Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03288/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 March 2018	**On 22 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

J O
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Mahmud of Counsel instructed by Virgo Consultancy Services Limited
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge A D Baker promulgated on 14 August 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 17 March 2017 refusing asylum.

2. The Appellant is a citizen of Nigeria born on 17 March 1982. She first entered the United Kingdom in June 2012 pursuant to entry clearance as a visitor. Although no specific date is apparent, it appears that she returned to Nigeria, She again left Nigeria in October 2012 travelling to the Netherlands where she claimed asylum. On 11 July 2013 the Dutch authorities removed the Appellant to the UK as a 'third-

country asylum seeker'. The Appellant thereafter pursued her claim for asylum in the United Kingdom.

3. The Appellant's claim for protection was essentially advanced on the basis of a fear of an ex-fiancé who was claimed to be linked to Boko Haram.

4. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 9 August 2013. It is noticeable that there is in the RFRL no full or proper assessment of the core events on which the Appellant based her claim: rather the application is determined on the basis of the availability in any event of internal relocation. The Appellant became 'appeal rights exhausted' in respect of this decision on 20 August 2013.

5. On 23 September 2014 the Appellant made further representations to the Respondent by way of letter dated 19 September 2014. In those representations it was pleaded that the 'country situation' in Nigeria had changed: it was said that the security situation in Yobe State (from where the Appellant originated) had deteriorated, with particular reference being made to a school attack that took place on 6 July 2013. The letter of 19 September 2014 does not make reference to any factors personal to the Appellant or to her son, 'E' (d.o.b. 19 April 2013).

6. Whilst the Appellant's further representations were pending she gave birth to a daughter, 'L', on 15 January 2015. In due course the Respondent was notified of this event.

7. The Respondent was also notified whilst the application was pending, by way of letter from the Appellant's representative dated 19 July 2016, that E had been diagnosed as having autistic spectrum disorder with moderate symptomology.

8. The Respondent refused the Appellant's claim for protection on 17 March 2017 for reasons set out in a further RFRL. The issue of the Appellant's account of the difficulties with her ex-fiancé was again neither accepted nor rejected. However, it was accepted that state protection was not available in areas controlled by Boko Haram (paragraph 14 of the RFRL). Nonetheless it was determined that the Appellant could relocate within Nigeria. The Respondent summarised it this way at paragraph 23:

    - *Your son and family members still reside in Nigeria.*
    - *You can relocate to Abuja or Lagos in Nigeria.*

- *You can access NGOs in Nigeria.*

9. The reference therein to the Appellant's son still residing in Nigeria is a reference to the Appellant's first-born child, 'K' (d.o.b. 21 November 2007). The Appellant left K with a friend when she travelled to Europe in October 2012, and he has remained living with the Appellant's friend ever since. In this regard I pause to note that during the submissions before me at one point Ms Mahmud suggested that the Appellant had lost contact with her friend - and therefore also her son; however, on closer consideration of the Appellant's two witness statements before the First-tier Tribunal no such assertion was identifiable as ever having been made by the Appellant.

10. The Appellant appealed to the IAC against the decision of 17 March 2017.

11. The appeal was dismissed for reasons set out in the decision of First-tier Tribunal Baker.

12. The Appellant sought permission to appeal to the Upper Tribunal, which in the first instance was refused by First-tier Tribunal Judge Easterman on 1 November 2017 but was subsequently granted by Upper Tribunal Judge Allen on 19 December 2017.

13. The Appellant advances two bases of challenge. The first relates to the rejection of affidavit evidence provided by a witness living in Nigeria. The second relates to the adequacy of the Judge's reasoning and findings more generally. The first basis of challenge relates to the Appellant's claimed fear of her ex-fiancé. The second basis of challenge relates more particularly to issues of internal relocation.

