



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07143/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 11 May 2022**

**Decision & Reasons Promulgated
On the 19 July 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Zapata-Besso

For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of the Secretary of State made on 26 June 2019 to refuse him leave to remain in the United Kingdom, the appellant having made a human rights claim and an asylum claim.
2. On 6 August 2021 the First-tier Tribunal dismissed the appellant's appeal on asylum and humanitarian protection grounds but allowed it on Article 8 grounds.

3. The appellant sought permission to challenge that part of the decision refusing his appeal on asylum and humanitarian protection grounds. Permission to appeal was granted on 6 October 2021.
4. On 8 November 2021 the appellant was issued with a biometric residence permit granting him leave to remain in the United Kingdom. The appellant did, however, issue notice pursuant to Section 104(4b) of the Nationality, Immigration and Asylum Act 2002 as the appeal was not deemed abandoned. The reasons for that and the reasons for which the decision of the First-tier Tribunal were set aside are set out in my decision promulgated on 11 February 2022, a copy of which is attached.
5. The appellant's case is he is registered blind and suffers from a number of psychiatric problems. This includes PTSD, moderate/severe depressive disorder and anxiety syndrome, and that these are complex.
6. The appellant is from a family which is famous and prominent in Nigeria particularly in Benin City. Further, his grandfather was responsible for the formation of the Owegbe cult which has grown to have millions of members across the world. His father was the eldest which meant he was heir to the grandfather's position and property and was wealthy. Eventually the appellant's father became head of the cult after the grandfather's death in 1977.
7. The appellant was born prematurely and suffered from partial sight and some disability after birth. At the age of 12 he was initiated into the cult as are all members of his family and he was scarred as a result. The initiation into the cult involved attempts to "cure" his blindness which traumatised him. Things began to get difficult for him in 2001 when his mother died and his stepsiblings mocked him, trying to control the family and property in his state. In 2004 he was invited to the United Kingdom by his uncle and had planned to study law at the University of Buckinghamshire but this did not turn out as planned.
8. In 2007 the appellant's father died and his brothers filed a lawsuit preventing the will being taken into force. Legal proceedings are ongoing still. He believes that his stepsiblings had his sister murdered in 2009.
9. The appellant's case is that his family, in particular his stepsiblings, are rich and powerful with many connections in Nigeria and would wish him out of the way as he is a possible threat to their taking legal proceedings.

The Respondent's Case

10. In her refusal letter dated 26 June 2019 although it was accepted [28] that people with a disability are stigmatised and some are severely abused and seen as a source of shame, and some elderly and children are perceived to be associated with witchcraft, no information had been found to demonstrate that those who were blind were associated with that and therefore persecuted. It was accepted also [31] that those with physical

disabilities may be linked to witchcraft but that people with physical and mental disabilities were not generally at real risk of persecution.

11. It was noted also that the appellant had not provided any reliable information to demonstrate he would have no support from the family on return and would therefore be destitute [33], nor that he had substantiated his claim that he was at risk of persecution by the general population for being blind and associated with witchcraft. The Secretary of State also considered the appellant would not be at risk of ill-treatment contrary to Articles 2, 3 or 8 Human Rights Convention were he to be returned to Nigeria.
12. Judge Hussain found in respect of the appellant's private life claim:-
 - (i) that the appellant was a trustworthy witness and was supported by the expert evidence from Dr Akin Iwilide;
 - (ii) that the appellant's stepsiblings would be able to exert influence over the authorities because of the position they occupy, that his fears of this are speculative although genuinely held although not objectively [76];
 - (iii) he could not be satisfied on the balance of probability the appellant was likely to be a victim of assault although had a subjective fear that that would occur and his ability to get a remedy would be limited [77];
 - (iv) that a lack of support networks is a crucial social determinant of healthcare in Nigeria [79] and due to limited healthcare services and resources especially in the light of financial constraints and family networks and that the availability of mental health being highly dependent on the ability of the individual concerned to be able to access it to have private funds [79, 80], that the appellant has no close relatives remaining in Nigeria who would be able to support him pastorally [81], that he had no access to funds there and whilst he might potentially inherit a substantial sum of money left by his father it was totally uncertain when the litigation would end and if he would win and that his treatment and support for him would not be available.

