



IAC-AH-KEW-V1

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

Appeal Number: AA/05159/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 March 2016**

**Decision &  
Promulgated  
On 4 May 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**O H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Jesurum, Counsel

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on [ ] 1969. She has been granted permission to appeal the decision made by First-tier Tribunal Judge Parker dismissing her appeal against the decision of the respondent

dated 4 July 2014 refusing to grant her asylum and leave to remain on Article 8 grounds.

2. The basis of the appellant's claim was that she had been ill-treated by her husband and his family both in Nigeria and in the UK. She met her husband 21 years ago and her husband would beat her every day and his family started to ill-treat her and abuse her. Following the ill-treatment by her husband and his family her mental health deteriorated. She was taken to a psychiatric hospital on three occasions in Nigeria. The police were informed two to four times and her husband was released without charge. The beatings would continue after he returned from police detention. She came to the United Kingdom in 2009 with her husband and two of her eldest children. During the trip to the United Kingdom her husband beat her and she was taken to a psychiatric unit. She believes that if she is returned to Nigeria with her four children, he would subject her to further ill-treatment and she would not receive sufficient protection from the police or the authorities in Nigeria.
3. The appellant has six children with her husband. They are EH(1) born [ ] 1993, SH born [ ] 1994, RH born [ ] 1996, EH(2) born [ ] 1998, VH born [ ] 2001 and JH born [ ] 2004. All her children are in London.
4. The judge heard evidence from the appellant, RH and EH(2). He had up-to-date medical evidence consisting of two letters from South West London and St George's Mental Health Trust from Dr P Lomax and Dr O Mistry dated 16 January 2015 and 26 June 2014. The letter from Dr Lomax gave a general description that the appellant has both bipolar and affective disorder and this can result in extreme moods and can affect her memory. The second letter said she had been under the care of a support team since August 2012 confirming that she has bipolar and affective disorder and is currently on medication. It also says her memory has been poor.
5. The respondent accepted that the abuse has occurred. The judge found that the appellant was abused in Nigeria. The consistent evidence of her children was that they were also abused. Since 2009 her husband has travelled to the United Kingdom on 30 separate occasions. Since she claimed asylum he has travelled on eight separate occasions to the United Kingdom.
6. The judge agreed with the respondent's assessment that the appellant will have sufficiency of protection in Nigeria. This is because the background evidence stated that the countrywide police force is present and available in Nigeria to provide protection. The appellant would not be returned to live with her husband. She would be returned to live elsewhere. It is not the state who will be persecuting her and it has not been shown to a satisfactory standard that the appellant cannot live in the same area as her husband because he will harm her and that he has sufficient influence over the police so that she would not obtain protection.

7. The judge said that the evidence from RH and EH(2) suggests that they were threatened but he found that the threats were vague. There was reference to the police being called to one incident in the UK but there was no evidence relating to this. Therefore it was the respondent's view from 2011 that the appellant has had little contact with her husband and no threats have been made was correct. The appellant was sectioned in 2010 and was away from her children when they were at a very young age for three months. Her husband is a frequent visitor to this country and could have visited if he was bothered and had an inclination to do so and take the children back to Nigeria. The other difficulty was the appellant's husband's abuse towards his children. The respondent questioned why they were visiting their father on a regular basis. While the conclusion was that some abuse occurred there was an ongoing relationship with their father which suggested that their claim may have been exaggerated. RH was now an adult and EH(2) was nearly an adult yet they still maintained a relationship with their father. The judge found that the appellant would return with her four children to live in Lagos and in his opinion, it has not been shown that the appellant's husband would have any interest in harming her on return. He found that the evidence of the appellant and the children was speculative. The appellant's husband's intentions should be viewed by his actions and he has done nothing to demonstrate that she would be harmed on return. He found that the appellant's husband has forgotten her and got on with his life. The evidence was that he had remarried.
8. The judge said it was difficult to reconcile her husband's previous role arranging her previous visa and tickets on her trips to the UK and the notion that he was unaware of her trip in 2011.
9. The judge said the appellant had not provided any evidence that her husband has the widespread influence she claims he has. She did not mention that her husband has maintained contact with her since 2011. Since 2009 he has been to this country on 30 separate occasions and since claiming asylum in April 2012 he has been here eight times. He has not met her once which indicates a lack of interest in her. She alleges that the police warned him to stay away yet there was no evidence of this. The appellant, RH and EH(2)'s evidence suggests that he did contact her prior to claiming asylum and the police had to be called in. In her screening interview she only refers to threatening to call the police. Even taking into account her vulnerable witness status, the judge said he would expect clear answers on these points. He said the submission from Mr Jeserum portrayed the appellant's husband as a controlling and organised person which suggests that if this was true, he would have made more of an attempt to contact or harm the appellant in this country if he was interested in her. At best he has made an attempt to contact her in December 2011. He has not made any attempt to contact her since she made the asylum application in 2012 despite coming to the UK on eight occasions. The judge held that these are not the actions of a man who is interested in the appellant.