14. The first basis of challenge centres upon an affidavit provided by MR signed on 14 April 2017. The affidavit is to be found at pages 219-220 of the Appellant's bundle before the First-tier Tribunal and is accompanied by a business card and the envelope in which the letter was said to have been forwarded to the Appellant.

15. The First-tier Tribunal Judge, in the process of rehearsing the Appellant's various items of supporting documentary evidence, paraphrased the contents of the affidavit (paragraph 19).

16. Complaint is made as to the way in which the Judge essentially dismissed the value of this supporting evidence at paragraph 42. Paragraph 42 in its entirety is in these terms:

"The affidavit by her friend's husband saying that he assisted her cannot be given any weight."

No further reference is made to that affidavit evidence in the Judge's evaluation of the risk on return or indeed the issue of internal relocation.

17. I acknowledge that in the abstract this appears to be unsatisfactorily expressed. The affidavit required to be taken into account 'in the round' with the other evidence, and something should properly have been offered by way of reasons for why it was considered appropriate to attach no weight to it.

18. However paragraph 42 cannot be seen in isolation but must be considered in context. The preceding paragraphs are significant.

19. For the avoidance of any doubt, bearing in mind that both RFRLs were essentially silent as to whether or not the Respondent accepted the Appellant's narrative of having had difficulties with an ex-fiancé who was associated with Boko Haram, it is identified at paragraph 39 of the Decision of the First-tier Tribunal Judge that the Appellant's claim "*is disputed in every respect through cross-examination*".

20. Paragraphs 40 and 41 are then in these terms:

> *"40. It was submitted that the treatment of the Appellant in allowing her and encouraging her to go to the UK to purchase westernised clothes materials for her wedding to her fiancé who she then found out was a member of Boko Haram was inherently not credible. Similarly that he had not asked her to convert to his Muslim faith undermined the credibility of her account that he was a member of Boko Haram. I find against the background evidence that both those submissions are well-founded. All the tenets of Boko Haram cause me to find that her account of being in a relationship with a member of the group with all their beliefs is undermining of her credibility.*
>
> *41. It is also undermining of her credibility that on his identifying that she had read his diaries in which it was disclosed he was a member he did not dispose of her then but only threatened to do so leaving her time to escape to a friend."*

21. The Judge's reference to the affidavit follows immediately from those paragraphs. The affidavit recounts the deponent's supposed involvement in assisting the Appellant to escape her local area to avoid the unwanted attentions of her fiancé. When viewed in context, it seems to me that it is adequately clear that the Judge is in effect saying that because the Appellant's account of having been in a relationship with a member or associate of Boko Haram was inherently not credible, it followed that the affidavit could not be accorded any weight. The Judge rejected the notion

that the Appellant was fleeing a threatening fiancé, and therefore necessarily was rejecting the notion that she needed any assistance from anybody to effect that escape.

22. I acknowledge that there is scope for fair criticism of the Judge in that she appears to have failed to address these matters 'in the round': the Judge appears to have rejected the affidavit *because* she rejected the inherent credibility of the Appellant's account, rather than considering all matters in the round. Be that as it may, there is nothing in the affidavit that remotely begins to reconcile the circumstances that the Respondent argued were "*inherently not credible*" – a submission which the Judge accepted – or otherwise resolves the matters the Judge considered to be "*undermining of [the Appellant's] credibility*": i.e. that a member of the militant fundamentalist Islamic organisation Boko Haram would be in a relationship with a Christian woman, and be content to marry her without seeking her conversion, and also be content for her to shop for western clothing in 'the West' in preparation for her marriage.

23. In such circumstances it seems to me that even if the Judge had properly evaluated the affidavit alongside, or 'in the round' with, the Appellant's narrative account, there was nothing in the affidavit that could have alleviated the sustainable concerns expressed by the Judge as to the inherent improbability of the account. For these reasons I find that there is no material error of law in respect of the Judge's consideration and evaluation of the affidavit evidence or of the core element of the Appellant's narrative account as to the reasons why she left her home area.