The Hearing

13. At the hearing on 11 May 2022, Ms Willcocks-Briscoe accepted on behalf of the Secretary of State that the circumstances in which the appellant would find himself, that is destitution, was sufficient to engage Article 3 of the Human Rights Convention but that there would be no causal nexus with that situation and the appellant's membership of a particular social group on that basis.
14. Ms Zapata-Besso submitted this case was not just based on deprivation, that it went to the actual treatment he would face, both medical treatment

and the accusations of witchcraft. She asked me to note that the appellant would be entirely alone without access to funds, friends or support and that the medical evidence indicates that he is entirely reliant on others to deal with everyday living and that, on return he would be destitute in the street homeless, unable to complete tasks or see where he is and would need to rely on strangers in order to survive. That, given the evidence of Dr Ayesha Ahmad, would put him at risk and that even public healthcare, which requires funds, would not be available to him. Such NGOs as exist in respect of the disability rights do not provide services, just advocacy and are not in a position to provide care or accommodation. Those that claim to provide such, engage in harmful practices and poor standards of care putting the appellant at further risk. Ms Zapata-Besso submitted that given how reliant the appellant is on others he would as a matter of survival need to depend on strangers he could not even see and would be at their mercy for help and support with everything. That in turn would put him at risk as indeed would the support from the church given [see Dr Ahmad at 5.95.3] the stigmatisation of those with mental health problems.

15. It is submitted also that the appellant was, on the basis of the evidence of Dr Wootton, that his mental health would deteriorate on return with an acute manifestation of his PTSD symptoms which would make him identifiable as not just being disabled through blindness but mentally unwell. There is therefore a risk that anyone who would speak to him would see that he had mental health issues and as such he was unlikely to get help or risk free treatment and would be at risk of active ill-treatment through religious and cultural practices which the state did not prevent.
16. It was submitted further that the appellant was at risk from society at large due to such “medical” practices given the accusations of witchcraft are common in Nigeria [see EASO Report at section 25]. Relying on the evidence of Dr Ahmad, she submitted that the general attitude of strangers who might come into contact with him would be that he would be stigmatised and at a real risk of accusations. He would be also at risk of being taken to the sort of organisations such as the churches where he would arguably be ill-treated. Ms Zapata-Besso submitted also the appellant was at risk from his family due to the ongoing feud. She submitted that if the appellant were encountered by anybody in authority, which was likely given his personal circumstances on return, he might be identified as a person belonging to the family and thus they would learn of his return to Nigeria. There would then be a risk of him coming to harm and no protection as found by the First-tier Tribunal. He was at risk also given the nature of the dispute over the will and the Owegbe cult, this being in particular a risk on return to Benin City.
17. Ms Willcocks-Briscoe submitted relying on DH (Afghanistan) at [72], [74], [87 to 89], [93] that there was no causal link between the ill-treatment the appellant would suffer and his blindness and mental ill health. She submitted that there was insufficient evidence of an external manifestation of his mental ill health and that although physically blind,

there was insufficient evidence to show he was suffering from mental ill health. This was to be distinguished from the circumstances in DH or, for example, where someone was suffering from a florid psychosis if untreated.

18. Ms Willcocks-Briscoe submitted further that although the appellant might be accused of being cursed or of witchcraft this was implausible as the evidence from the EASO Country Report at section 9 indicated that such risks flowed from the family making accusations and it tended to be family (COI tab C) who took people to hospitals where they might face ill-treatment. That was unlikely to happen in the circumstances, the reality being at best he was likely to be subject to social distancing. The risk of him being taken to a faith healer by the public was remote as indeed was the risk from the family.
19. In reply, Ms Zapata-Besso submitted that the issue of internal relocation needs to be considered as the appellant might be at risk in the home area and that the appellant would not be able to socially distance given his blindness and his need to rely on others to get food and know where he is.

Discussion

20. The core issue in this case is what is likely to happen to the appellant on return to Nigeria. It is accepted that he would suffer destitution and thus face persecution on return to Nigeria.
21. The appellant faces destitution. The key question here is whether there is a nexus between that and membership, if proven, the Secretary of State does not now contest that the appellant is not a member of a particular social group, though that is a matter to which I will return in due course in any event. The case is in effect that anything he is suffering is not on account of his membership of a particular social group.
22. The starting point for any assessment of the risk to the appellant from the general public or the state (as opposed to his family) is how he will present on return. The appellant is visibly blind and that is not something he could conceal in any way. There is no indication that the appellant's condition has improved.
23. In addition to the obvious disability, it is not in dispute that the appellant suffers from significant mental health issues which are detailed in the reports of Dr Wootton and which have not been challenged. It is accepted also that the appellant would not be able to access the treatment he currently receives in terms of medication, nor would he obtain the support he currently has in the United Kingdom. He has been diagnosed as having complex PTSD as well as depression and has appeared to have been deteriorating from 2017 to 2020, Dr Wootton being of the opinion that in the absence of medication or treatment his mental health is likely to deteriorate. It is of note from the addendum report at Q7 that:-

