In circumstances where this three month old child's claim is identical to and dependent upon the claim made by the mother, it is difficult to envisage what further investigation or enquiry might have been carried out into the child's claim, nor has any been illustrated or suggested on her behalf.
>
> Finally, the Court will point out that while asylum applications fall to be examined and determined individually, objectively, and in accordance with law, the asylum process is also to be carried expeditiously, flexibly, and reasonably. This Court is not required to suspend common sense when asked to review that process. This case is an example of a situation in which the Court ought not to permit formalistic arguments of technical illegality to distract it from the need to apply common sense so as to ensure that the process remains not only lawful but fair, flexible, and expeditious. In this case, the authorised officer had before him the mother's Section 13 report and was clearly familiar with its contents as it is both annexed to the present report and referred to in the body of the report. Given that the claim made by the mother for the child was identical to that which she made for herself and her sisters, the authorised officer was, it the Court's judgment, entitled to adopt its contents as the basis of its conclusions."

Decision
29. The authorities in this jurisdiction clearly establish that, where no separate claim is advanced on behalf of a minor applicant but is effectively based upon the claim made by a parent and which was rejected in an earlier decision, then the Tribunal member is entitled to rely on that earlier finding and to accordingly reject any alleged claim of persecution based on the original claim of the parent. In this case, it seems abundantly clear to this Court that the Tribunal member acted within jurisdiction when rejecting the claim put forward on behalf of the infant child of any risk of persecution from the State authorities based on the account previously given by her mother of having been involved with a governor and allowing her bank accounts to be used for the purposes of channelling funds and that therefore the applicant minor in this case would be sought by the authorities were she to return to Nigeria. The mother's

claim in this regard was rejected and, quite correctly in my view, the similar claim advanced on behalf of the applicant minor was also doomed to rejection.

30. It is also clearly established that, if a separate claim is advanced on behalf of an applicant minor, i.e. separate and distinct to that advanced by the parent, then the Tribunal member is obliged to consider that claim. The alleged separate claim advanced by the applicant minor in this case is that of the risk of being subjected to FGM should she be returned to Nigeria. However, this claim is fraught in that the mother, throughout her own asylum interviews and in completing the questionnaire in support of the applicant minor's application, repeatedly maintained that she herself, i.e. the applicant's mother, had been subjected to FGM as a young girl and that the applicant minor was at risk of being subjected to FGM by her husband's family should she return to Nigeria. The difficulty with this alleged risk to the applicant minor was that it subsequently emerged at the appeal hearing in respect of the applicant minor that the applicant's mother conceded that she herself had never been subjected to FGM. This being the case, counsel on behalf of the applicant sought to argue that, notwithstanding this concession by the applicant's mother, albeit belatedly, the Tribunal member nevertheless, having rejected the applicant's mother's credibility in this regard and having rejected any possible risk to the applicant minor due to the applicant's mother's story being unbelievable, nonetheless the Tribunal member should have considered the country-of-origin information relating to Nigeria in respect of the risk of FGM to young girls, in particular, based upon that information.

31. When this matter first came on for hearing before the Court the respondents in their written submissions had referred to the decision of Hogan J. in *O.A.Y.A.* [supra] as having been overturned by Hardiman J. in a unanimous *ex tempore* Supreme Court decision. The applicants were unaware of the existence of that Supreme Court decision when the matter initially came on for hearing. The situation was compounded by the fact that, not only were the applicants relying on the decision of Hogan J. at first instance in the *O.A.Y.A.* decision, but it was also relying on the decision of Faherty J. in *T.I. v RAT* [2015] IEHC 341, which endorsed the *O.A.Y.A.* decision. At the conclusion of the first day of the hearing the matter was adjourned from time to time to enable a transcript and/or an approved copy of the decision of the Supreme Court to be made available to the parties. When the approved *ex tempore* judgment was ultimately produced, as is stated earlier, both parties filed supplemental written submissions in response to same.

32. It seems to me that the decision of Hardiman J. in the Supreme Court puts the matter at issue between the parties beyond doubt. Notwithstanding the valiant efforts of Mr. O'Dwyer, S.C. on behalf of the applicants to argue otherwise, it seems to me that, in circumstances where the claim of being at risk of FGM put forward by the applicant's mother on the applicant's behalf was rejected by the Tribunal, the Tribunal was not required to consider the risk of FGM as a free-standing proposition based on country-of-origin information. In *O.A.Y.A.*, an *ex tempore* judgment of Hardiman J. in the Supreme Court delivered on the 16th day of January, 2013, the Court heard an appeal against the judgment and subsequent order of Hogan J. and a judicial review of the decision in *O.A.Y.A.* by the RAT. The application in *O.A.Y.A.* was proffered entirely on the basis of a risk from an older male family member. Hogan J., quoted from the decision of the RAT in his decision at first instance and stated as follows:-

> "It is, frankly, hard to disagree with this analysis. While the depth of animosity between adherents of different religious traditions… [I]t is difficult to accept that the Imam in question could have the all pervasive powers attributed to him by Ms. A. This is especially true given the generic and unspecific nature of the allegations made by Ms. A. Thus, for example, the Imam is not even identified by name, nor have any particulars been given… Here again, the absence of such detail fundamentally detracts from the general credibility of the claim and the Tribunal member was plainly entitled to reject Ms. A.'s evidence and, hence, by extension, this part of this applicant's claim."