24. It might be thought that in those circumstances the issue of internal relocation does not obviously arise. However, I have already alluded to the concession made in the RFRL: the security situation in the Appellant's home state, which in large part was under the control of Boko Haram, was accepted by the Respondent to be such that there would be no form of protection. The Appellant had also raised an issue as to the risk to her infant daughter of female genital mutilation at the hands of family members, in particular the Appellant's mother, if she were to return to her home area.

25. The Judge's consideration of matters relevant to internal relocation runs from paragraphs 43-49. The Judge notes that the Appellant on her own account was able to relocate to stay with a friend without any seeming difficulty (paragraph 43). No particular complaint is made as to the Judge's observations that "*The background evidence does not demonstrate a risk of serious harm to [the Appellant] as a single female Christian with two children, herself in good health, one child suffering from autism*" (paragraph 44). The Judge said in this regard "*I find that she does not face serious harm but can access work, shelter, education for her children*" (paragraph 44). Nor is any particular criticism made of the Judge's observations as to the absence of risk to the Appellant's daughter of FGM in circumstances where the Appellant did not approve

of such a practice: the Judge concluded that the Appellant could relocate to avoid FGM being inflicted on her daughter by the Appellant's mother and/or others, and that it would not be unduly harsh for her to do so with her children - see paragraphs 45 and 46.

26. The focus of challenge is in respect of paragraphs 47-49 which are in these terms:

> *"47. Even were she not to have the support of her family or her friend or indeed of other friends I find that as a person who on her own account had been operating as a small business holder as her Counsel described it 'Hawking' goods for sale, she can with her level of education to secondary level obtain work so as to sustain herself and her two children on the background evidence as to circumstances in large cities in Nigeria away from areas of conflict. In addition she can access support in Nigeria from Christian churches as she has in the UK for friendship.*
>
> *48. The medical evidence regarding her daughter does not demonstrate even to the low level required any material disability.*
>
> *49. Her son suffers from autism. The background evidence shows that autism is a disorder that is recognised and can be accessed* [sic.]*."*

27. I return below to the quality and stylisation of some of the passages in the Decision: the words "*can be accessed*" need to be considered in that light. Suffice for the moment to say that I do not consider that there is anything in this regard that demonstrates a material error.

28. In respect of the Judge's observations at paragraph 49 Ms Mahmud directed my attention to country information as set out in correspondence from the Appellant's representatives (pages 193-194 of the Appellant's bundle before the First-tier Tribunal). The Appellant's representatives wrote to the Respondent on 19 July 2016 enclosing the 'autistic diagnostic observation schedule report' on E, and also referring to country information. In particular my attention was directed to a passage that referenced the availability of mental health facilities and the difficulties for disabled persons. The report quoted in the representatives' letter is the US State Department Report on Human Rights Practices 2011 (released on 24 May 2012); the source material cited therein in respect of education was dated 2008:

> *"In 2008 the Federal Ministry of Education estimated that there were 3.25 million school aged children with disabilities. Of these only 90,000 (2.76%) enrolled in primary school and 65,000 (1.85%) in secondary school."*

29. It is of course not this Tribunal's role to re-evaluate the factual materials that were before the First-tier Tribunal. In any event in this context it seems to me that it is significant that the materials to which I was directed are relatively old. The

Respondent's RFRL provided more up-to-date information in respect of the availability of educational facilities for those suffering from autism: see page 13 of 15. On the basis of all of the available materials before the First-tier Tribunal, it seems to me that it was sustainable for the Judge to conclude that the background evidence demonstrated that autism is recognised in Nigeria. The materials also show that sufferers may be assessed, and also that there is access to education.

30. In this context I invited Ms Mahmud to indicate if there had been any materials before the First-tier Tribunal that identified the Appellant's son's specific needs - bearing in mind that autism is a spectrum and particular needs will vary greatly person to person. Ms Mahmud acknowledged that there was no report that addressed the particular needs of the Appellant's son either at home or in school. It was acknowledged that he was attending a mainstream primary school in the United Kingdom. It was also acknowledged that social services had no involvement in the family with regard to welfare and safety issues.