10. The judge found that the appellant would not need to rely upon the state for protection because her husband has no interest in harming her in the UK or in Nigeria. The abuse that has occurred has happened inside the marital home and outside this environment she is not at risk and neither are her children. The evidence of the latter statement is the fact that on eight or nine occasions RH and EH(2) have been allowed to visit their father. This shows that the appellant does not think that they are at risk in this situation.
11. The judge noted that the appellant's eldest daughter SH is married to a British citizen and her eldest son had previously helped her financially and there was no reason why they will not continue to support her. This would include paying for her medication on return. The appellant said they have no obligation to do so and have responsibilities of their own. The judge found that this may be true but there was no evidence that they have turned their back on her.
12. The judge considered internal relocation and he said it was difficult to escape the conclusion reached by the respondent that the appellant may face practical difficulties if starting life in another place. Whilst there may be general concerns and uncertainties, she has not produced any evidence that they would not be able to live a normal life judged by the country's standards.
13. The judge found that the appellant would return as a person who lives with her four dependent children. She looks after them without help from Social Services. She is stable on her monthly medication. Dr Mario Aguillar believes that there is no internal relocation option for the appellant yet the respondent quoted from a British Danish fact-finding report from 2008 which states the opposite is true. This is quoted in the Nigerian CIO June 2013 report which suggests it is still a valid proposition. There are hostels available. Dr Mario Aguillar concluded at paragraph 47 of his report and went as far as to say that the appellant would be regarded as a witch possessed by evil spirits. The judge said as he had found that there are mental health drugs available in Nigeria the appellant, supported by her three adult children, will be able to afford this. He relied on the decision in **POO Nigeria v SSHD [2011] EWCA Civ 132** which held that if the Claimant was returned to Nigeria she would receive adequate care facilities in a shelter.
14. The judge then went on to consider Section 55 of the UK Borders Act. He said the children will return as a family unit with their mother. There is no threat of persecution and the risk of harm is so low that the appellant allows her children to visit their father.
15. He noted that the seven year residence period has not been met.