33. Hardiman J. in the Supreme Court decision on appeal stated, having coming to that conclusion, that the learned trial judge then went on to consider under a separate heading the risk of FGM. He referred to some of the country-of-origin information which was before the Court. He posed the question, beginning at p. three:-

> ""*Can it therefore be said that the Tribunal member has sufficiently identified the risk to this young female in view of her vulnerable age and tribal membership? With great respect, I do not think that one can. The country of origin information clearly shows that young Yoruba females constitute a very high risk group. Nor can it realistically be said that such young girls enjoy any effective police protection in this regard."*
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> *…it likewise cannot be said that the Tribunal member acknowledged the existence of the risk that the applicant would be subjected to FGM independently of the threats allegedly posed by the Imam. The very fact that the applicant is a young vulnerable girl from the Yoruba tribe in itself poses a very serious risk which the Tribunal member is clearly obliged to assess and consider. That really is the burden of the appeal. Whether having rejected the specific case made in the oral interview on the part of the child by her mother; what I might call for short the "Imam allegation", the Judge was entitled to go on and consider from the general and often statistical information to be found in the country of origin information which was before the Court. That established a very serious risk which he held the Tribunal was clearly obliged to assess and consider.*
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> *In the course of this case both sides at different times made a variant of what is often and somewhat derogatorily called "a floodgates argument". The State clearly felt that there would be an impossible burden cast on the Tribunal if the applicant were to succeed. The applicant on the other hand painted a dark picture of the setting of the bar for the Tribunal very low indeed if the State succeeded.*
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> *The Court is of the view that these fears are probably exaggerated on each side and proposes to deal with the case solely in terms of the facts of this particular case. One might also say that at various stages in the respondent's case, complaint, low in tone but persistent, of the existence of some form of inequality or arms was heard. Thus, it was said meaningfully, that the case may not have emerged as clearly as it might in a commercial case and that the applicant as she then was, was at a disadvantage by reason of the legal service available to her. Here, and apparently in the High Court, she was represented by a solicitor and senior and junior counsel and it is clear that she was represented by a solicitor at the time of her interview though the solicitor did not attend with her at the interview. He would have been entitled to do so but not to intervene which is a different situation to that pertaining at Garda interviews where the attendance of the solicitor is not possible at all. The solicitor did, however, write a letter on the day of the interview saying what he considered the applicant's case to be.*
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> *In the present case it is worthwhile drawing attention to the applicant's case as set out in the interview which begins at p. 188 of the book. It [is] set out plainly and specifically enough by the applicant and the allegations in relation to the child of female genital mutilation are said to come through her grandfather, the radical Imam and have been communicated to her, the mother, by a group of people described as "his followers". She said plainly "if my child returns to my country, then they will kill the child and me and they will perform female circumcision on her, they will kill me and the baby she is not safe there." She was asked:-*

"Q: When did the grandfather say that he wanted to kill your daughter?

A: This daughter before I left Nigeria, he was after me, he wanted to kill me and the baby and circumcise the baby. He was after her from the beginning.

Q: Why should he want to kill her?

A: Because from the beginning he said I changed his son to Christianity. He was Muslim. A. changed from the family. He wants nothing to do with our family. That's why he wants to kill and circumcise her. Her life is in danger.

Q: When did he say he wanted to carry out FGM on the baby?

A: One of his followers, the baby was born in Ireland, they said it to me before I left, they are after my life and my children's life. She was in my tummy so if they find the baby they will kill the baby and circumcise.

Q: Why do you want to carry out FGM? [sic]

A: It's because it's how they do it in their house. It's out of hatred. They don't want to see me or anyone around me. They say I bring shame to Islam and change my partner to Christian which starts the problem."

After some further questions about, amongst other things, the whereabouts of the partner about whom it is said: "I did not see him. He ran away from his life too. I sent someone to look for him in the house and his work. I have not seen him since I came here in 2005". She was asked:-

"Q: Why would your daughter's grandfather want to both kill her and circumcise her?

A: It's because he doesn't want to see me or my children. He doesn't want my partner to have us. He says we bring shame to Islam. They want to kill or circumcise her but they don't want to see her."

Then the significant question is asked:-

"Q: Does your child fear anyone or anything else in Nigeria?

