Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10562/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On 26 April 2019	**On 14 May 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

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(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Pickering (Counsel)
For the Respondent: Mr M McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal in respect of some of the grounds and with the permission of a Judge of the Upper Tribunal with respect to others, from a decision of the First-tier Tribunal (the tribunal) which it made on 4 December 2017 following a hearing of 20 November 2017. The tribunal's decision was to dismiss the claimant's appeal against a decision of the Secretary of State of 6 October 2017 to refuse to grant her international protection.

2. Shorn of all but essential detail, the background circumstances are as follows: The claimant is a female national of Nigeria. She was born on 29 November 1980. She claims to be a Christian. She has a daughter who was born to her in the United Kingdom (UK) on 11 May 2017. She was, on 17 March 2011, granted a visa permitting her to come to the UK as a visitor. It is said that she entered the UK on a date in May 2011 having travelled by air. Her leave as a visitor must have expired without further leave being given because, on 10 November 2016, she was served with notice as an overstayer. It is recorded that she claimed international protection on 7 April 2017. As to the facts underpinning her claim for asylum, she asserted that her parents had been murdered by followers of Islam because of antipathy they had towards the Christian religion, that she had been detained by her parents' assailants and those associated with them, that she had managed to escape from her captors, that she had subsequently received death threats from them and that she had, in consequence, decided she would have to leave Nigeria for her own safety. She also claimed that the authorities would not be able to protect her in Nigeria and that she would not have available to her, upon return, an internal flight alternative. The Secretary of State did not believe that the claimant had told the truth and, essentially, that is why her claim was refused.

3. Given that the claimant had appealed to the tribunal, her case had to be allocated to a Hearing Centre. She has, at all material times, resided in Doncaster. The closest and most accessible Immigration Hearing Centre to Doncaster is located in Bradford. However, for reasons which are not clear to me, her case was allocated to the North Shields Immigration Hearing Centre. At the pre-hearing review stage, the claimant's solicitors made a written request for the case to be transferred from North Shields to Bradford. By way of explanation, it was said that the claimant has a young child who was five months old and that it would be very difficult for her to have to travel to North Shields. The clear implication (though this was not actually stated in terms) was that the claimant intended to travel with her child rather than to leave her child in the care of someone else. It may be that she did not have anyone she felt she could trust with the task of caring for her child. Anyway, a Judge of the First-tier tribunal refused the request for a transfer. His handwritten note relevantly reads:

> "Transfer refused – no special circumstances. A would still need to travel from Doncaster to Bradford".

4. The claimant's solicitors then renewed the transfer request by letter, essentially making the same points and observing "*our client advises that it is very unlikely that she would be able to attend the hearing herself as it stands in North Shields. She is really concerned about the travel time and the fact that she would have to set off very early in the morning in order to ensure that she was at the court in time for her hearing*". The letter asserted in light of that "*there are special circumstances in this case*". The application, however, was refused by the same Judge on the basis that the more recent request did not contain new information. The case was, therefore, listed for a hearing at the North Shields Hearing Centre on 20 November 2017. The claimant did not attend.

Counsel for her did attend and applied for an adjournment but that application was refused. So, the hearing proceeded and the tribunal made its decision on the basis of the documentary evidence before it and the oral submissions made to it. The individual Judge who decided the appeal was not the same Judge who had refused the request for a transfer.

5. The tribunal having dismissed the appeal, permission to appeal was sought and subsequently granted. There were four grounds of appeal before me. There was also what I decided amounted to an application to amend the grounds in order to incorporate a fifth ground of appeal. Mr McVeety did not oppose the application to amend the grounds and I granted that application and in doing so I utilised the wide-ranging case management powers conferred upon me at rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and, in particular, rule 5(3)(c). So, in summary, the grounds of appeal I was required to consider given the amendment were as follows:

> "Ground 1 – The tribunal erred through failing to adequately consider background country material regarding the claimant's assertion she would face persecution or serious ill-treatment as a Christian and/ or as a single female returnee.
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> Ground 2 – The tribunal failed to adequately consider what would be in the best interests of the claimant's child.
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> Ground 3 – The tribunal carried out an inadequate consideration of the position with respect to Article 8 of the ECHR.
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> Ground 4 – The tribunal failed to consider how the quality of the claimant's written evidence might have been impacted by the trauma which she claimed she had experienced.
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> Ground 5 – The tribunal had unfairly required the claimant to attend a hearing in North Shields and that had led to her not being able to give oral evidence.

6. Before me, Ms Pickering relied upon the grounds as drafted and amended. The claimant had effectively been prevented from giving her evidence. All she had been seeking was a transfer to a Centre closer to her home. That had been a reasonable request. The adjournment application made by Counsel (not Ms Pickering) at the outset of the hearing had not been properly considered. As to Article 8, the tribunal had simply rehearsed the law and then stated a conclusion without any reasoning to link the two. I was urged to set aside the tribunal's decision and to remit for a complete rehearing. Mr McVeety, for the Secretary of State, said he had "some sympathy" with respect to the points made under Ground 5 but did not accept that that ground was made out. As to grounds 1 and 4, he argued that the tribunal had made comprehensive and cogent credibility findings. It had specifically rejected the claimant's assertion that she would be returning to Nigeria as a lone female. The Article 8 consideration had been very brief but there had been no substantial evidence placed before the tribunal in support of the Article 8 contention so, that was permissible.