“It is further established that [the appellant] is very limited in his day-to-day life because of his blindness and mental health problems. This has been noted by his GP and by the ophthalmology clinic and by the emergency department. His history of trauma combined with his current symptoms and visual impairment mean that he is very frightened and is struggling to adapt to his failing sight. He currently limits himself to the flat where he lives (mostly sitting on one space where he feels safe), the library and the outside space around the flat. His ability to complete daily skills on his own is extremely poor and he relies on the family he lives with to help him. If he did not experience such poor motivation and energy and was not so anxious he might be better able to develop these skills for himself. Instead he feels worthless due to his dependence on others and this becomes a vicious circle for him. He is also reliant on support from charities and others”.

24. Dr Wootton opines also (Q10) that his symptoms would be exacerbated by difficulties he might have in Nigeria such as finding shelter, work, accessing education or healthcare and social isolation.
25. Neither the first report nor the second report comments to any significant degree on how the appellant’s mental ill health would manifest itself if he deteriorated but it is evident that he suffers from anxiety but I do note that he is prone to panic attacks, which is consistent with him being frightened of being in an unfamiliar environment, something he finds difficult to cope with given his blindness which has deteriorated over time. He appears also to be hypervigilant at times I note equally from the diagnosis of complex PTSD at Annex 1 to Dr Wootton’s first report.
26. It is manifest from the reports that the appellant is significantly dependent on others for almost every aspect of everyday functioning. In assessing the report of Dr Ahmad, the circumstances in which the appellant would find himself in terms both of being able to access healthcare and as to how he would be treated, I have considered carefully the background material presented to me in light of the report from Dr Ayesha Ahmad who I accept is entitled to be treated as an expert on the difficulties the appellant would face on return to Nigeria on account of his physical and mental ill health.
27. The Secretary of State accepts in the refusal letter that people with disability are stigmatised [28] and some are severely abused and seen as a source of shame. It is not, however, accepted that those who are blind are associated with witchcraft and are thus persecuted although it is accepted that some with physical and mental disabilities may be accused of witchcraft depending on the local context [30] and that people with mental and physical disabilities may face persecution from society and families dependent on severity and repetitive nature of the act. It is stated [31]:-

“Taking all of the objective information in the round it is accepted that those with physical disabilities may be linked to witchcraft. The

objective country information does not demonstrate that people with physical and mental disabilities are generally at real risk of persecution”.

28. I accept from Dr Ahmad’s report that there would not be healthcare for the appellant’s mental ill health and that he would not have the necessary financial resources to afford healthcare. I accept that views towards mental health are primarily negative [see 3.2] and that “mental illness, regardless of its severity and the diagnosis, is heavily stigmatised, and the stigma increases the individual’s vulnerability towards harms”. On a basic level, widespread stigma towards mental health in Nigeria impacts on the progress of healthcare (Reed, 2009). Furthermore, lack of mental healthcare treatment means that the mentally ill in Nigeria have “little more than faith on their side” (Gerety, 2013). This can be very challenging for those in transition from a more developed and non-discriminative approach to the mental health such as that from the UK.
29. I accept also that those suffering from mental illness such as depression may consult faith healers [3.4] and that due to stigmas from cultural beliefs surrounding mental ill health those suffering from mental illness are at risk of harms ranging from discrimination, marginalisation and abandonment to forced treatments by witchdoctors such as flogging, confinement, exorcisms, chaining, and administrations of concoctions to sedate them.
30. In her opinion, the appellant’s current mental health status and risk of deterioration puts him at significant risk. That is said to be whether it would be in Benin, his home area, or in a major city such as Lagos.
31. Dr Ahmad says also at section 5 of her report that social distancing was the most common attitude expressed by people and that traditional (unorthodox) medicine was a treatment preference in reference to health seeking behaviour. Such antipathetic. attitudes appears also to be present amongst medical professionals and trainees [5.3].
32. Dr Ahmad opines:-
 - “5.5 Further effects of negative socio-cultural attitudes towards mental illness in Nigeria have been found to be additionally affected by destitution (Ikwuka et al, 2016), which will be a significant issue for [the appellant] would have access to financial resources. With the complex living situation due to his visual impairment and mental illness combined with negative socio-cultural attitudes towards both health conditions, [the appellant] will be subjected to a risk of ‘endorsed social restrictiveness, anti-community care and secondary social distance’ (Ikwuka et al, 2016)”.

