Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-003837**
[PA/53318/2021]; IA/13194/2021

THE IMMIGRATION ACTS

Heard at Field House
On the 18 November 2022

Decision & Reasons Promulgated
On the 05 January 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MA (NIGERIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Ms Katie Bennett, Kesar and Co Solicitors
For the Respondent: Ms Siobhan Lecointe, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal from the decision of First-tier Tribunal Judge Ferguson ("the Judge") promulgated on 13 July 2022. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse her protection and human rights claim.

Factual background

2. The Appellant is a citizen of Nigeria and was born in 1974.

3. The Appellant arrived in the United Kingdom on 8 April 2008 with entry clearance as a student valid from 8 February 2008 until 31 December 2008. She was subsequently granted further leave to remain in the United Kingdom as a student, on five successive occasions, until 28 April 2013. She made an application for further leave to remain outside the Immigration Rules on 26 April 2013, which was refused by the Secretary of State on 23 May 2013.

4. The Appellant made a protection claim on 25 January 2019. The Secretary of State refused that claim on 17 June 2021. The Secretary of State held that the Appellant's removal from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention or in relation to persons eligible for a grant of humanitarian protection. The Secretary of State also held that the Appellant's removal from the United Kingdom would not be incompatible with Articles 2, 3 or 8 of the European Convention on Human Rights.

5. The Appellant's appeal from the Secretary of State's decision was heard by the Judge on 22 April 2022. The Appellant was legally represented and gave oral evidence. In short, she stated that she was subjected to physical violence, rape and false imprisonment in Nigeria by her former partner who we shall refer as OK. She stated that she first met OK in 2005 and escaped from him in 2006 to seek refuge with a friend and thereafter with her sister. In 2007, with the help of her relatives, she applied for entry clearance to the United Kingdom and arrived here in 2008. She claimed to be at risk in Nigeria on that basis. She also relied on her private and family life in the United Kingdom. The Secretary of State accepted before the Judge that the Appellant was a victim of domestic violence but submitted that there was no well-founded fear of persecution or real risk of harm on return.

6. The Judge, in short, held that the Appellant was unable to establish that OK has any interest in her and therefore there was no risk in Nigeria. The Judge also held that there were no very significant obstacles to her integration into Nigeria and her removal from the United Kingdom would be proportionate. The Judge accordingly dismissed the appeal on all grounds by the decision promulgated on 13 July 2022.

7. The Appellant was granted permission to appeal from the Judge's decision on 17 August 2022.

Grounds of appeal

8. The Appellant's grounds of appeal make three connected submissions. First, the Judge failed to properly assess the risk on return to Nigeria. Secondly, the Judge failed to properly assess the issue of very significant obstacles in Paragraph 276ADE(1)(vi) of the Immigration Rules. Thirdly, the Judge failed to give cogent reasons for his decision as to Article 8.

Submissions

9. We are grateful to Ms Bennett, who appeared for the Appellant, and Ms Lecointe, who appeared for the Secretary of State, for their assistance and able submissions.

10. Ms Bennett developed the pleaded grounds of appeal in her helpful skeleton argument and oral submissions. She took us to the Appellant's witness statement that was before the Judge and her asylum interview record. She submitted that the Judge confused the evidence of the Appellant's sister, who we shall refer to as EA, in making his decision. She submitted that the Judge proceeded on a misapprehension that the Appellant had resided with EA before she left Nigeria and erred in holding that there was inconsistency in the evidence. She further submitted that the Judge gave no consideration to the Appellant's mental health and vulnerability in deciding that there were no very significant obstacles to her integration into Nigeria for the purpose of Paragraph 276ADE(1)(vi) of the Immigration Rules. She submitted that the Judge's assessment of Article 8 was flawed for the same reasons. She invited us to allow the appeal and set aside the Judge's decision.