A: He's the only problem. She was born here. She doesn't know anyone or anything. He is the problem."

It goes on then to other matters.

The significance of that is, to leave aside for a moment the word "only", which Mr. Phelan says is only a single word, it is clear that the allegation as to why there exists a fear of female genital mutilation, (which would certainly amount to persecution and to torture), is very specific, it is not a general fear, it is highly specific to this particular person who it is fair to say is a person with very considerable powers. The statement that he is the only problem is not simply a word that happens to be used: it is quite consistent with the general account given.

That being so one must turn to consider what happened. That specific account was rejected by the Tribunal and that rejection was upheld by the learned trial judge who then proceeded to grant relief on the grounds that the Tribunal failed to addressed the risk which arose from the country information.

In considering the country information one must look to its role in this particular case and it is not necessary to make any finding of a more general nature. Mr. Regan for the State has referred us to the case of Izevbekhai v. Ireland (App. No. 43408/08) an Irish case from Strasbourg, and refers us in particular to para. 73 which says:-

"It is not in dispute that subjecting a child or adult to FGM would amount to ill-treatment contrary to Article 3 of the Convention. Nor is it contested that girls and women in Nigeria have traditionally been subjected to FGM and, to varying degree, dependent upon on their ages and the region of Nigeria continue to be".

That summarises the position revealed by the country information in this case. The court went on to say:-

"The crucial issue for present purposes is whether the second and third applicants would face a real risk of being subjected to FGM upon their return to Nigeria".

The paragraph I have just cited establishes that the relevance in this case of the country information is to the question of whether the applicant would be subjected to FGM or is there a real risk that she would be?

It appears to the court that it is not possible to read an answer to that into the information which is available.

What the country information from various sources does establish is that in parts of Nigeria a custom or practice of genitally mutilating female children. The nature of this custom is that it is "tribal and familial". There is no evidence, none whatever, in any of the international documents referred to which have considered the position in Nigeria, that a child or baby, Yoruba or otherwise, is at risk of having FGM inflicted upon her by outsiders.

There is no evidence of any authority, state or non state, inflicting FGM on children whose families are opposed to the practice. That is a significant feature of the evidence and the information available to the court. That is an extremely important matter because if there were evidence that a child, regardless of her families' attitude was liable to have

strangers inflict this on her well, then evidence of the prevalence of FGM might be a bar on returning any such child. But the evidence does not go that far and in fact goes in quite the opposite direction.

The statistics as we have seen are sometimes oddly expressed and liable to misinterpretation but it is clear and it is not a statistical matter that the source of the risk of FGM is a familial source. That was the position in Izevbekhai v Ireland and the outline is quite similar in the present case. The risk is said to derive from a male relative from the older generation said to approve of traditional ways. That was the allegation made here and it was rejected and in fact the court has not been asked to overturn that rejection. The court does not find it necessary to say that where a case is limited to a particular kind of allegation or source of fear and that is rejected it can never be necessary to go further especially in the case of a child. The court is of the view that absolutely no basis for any further consideration arises here."

36. The judgment goes on further, at p. nine:

"…it was not open to the learned trial judge, having rejected the case that was made, to ground, and to find, a real risk which required further consideration of the tribunal from the statistical and general solution. Firstly, it is not clear that he was asked to do so, but he was at in any event asked or invited to find a specific risk to this particular child and he did not do so. In fact, as the court has said, he appears to have rejected the specific risk which was alleged to exist. That this is a case where the applicant made a particular case, and no others; she has not shown any ground to believe or even to apprehend any intervention in the way of FGM from outside the family circle and there appears to be no other source within the family circle either. In the circumstances the court is of the view that the learned trial judge erred in law in seeking or finding an independent threat. There was in any event no credible evidence of such and accordingly the court will allow the appeal".

37. It is unfortunate that not, withstanding that the extempore judgment was delivered on the 16th day of January 2013, the state respondents, who are participants in all cases of this kind that come before the court, did not pursue and procure a copy of that ex tempore decision before this case came on for hearing. The applicants in this case had no knowledge of the appeal in respect of the *O.A.Y.A.* case, nor did the applicants who relied on that case before Faherty J. when she followed the decision of Hogan J. in the High Court. Clearly, a relevant binding authority was not opened to Faherty J. on that occasion. This Court is bound by the decision of the Supreme Court. I am satisfied that the Tribunal member was entitled to reject the specific risk of FGM identified by the applicant due to the lack of credibility on the part of the applicant's mother and the manner in which the claim was advanced on behalf of the applicant minor. That being the case, I am further satisfied, based on the ruling of Hardiman J. in the *O.A.Y.A.* case, that the Tribunal member was not obliged to consider the risk of FGM based on general country-of-origin information when the specific risk of same, which was clearly tribal and familial, was rejected by the Tribunal member.

38. For the reasons of the foregoing I therefore refuse leave.