33. It is of note also that mental illness is linked with “evil” in Nigerian society and that this may result in churches and other groups imposing harmful treatments on people [5.8].
34. It appears also that those who end up in psychiatric hospitals are only those who turn up as a last resort when they have already been subject to “treatment” at churches and mosques or in centres run by traditional healers.
35. Dr Ahmad records:-

“5.10 Beating, flogging, shackling and withholding food of patients is common in both traditional healing centres and hospitals. Ademola, Mental Hospital, for example, practises diagnosis by incantation, reciting religious verses to invoke the presence of Gods responsible for mental illness and uses chaining to restrain patients”.
36. The respondent’s primary submission is that the appellant would simply be destitute and would not be at risk of being subjected to the type of treatment referred to above simply because, in reality, nobody would take him to such a place. Thus, it is simply destitution that is likely to follow and not any active steps such as the type of “treatment” that would be administered.
37. The risk of the appellant or rather somebody taking the appellant to a faith healer or a similar place must be seen also in the context of the attitude towards witchcraft. I accept that the risk if the appellant faced treatment through being accused of witchcraft is a risk which is in addition to that of him being taken simply on account of his mental ill health and physical disability. It is, however, difficult to differentiate between these risks given that those with visible physical disabilities may be seen to be involved in witchcraft although I accept that that does tend to arise in communities and in extended families particularly with regard to children.
38. The EASO country guidance on Nigeria at section 15 states that “persons with mental or physical disabilities are often accused of witchcraft, see also the profile individuals accused of witchcraft or threatened in relation to ritual killings”.
39. This is, I consider, evidence of a risk to the appellant of being attacked but a risk which is part of a range of risks to him.
40. I have considered whether the appellant is at risk from his family in his home area. That, to an extent, depends on whether his presence again in Nigeria would be of note to them. I note the submission that there is a risk that any official coming into contact with the appellant would ask his name and would refer him to the family but that appears to be speculative. Further, there is little or no evidence that the appellant’s family would, on learning of his presence again in Nigeria, take active steps against him. If,

as appears to be the case, he is destitute and not in a position to integrate with any legal rights that they have, it is unlikely that they would take active steps against him. But I accept they are unlikely to take steps to protect him.

41. Given the combination of the appellant's mental ill health which can manifest itself in terms of panic attacks as well as his obvious visual impairment and consequent vulnerability and dependence on strangers for everyday living, the appellant will be unable to fend for himself and would need to contact and approach people to get any assistance at all. He cannot hide his combined physical and mental ill health and his anxiety related symptoms are likely to be exacerbated by being put into the unfamiliar situation of Nigeria.
42. Given his particular circumstances, both physical and mental disabilities, I find that there is a risk of him being seen to be involved with witchcraft and/or taken to a type of facility such as that run by various NGOs and religious organisations where he would be subjected to treatment of a type set out above, it would clearly be in breach, amounts to serious harm and would be sustained and repeated, thus amounting to persecution. I am satisfied that this is a result of a cumulative number of factors which are peculiar to this individual and the particular circumstances in which he finds himself as a result of mental ill health, destitution and blindness.
43. Accordingly, for these reasons, I consider that the appellant has a well-founded fear of persecution in his home area in Nigeria and elsewhere in that country on account of these factors. In any event, I consider that the risk to him extends across the whole country.
44. I am further satisfied that the appellant would not be able to get the assistance of the state in preventing him from being ill-treated as noted above. It is evident from the evidence of the widespread way in which the mentally and physically disabled are treated in Nigeria that there is a widespread stigma against such people and that the authorities are unable or unwilling to prevent the serious ill-treatment of people in that condition.
45. For these reasons, I am satisfied that the appellant has a well-founded fear of persecution on account of his membership of a particular social group, that is the mentally ill and/or the blind, which is a primary cause of his persecution.
46. Accordingly, I allow the appeal on asylum and human rights grounds, given that the ill-treatment to which he would be subjected would engage article 3. It therefore follows that he is not entitled to humanitarian protection.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

- (2) I re-make the appeal by allowing the appeal on asylum grounds.
- (3) I formally dismiss the appeal on humanitarian protection grounds as the appellant qualifies as a refugee.

