



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02503/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 19th September 2013

Determination Sent
23rd September 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IKECHUKWU ABBA ONYEANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Gibb, of Quinn Martin & Langan, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appeals against a determination by First-tier Tribunal Judge McGrade, promulgated on 24th May 2013, dismissing on all available grounds his appeal against refusal of recognition as a refugee from Nigeria.
2. Permission to appeal to the Upper Tribunal was granted on one ground only: reaching a conclusion on credibility prior to considering a medical report, an error of the type identified in Mibanga v SSHD [2005] EWCA Civ 367.

3. Mr Gibb argued that this was an error of such a nature that the determination required to be set aside in its entirety. The Appellant should have the opportunity of giving his oral evidence again. He was willing to tender himself for cross-examination, although the Respondent had not been represented in the First-tier Tribunal on the last occasion.
4. Mrs O'Brien submitted thus. Although the judge gave good reasons for reaching a negative credibility conclusion, the determination was not sustainable, because he had clearly done so before turning to the report by Dr Ross at paragraph 40 of the determination. The claim was partly based on alleged seizure of the land of the Appellant's father in his home village twenty-eight years ago. Although it appeared that part of the claim was inevitably defeated by the internal flight alternative in any event, there were alternative claims which depended on credibility and did not turn on internal flight. She agreed that the appropriate course was to fix a fresh hearing in the First-tier Tribunal.
5. Mr Gibb correctly acknowledged that the internal flight alternative did defeat the claim based on land seizure. That issue need not trouble the First-tier Tribunal when it hears the case again.
6. The decision of the First-tier Tribunal erred in law, as set out above, and as conceded by the Respondent. The determination is **set aside**. Apart from the now undisputed findings on internal flight in respect of the land seizure claim, none of the previous stand.
7. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge McGrade.
8. No order for anonymity has been requested or made.



20 September 2013
Judge of the Upper Tribunal