16. The judge found that the children's best interests are to be with their mother the appellant. The children do not face abuse from their father. The appellant's economic plight will be aided by her three and soon to be four adult children. She is currently stable and as such is a functioning mother of four. According to her oral evidence she does work and can do so on her return to Nigeria. He found that the appellant is not at risk of being persecuted if returned to Nigeria.
17. Mr Jesurum raised two grounds of challenge to the judge's decision. The first ground he submitted was the judge's failure to take into account relevant evidence. The first relevant evidence which the judge did not take into account was the evidence of RH and EH(2) that their father did not have their contact details and that was why he was not able to contact them. Consequently the judge erred in finding that their father had lost interest in them because he had not contacted them. Mr Jesurum submitted that this was because he had no means of doing so.
18. The second relevant evidence according to Mr Jesurum was that the judge did not deal with the reason that the appellant's husband did not target them in the UK was because when he did so the police were called. The third relevant evidence was the judge's conclusion that the children's evidence of the claimed threats from their father was vague. EH(2) did say that his father had said that if their mother returned to Nigeria he would show her what sort of man he was. Mr Jesurum submitted that the judge was wrong to dismiss this evidence as vague. He submitted that the appellant's husband is violent and controlling. He has twenty domestic staff at home and owns a security business. The specific threat must be analysed in the context of the undisputed evidence.
19. As to the materiality of the error, Mr Jesurum submitted that the appellant and the children have no funds, no home or support. RH said that they would have no choice but to call their father for assistance. If they were threatened by him then relocation would need to be considered. The unduly harshness of relocation must be assessed in respect of the appellant's mental health. These cumulative errors materially undermine the judge's decision.
20. The second ground he argued was the judge's reference to the ages of the children. The judge found that the children would be able to pay for the appellant's treatment. The judge erred in his finding at paragraph 40 that the appellant would be supported by her three adult children. Mr. Jesurum submitted that out of the four children one is an adult and three are minors. The error of fact is an error of law and it is material to the judge's decision.
21. I was not persuaded that the judge erred in law for the reasons given by Mr Jesurum.

22. The appellant's evidence of her husband's violent behaviour towards her and the children was accepted. Her evidence which was also accepted was that he had not tried to contact them since 2011. He had remarried. He had been in the UK on several occasions after she claimed asylum and he had made no attempt to contact them. Mr Jesurum submitted that this was because when he had done so the police were called. The judge considered this evidence at paragraph 31 finding that the evidence on this issue was inconsistent. The judge noted the appellant's evidence that the UK police warned him to stay away but found that there was no evidence of this. The appellant and RH and EH(2)'s evidence suggested that he did contact her prior to claiming asylum and the police had to be called in. However during the screening interview she only referred to threatening to call the police. Even taking into account her vulnerable witness status, it was open to the judge to find that he would expect clear answers on these points. It was open to the judge on the submission from Mr Jesurum who portrayed the appellant's husband as a controlling and organised person, that he would have made more of an attempt to contact or harm the appellant in this country if he was interested in her. It was open to the judge to find that at best he has made no attempt to contact her in December 2011 and has made no attempt to contact her since she made the asylum application in 2012 despite being to the UK on eight occasions. The judge's finding that these are not the actions of a man who is interested in the appellant was open to him on the evidence and discloses no error of law.
23. I find no error of law in the judge's finding at paragraph 29 that the evidence from the two children suggesting that the father had issued threats were vague. The judge gave sound reasons at paragraph 29 for his finding.
24. I find that Mr Jesurum's second argument discloses no error of law in the judge's decision. The appellant has six children, two of whom are adults. Out of the four children who it is claimed are dependent on her, the first of those children is RH and she is now 19 and an adult. The judge found that the two adult children, meaning the oldest son and daughter who are her first two children, had supported their mother in the past and were not likely to abandon her now. There was also evidence that their father paid the school fees. Mr Jesurum said that at the hearing the appellant had said that the children did not have contact with their father but had met him at family gatherings. I find that this is inconsistent with what she said at paragraph 29 of her witness statement dated 4 November 2014 in response to the respondent's Reasons for Refusal Letter. She said therein

"I can confirm that when my husband has come to the United Kingdom since my asylum application, he has on occasions contacted my children and has met them. He has not come to my house nor had he met me however. ... in fact, every time my children have visited him since, I have ensured that he is reminded that he should

not contact me or attempt to assault me as I would contact the police and he could end up in prison ...”

That was the evidence before the judge and he was entitled to rely on that evidence to find that even though it is said that the appellant’s husband was abusive towards his children, they were visiting their father on a regular basis and that there was an ongoing relationship with their father which suggested that their evidence may have been exaggerated.

25. I find that the judge made no error of law and that the judge’s decision dismissing the appellant’s appeal shall stand.

**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

Upper Tribunal Judge Eshun

### Approval for Promulgation

Name of Upper Tribunal Judge issuing approval:	Miss K Eshun
Appellant's Name:	Mrs OH
Case Number:	AA/05159/2014

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:


Other Information:



