



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02646/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Manchester

**On** 9 January 2019

**Decision & Reasons  
Promulgated**

**On** 30 January 2019

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**OLUTOLA [F]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Smith (counsel) instructed by Greater  
Manchester Immigration

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Parker promulgated on 17 September 2018, which dismissed the Appellant's appeal on all grounds.

### Background

3. The appellant is a citizen of Nigeria born 28 March 1982. She has two children who are dependent on her claim. The appellant arrived in the UK on 24 September 2011 in possession of a visit visa and claimed asylum on 2 October 2015. The appellant claims that she fears her parents, who want her to adhere to her abusive husband in Nigeria. The respondent considered the appellant's claim to be a claim to have a well-founded fear of persecution as a member of a particular social group as a woman in Nigeria. On 7 February 2018 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge AJ Parker ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 10 October 2018 Tribunal Judge Povey gave permission to appeal stating inter alia

"3. All grounds appear arguable. In assessing the appellant's credibility, the Judge recited and appeared to rely upon the respondent's decision letter. If the Judge considered the appellant's response in her witness statement of the letter, he failed to provide adequate reasons for how he assessed her evidence. If he failed to have regard to her statement, he ignored a relevant factor. Those findings undermine the Judge's finding that the appellant was not credible.

4. The same errors appear to undermine the Judge's assessment of the appellant's partner's return (or otherwise) to Nigeria. There was no explanation of how, if at all, the Judge had assessed the partner's evidence (of why he could not return to Nigeria). Those errors are material to the Judge's findings on internal relocation (which was premised on the appellant returning to Nigeria with her partner) and his assessment of proportionality under article 8.

5. As such, the application for permission has disclosed arguable errors of law and permission to appeal is granted. All grounds may be argued.

### The Hearing

5. (a) Ms Smith, for the appellant, moved the grounds of appeal. She told me that the Judge failed to have regard to the appellant's evidence. She took me to [28] of the decision and told me that, there, the Judge simply repeats the points raised by the respondent in the reasons for refusal letter. She told me that the appellant adopted the terms of a detailed witness statement responding to the points taken by the respondent in the reasons for refusal letter, and that the Judge has failed to consider the

various strands of the appellant's evidence. She told me that the Judge's assessment of credibility is inadequate.

(b) Ms Smith moved the second ground of appeal and told me that the Judge failed to give proper consideration to the expert report relied on by the appellant. She told me that the Judge simply rejects the expert report at [46] because he finds that the appellant is not a credible witness. Miss Smith referred me to Mibanga v SSHD [2005] EWCA Civ 367.

(c) Ms Smith told me that the Judge found that the appellant's partner can return to Nigeria with her, yet the appellant's partner has limited leave to remain in the UK because he has contact to his children from a previous relationship. Ms Smith told me that the Judge's findings in relation to both the protection and article 8 claims rely entirely on his finding that the appellant's partner will return to Nigeria with her. She took me to various parts of the decision and told me that that finding is unsafe, and is inconsistent with the finding at [47] that there is no requirement on the appellant's partner to leave the UK.

(d) Ms Smith told me that the Judge's article 8 assessment is inadequate. She argued that the Judge failed to take proper account of the appellant's partner's circumstances (as a man granted limited leave to remain in the UK) and that in any event the Judge failed to properly consider both the rights of the appellant's partner's British citizen children from an earlier relationship, and the rights of the two children born to the appellant and her partner. She told me that the decision is weakened by mistakes in fact which demonstrate that the Judge did not apply anxious scrutiny to the evidence.

(e) Ms Smith urged me to allow the appeal and set the decision aside.

6.(a) For the respondent Mr Bates conceded that the decision contains material errors of law. He told me that the protection claim is not adequately dealt with and that the Judge fails to give reasons for rejecting the appellant's evidence. He told me that the Judge fails to give reasons for preferring the respondent's position. He told me that the decision in relation to the protection claim does not contain an analysis of the appellant's statement and does not explain why the respondent's position is adopted at [28] of the decision.

(b) Mr Bates agreed that the Judge's treatment of the expert report is flawed, and that the Judge's findings in relation to internal relocation are undermined by his failure to properly assess the appellant's protection claim and reach a conclusion. He agreed that as the Judge made no real findings about the influence and reach of potential agents of persecution, so that the findings on internal relocation are incomplete.

(c) Mr Bates did not accept all of Ms Smith's arguments in relation to article 8 ECHR grounds of appeal, but accepted that the Judge has not given adequate consideration to the grant of limited leave to remain

enjoyed by the appellant's partner. He accepted that there is a less than straightforward family dynamic which needed to be considered in greater detail. He accepted that the decision does not properly deal with the best interests of both the two children born to the appellant and her partner and the interests of the appellant's partner's British citizen children from an earlier relationship.

(d) Both Mr Bates and Ms Smith joined in asking me to set the decision aside and to remit this case to the First-tier Tribunal to be determined afresh.

### Analysis

7. Between [16] and [47] the Judge starts consideration of the appellant's protection claim. At [20] he appears to make findings of fact, but then departs from fact-finding to quote from the appellant's skeleton argument. Then (after confusing the numbering of the paragraphs) at [28] declares that the appellant's evidence is riddled with inconsistencies before adopting the terms of the reasons for refusal letter. The Judge moves on to consider section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004, before again quoting at length from the skeleton argument for the appellant.

8. Between [43] and [47] the Judge returns to consideration of the protection claim. He then appears to confuse the protection claim with the article 8 claim, before reaching a conclusion that the appellant can return to Nigeria because her partner will return with her & protect her. The Judge does not reach a conclusion in relation to the protection claim. He does not make any meaningful findings about risk on return nor on the existence (or otherwise) of an agent of persecution. Instead he leaps straight to consideration of internal relocation.

9. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

10. The decision does not contain an analysis of the appellants evidence nor does the Judge say why he prefers the respondent's position to the appellant's position. No meaningful decision is reached on the protection claim. That is a material error of law.

11. In Ex parte Virjon B [2002] EWHC 1469, Forbes J found that an Adjudicator had been wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical

evidence itself. That too was the view of the Court of Appeal in the case of Mibanga 2005 EWCA Civ 367.

12. The appellant relies on an expert report. At [43] the Judge rejects the expert report in two sentences. The Judge rejects the experts report because the Judge does not find the appellant to be a credible witness and because the Judge says that the expert report does not consider whether the appellant's partner will return to Nigeria with the appellant.

13. There is no meaningful analysis of the expert report. The Judge relies almost exclusively on his finding that the appellant is not a credible witness and does not consider the expert report further. The Judge's superficial consideration of the expert report amounts to another material error of law.

14. The Judge goes on to consider article 8. At [63] he says that his starting point is that it is in the children's interest remain with both parents. He fails to adequately consider the position of the appellant's partner, who has limited leave to remain in the UK, and his relationship with his two British citizen children from an earlier relationship.

15. The Judge's findings depend entirely on the appellant's partner leaving the UK with the appellant. His finding that the appellant and her partner are inseparable and that the appellant's partner will accompany the appellant to Nigeria is inadequately reasoned. At [61] the Judge makes findings in relation to the two children born to the appellant and her partner. He makes no findings in relation to the appellant's partner has two British citizen children. Between [70] and [73] the Judge appears to consider the test of reasonableness which applies to either British citizens or qualifying children. Those considerations are irrelevant in relation to the children of the appellant and her partner. The Judge has not applied those considerations to the appellant's partner's British citizen children from an earlier relationship.

16. The decision in relation to each aspect of the appellant's appeal is undermined by material errors of law. I set the decision aside.

17. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 17 September 2018. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

#### Remittal to First-Tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if 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.

19. In this case I have determined that the case should be remitted because the findings of fact are not necessary. None of the findings of fact are necessary.

20. I re-heard the appeal sitting at Manchester to be heard by Judge Parker.



**Decision**

**21. The decision of the First-tier Tribunal is tainted by material errors of law.**

**22. I set aside the Judge's decision promulgated on 17 September 2018. The appeal is remitted to the First-tier Tribunal to be determined afresh.**

Signed

Date 15 January 2019

Deputy Upper Tribunal Judge Doyle