



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

Appeal Number: AA/01164/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport  
On 17<sup>th</sup> December 2014**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> January 2015**

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

**TBA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Fenney, Solicitor

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a female citizen of Nigeria, born 15 August 1979. The appellant arrived in the United Kingdom in the year 2000. She said she had been trafficked into the United Kingdom along with four other girls by

“a couple” who she had met in Lagos. She was forced into prostitution and she then said that in 2007 she managed to escape. In 2010 she came into possession of a false EEA Registration Certificate. She was arrested in possession of that document, prosecuted and sentenced to 8 months in prison. At the end of her sentence in May 2011 she applied for asylum. The respondent refused that application for reasons given in a refusal letter dated January 2013.

### **Appeal History**

2. The appellant appealed that decision and in March 2013 her appeal came before Judge of the First-Tier Tribunal Page, who allowed her appeal on the basis that those who trafficked her were part of a gang and as a result of the tribunal’s determination in **PO (Nigeria CG) [2009] UKAIT 00046** she would be at risk from that gang upon her return to Nigeria.
3. The respondent sought leave to appeal that decision. Leave to appeal was granted and the matter then came before Upper Tribunal Judge Grubb sitting at Newport on 4 July 2013. In his determination Judge Grubb found a material error of law, remitted the appeal back to the First-Tier Tribunal (other than Judge Page) to be considered again.
4. In his determination Judge Grubb referred not only to the tribunal decision in **PO (above)**, but also the subsequent Court of Appeal decision referred to as **PO (Nigeria) v SSHD [2011] EWCA Civ 132**. Judge Grubb noted that the Court of Appeal in **PO** preserved a number of the findings of the tribunal in **PO** as set out in paragraphs 191 and 192 of the country guidance case of **PO (Nigeria)**. In paragraphs 12 to 16 of his decision Judge Grubb said this:

*“12. In allowing **PO’s** appeal, the Court of Appeal simply set aside the AIT’s conclusions in relation to the availability and effectiveness of shelters provided to traffic victims by NAPTIP. In **PO** that was particularly important in relation to an appellant who had a young child, where the evidence concerning the availability of shelters to women with young children was in dispute. That is not an issue in this appeal as the appellant does not have a young child.*

*13. Paragraph 191 of the AIT’s decision sets out the country guidance and its conclusion that “in general the government of Nigeria is both able and willing to discharge its own duty to protect its own national from people traffickers”. That finding survived the Court of Appeal’s remittal of the appeal to the Upper Tribunal. Likewise, paragraph 192 of the preserved country guidance identifies that, despite that “general” sufficiency of protection, a claimant may have a well-founded fear of persecution if she can show that the Nigerian authorities “know or ought to know of circumstances particular to her case giving rise to fear”, but “are unlikely to provide the additional protection” those particular circumstances reasonably require. As the sub-paragraphs of paragraph*

192 make plain, a “very careful examination” is required of the circumstances in which the claimant was first trafficked, including whether she was required to earn a particular sum for the trafficker or gang and whether she has achieved her “target earnings”. The point being made is that the risk of being re-trafficked is likely to depend upon those circumstances. Likewise, the AIT accepted that there was an enhanced risk of being re-trafficked if the original trafficking had been carried out by a “collection of individuals”. The guidance concludes that in the absence of evidence that a person has been trafficked by an individual it is “likely” that the trafficking was carried out by a “collection of individuals”.

14. In my judgment, Judge Page failed in paragraph 21 of his determination to give a “very careful examination” to the circumstances of the appellant.

15. First, the Court of Appeal’s decision in **PO (Nigeria)** did not determine the outcome on the facts of this appeal without more. Secondly, it was accepted that the appellant had been trafficked and it was also accepted that a “couple” had brought her to the UK. The judge made no further findings in respect of the circumstances in which she was trafficked. He made no finding for example whether she was required to earn a particular sum of money and whether or not she had met that target. That, as the country guidance makes plain, was relevant to any risk of being re-trafficked on return. Thirdly, it is not clear whether Judge Page found that the “couple” were, in fact, part of a gang or “collection of individuals” that put the appellant in an enhanced risk category. He merely stated that they “may have been part of a gang”. Finally, Judge Page failed to give any reasons or engage with the background evidence concerning the availability of shelters and the “sufficiency of protection” that the Nigerian government would be able and willing to provide her and whether, in light of any particular risk to her, it would provide a reasonable level of protection. The AIT’s finding in relation to the “general” level of protection that the state is both able and willing to provide set out in paragraph 191 was not referred to by the judge, perhaps on the erroneous assumption that it had not survived the appeal to the Court of Appeal which, of course, it had.

16. In short, despite the Court of Appeal’s decision in **PO**, the judge was still required to consider and apply the country guidance in paragraphs 191 and 192 and to do so in the light of the background evidence submitted in the appeal. In this appeal, unfortunately, the judge did neither and as a result his finding in favour of the appellant is flawed in law and cannot stand”.

15. As result of Judge Grubb’s decision the appeal then came before Judge of the First-Tier Tribunal Troup, again sitting at Newport on 20 August 2013. An oral hearing was held and both parties were represented. For reasons set out in a decision dated 26 August 2013, Judge Troup dismissed the

appellant's appeal on all grounds. Judge Troup noted the decision of Judge Grubb and proceeded to consider the appellant's appeal by reference to the case of **PO (Nigeria)** both before the tribunal and before the Court of Appeal. In summary, Judge Troup found that the appellant had not been trafficked by a gang and that references to "the couple" could not be regarded as autonomous with the existence of a gang. Judge Troup noted the situation in **PO (Nigeria)** was not perfect, but that he did not have to apply a standard of "perfection".

16. The appellant then sought leave to appeal Judge Troup's decision. The matter came before a Designated Judge of the First-Tier Tribunal who, in summary, decided that Judge Troup had properly considered the case and although there may well have been misleading references to "**PO**", there was no arguable error of law. The appellant's application was renewed before the Upper Tribunal. On 22 October 2013 Judge Chalkley dismissed the application supporting the Designated Judge in refusing permission.
17. The appellant then challenged the Upper Tribunal's decision in the High Court by way of judicial review. By an order dated 8 May 2014, Foskett J allowed the matter to be adjourned for oral hearing. In making the order Foskett J made certain observations suggesting that the judge who heard the adjourned application for judicial review should be addressed on "the current state of the authorities" concerning the risk of re-trafficking in Nigeria and suggesting that the country guidance case of **PO** was some years out of date.
18. However despite these observations the judicial review proceedings were settled by "consent order" and although the observations were "noted" the disposal was merely a way of remittal back to the Upper Tribunal for reconsideration.
19. Thus the matter was listed before me to consider whether or not Judge Troup made a material error of law in his determination of 26 August 2013.
20. Ms Fenney appeared for the appellant (as she did on all previous hearings). Mr Irwin Richards appeared for the respondent.
21. Ms Fenney was able to let me have sight of the order of Foskett J which unfortunately had not reached my file.
22. In her submission Ms Fenney argued that Judge Troup had failed to properly take into account the country guidance case of **PO**, bearing in mind the decision of the Court of Appeal in **PO (Nigeria)**. He had misdirected himself with regard to the existence of "gangs". In the absence of evidence to the contrary a collection of people rather than individuals must be a gang. The appellant had been found to have been trafficked by a couple. They were not individuals they were a gang. The

next issue was the availability in Nigeria of shelters for people such as the appellant. The Court of Appeal had considered the question of “the gang point” in paragraphs 30 to 32 of their decision. Conclusions are reached at paragraphs 45 and 46. Ms Fenney has submitted that Judge Troup had made a material error of law.

23. Mr Richards in his submission said that it was wrong to suggest that Judge Troup had relied on the 2009 case rather than taking into account the Court of Appeal case in 2011. Paragraphs 16 to 21 of Judge Troup’s determination sets out at considerable length the judge’s findings on protection upon return. He has not gone against the country guidance case and there is no misdirection. The level of protection is still “Tier 2”. The judge had found that the level of protection had increased.
24. Mr Richards went on to submit that the judge had properly considered whether or not there was a gang involved and had reached a conclusion to which he was entitled. The appellant had been held prisoner for 7 years and the only people she came into contact with were the couple and her co-workers (paragraph 15). The judge was wholly entitled to find no gang was involved. There was a sufficiency of protection available and the judge was entitled to that conclusion.
25. In response Ms Fenney emphasised that there evidence of deterioration of the protection in Nigeria. It had gone from Tier 1 to Tier 2.
26. At the end of the hearing I reserved my determination which I now give with reasons.
27. I have noted that the observations made by Foskett J have not been tested at any hearing before the High Court (or elsewhere). They were merely noted in the consent order. There is suggestion in those observations that country guidance in this particular case could well be out of date. However no submissions have been to me to that effect and it is inappropriate for me to comment further.
28. The issues before me are limited. They are two in number, namely the existence or otherwise of a gang and secondly with regard to the question of sufficiency of protection.
29. Did Judge Troup make an error in his determination which was material to the outcome of the appellant’s appeal before him. A reading of Judge Troup’s determination shows the possibility of some error in the references to the two cases bearing the title “**PO (Nigeria)**”. However such a reading of the determination shows that any mistake could well be purely typographic. Judge Troup clearly had in mind the difference between the tribunal’s country guidance case and the subsequent Court of Appeal case. He clearly understood the distinction and any typographic error certainly would not be material to the outcome of his decision.

30. Upper Tribunal Judge Grubb has fully explained the findings of the two cases. How they interrelate and the clear findings of the Court of Appeal, especially with regard to the preserved paragraphs 191 and 192 of the tribunal country guidance case. It is neither appropriate nor necessary for me to make further comment as Judge Grubb's comments have never been in issue.
31. The two matters that are at issue are in respect of gangs and sufficiency of protection.
32. With regard to the existence or otherwise of a gang, Judge Troup came to the firm conclusion that references to the "couple" did not infer the existence of a gang. He concluded that they were two individuals acting as a couple, which in the circumstances of the case did not amount to membership of a gang. Judge Troup at paragraphs 13 to 15 explains fully why he reached that conclusion. That conclusion was based not only on the numbers included, but because throughout the 7 years of captivity the appellant saw only the couple and her co-workers. The judge also noted the absence of target earnings or the absence of expectations of earnings. For the reasons given, Judge Troup concluded that the appellant had not been trafficked by a gang and in doing so fully took into account the country guidance case as perfected by the Court of Appeal in **PO**. There was certainly no evidence before the judge to require him to deviate from country guidance principles.
33. Again, Judge Troup at paragraphs 16 onwards then turns his mind to the ability and willingness of the Nigerian authorities to offer protection to the appellant. For the reasons set out in those paragraphs, Judge Troup concludes that there is an ability and willingness to offer protection. Ms Fenney argues that there is evidence of a declining situation. Nigeria having fallen from a Tier 1 to a Tier 2 position. Mr Richards quite properly points out that even at Tier 2 level there is sufficiency. Judge Troup at paragraph 22 finds:

*"The reception arrangements for victims of trafficking returning to Nigeria are not perfect but "perfection" is not the standard that I have to apply".*
34. I conclude that that is a perfectly proper view for Judge Troup to take on the objective information that was before him.
35. For these reasons I find that no material error of law is contained within Judge Troup's determination and the appellant's appeal is dismissed.
36. An anonymity direction has previously been made and no application has been made before me to vary that direction.

Signed

Date

Upper Tribunal Judge Poole