7. I have decided that ground 1 is not made out. I accept Mr McVeety's submission to the effect that the tribunal did make clear adverse credibility findings and that it was entitled to make those findings on the basis of the evidence before it although that evidence, of course, did not include any oral evidence from the claimant. As to the question of risk upon return as a lone female I accept Mr McVeety's submission that the tribunal did adequately deal with that at paragraph 79 of its written reasons. It said, therein, that there was reason to believe that the claimant would have a male protector to return to. As to ground 4, I have concluded that that is not made out either. That is because the tribunal did not accept the claimant's account of having experienced serious ill-

treatment which would it is said have led to her suffering from trauma. I have hesitated over ground 5 but I have concluded that it is not made out. It is possible (I put it no higher) that the interlocutory decisions to refuse a transfer involved the importation of a "special reasons" test which (so far as I am aware) is not underpinned by anything in primary or secondary legislation nor any applicable Rules of Procedure. It seems to me on the basis of the arguments I heard that the proper course in dealing with transfer requests is to consider them in light of the "overriding objective" as enshrined in the First-tier Tribunal's Rules of Procedure. But, as Ms Pickering confirmed before me, the attack in the grounds was not in relation to the interlocutory decisions but in relation to the tribunal's decision not to adjourn the hearing. The tribunal, in deciding not to adjourn, did not apply or seek to incorporate any "special reasons" test but simply based its decision upon the overriding objective and upon the relevant case law (see paragraph 11 of its written reasons). The evidence, as I understand it, was that if the claimant had had to undertake a journey to Bradford rather than North Shields, that could have been accomplished some 35 to 40 minutes earlier. Without wishing to lay down any general principle at all, it does seem to me on a common-sense view, that absent something unusual a claimant should be invited to attend the Hearing Centre situated closest to his/ her home and that, speaking generally, when that does not happen, transfer requests ought normally to be granted. But there was no persuasive evidence before the tribunal that the claimant could not have attended at North Shields and her seemingly unilateral decision not to do so was, in the circumstances, most surprising. It seems to me that faced with her non-attendance the tribunal was entitled to proceed in the claimant's absence.

8. I have taken grounds 3 and 4 together. They both relate to the tribunal's treatment of the case under Article 8 of the ECHR. I have concluded that the tribunal did, here, err in law. I accept Mr McVeety's point that not very much had been said in witness statements regarding the potential applicability of Article 8. But nevertheless, the claimant has been in the UK since 2011. She has a child who was born here. There was an indication in the paperwork that her child might have heart problems and was being monitored. I accept Ms Pickering's submission that what the tribunal had to say at 128 and 129 of its written reasons did not contain meaningful reasoning. Rather, it amounted to a statement of conclusions without an explanation for them. What followed in the paragraphs immediately before was a detailed summary of Article 8 case law but it was not explained how what had been decided in the important cases referred to was relevant on the facts of this appeal. I appreciate it might well have been the case that, had the tribunal more fully considered Article 8, it would nevertheless have reached the same view. But I am not quite persuaded that this is a case where that would have been inevitable. So, I have concluded, that I must set aside the tribunal's decision.

9. My having so concluded I must go on to consider disposal. Mr McVeety urged me, if I were simply finding an error of law with respect to Article 8, to preserve everything else which had been found by the tribunal. Ms Pickering urged me to remit but in doing so to leave the tribunal with a blank canvas. In the unusual circumstances of this case I have decided to take the latter course of action. I do take Mr McVeety's point that there is much to be said for preserving the findings with respect to international protection since I have not found error of law with respect to those findings. Ordinarily that is probably what I would do. But the circumstances in this case are unusual and, whatever the merits of the decision to refuse to transfer and then to refuse to adjourn, the lack of oral evidence was unfortunate. I have decided, in these circumstances, that the appeal should be reheard completely afresh by a differently constituted First-tier Tribunal. So, I am exercising discretion afforded at section 12(3) of the Tribunals, Courts and Enforcement Act 2007 not to circumscribe the scope of the rehearing before the tribunal which will now follow.

10. Finally, my having decided to remit, section 12(2)(b)(i) of the same Act requires me to issue directions for the remaking of the decision. Accordingly, I direct that the case be considered by way of a complete rehearing of the appeal, that the appeal be heard at the Hearing Centre closest to the home of the claimant (currently Bradford though I suppose a change of address which might alter that cannot be ruled out) and that the tribunal which conducts the rehearing shall be differently constituted to that which heard the appeal on 20 November 2017. Any other directions which need to be made are best left to the Judiciary at the Centre where the appeal will be reheard.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The case is remitted to the First-tier Tribunal for a complete rehearing before a differently constituted tribunal.

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall name or otherwise identify the claimant or any member of her family. This grant applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed: Dated: 10 May 2019

Upper Tribunal Judge Hemingway