IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002689

First-tier Tribunal Nos:
HU/54630/2021
IA/11653/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

AD
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Sanders, Counsel, instructed by MQ Hassan Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 18 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and the members of his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant and his family members, likely to lead members of the public to identify the appellant and his family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on 22 August 1985. He came to the UK in May 2018 pursuant to a work visa under Tier 5 as a pastor. He was joined by his wife [DOB 14 June 1986] and youngest daughter [DOB 19.12.16] on 2 December 2018 and this daughter sadly died in hospital the following day. The Appellant's remaining children born respectively on 16 July 2004, 11 September 2012 and 28 May 2014, arrived to join their parents in April 2019.

2. The Appellant made an asylum claim in March 2020 on the basis that he had a fear of persecution resulting from his former employment by what is known as a "megachurch", the Living Faith Church Worldwide [LFCW], and its subsidiary, DOMI [David Oyedepo Ministries International], under the auspices of David Oyedepo. The Appellant previously changed his religion, having been brought up in the traditional Yoruba Ifa religion which involves idol worship but became a Christian when he met his wife. He subsequently changed his name to reflect his change of religion in 2015 and it was after this time that his problems with the Church and his employers began.

3. The Secretary of State refused the Appellant's asylum and human rights claims in a decision dated 4 May 2021. The Appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Traynor for hearing on 13 December 2022. In a decision and reasons dated 14 June 2023 the judge dismissed the appeal.

4. An application for permission to appeal to the Upper Tribunal was brought on 28 June 2023. The grounds of appeal in support of the application submitted essentially as follows:

4.1. Ground 1 challenged the delay between the hearing, which took place on 13 December 2022 and the promulgation of the determination on 14 June 2023, which was six months later. It was asserted that this was a very significant period of delay and that following the judgment in SS (Sri Lanka) [2018] EWCA Civ 1391 at [29] consideration has to be given to whether there is a nexus between the delay and the safety of the decision. If the delay exceeds three months it requires the First-tier Tribunal Judge's findings of fact to be scrutinised with particular care to ensure that the delay has not infected the determination.

4.2. Ground 2 asserted that the judge's assessment of the Appellant's asylum claim had included a number of discrete errors:

(a) that the judge made contradictory and unclear findings regarding the application of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 given that at [47] the judge mentioned section 8 but found it would not be appropriate for him to consider it as relevant to his consideration of credibility; but at [57] and [58] the judge then held it against the Appellant that he did not make his asylum claim until 2020 and that the delay was material;

(b) at [49] in only giving a partial summary of some of the Appellant's oral evidence and at [50] in characterising the Appellant's claim as being one of merely a poor employer/employee relationship, noting that the Appellant was not physically assaulted by his former employers and that this lessened

the weight of his claim: see also [59] and [60]. It was asserted that this was an unreasonable characterisation given that persecution is not synonymous with physical assault and that the judge failed to give detailed consideration to the evidence of the Appellant and his wife as to the treatment they experienced, as set out in the background evidence and the skeleton argument, including other reports of abusive and irrational behaviour by David Oyedepo and his organisation, including an incident where he was filmed slapping a girl and accusing her of witchcraft;

(c) it was asserted the judge erred in stating that the Appellant's credibility is at large despite the limited nature of cross-examination by the Respondent's counsel and in taking into account various points which were not part of the Respondent's case and were unfounded;

(d) at [52] in characterising the Appellant's claim as a continuous process of being employed and then dismissed from his employment and finding that this was inconsistent with his other evidence, when this is incorrect as this is not the Appellant's claim. He had only been employed twice and dismissed once;

(e) at [54] in finding that the fact the Appellant's wife and children were able to join him informed him that their circumstances were not as difficult as the Appellant would wish him to believe. However, this is not an accurate summary of the evidence which is that the Appellant's wife and children were only with her family for a short time and also had to rely on a neighbour and a friend for temporary accommodation;

(f) at [56] in finding that the illness which led to the Appellant's baby daughter's death may well have lasted significantly longer than the Appellant and his wife would wish him to believe, asserting that there was a singular lack of evidence from the medical authorities in Nigeria to substantiate his conclusion that the Appellant came to the UK to seek healthcare for his daughter. It was asserted that these findings have no objective basis that the Appellant and his wife volunteered the information that they sought medical treatment for their daughter in Nigeria, that this was unaffordable and her mother was there to take her to the UK. Also the mother and daughter had valid visas and were entitled to come to the UK;

(g) at [60] in finding it was inconsistent that the Appellant is an Anglican, who had been employed by a Pentecostalist organisation in Nigeria, absent any objective basis for that;

