Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10227/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 28 October 2019

Decision & Reasons Promulgated
On 28 November 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

OA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Khan, instructed by Bankfield Heath, solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 2 March 2019, I set aside the decision of the First-tier Tribunal. My reasons were as follows:

> “1. The appellant, OA, born in 1981 is a female citizen of Nigeria. By a decision promulgated 20 July 2018, the First-tier Tribunal (Judge O’Hanlon) allowed the appellant’s appeal against the decision of the respondent dated 28 September 2017 refusing her international protection. The Secretary of State now appeals, with permission, to the Upper Tribunal.
>
> 2. I shall deal first with the scope of the grant of permission. In addition to granting permission on those grounds which were pleaded,

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Judge Scott-Baker has granted permission also in respect of what she considered to be a "Robinson" obvious point:

Whilst not raised in the grounds the judge had allowed the appeal on asylum grounds but had found at [16] that [the appellant's] fear of the loan sharks was a "non-Convention reason" and arguably, on a Robinson obvious point, in allowing the appeal on asylum grounds with these findings there is an arguable error of law.

3. A more thorough reading of the decision would have revealed that the judge concluded that the appellant was at risk in Nigeria from state (as opposed to non-state) agents, in that the loan shark she claimed to fear had power over General Intelligence Department (GID) and Special Anti-Robbery Squad (SARS) which are Government agencies in Nigeria. It was claimed that the loan shark would be able to use those state agencies to persecute the appellant. Secondly, it is unclear whether Judge Scott-Baker has had regard to the principles articulated in the case of AZ [2018] UKUT 245 (IAC) when granting permission on a matter which had not been pleaded.

4. I find that the first ground of appeal has no merit. The judge had considered the evidence and accepted documentary evidence from the appellant's solicitor. The grounds complain that the solicitor was not available for cross-examination therefore the evidence was untested. The apportionment of weight to various items of evidence was a matter for the judge. There was no reason why the judge should not apportion weight to a piece of documentary evidence which had not been tested by cross-examination. As regards the fact that the judge had not considered how the appellant could afford to get to the United Kingdom having been in debt in Nigeria, it is not apparent that this issue was raised before the judge at the hearing. It is not open for either party to raise matters following a hearing which could have been and should have been raised at the time of the hearing.

5. The second ground of appeal has more merit. This concerns the question of internal relocation. The judge considered internal flight at [54]. The Secretary of State had proposed that the appellant could relocate to a different part of Nigeria outside Lagos. However, the judge wrote that "the loan shark was able to exercise such influence over the GID and SARS that they became involved in his business with the appellant. I find that there would still be a risk to the appellant from those rogue state agents in the event that the appellant were returned to Nigeria." Mrs Pettersen, who appeared for the Secretary of State, submitted that the judge's finding was not tenable. The judge had failed to explain how, several years after the event, the "rogue state agents" would be aware that the appellant had returned to Nigeria and why the loan sharks under whose influence the judge found they operated would still wish to persecute the appellant.

6. I agree that the judge's analysis of internal flight is inadequate. In addition to the points raised by Mrs Pettersen, I am concerned that the judge may have applied the wrong test as regards internal flight. At [54], the judge writes that, "having considered all the circumstances of the appellant in the round I find it would be unreasonable to expect the appellant to return to a different part of Nigeria that as part of the threat to her is from police/Government Authorities, she would not be able to avail herself of the protection of the state." It is one thing to

make a finding that a particular individual or loan shark has control over "rogue" elements in Government agencies but quite another to find that internal flight within Nigeria is not available to the appellant because of a threat from "police/Government Authorities." Further, the test for internal flight is that of undue harshness, not reasonableness.

