IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003712
First-tier Tribunal No:
PA/52104/2022
IA/05578/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

RAN
(anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Mair of Counsel
For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 20 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant was born on 15 October 1989. She is a citizen of Nigeria. She appealed against the decision of the Respondent dated 23 May 2022, refusing her protection and human rights claim. That appeal was dismissed by First-tier Tribunal Judge Caswell in a decision promulgated on 18 July 2023.

Permission to appeal

2. Permission was granted by Judge Adio on 1 September 2023 who stated:

"1. ... The grounds in the application for permission to appeal advanced the following grounds of appeal:

- The Immigration Judge made a material error of law in their approach to the medical evidence;
- The Immigration Judge made a material error of law in their approach to the evidence on medical treatment in Nigeria;
- The approach to the Appellant's claim under paragraph 276ADE(vi) and Article 8 ECHR is fundamentally flawed.

2. At paragraph 20 of the determination the judge did not find that the Appellant would be at real risk of being harmed by her ex-husband on return to Nigeria. At paragraph 19 the judge found that it was significant before her that the Appellant, despite being given a number of opportunities to do so, did not at any time state that she might seek to harm herself if returned to Nigeria. It was noted that her oral evidence was to the effect that she would be fearful of her ex-husband harming her not that she would self-harm. The judge goes on to find that the fact that the Appellant did not identify any perceived risk of self-harm if she were returned to Nigeria, the judge's judgment is a significant matter which substantially undermines the force of the expert's conclusion.

3. It is arguable that the judge erred in law make the above finding without any medical expertise and without resolving the material conflicts in her findings and the expert's evidence. As the grounds argue the medical evidence shows that the Applicant avoided internal and external reminders and that she actually sought to minimise the distress she was in according to the expert report. Paragraphs have been identified in the application for permission to appeal and the decision indicates that the judge did not deal with these aspects of the expert report which is quoted in the skeleton argument. The judge is in effect stating that self-harm cannot occur in a high function individual as the Appellant due to the fact that she did not identify this in court. The judge accepted the expert's competence and background and this was not challenged by the Respondent as rightly identified in the application for permission to appeal. The judge therefore needed to resolve her opinion with the opinion of the expert where there is a conflict. This has not been adequately done. It is therefore arguable that there has been insufficient analysis of the medical evidence and insufficient weight attached to the doctor's clinical experience and expertise. In view of the error in this regard all other grounds are arguable."

The First-tier Tribunal decision

3. Judge Caswell made the following findings:

"14. The Respondent does not really challenge the Appellant's credibility, and I accept that she has a genuine subjective fear of her ex-husband. However, Ms Rayasat has argued that it is not well-founded, since the Appellant last saw her ex-husband in 2019, last had contact with him by phone in November 2022 and, even when he was in the UK, there is little or no evidence of contact by him with the Appellant or her family. The Appellant's oral evidence was that her brother, who is studying at the University of Bedfordshire in Luton, saw her ex-husband there a few months ago, but there is no suggestion that the ex-husband has caused any problems for the Appellant or her family in this visit.

15. The Appellant's case is that her husband is an influential man, described as an intelligence agent with the government, and as a political person with connections to those in power. However, the reality is that he has not been able to act with impunity in Nigeria, since I have written evidence before me that the divorce court supported the Appellant's divorce from him, even when he contested it, and that the court awarded custody of their daughter to the Appellant's mother, against the wishes of the Appellant's ex-husband, with no visitation rights for him. Although the Appellant speaks of her ex-husband harassing her parents in Nigeria, there is no real evidence from them to this effect, in the period since the court decision on custody, and I note that he has remarried. The Appellant explained in oral evidence that the court ordered

her ex-husband to pay maintenance for their daughter to her mother, and that he has not paid this, but this in itself is not sufficient, in my judgment, to show that there is any real risk now to the Appellant or her family from the ex-husband, or that the authorities are not willing and able to protect them and her from him.
16. The Appellant relies on the expert report from Ivo Ngade. Ms Rayasat asks me to give the report limited weight, and she has made the point that he has not seen the Appellant. I also note that the report is given on the basis that the ex-husband does have power and influence (see 4.3, and then 7.2 of the report, where he is described by the expert as a 'political leader'). In addition, the expert describes the Appellant as a 'mental health patient', (see 7.3) whereas the Appellant's oral evidence before me is that she is not having medical treatment as such, but is engaged in holistic talking therapies. The expert also refers at 7.6 to 'Nigerian people who failed to get custody for their children' , and at 7.10 to the ex-husband being able to manipulate the court proceedings for his own benefit, but in this appeal the Appellant and her family succeeded in getting custody against the ex-husband. Although the expert gives it as his opinion that the Appellant would be at risk from her husband on return, would have difficulties relocating within Nigeria, and would not obtain a sufficiency of protection from the authorities against him, I find that the errors and inaccuracies in the factual basis of his report mean that it is of limited value, and I do not give it significant weight.
17. I note also that the September 2021 Country Policy Information Note (CPIN) on Internal Relocation makes the point that Nigeria is a large country. The Appellant in oral evidence stated she has been to Abuja, Lagos, Kano and Kaduna State in Nigeria. She claimed that she would not feel safe in Lagos, for example, because her ex-husband is very familiar with it. She also, in re-examination, stated that she would find it hard to re-establish herself outside Kano State in Nigeria, because she does not have enough connections to form a safe community for herself, and because getting a job would be very hard. However, her main claim is that she would be terrified of her ex-husband finding her, and that this would mean she would be living in fear, with her mental health declining, so she would find establishing life there with her daughter very hard.
18. Mr Hussain has relied heavily on the medico-legal report from Dr de Burgh. This diagnoses the Appellant as having complex PTSD, characterised by significant anxiety symptoms, and a 'poor and fragile' mental state, exacerbated by the 'uncertainty of her asylum claim'(paragraph 341). She has experienced suicidal ideation, but has stated she will 'keep going' because of her daughter. At paragraph 369 of the report, Dr de Burgh has concluded that 'At the date of the assessment [the Appellant] is at low risk of suicide. However, should plans be made to remove her from the UK I would predict that [her] level of risk would increase which might result in (potentially fatal) self-harm. Suicidality is increased in people who have PTSD, like [the Appellant]. I therefore strongly recommend that her risk be fully reassessed should any plans be made to remove her to Nigeria.'
19. Although the expert's competence and background are not challenged by the Respondent, and she has prepared a detailed and well sourced report, it was significant before me that the Appellant, despite being given a number of opportunities to do so, did not at any time state that she might seek to harm herself, if returned to Nigeria. Her oral evidence was to the effect that she would be fearful of her ex-husband harming her, not that she would self-harm. In relation to some Appellants, this might not be as significant, but the Appellant, although (rightly) treated for the purposes of the hearing as a vulnerable witness, is, as already indicated, a highly intelligent, highly educated woman, who gave her oral evidence with clarity and eloquence, and who is clearly articulate and sophisticated in her responses. She has sought and received support from various agencies, has engaged in a substantial number of therapies, and has gained insight into her condition, in the time she has been in the UK. For example, she said in oral evidence that these therapies had made her realise that she was in a depressed state in Nigeria. The fact that she did not identify any perceived risk of self-harm, if she were returned to Nigeria, in my judgment is a significant matter, which substantially undermines the force of the expert's conclusions.

20. On all the evidence before me, I am satisfied that the Appellant is truthful, and that she has a genuine subjective fear of her ex-husband, but not that she has established, even to the lower standard, that it is objectively well-founded. I do not find that she would be at real risk of being harmed by him, on return to Nigeria. I find that she has not shown that she would currently be at real risk of harm from him in her home area, and I find that there is a sufficiency of protection for her from the Nigerian authorities, based on the events which have already occurred. I do not find that the Appellant would have to relocate within her country to avoid being harmed by her ex-husband. However, if she did choose to relocate, I find that this would be a safe and viable option for her. The Appellant has a good work history, and has family support in Nigeria. I do not find that the evidence before me demonstrates, even to the lower standard, that she would be unable to find work and a community, and establish a life for herself and her daughter.
21. I accept that the Appellant has complex PTSD, and that women and girls in Nigeria frequently do face a number of challenges, in terms of societal discrimination, and high levels of domestic abuse. However, the Appellant has not been abandoned by her family, but continues to have their support. She has been supported and vindicated by the court system in Nigeria. I find that these factors would help mitigate any difficulties she may have, together with the fact that she would be reunited with her daughter. So far as medical treatment is concerned, it is not disputed that there is treatment available in Nigeria. I do not find that the Appellant has established to the lower standard that she could not access adequate treatment as required, bearing in mind that she is apparently not on medication currently.
22. In conclusion, the Appellant does not face a real risk, on return to Nigeria, of persecution from any source for any reason, serious harm, or treatment which breaches her human rights under Articles 2 and 3. The same findings of fact applying, I also do not find that there would be very significant obstacles to her integration into Nigeria, so that paragraph 276ADE of the Rules is not met. I do not find that the Appellant's condition would deteriorate to such an extent that she would be unable to carry on a normal private or family life in Nigeria. Therefore, any appeal on Article 8 grounds also fails."

The hearing before me

4. There was no rule 24 notice. It is unnecessary to recite the grounds or the majority of Miss Mair's submissions given the concession by Mr Diwnycz that the Judge materially erred in relation to the way the medical evidence was assessed, as a vulnerable Appellant cannot be expected to assess her mental health. This was a material error of law in relation to Article 8. He also conceded that there was probably a serious risk of infection into the Article 3 findings on her ability to safely return.

5. Miss Mair sought permission to extend the grounds of permission to appeal to include a challenge to the refusal of the asylum appeal. Miss Mair submitted that had she represented the Appellant in the First-tier Tribunal she would have argued it differently. She accepted that it was hard to argue that a material of law had occurred in relation to a point not put before the First-tier Tribunal. Reliance was placed on Ortega (remittal; bias; parental relationship) [2018] UKUT 298 (IAC) and in particular headnote 1 which states;

> *"In an Upper Tribunal error of law decision that remits an appeal to the First-Tier Tribunal, a clear indication should be given if the appeal is to be re-made de novo. If that is not the case, the error of law decision should set out clearly the issues which require re-making and any preserved findings of particular relevance to the re-making of the appeal."*

6. In relation to the further conduct of the appeal, Miss Mair submitted that it was appropriate to remit the appeal to the First-tier Tribunal for updated evidence to be provided, as she would otherwise lose an appeal right, as she was vulnerable, and as she required a full reassessment. Mr Diwyncz submitted that if the Appellant sought to raise an asylum ground of appeal at the subsequent hearing it will need to be considered by the Tribunal. He had no view as to whether the appeal should remain in the Upper Tribunal or remitted to the First-tier Tribunal.

Discussion

7. The Judge erred in the assessment of the medical evidence for the reason given in [3] of the grant, and as conceded by Mr Diwnycz, which I will not simply repeat. They relate to both the Article 3 and Article 8 findings as they impact on her ability to reintegrate, and internally relocate, and upon her physical and moral integrity in doing those things.

8. Regarding the application to extend the grounds of permission to appeal, I note the overriding objective identified within The Tribunal Procedure (Upper Tribunal) Rules 2008;

> "2.—(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.
> (2) Dealing with a case fairly and justly includes—
> (a)dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
> (b)avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c)ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d)using any special expertise of the Upper Tribunal effectively; and
> (e)avoiding delay, so far as compatible with proper consideration of the issues.
> (3) The Upper Tribunal must seek to give effect to the overriding objective when it—
> (a)exercises any power under these Rules; or
> (b)interprets any rule or practice direction…"

9. I also note that The Tribunal Procedure (Upper Tribunal) Rules 2008 provides broad case management powers in Rule 5 which include;

> **"**5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure…
> (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—
> (a)extend or shorten the time for complying with any rule, practice direction or direction;…
> (c)permit or require a party to amend a document;…
> (e)deal with an issue in the proceedings as a preliminary issue;…"

10. I do not accept that Ortega is authority to extend the grounds of permission to appeal. Miss Mair could not point me to anything in the grounds that sought to challenge the findings in relation to the asylum claim. Ortega relates to what I should do if I am satisfied a material error of law has occurred.

11. I do not accept there is an arguable material error of law arising from Miss Mair's submission that had she represented the Appellant in the First-tier Tribunal she would have argued it differently. She accepted that it was hard to argue that a material of law had occurred in relation to a point not put before the First-tier Tribunal. That is plainly right, especially where, as here, in the First-tier Tribunal the Appellant had been represented by specialist Counsel, and the grounds seeking permission to appeal had been prepared by a different specialist Counsel. It is by no means obvious that a point was missed by Judge Caswell in those circumstances (R v Secretary of State for the Home Department ex parte Robinson [1997] 3 WLR 1162).

12. In those circumstances I decline to extend the grounds seeking permission to appeal.

13. I am satisfied that [14-18] of the decision of Judge Caswell remain undisturbed as they are findings on the asylum claim and a summary of evidence in relation to the Article 3 and 8 claims. I am not satisfied that [19 and 22] of the decision of Judge Caswell can stand for the reasons given in [3] of the grant of permission to appeal. I am satisfied that [20 and 21] of the decision of Judge Caswell stand with the exception of the final sentence of each of those paragraphs as those final sentences are infected by the error in relation to the assessment of the medial evidence whereas the rest of the paragraphs are not.

14. In relation to the further conduct of the appeal, bearing in mind the guidance in AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512, and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) I am satisfied that remittal to the First-tier Tribunal is appropriate as the issue is how the Appellant's mental health impacts on her ability to reintegrate, and internally relocate, and upon her physical and moral integrity in doing those things. As that assessment needs to be made afresh, it would be unfair to deprive her of the loss of the two tier decision making process.

15. I do not agree with Mr Diwnycz that if the Appellant sought to raise an asylum ground of appeal at the rehearing of the Article 3 and Article 8 claims, the Judge will need to consider the asylum claim. It will be a matter for the Secretary of State to firstly consider whether fresh evidence has been submitted such as to amount to a fresh claim in accordance with [353] of the Statement of Changes in Immigration Rules HC395, and if so whether that new matter should be considered within the existing appeal in accordance with s85(5) of the Nationality Immigration and Asylum Act 2022. Only if both are answered in the affirmative will it need to be considered by the Judge.

Notice of Decision

16. The Judge made a material error of law in relation only to the Article 3 and 8 appeal. The decision of the First-tier Tribunal in relation to those matters is set aside. The decision in relation to the asylum appeal stands.

17. The appeal in relation to Articles 3 and 8 only shall be remitted to the First-tier Tribunal to be reheard by a Judge other than Judge Caswell with the findings preserved as set out above in [13].

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 November 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.