31. Challenge was also pursued in respect of the Judge's findings in paragraph 47 that the Appellant would be able to work 'so as to sustain' her children. It was argued that the Appellant could not work if she had young children, because of their age and their particular needs.

32. I note that the Judge made reference to the Appellant's previous employment whilst in Nigeria. More details of this may be found in the interview that was conducted on 30 July 2013 at the time of the Appellant's initial claim. The record of interview has been included in the Appellant's bundle. At page 30 the following exchanges are recorded:

> *"2. Who did you live with in Nigeria? It was me and my son who was living together.*
>
> *3. How were you supporting yourself financially? I was doing business.*
>
> *4. What kind of business? I was buying farm products and clothes to sell.*
>
> *5. You owned and ran this business? Yes it was my own business.*
>
> *6. How long did you run this business / been running business? One year and eight months before I left."*

33. It may be noted that the Appellant was able to run her business notwithstanding being a single mother. At the time her son would have been between the ages of 3 and 5: he was born in 2007 and the Appellant left for Europe in late 2012.

34. Yet further, there is another relevant and significant aspect of the Appellant's account. She left her oldest child K with a friend in Nigeria, and the evidence was to the effect that he had remained living with that same friend ever since – i.e. from the age of 5 onwards. It seems to me that that is perhaps the biggest single difficulty that the Appellant faces in attempting to establish that she could not relocate in Abuja where her friend lives. It is a reasonable inference that in circumstances where she has a friend who has been willing to take on the full-time care of one child that the Appellant would be able to secure a level of assistance and support in respect of her other children such that she would be able to undertake similar business activities to those that she had engaged in previously in Nigeria.

35. In all the circumstances, in my judgement what the Judge says at paragraph 47 is entirely sustainable; indeed it seems to me that the obverse conclusion would not rationally be supported by the evidence. For these reasons I find that there is no material error of law in respect of the Judge's evaluation of the viability of internal relocation: the reasons and findings are adequate.

36. Before leaving the decision of the First-tier Tribunal Judge I should however make one further observation. It does appear that the First-tier Tribunal Judge has either been using some form of voice recognition software in preparing her decision, or has otherwise dictated the decision and had it typed up by someone unfamiliar with the case. This is transparent in certain paragraphs where 'Boko Haram' organisation has been typed almost phonetically as 'bow co-ha run'. This is a decision that clearly has not been very thoroughly proofread.

37. It is with this in mind that I have approached the final sentence at paragraph 49 - which appears somewhat incomplete. It is unclear whether perhaps the Judge meant 'autism is a disorder that is recognised and can be assessed', or perhaps 'autism is a disorder that is recognised and education can be accessed'. Notwithstanding the unfortunate ambiguity, I am not satisfied that that lack of clarity in any way constitutes a material error of law.

38. Finally I note that at the conclusion of the hearing before me today the Appellant instructed her Counsel to bring to my attention certain matters: in particular it was said that E is now attending a special needs school in reception class, and is difficult to take to public places. Moreover the Appellant's daughter is currently undergoing a process of assessment for possible ASD. These are not matters that were before the First-tier Tribunal. Even now they are not matters in respect of which any documentary evidence has been filed. I am at this stage concerned only with the correctness or otherwise in law of the decision of the First-tier Tribunal; I am not determining the case on the basis of any changes of circumstances or new developments. If the Appellant considers these matters to be of significance then she

should duly take advice as to how best she might bring them to the attention of the Respondent; however that is not a matter for me presently.

Notice of Decision

39. The decision of the First-tier Tribunal contains no material errors of law and accordingly stands.

40. The Appellant's appeal remains dismissed.

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 her or any member of her 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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: **16 May 2018**

Deputy Upper Tribunal Judge I A Lewis