7. For the reasons I have given above, I see no reason to interfere with the judge's acceptance of the credibility of the appellant's account of past events. I find that it was also open to the judge to find that the loan shark had control over particular "rogue" Government officials. I am, however, not satisfied that it was open to the judge to find that the appellant has a real risk of being detected upon return to Nigeria and whilst living anywhere within that country by Government agencies or the police or that those agencies would seek to harm the appellant. I set aside the decision of the First-tier Tribunal. The judge's finding that the appellant has a well-founded fear of ill-treatment at the hands of her husband are preserved. The judge's findings that loan sharks who two years ago wished to cause her harm were able to influence rogue elements in the Government agencies, the GID and the SARS are preserved. Otherwise, the judge's findings of fact are set aside. The Upper Tribunal will remake the decision following a resumed hearing on a date to be fixed at Bradford. Both parties may adduce fresh evidence provided that copies of any documents upon which they may respectively intend to rely are filed at the Upper Tribunal and served on the other party no later than ten days prior to the resumed hearing.

Notice of Decision

8. The decision of the First-tier Tribunal is set aside. The Upper Tribunal shall remake the decision following a resumed hearing before Upper Tribunal Judge Lane at Bradford on a date to be fixed."

2. The burden of proof is on the appellant. In order to succeed in her appeal, the appellant must prove that there are substantial grounds for believing that to be a real risk that she would suffer ill treatment or persecution upon return to Nigeria. This appeal in the Upper Tribunal proceeded only on the basis that the Secretary of State contends that would not be unduly harsh for the appellant to relocate within Nigeria. In the light of the findings of the First-tier Tribunal which I have preserved, the appellant does face a real risk of ill-treatment should she return to her home area of Nigeria.

3. The appellant gave evidence in Yoruba with the assistance of an interpreter. She was cross-examined by Mr Diwnycz who appeared for the Secretary of State. I found her evidence to be credible and consistent. Nothing which she said in response to cross-examination led me to consider that she was seeking to provide the Tribunal with anything but a true and accurate account of past events; indeed, Mr Diwnycz did not submit otherwise. I treated the appellant as a vulnerable witness. During her evidence in chief, she broke down and there was a lengthy break in the proceedings whilst she recovered herself. I accept the diagnosis which has been provided for her of PTSD and depression. I accept also that the appellant had a hysterectomy operation in May 2019. I have taken the

appellant's medical condition into account in making my assessment of her evidence.

4. I accept that the appellant has continued to receive threatening and abusive messages on WhatsApp and Facebook. These messages relate to or emanate from those who have in the past threatened the appellant with ill-treatment. I accept, as the appellant claims, that interest in her in Nigeria continues notwithstanding the lapse of time since she left that country. I accept also that the appellant's bank accounts have been blocked and that, without possession of her passport, she cannot change her name in Nigeria. Being unable to change her name or identity will make it easier for those who seek to harm her to locate her anywhere in Nigeria through an extensive network of contacts. I accept also that the appellant's father has died and that she has lost contact with her mother. If returned Nigeria, I find that she would return as a single woman with two small children with no obvious means of supporting her family. Beyond that, she will, as I accept her lawyer in Nigeria continues to insist, still be at risk from those who have in the past threatened her. Having considered the evidence as a totality, I accept the appellant's assertion that those who seek to offer her harm in Nigeria can, through their extensive contacts and by reason of the red alerts placed on her bank accounts locate her within Nigeria should she flee from her home area.

5. I have to consider whether the appellant, possessing the characteristics which I have identified in my findings of fact above, faces a real risk of ill-treatment contrary to Article 3 ECHR upon return to any part of Nigeria to which she and her children may relocate. I have concluded that she does face a Nigeria-wide risk. In addition, her mental and physical ill health, together the fact that she would be a single woman with children, will render it virtually impossible for her to find employment, take steps to avoid ill-treatment at the hands of those who seek to harm her and to sustain and accommodate her family. I conclude that it would be unduly harsh for the appellant relocate outside her home area of Nigeria. Accordingly, her appeal is allowed.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State to refuse her international protection is allowed and human rights grounds (Article 3 ECHR)

Signed Date21 November 2019
Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.