(h) at [61] in relation to sufficiency of protection, the Appellant's case was that David Oyedepo's organisation had connections within the police and were influential and therefore he could not seek sufficiency of protection and therefore could not simply go to a different police station. Further, that the judge failed to refer specifically to any of the evidence cited by the Respondent in relation to a sufficiency of protection in Nigeria, nor any evidence cited in the Appellant's skeleton argument that Nigerian megachurches are powerful and influential and corruption is massive, widespread and pervasive, including within the police service;

(i) at [61] in finding that the Appellant made no mention of the possibility of internal relocation, which was incorrect as the Appellant addressed this in

his statement at [27] that he would fear returning anywhere in Nigeria due to the extensive presence and influence of those he feared and it was submitted that the judge's findings were insufficiently reasoned.

5. In relation to Article 8, the grounds of appeal asserted at [7] that the judge erred:

(a) in finding there was no evidence that care workers are a shortage occupation;

(b) in failing to refer to the country background evidence in relation to difficulties finding employment and the instability experienced by internally displaced persons;

(c) in failing to make a best interests assessment in relation to the Appellant's children individually and as a primary consideration, in summarising the social worker's evidence in a cursory manner and in failing to refer to other evidence showing the difficulties the children have experienced following the death of their younger sister;

(d) in failing to consider the Appellant's and his wife's mental health difficulties in the context of Article 8 and erroneously considering Article 3 on medical grounds when this was not part of the Appellant's case.

6. Permission to appeal was granted by First-tier Tribunal Judge Austin in a decision dated 17 July 2023, on the basis that:

> *"Ground 2 discloses an arguable material error of law in respect of the discussion and possible adverse application of Section 8 of the Treatment of Claimants Act 2004. The application is not admitted on the grounds of delay alone"*.

Hearing

7. At the hearing before the Upper Tribunal, Ms Sanders made submissions in line with her grounds of appeal summarised above. She accepted that the delay between the hearing and the judge's decision did not indicate a material error as such but did require the judge's findings to be considered with anxious scrutiny. She submitted in relation to ground 6 that, whilst it appeared that the judge did not accept the Appellant's account, there was an overall lack of clarity and findings on this issue. She pointed out in relation to ground 6(a) and the section 8 factors that the Appellant had not become an overstayer but made his claim for asylum while he still had extant leave as a Tier 5 religious worker. She submitted that there was a fundamental lack of reasoning in the judge's finding at [47] that it was not appropriate to engage with section 8, but then at [57] and [58] taking a point against the Appellant on delay.

8. Ms Sanders drew attention to the fact that at [26] of his witness statement the Appellant and his wife were deeply traumatised by the loss of their daughter and discovered they could claim asylum having engaged with counselling. In relation to 6(c) Ms Sanders submitted that credibility should not be *"at large"* but rather confined to certain issues in light of what was raised in the Respondent's refusal decision, review and cross-examination. At 6(d) she submitted that the judge had taken insufficient care in reaching his findings which were incorrect, at 6(e) in

relation to the Appellant's wife and children's circumstances the judge failed to take account of material evidence. In relation to 6(f) she submitted that the illness and death of the Appellant's youngest daughter was explained in detail in the statement of the Appellant and his wife who had desperately tried to obtain adequate care for her. At 6(g) she submitted the judge erred in failing to refer to any evidential basis as to why it was inconsistent that the Appellant is an Anglican who had been employed by a Pentecostalist church.

9. In relation to Article 8 and the issue of return, I asked Ms Sanders to summarise the evidence in relation to risk on return and internal relocation in order to substantiate the materiality aspect of the asserted error of law. She drew attention to the appeal skeleton argument at paragraph 15(a)(ii), [26], an article from Reuters which made reference to 5,000 branches of the organisation throughout Nigeria and also an article from Wikipedia. She confirmed that David Oyedepo was still the leader and in relation to undue harshness she drew attention to page 28b as to the difficulties experienced by children who are forced to internally relocate, and also the US State Department Report at page 23. She submitted the evidence about the police in Nigeria supports the Appellant's assertion that he would not be able to get protection, set out at [15(d)] of the skeleton argument, particularly in light of the power and influence of the megachurches, as per 7(b) of the grounds of appeal.

10. In relation to 7(c) Ms Sanders asserted that there was detailed evidence provided as to the impact on the children if they had to leave the UK but this was not dealt with properly, see the evidence at pages 433 to 435, and the difficulties that the children would face coping with the death of their sister needed to be considered alongside any difficulties that would be faced by the family as a whole on return. In relation to paragraph 7(d) Ms Sanders relied upon the content of this ground of appeal.

11. In response, Mr Terrell submitted that in relation to section 8, the delay by the Appellant in claiming asylum was not the type of delay that engaged Article 8 because it was general delay and therefore immaterial. In relation to the grounds of appeal challenging the findings in relation to asylum, he submitted that it was not necessary for the judge to address every issue and set out every piece of evidence and it was inevitable the judge would deal with some issues more fully than others, which did not render his findings for the decision erroneous. In relation to whether the judge had considered all the material evidence, Mr Terrell drew attention to [50] of the judge's decision and reasons where he states that he has considered all the evidence and had also given numerous reasons also at [50] for finding that the Appellant's claim was an exaggeration. He submitted this was open to the judge on the evidence and that at [49] the Appellant partially agreed with this, i.e. that he had a bad employer. Mr Terrell submitted that this is simply a characterisation of the case that was justified. In relation to [50] and the absence of physical violence, Mr Terrell submitted that the judge had not lost sight of the fact that persecution can occur without physical violence, which impacted on these facts as it did not result in physical violence. He submitted that it was open to the judge rationally to take account of the fact that the employer's treatment of the Appellant may have been heavy handed but did not amount to persecution.

12. In relation to the issue as to whether the Appellant's credibility was at large, Mr Terrell submitted that the Respondent's review raised the Appellant's credibility as an issue and ultimately the judge has to make his own assessment on

credibility unless it is unfair to the Appellant. In this case, the judge did form the view and the Appellant had addressed the issue of delay in his witness statement that it was open to the judge to consider that point. In relation to ground 6(d) Mr Terrell submitted it was not clear what the judge meant at [52] but there was a danger of reading too much into that finding and it was clear read in its entirety at that paragraph that the Appellant had problems with DOMI and left that employment but was then hired by the parent company, LFCW, and that at 6(e), [54], those findings were open to the judge to make. In relation to ground 6(f) and the Appellant's daughter's illness, Mr Terrell submitted that the judge at [55] dealt with this issue with some sensitivity and concluded ultimately there may be other reasons, i.e. her illness, as to why the family came to the UK, and it was not disputed that they had concerns about her health.

13. With regard to the Anglican Pentecostal issue at [60] he submitted that the point the judge was making was that the Appellant being an Anglican was a serious issue for his employer and this was a perfectly fair point for him to make. He submitted that there was little to show that the Appellant would be at risk on return of persecution by that church.

14. In relation to the Article 8 grounds of appeal, the judge was entitled to conclude at [68] that family life would not be disrupted because the family would be removed as a family unit, so this aspect is concerned only with private life. Mr Terrell accepted that care workers were on a shortage occupation list but concluded not much turned on it as the judge accepted at [69] that the Appellant could provide value to the community but in light of the presidential decision in Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 00336 (IAC) not much weight could be placed on this in terms of diminishing the public interest in the proportionality assessment. He submitted that the judge was right to focus on the Appellant's specific circumstances and the fact he was a qualified accountant. In terms of ground 7(c) Mr Terrell submitted that the section 55 finding was adequate and that the judge could have been criticised had he considered the children's best interests separately.

15. In reply, Ms Sanders submitted in relation to the section 8 point that section 8(2)(c) did not specifically address delay and the judge did not consider the actual evidence that the Appellant gave about delay, nor was this point taken by the Respondent in this case. She submitted that the grounds essentially asserted that the judge failed to take account of material evidence and failed to provide proper and adequate reasons for his findings. She submitted that his findings on credibility and whether or not there was an error in those findings clearly needed to be considered in the round because this would go to the overall assessment of credibility. She submitted in relation to the fact the Appellant is working in a shortage occupation that he is fulfilling a role and so is his wife, they would be difficult to replace and that was relevant to the proportionality assessment. Ms Sanders further submitted that clearly the judge should have considered the children individually and he would not be criticised for so doing.

16. I reserved my decision which I now give with my reasons.

Decision and reasons

17. I have carefully considered the submissions made by both parties. The decision of the First tier Tribunal Judge was careful and detailed. The grounds of appeal are extensive and make a number of points, set out above.

18. I do not consider that ground 1, concerning the delay between the hearing and the promulgation of the Judge's decision, raises any issue of substance. Whilst ideally there should be only a short time period between the hearing and the determination, the decision of the First tier Tribunal Judge in this case was not predicated largely upon an assessment of the credibility of the evidence of the Appellant and his wife, which could have been infected by passage of time.

