



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08066/2017

**THE IMMIGRATION ACTS**

Heard at: Field House  
On : 8 January 2018

Decision & Reasons Promulgated  
On: 10 January 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AE  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E Waheed, instructed by A. Vincent Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria, born on [ ] 1980. He has been given permission to appeal against the decision of First-tier Tribunal Judge Harris dismissing his appeal against the respondent's decision of 16 August 2017 to refuse his asylum and human rights claim.

2. The appellant entered the United Kingdom on 10 September 2012 as a Tier 4 student and was given further periods of leave to remain on that basis until 19 April 2016. His subsequent application for further leave to remain outside the immigration rules was refused and certified as clearly unfounded on 14 March 2017 and he then made an application for leave to remain on 4 July 2017 on the basis of family and private life. He was detained when reporting on 6 July 2017 and claimed asylum. His claim was refused on 16 August 2017. He appealed against that decision and his appeal was heard in the First-tier Tribunal on 28 September 2017 and was dismissed in a decision promulgated on 5 October 2017.

### **The Appellant's Claim**

3. The appellant claims that his father, a teacher, was politically active and critical of the Nigerian government's treatment of the people of Biafra and was abducted, tortured and killed in 1999. He claims that he (the appellant) became a member of the Indigenous People of Nigeria Movement (IPOB) in Nigeria and had a role in the movement as zonal coordinator for Okigwe. From time to time he received threats as a result and on 3 February 2011 he was kidnapped together with his 12 year old cousin when travelling in a car and handed over to another group of kidnappers whom he believed to be associated with the Nigerian government. They told him that they could do the same to him as they did to his father and they raped his cousin in front of him and then released her. They beat and tortured him and he was subsequently diagnosed as having post-traumatic stress disorder as a result. His mother paid a £10,000 bribe to secure his release. He was released on 25 February 2011 and fled to Lagos where he hid with an old family friend whom he considered as an uncle. The kidnappers called him on his telephone number. He managed to obtain a student visa for the UK in August 2012 and left Nigeria in September 2012. He fears people connected to the Nigerian government. The appellant met his wife Ms A in 2013 and they were married on 5 February 2017 in Lagos, with the appellant represented through a proxy.

4. The respondent, in refusing the appellant's claim, did not accept that he was ever a member or supporter of IPOB or any other Biafra movement and did not accept that he was kidnapped as claimed. The respondent considered that the timing of the appellant's claim undermined his credibility. It was not accepted that he was at risk on return to Nigeria or that his removal to Nigeria would breach his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Harris on 28 September 2017. The judge heard from the appellant and his wife and considered a Rule 35 report from a Dr N Ali which commented that he had PTSD and was on anti-depressants. The judge noted the appellant's wife's evidence that he had been raped when kidnapped and that she had observed him suffering from mental health problems and had encouraged him to seek expert psychiatric help. The judge found there to be matters in the appellant's favour when assessing credibility but considered that his reliability was outweighed in the end by various concerns. Whilst he was prepared to accept that the appellant may have suffered some sort of traumatic incident in Nigeria involving physical and sexual abuse he did not accept the appellant's claim as to who was

responsible for that and why. He did not accept that the appellant was politically active in IPOB or that he was targeted, kidnapped and abused by Nigerian security forces or supporters of the Nigerian government. He did not accept that the appellant's enemies had tried to trace him and he did not accept that he had been politically active in the UK. The judge was not satisfied that the appellant would be at any risk on return to Nigeria and considered that his removal would not breach his human rights on Article 3 or 8 grounds.

6. The appellant then sought permission to appeal the judge's decision on the grounds that he had failed to provide adequate reasons for finding the appellant not to be credible and had failed to apply paragraph 339K of the immigration rules. The judge's findings on insurmountable obstacles and very significant obstacles for the purposes of Appendix FM and paragraph 276ADE were also challenged in relation to the risk on return.

7. Permission was granted in the First-tier Tribunal on the following grounds:

"...the judge arguably arrived at an irrational finding that the appellant had not given a credible account to have come to the adverse attention of the Nigerian security forces given that the judge found at paragraph 64 of his decision that he was prepared to accept that the appellant may have suffered a traumatic incident in Nigeria which involved physical and sexual abuse."

### **Appeal Hearing**

8. At the hearing both parties made submissions before me.

9. Mr Waheed submitted that it was irrational for the judge, having accepted at [64] the appellant's evidence about sexual abuse, to have then relied upon that evidence and its disclosure to cast doubt on the appellant's credibility at [54], [55], [57] and [58]. Further, the judge had failed to comply with paragraph 339K of the immigration rules as he had failed to give good reasons for concluding that the previous serious harm would not be repeated. The challenge to the judge's findings on Article 8 flowed from the errors made in relation to risk on return.

10. Mr Lindsay, in response, relied on the respondent's Rule 24 reply and submitted that the judge's findings on credibility were not irrational and that he had been entitled to dismiss the appeal for the reasons given at [54] to [64]. With regard to paragraph 339K the burden of proof was upon the appellant to show good reasons why the serious harm would be repeated. As to Article 8, the judge was entitled to require that the appellant make an entry clearance application from Lagos.

### **Consideration and findings**

11. Having carefully considered the submissions of both parties it seems to me that the grounds fail to establish that there were any errors of law in the judge's decision. It was entirely open to the judge to accept parts of the appellant's evidence and to reject others, provided that he gave full and proper reasons for doing so, which I consider that he did.

12. Aside from the appellant's own evidence, the judge noted that the only evidence submitted in support of the claim was that of his wife and the Rule 35 report. The judge noted the absence of medical evidence, other than the Rule 35 report, to support the appellant's account. He acknowledged at [47] that there was no requirement for corroboration as such, but properly observed that the burden of proof lay upon the appellant to make out his case and was entitled to take into account the absence of evidence that could reasonably have been obtained. The judge gave full consideration to the evidence of the appellant's wife and of Dr Ali in the Rule 35 report and provided cogent reasons at [50] and [53] for according that evidence the weight that he did. It was on the basis of that evidence that he was prepared to accept, although only just, that the appellant may have suffered some sort of traumatic incident in Nigeria involving physical and sexual abuse, as he found at [64]. However the judge was not then required, having made that finding, to accept that the incident occurred in the circumstances and for the reasons claimed by the appellant and he provided detailed and cogent reasons for concluding that it had not.

13. At [54] the judge noted that the appellant had made no mention himself of having been raped, in any of the accounts given, and that it was only raised by his wife at the hearing. At [56] the judge observed that the appellant made no mention, in his first interview, of fearing for his safety in Nigeria when asked why he would not consider returning there. At [57] the judge noted that no mention was made, in the written representations of 4 July 2017, of the appellant wishing to make a protection claim, of his claimed role in IPOB or of being kidnapped and ill-treated, and at [58] that no mention was made in the first screening interview of the kidnapping. At [59] the judge observed that the appellant did not leave Nigeria until a month after obtaining a visa, despite his claim to be in great danger, and at [60] that his account of his movements in Lagos was not consistent with a claim to have been in hiding. At [61] the judge found the appellant's evidence as to his political involvement in the UK to be contradictory. At [62] he noted the delay in the appellant's claim for asylum. All of these reasons were given by the judge for finding the appellant's account of kidnapping and torture to be lacking in credibility and for all of those reasons he was perfectly entitled to make such adverse findings and to reject the appellant's claim as he did at [64]. It was not a matter, as suggested by Mr Waheed, of the judge using the circumstances of the appellant's disclosure of an accepted event to reject his credibility. The judge did not accept that the incident described by the appellant occurred and it is plain from his finding at [64] that what he was prepared to accept was simply that there may have been some other incident in the past which had no link to, or bearing on, the appellant's claim to be at risk on return. I find nothing irrational in the judge's conclusion in that regard and neither do I find it to be in any way inconsistent with the approach in paragraph 339K.

14. For all of these reasons the judge was fully and properly entitled to find that the appellant's account was not a credible one and to conclude that he was at no risk on return to Nigeria. As Mr Waheed indicated, the remaining grounds flowed from the above and the challenge to the judge's findings on Article 8 was founded on the same reasons for the challenge to the judge's findings on credibility and risk on return. The judge was perfectly

entitled to conclude that there were no insurmountable obstacles to family life continuing in Nigeria, that there were no very significant obstacles to integration in Nigeria and that there were no compelling circumstances justifying a grant of leave outside the immigration rules on wider Article 8 grounds. He provided full and cogent reasons for reaching those conclusions at [83] to [109], taking account of all relevant matters and was fully entitled to conclude that the appellant's removal would not breach his Article 8 human rights.


15. On the evidence available, and for the reasons fully and properly given, the judge was unarguably entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did. I find no errors of law in the judge's decision. I uphold the decision.

### **DECISION**

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

### **Anonymity**

The First-tier Tribunal made an order for anonymity. I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed   
Upper Tribunal Judge Kebede

Dated: 8 January 2018