



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
AA/01713/2013

Appeal Number:

AA/03451/2013  
AA/03454/2013

**THE IMMIGRATION ACTS**

<b>Heard at: Field House</b>	<b>Determination sent</b>
<b>18 October 2013</b>	<b>28 October 2013</b>

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**MK  
AK  
PK**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr P Nathan, instructed by Duncan Lewis solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction and Error of Law**

1. I continue the anonymity direction made by the First-tier Tribunal. Two of the appellants are minors and all of the appellants are potentially vulnerable persons. It is appropriate in such

circumstances that each appellant be granted anonymity unless and until a relevant Court or Tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify the appellants. Failure to comply with this direction could lead to a contempt of court.

2. The appellants are nationals of Nigeria and are siblings. The first appellant has recently turned 19 years old, the second appellant is 15 years old and their sister, the third appellant, has just turned 13 years old. The appellants' father was a diplomat with the Nigerian High Commission in London and the appellants, and their mother, resided in the United Kingdom on diplomatic visas. Unfortunately the appellant's father passed away in July 2012 in Nigeria. The appellants returned to Nigeria at that time and attended their father's funeral. It is said that they have not had contact with their mother since that time, she having abandoned them. It was further said that their family house has been burnt down.
3. The appellants returned to the United Kingdom [the first appellant in August 2012 and the second and third appellants in September 2012] and each claimed asylum in December 2012. These applications were refused by the Secretary of State in a decision of 12 February 2013 and on the same date decisions were made to remove the appellants from United Kingdom.
4. The appellants appealed these decisions to the First-tier Tribunal. The appeals were heard by First-tier Tribunal Judge Andonian, and each was dismissed in a conjoined determination prepared on 27 July 2013. The First-tier Tribunal Judge Cheales granted the appellants permission to appeal against this determination by way of a decision of the 29 August 2013. Thus the matter came before me.
5. At the outset of the hearing Mr Nath made an application for an adjournment, such application being supported by Mr Nathan. It was said by Mr Nath that he had received an e-mail from the British High Commission in Nigeria on 15 October 2013, which enclosed two e-mails [dated in September and October 2013] written to the High Commission from friends of the appellants [and the appellants' family] and that such e-mails contained information demonstrating that important aspects of the evidence given by the appellants was untrue. Mr Nath wished time to investigate the content of the e-mails further. Mr Nathan required time to discuss the contents of the e-mails with his clients.
6. I refused to adjourn the proceeding on the basis that it had not been demonstrated that the e-mails were relevant to my consideration of whether the First-tier Tribunal's determination contained an error of

law and, consequently, whether such determination ought to be set aside.

7. Turning to these issues of whether the First-tier Tribunal's determination contains an error of law, Mr Nath accepted that it did, he said for the reasons identified in the appellant's grounds. He further accepted that as a consequence the determination ought to be set aside.
8. I agree with the parties, and find that the First-tier Tribunal's determination does contain an error of law such that it ought to be set aside; although for very much more restrictive reasons than Mr Nath conceded to. The assertion in the grounds that the First-tier Tribunal's failure to consider the trafficking issue amounted to a material error of law is hopeless. This ground is prefaced on the fact that the appellants would have no support network upon return to Nigeria; however, on the First-tier Tribunal's findings they would have a significant support network there in the form of their mother and M T and her family. Further, the background evidence that was before the First-tier Tribunal comes nowhere near demonstrating that children, in general, are at real risk of being trafficked in Nigeria, or indeed in any one part of Nigeria.
9. As to the ground relating to internal relocation, any error made by the First-tier Tribunal in this regard could not possibly have affected the outcome of the appeal, because the tribunal concluded that the appellants would not be at risk of being persecuted in their home area.
10. I do agree, however, that the First-tier Tribunal's credibility findings contain errors of law and that, as a consequence, the determination is unsustainable. The Judge refers, on a number of occasions, to the appellants' failure to produce corroborative documentary evidence in support of their assertions [paragraphs 8, 12, 13]. He treats such matters as being adverse to their general credibility. The Judge did not, however, give any consideration to the issue of whether it was reasonable to expect the appellants to obtain such evidence given their circumstances (two of them being minors, one being just into his majority and all of them living in the UK without their parents to support them). If, which is not made clear in the determination, the Judge did consider such issue and found that it was reasonable to expect the appellants to obtain the type of evidence referred to in the determination, he fails to give any reasons as to why this is said to be so. In my conclusion, given the appellants' ages and their circumstances in the United Kingdom, such reasons were required.
11. Further, in relation to the issue of whether the appellant's family house was burnt down as claimed, the appellants did, contrary to

the judge's conclusion, produce at least some corroborative evidence of this fact; evidence which the Judge did not refer to or pass comment upon in the determination.

12. For these reasons I informed the parties at the hearing that I had set aside the determination of the First-tier Tribunal.

### Re-making of decision

13. Given the potential significance of the aforementioned e-mail evidence, and the lack of time thus far for the parties to digest and decide how to appropriately act upon it, I indicated that I intended to adjourn the re-making of the decision to allow the necessary actions to be taken.
14. At this point Mr Nathan invited me to remit the matter back to the First-tier Tribunal; Mr Nath passed no comment on this matter.
15. The Senior President of the Tribunals' Practice Statement of 25<sup>th</sup> September 2012 provides as follows:

“7. “Disposal of appeals in Upper Tribunal

Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

[7.2] The Upper Tribunal is likely on each occasion to proceed to re-make the decision instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”
16. Given the terms of my decision setting aside the determination of the First-tier Tribunal, and given the new evidence (in the form of the e-mail from the British High Commission) which is likely to require significant additional evidence from the appellants and in all

likelihood lead to the Secretary of State calling the author of the e-mails to the BHC to give evidence, I agree with Mr Nathan that the requirements of paragraph 7.2 (b) of the Senior President's Practice Statement are fulfilled.

17. In such circumstances, and given that the hearing of the appeal in the Upper Tribunal was, in any event, to be adjourned, I conclude that it is appropriate to remit this appeal to the First-tier Tribunal for it to be determined afresh and I direct that this be so.

**Decision**

The decision of the First-tier Tribunal is set aside. The Upper Tribunal allows the appellant's appeal to the limited extent that it is remitted to the First-tier Tribunal to be re-heard de novo.

To this end, given the terms of the e-mail evidence produced by the Secretary of State on 16 October, a Case Management Review Hearing has been fixed for Taylor House hearing centre on 9 December 2013. Both parties must be in a position at the CMRH to identify which witnesses they intend to call at the substantive hearing.

Signed: M O'Connor

A handwritten signature in blue ink, appearing to read 'M O'Connor', with a long horizontal flourish extending to the right.

Judge of the Upper Tribunal  
October 2013

Dated: 24