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

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

Signed

Date 24 June 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX - ERROR OF LAW DECISION



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07143/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2022**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Grigg, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hussain, promulgated on 6 August 2021. In that decision the judge dismissed the appeal on asylum and humanitarian protection grounds but allowed it on human rights grounds.
2. After permission to appeal to the Upper Tribunal had been granted on 6 October 2021, the appellant was on 8 November 2021 sent a biometric

residence permit ("BRP") and thus Section 104 of the Nationality, Immigration and Asylum Act 2002 was engaged.

3. That Section provides as follows:-

104. Pending appeal

(1) An appeal under section 82(1) is pending during the period -

(a) beginning when it is instituted, and

(b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

(2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while -

(a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,

(b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or

(c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.

(4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsection (4B)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection) where the appellant -

(b) gives notice, in accordance with Tribunal Procedure Rules, that he wishes to pursue the appeal in so far as it is brought on that ground."

4. Rule 17A of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended provides as follows:-

17A.(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the Upper Tribunal if they are aware that-

(a) the appellant has left the United Kingdom;

(b) the appellant has been granted leave to enter or remain in the United Kingdom;

(c) a deportation order has been made against the appellant; or

(d) a document listed in paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006 has been issued to the appellant.

(2) Where an appeal is treated as abandoned pursuant to section 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 or paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice

informing them that the appeal is being treated as abandoned or finally determined.

(3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

(4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty-eight days.

(5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4)."

5. It only became apparent at the hearing before me on 1 February 2022 that no notice pursuant to section 104 had been served and I gave the appellant's solicitors time to make an application to extend time, having had regard to the power to do so as noted in MSU (S.104(4b) notices) Bangladesh [2019] UKUT 412 and the criteria identified as applicable in that.
6. It is accepted that the delay in this case was serious and significant. I accept also for the reasons given by Mr Bell in his statement that this oversight was due to exceptional pressure of work. I accept also that there are significant factors in this case weighing in favour of granting the extension. The appellant is, I accept, a vulnerable individual who is blind and suffers from significant mental illness. He is therefore dependent on his solicitors and others to a significantly greater degree than is usual in understanding procedural requirements and, even on a cursory examination of the grounds of appeal in this case, it was apparent the grounds are very strong indeed.
7. Given that the effect of not granting permission would be that the appellant would be unable to demonstrate that he is a refugee or is entitled to humanitarian protection there is a serious issue in play and I am satisfied that in all the circumstances it is in the interests of justice to extend time to permit service of the notice.
8. While, technically, the hearing before me was a nullity as I did not have jurisdiction, as is noted in MSU in the headnote at 2, the effect of the notice is to retrospectively cause the appeal to have been pending throughout and validating any act by the First-tier or the Upper Tribunal was done without jurisdiction. Accordingly, my decision on the error of law is valid.
9. The appellant is a citizen of Nigeria and is blind. He also suffers from significant mental ill health and, as a combination of these conditions, he is at risk on return to Nigeria of persecution as he faces accusations of witchcraft and would be subject to "folk treatment" for his condition.

Further, in the alternative, he would be at risk from his step-siblings owing to an ongoing legal dispute. It is also his case that the threat to him would exist as far as his disabilities throughout Nigeria and he could not relocate.

10. The Secretary of State did not accept that the appellant would be at risk or that his case engaged the Refugee Convention as there was no Convention reason.
11. The judge concluded:-
 - (i) that the appellant was unable to establish refugee status as being blind, which was a natural phenomena, was not the basis of which he could be a member of a particular social group [66 to 67];
 - (ii) that there was no real risk of the appellant being persecuted as the claim that because he is visibly blind and has a mental disability that he would be at risk of being treated by a faith healer or otherwise be accused of witchcraft was entirely fanciful as the appellant could not say that he had no one to support him yet claimed that there was an army of volunteers who were ready and willing to accuse him either of witchcraft or else force him to undergo unregulated treatment.
12. The judge then went on to consider whether the appellant met the requirements of paragraph 276ADE of the Immigration Rules.
13. The appellant sought permission to appeal on the ;grounds that the judge had erred:
 - (i) in his approach to what constitutes membership of a particular social group, in particular failing to have regard to DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223;
 - (ii) failure to consider evidence relevant to the issue on return, in particular the evidence from the expert that those who access mental healthcare in Nigeria may find themselves victims of ill-treatment and, given the findings that the appellant's isolation on return, his visible blindness and serious mental health and vulnerabilities which he appears to have accepted, the appellant would be at particular risk of being targeted, exploited on return to Nigeria;
 - (iii) failing to make any proper findings with regard to the risk of persecution from the appellant's family which was relevant to the issue of internal relocation.
14. I heard brief submissions from Mr Grigg who relied on an extensive seventeen page skeleton argument. I also heard submissions from Mr Melvin who again relied on his skeleton argument.
15. The judge does not appear to have directed himself as to the applicable law in respect of deciding whether a group of people constitute a