11. Ms Lecointe acknowledged that there was an apparent misapprehension on part of the Judge as to the Appellant's residence in Nigeria. She also accepted that no consideration was given by the Judge to the Appellant's mental health and vulnerability in considering whether there were very significant obstacles to her integration into Nigeria. She however argued that the Judge's decision disclosed no material error of law. She submitted that the primary point made by the Judge was that the Appellant had not been detected or located by OK in Nigeria following their separation. She submitted that the Judge was ultimately entitled to dismiss the appeal on all grounds. She invited us to dismiss the appeal and uphold the Judge's decision.

Discussion

12. It is tolerably clear that the Judge proceeded on the basis that the Appellant had resided with EA in Nigeria following her separation from OK. The Judge, at paragraph 20, found that EA's statement was inconsistent with the evidence given by the Appellant. EA's statement suggested that OK was aware of the location of her residence. On the other hand, the

Appellant's evidence was that OK was unable to find her in Nigeria because he did not know her "sister's address". The Judge assumed that this "sister" was EA. This was an incorrect assumption. The Appellant did not say at any stage, either in the asylum interview or in evidence before the Judge, that she had resided with EA in Nigeria. Likewise, EA did not say in her statement that the Appellant had lived with her at any point. The Appellant had lived with a different sister for few months prior to her arrival in the United Kingdom in 2008.

13. Accordingly, the Judge's conclusion that the Appellant's account was inconsistent with EA's statement was based on a fundamental misunderstanding of the evidence. This misunderstanding led the Judge to conclude that OK made no attempt to cause harm to the Appellant following their separation and would not have any interest in her on return to Nigeria.

14. It is well-settled, as the Court of Appeal observed in *ML (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 844, at [16], that a material error of fact in a determination will constitute an error of law. A material error of fact is an error as to a fact which is material to the conclusion. In our judgment, the error of fact made by the Judge in this instance was plainly material to the overall conclusion. It makes the Judge's decision as to the protection claim materially wrong in law.

15. It was, as we note above, common ground before the Judge that the Appellant was a victim of domestic violence. The evidence before the Judge, at pages 27-28 of the Appellant's bundle, included her medical records. Those records showed that she suffered from depressive disorder. There was also in evidence before the Judge, at page 32 of the Appellant's bundle, a letter from Domestic Violence Advocacy Support and Outreach Service stating that she received support due to suffering from depression, anxiety and high level of stress disorder. The letter further stated that the level of support had to increase due to deterioration of her mental health, and was compounded by the death of her mother.

16. The Judge, at paragraphs 27-28, assessed the question as to whether there were very significant obstacles to the Appellant's integration into Nigeria, but in doing so did not engage at all with her mental health issues and potential vulnerability as a victim of domestic violence. The Appellant's mental health and potential vulnerability are relevant in considering whether there is something that would seriously inhibit her from integrating into Nigeria on return.

17. We accept that the test of very significant obstacles in Paragraph 276ADE(1)(vi) of the Immigration Rules, as the Court of Appeal held in *Parveen v Secretary of State for the Home Department* [2018] EWCA Civ 932, at [9], presents a high hurdle. However, in our judgment, the Judge's failure to engage with these relevant matters makes his decision materially wrong in law.

18. The Judge's assessment as to Article 8 is premised on his conclusion that there is no risk on return and there are no very significant obstacles to the Appellant's integration into Nigeria. Accordingly, for the reasons set out above, the Judge's conclusion as to Article 8 is vitiated by a material error of law.

19. We entirely accept, as Ms Lecointe submitted, that we should not rush to find an error of law in the Judge's decision merely because we might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, we are satisfied that the Judge's decision is materially wrong in law.

20. This appeal, given that it involves a protection claim, calls for anxious scrutiny. As the Court of Appeal explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of the evidence.

Conclusion

21. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. We therefore set aside the Judge's decision in its entirety. No findings of fact are preserved.

22. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, we remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Ferguson.

Decision

23. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity order

24. In our judgment, given that this is a protection claim, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. We therefore make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, 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 his 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.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 2 December 2022