19. Ground 2 raises a number of discrete errors. I accept that the Judge made contradictory findings as to the application of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, at [47] finding it would not be appropriate for him to consider it as relevant to his consideration of credibility but then at [57] and [58] holding it against the Appellant that he did not make his asylum claim until 2020 and that the delay was material. I do not consider that this amounts to a material error, given that as a matter of fact there was delay by the Appellant in bringing an asylum claim in March 2020 following his arrival in the UK in May 2018.

20. With regard to the assertion that the Judge gave only a partial summary of some of the Appellant's oral evidence, I accept Mr Terrell's submission that a Judge is not required to refer to each and every aspect of the evidence. However, I do find that the Judge erred at [50] in focusing on the absence of physical assault in his assessment of the question of persecution. Whilst it might reduce the weight to be attached to the Appellant's claim to have been subjected to a campaign by his employer to threaten him and his family following the termination of his employment, it does not negate the threat entirely. Nor did the Judge consider the application of paragraph 339K of the Immigration Rules, given that the Appellant claimed to have been subjected to past persecution. I find, in light of the evidence as to other reports of abusive and irrational behaviour by David Oyedepo and his organisation, including an incident where he was filmed slapping a girl and accusing her of witchcraft that this is a material error.

21. I further find that the Judge's assertion at [51] that the Appellant's credibility is at large despite the limited nature of cross-examination by the Respondent's counsel and in taking into account various points which were not part of the Respondent's case and were unfounded that this raises an issue of procedural fairness and amounts to a material error of law.

22. Whilst at [52] the characterisation of the Appellant's claim as a continuous process of being employed and then dismissed from his employment and finding that this was inconsistent with his other evidence, I find is incorrect as the Appellant had only been employed twice and dismissed once. I agree with Ms Sanders, in light of my finding at [19] above that the characterisation of the Appellant's claim as simply a poor employer/employee relationship minimises the claim and amounts to a mischaracterisation. I further accept Ms Sanders assertion that the Judge erred at [54] regarding the ability of the Appellant's wife and children to join him failed to take account of material evidence that the Appellant's wife and children were only with her family for a short time and also had to rely on a neighbour and a friend for temporary accommodation following eviction by the Church.

23. I do not consider that the Judge erred at [56] in finding that the illness which led to the Appellant's baby daughter's death may well have lasted significantly longer than the Appellant and his wife would wish him to believe given that it appears that she died from cancer. However the Appellant was already in the UK

pursuant to a Tier 5 visa so his daughter's illness cannot reasonably be considered to be the reason that he came to the UK.,

24. As to the Judge's findings at [60] that it was inconsistent that the Appellant is an Anglican, who had been employed by a Pentecostalist organisation in Nigeria, I accept that this finding was not properly open to the Judge absent any objective basis to substantiate that finding.

25. I also find that the Judge erred at [61] in relation to his findings regarding sufficiency of protection, the Appellant's case being that David Oyedepo's organisation had connections within the police and were influential and therefore he could not seek sufficiency of protection and therefore could not simply go to a different police station. I find that the judge failed to refer specifically to any of the evidence cited by the Respondent in relation to this issue and failed to engage with the evidence cited in the Appellant's skeleton argument and also referred to at [9] above, that Nigerian megachurches are powerful and influential and corruption is massive, widespread and pervasive, including within the police service. I find that the Judge further erred at [61] in finding that the Appellant made no mention of the possibility of internal relocation when the Appellant addressed this in his statement at [27] that he would fear returning anywhere in Nigeria due to the extensive presence and influence of those he feared and it was submitted that the judge's findings were insufficiently reasoned.

26. In relation to the Article 8 findings, I further find that the judge erred in finding there was no evidence that care workers are a shortage occupation when they are contained on the shortage occupation list, however, I accept Mr Terrell's submission that in light of the decision in *Thakrar* [13] above refers, this may not be material. Similarly in relation to the Judge's failure to refer to the country background evidence in relation to difficulties finding employment and the instability experienced by internally displaced persons, whilst an error it is not material absent a finding that the Appellant would be at risk of persecution or treatment contrary to article 3 of ECHR on return to Nigeria. I consider that the Judge's best interests assessment in relation to the Appellant's children at [72] is adequate and not vitiated by error of law in that it is unlikely to have made a material difference if he had considered the three children individually. I find that the Judge erred in failing to consider the Appellant's and his wife's mental health difficulties in the context of Article 8 and that he erroneously considered Article 3 on medical grounds when this was not part of the Appellant's case.

Notice of Decision

27. In summary, therefore, I find that some but not all of the grounds of appeal are made out and establish material errors of law in the decision and reasons of the First tier Tribunal Judge, in relation to both the asylum and human rights claims. I set that decision aside and remit the appeal for a hearing *de novo* before a differently First tier Tribunal Judge.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 September 2023