



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

Appeal Number: PA/11712/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice  
Centre  
On 15 May 2019**

**Decision & Reasons Promulgated**

**On 11 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MS C G O  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Mahmood, Counsel, instructed by MH Solicitors  
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant is a national of Nigeria born on 4 June 1988. She arrived in the UK on 20 March 2011 in possession of a Tier 4 (General) Student visa. She subsequently sought to extend that leave but this was refused and she was served with an IS.151A as an overstayer on 23 March 2015.

The Appellant made an asylum application on 4 May 2017. The basis of that application was that she feared return to Nigeria because she had married a man who was from the outcast Osu clan. The Appellant is from the freeborn Diala clan and marriage between the two is socially unacceptable. As a

consequence of her marriage, her uncle threatened to kill her. A child of the marriage was born on 16 April 2013. That relationship subsequently broke down. The Appellant had another relationship and a child of that relationship was born on 28 December 2014. The Appellant was no longer in contact with either of her children's fathers. The Appellant's application was refused in a decision dated 27 October 2017.

She appealed against that decision and her appeal came before Judge Bristow at the First-tier Tribunal on 23 July 2018. In a Decision and Reasons promulgated on 10 August 2018 the judge dismissed the appeal for a number of reasons, finding at [41] that he was not satisfied the Appellant had proved to the lower standard her fear of her uncle and that she would not be at risk of persecution on return.

An application for permission to appeal was made, out of time, on the basis that the Appellant's solicitors did not give her a copy of the decision and she then had to seek legal advice as to making an application. The grounds of appeal asserted that:

the judge had placed undue emphasis on the Appellant's answer in her screening interview at 41(c);

at [41] the judge ignores the fact the Appellant's uncle could not find her in Nigeria because he did not know her whereabouts;

at [44] in failing to understand the Appellant's departure from social norms as the reason for her fear of persecution;

at [45] in finding that the Appellant has not proved her husband is Osu when this was not disputed by the Respondent nor was the Appellant challenged about this evidence in cross-examination and

in ignoring the corroborative value of the expert report.

Permission to appeal was granted by First-tier Tribunal Judge Keane in a decision dated 14 September 2018, who also extended time so as to admit the application in time, finding:

*"The grounds disclosed an arguable error of law but for which the outcome of the appeal might have been different. At paragraph 41(b) and (c) when assessing the Appellant's credibility the judge accorded weight to apparent discrepancies when remarks made by the Appellant at a screening interview were compared with evidence which came into being subsequently. Broadly, the judge was concerned first as to the number of incidents in which the Appellant's uncle threatened her and second as to her reasons why she could not return to Nigeria. It was arguably understandable that the Appellant should her contentions in subsequent sources of evidence and it could not fairly be said against her that she failed to mention at the screening interview a matter of substantial importance. The application for permission is granted."*

A Rule 24 response was submitted by the Respondent on 15 October 2018 which opposed the appeal, contending there was no rationality or perversity in the manner in which the judge considered the credibility of the Appellant's evolving evidence from screening interview via substantive interview to oral evidence at appeal: see [38] and [41](a) to (f). The judge was entitled to weigh the evidence as he did, for the cogent reason given, and the judge clearly considered the Appellant's account correctly in light of the background evidence set out by the expert, Professor Aguilar, at [42] to [44] and was entitled to conclude that the plausibility and credibility of her claim was further undermined.

### *Hearing*

At the hearing before the Upper Tribunal, Mr Mahmood on behalf of the Appellant sought to rely essentially on the points raised in relation to [41] of the judge's decision. He submitted that the screening interview was the starting point of the Appellant's reasons as to why she wished to claim asylum. At 4.1 of the screening interview she set out the reasons why she was unable to return to Nigeria, where she stated:

*"I am having family issues there. My uncle who is like a father to me told me I should not bring my children to the home because I am not married and the children are a shame on the family. He did this to two of my cousins. There is a lot of war going on, Boko Haram and Biafra war. I fear that I am going. The children will be taken away forcefully. I don't have anyone to support me and no-one wants me."*

Mr Mahmood submitted the Appellant later explained in more detail why she was unable to return. However, the judge at [41](b) found that the Appellant had exaggerated her evidence as she did not state in her screening interview that her uncle threatened to kill her. Mr Mahmood submitted the judge had attached too much weight to this discrepancy when determining the fundamental issue of the Appellant's credibility and this was a material error of law.

Mr Mahmood did, however, accept when the point was put to him that the judge had been correct to identify a discrepancy at 41(c) in relation to the fact that in her screening interview dated 4 May 2017, the Appellant referred to children, whereas on her own account she last spoke to her uncle in 2012 and her second child was not born until 2014. In relation to the expert report, Mr Mahmood submitted this was from an eminent scholar and reliance should be placed upon the report.

In his submissions, Mr Mills asserted correctly that the primary authority on the approach to screening interviews is JA (Afghanistan) [2014] EWCA Civ 450. Mr Mills submitted that the Appellant in that case was a 14 year old boy and the Court of Appeal found it had been unfair, given his age and the circumstances of his arrival, to treat what he had stated in his screening interview as damaging to his claim. He submitted that the guidance is that screening interviews have to be considered in their proper context and the circumstances in which they took place. He submitted that this Appellant cannot claim there

was anything about her screening interview which prevented her from giving a proper account, given that it took place six years after her arrival in the UK and not when she was tired and hungry from a journey, having just arrived, nor were there any mental health issues raised.

Moreover, the judge found at 41(c): *"I note Mr Fraczyk's submission that I should treat the screening interview with caution."* He submitted there was no error of law and the grounds of appeal in this respect was a mere disagreement. There was clearly a distinction between setting out one's claim and later expanding upon it. This was not the issue here. There was a direct circumstance at [41](c) as to what the Appellant had said about her uncle. According to her subsequent account she has not spoken to her uncle for seven years and this was prior to her second child being born. This was a clear discrepancy and the judge was perfectly entitled to place weight on it and take it into account. It was central and not peripheral to the credibility of her claim.

The Appellant stated the whole issue arose because she had married outside the clan to someone considered to be an outcast. Given this was the core event, it was reasonable to expect her to mention it but instead she refers in her screening interview only to family issues, children being born out of wedlock, and not to the clan issue. Mr Mills submitted that overall the judge had given perfectly adequate and rational reasons for finding the Appellant's claim not to be credible.

Mr Mills further submitted that whilst it is the case that Professor Aguilar is a reputable expert and that his report is corroborative of the Appellant's claim this was acknowledged by the judge at [42]. He submitted that the judge considered the Appellant's credibility in the round, taking account of all the issues, and even based on the expert's opinion was unable to find her account to be credible. Therefore, there was no material error of law and the grounds amounted to no more than a simple disagreement with the judge's findings of fact, to which he was entitled to come.

In response, Mr Mahmood denied that the ground in relation to the screening interview was simply a disagreement, but rather it went to the fundamental issue of the Appellant's credibility. He submitted that the Appellant was entitled to set out her case in detail at a later stage. Even though there may have been a discrepancy, when one looks overall at the circumstances of the claim the judge has accorded weight to the discrepancies when considering credibility. In respect of the expert report, Mr Mahmood submitted this is detailed and scholarly. It sets out the expert's understanding as to the factual matrix of the circumstances and the social stigma of cross-clan marriages, and the judge had failed to give appropriate weight to the expert report in respect of marriage outside the clan.

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

#### *Findings and reasons*

The judge found as follows:

*“41. I have considered all of the evidence very carefully in the round. I am not satisfied that the Appellant has proved to the lower standard her fear of her uncle for the following reasons:*

- (a) in answer to question 31 in the SEF form the Appellant stated that her fear began when she was pregnant with her first son. This would have been in 2012 and 2013. In her statement of 30 November 2017 the Appellant stated she was threatened in Nigeria. She states she was scared and in utter panic and that this is when she had to leave Nigeria. Her account as to when her fear began is inconsistent;*
- (b) in my judgment the Appellant has sought to exaggerate her evidence to make it fit with the Respondent’s criticisms of it. In her screening interview there is no mention that her uncle threatened to kill her. In her Statement of Evidence Form the threat to kill occurred during the 2012 telephone call. The Appellant did not seek to expand on that answer in her letter to the Respondent dated 11 September 2017. By the time of her statement dated 30 November 2017 the Appellant had added a further two incidents in Nigeria when her uncle threatened to kill her;*
- (c) in the screening interview the Appellant was asked why she cannot return to her home country. She replied ‘I am having family issues there. My uncle who is like a father to me told me that I should not bring my children to the home because I am not married and the children are a shame’. I note Mr Fraczyk’s submission that I should treat the screening interview with caution but, in my judgment, the Appellant advanced a different reason she feared her uncle in the screening interview to the one advanced in later accounts. There is no mention of his disapproval of the prohibited marriage or anything to do with clans. Moreover, the Appellant stated her uncle referred to children. On her account she last spoke to him in 2012 when she was pregnant with On. Oz was not born until 2014. There is no way her uncle would have referred to children;*
- (d) I also do not find it credible that if her uncle did threaten her in Nigeria that he did not act on that threat at the time if that is what he intended to do. His anger would have been raw and he would have had ample time to do so;*
- (e) in her statement of 30 November 2017 the Appellant asserts that her uncle threatened to kill her whilst she was in Nigeria. He threatened to kill her if she carried*

*on the relationship and after he found out about the marriage. That is something the Appellant would have known when she entered the UK in 2011. She did not claim asylum until May 2017, over six years later;*

- (f) *the Appellant did not claim asylum until after being notified of an immigration decision on 31 October 2012 and after being served with an IS.151A as an overstayer on 23 March 2015. Section 8(5) of the 2004 Act does not require me to find that the Appellant's failure to make her asylum claim before being notified of an immigration decision has damaged her credibility. It requires me to take account of such failure as damaging her credibility. In my judgment it is fair for me to take her behaviour into account. This is because of the length of time elapsed before she made her claim and because I do not find her explanation for the delay - that she did not know of the asylum process and was prompted by the health visitor - to be adequate. If her fear was genuine she would have sought ways to stabilise her status in the UK earlier and before the immigration decisions. I do find that the Appellant's credibility has been damaged by her failure to claim asylum before being notified of an immigration decision."*

I find that the Judge provided cogent and detailed reasons for his findings and that he was entitled to take account of the discrepancy in the Appellant's answer at 4.1. of the screening interview as compared to her later account, in particular, that her uncle threatened to kill her. The Appellant's last contact by telephone with her uncle was in 2012 whereas the screening interview was conducted on 4 May 2017 thus this was not a case where the Appellant's case evolved after her screening interview. Further, the Appellant made reference at 4.1. three times to her "children" when at the time of her last contact with her uncle she had only one child. I find that the Judge was entitled to find that this impacted negatively on the Appellant's credibility.

I turn now to the judge's findings in respect of expert report of Professor Mario L Aguilar dated 6 December 2017. The judge's conclusions are at [42] to [44]:

- "42. I have had regard to the report of Professor Aguilar. I note his conclusion that the description of her uncle's reaction is consistent with the reaction expected if a marriage was contracted between a Diala clan member and an Osu clan member. I am not satisfied that this salvages the Appellant's credibility such that she can prove her account to the lower standard.*
- 43. Professor Aguilar is clear that an individual from the Diala clan contracting a marriage with a member of the Osu clan would face death or serious harm whether through being*

*accused of being a witch and poisoning or otherwise. This fortifies my conclusion in (d) above that the Appellant's uncle would have carried out his threat in Nigeria, in the time available to him, before the Appellant left. Moreover, I cannot find any reference in the evidence to the Appellant being accused of being a witch. Professor Aguilar suggests that those accused of subverting the social order and at risk of being killed would be accused of being a witch.*

44. *Finally, Professor Aguilar's opinion is that it would be impossible for a Diala clan member and an Osu clan member to marry. He describes the harsh social stigma and consequences that would attach to such a marriage. In my judgment, that makes it much less likely that the Appellant would embark on a relationship with an Osu clan member let alone go on to marry him once her uncle had expressed his disapproval."*

The grounds of appeal assert that the Judge ignored the corroborative value of the expert report, however, it is apparent from the Judge's findings set out above that this is not the case. No answer has been provided to the Judge's finding at [41](d) that if the Appellant's uncle had threatened her as a consequence of his marriage, why he did not carry out this threat whilst the Appellant was in Nigeria, which he found in light of the expert's view that "*it would be impossible for a Diala clan member and an Osu clan member to marry*" brought him to the conclusion that the Appellant had not proved her husband was an Osu clan member and the Appellant's claim was not credible: [45]. The Judge considered the expert's report and was entitled to find that whilst corroborative, it also served to undermine the credibility of the Appellant's account, particularly in light of the fact it is clear from the refusal decision at [35] that the Respondent found the Appellant's credibility to be damaged by her failure to provide specific information about her husband's tribe

### **Notice of Decision**

The appeal is 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.

Signed Rebecca Chapman

Date 10 June 2019

Deputy Upper Tribunal Judge Chapman



### Approval for Promulgation

Name of Deputy Judge issuing approval:	Ms R K Chapman
Appellant's Name:	Ms Chiamaka Gloria Osondu
Case Number:	PA/11712/2017

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name: DUTJ Rebecca Chapman

Date: 10.6.19

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:


Other Information:

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