particular social group for the purposes of the Refugee Convention. I am at a loss to understand how the judge could not have concluded that blindness was an innate characteristic and Mr Melvin's submissions that because people might be able to be cured from blindness are at best fanciful.

16. I share Mr Grigg's concern that the judge's reasoning that blindness could not ground a particular social group because it was a "natural phenomena" flies in the face of both Shah and Islam [1990] UKHL 20 where sex was taken to found a particular social group or that sexual orientation was able to form a particular social group, see X, Y and Z (Joint cases C-199/12 to C-201/12). The relative size of the group is irrelevant; women in Pakistan would seem to constitute an extremely large number of people.
17. The judge further failed to engage with whether the group were seen as a specific group within society. In doing so he ignored that the skeleton argument before him set out the difficulties that people with disabilities, both physical and mental, faced in Nigeria and how that they were treated as different. Similarly, he failed to take into account the expert report of Dr Ayesha Ahmad. At no stage does the judge appear to have considered this matter properly, either in terms of the law or the evidence before him. Accordingly, I am satisfied that the decision involved the making of an error of law on this point.
18. Ground 2. For reasons which are entirely unclear the judge failed to consider to the expert report from Dr Ahmad which sets out in turn the stigmatisation that is associated with mental ill health and also blindness. I am at a loss to understand how the judge could have found a contradiction between an "army of volunteers who were ready and willing to accuse the appellant either of witchcraft or else force him to undergo unregulated treatment" yet have no support network. They are clearly entirely different groups of people. There is no suggestion that those who would be ready and willing to accuse him were the volunteers who would support him. That finding is simply perverse.
19. Further, given the extensive evidence of the ill-treatment of those with mental ill health including beating, flogging, shackling and withholding of food, and the serious ill-treatment by faith healers of those thought to be mentally ill, the error is manifestly material and, as Mr Grigg submitted, the judge's conclusion that persecution would be from those associated with the appellant is manifestly contrary to the evidence and perverse.
20. As Mr Grigg submitted, the respondent erred in submitting that appeal is primarily an article 3 medical claim. That is not so. It is, as Mr Grigg submits, concerned with the risk of the appellant being subjected to ill-treatment amounting to persecution or serious harm on account of his disabilities either by healthcare workers or the public.
21. It is in my view unnecessary to deal with the other grounds save to submit that the judge misdirected himself in law as to whether there was a risk

from the family stating [77] the appellant was not likely to be the victim of a physical assault. Whilst these findings were made in the context of the human rights component these findings were relevant to the asylum component given that these were a further potential source of harm.

22. I agree with Mr Grigg that the respondent's submission that there was no error of law in the judge's consideration of the possibility of internal relocation is misconceived. The matter ought properly to have been considered but was not.
23. For these reasons, I find that the decision also involved an error of law with respect to findings of the risk from family.
24. Accordingly, for these reasons, I am satisfied that the decision involved the making of an error of law and I set it aside.
25. Given the positive finding that the appellant's removal to Nigeria would be contrary to his Article 8 rights in that he meets the requirements of paragraph 276ADE of the Immigration Rules and has consequently been granted discretionary leave, I am satisfied that this case ought to be retained in the Upper Tribunal for fresh findings to be made in respect of:-
 - (1) whether the appellant is at risk of serious harm or persecution on return to Nigeria; and
 - (2) whether that engages the Refugee Convention on the basis of his membership of a particular social group.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside
2. The appeal will be remade in the Upper Tribunal on a date to be fixed with a time estimate of 3 hours, no interpreter needed.
3. Any additional material on which either party wishes to rely must be served on the other party and on the Upper Tribunal at least 10 working days before the hearing.

Signed

Date: 10 February 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul