Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12635/2017

THE IMMIGRATION ACTS

At: Bradford
On: 20th August 2019

Decision & Reasons Promulgated
On: 16th September 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AAO
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: **Mr Abraham, Counsel instructed by Batley Law**
For the Respondent: **Mr Diwnycz, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Nigeria born in 1981.

2. The Appellant asserts that she qualifies for leave to remain in the United Kingdom on both human rights and protection grounds. The decision in her appeal falls to be re-made by the Upper Tribunal by virtue of my decision of the 26th May 2019. The history of the matter thus far is as follows.

3. The Appellant has lived in the United Kingdom since 2011 but claimed asylum in 2016 after she had returned from a trip to Nigeria. The Respondent refused protection and the Appellant appealed to the First-tier Tribunal.

4. Her appeal was dismissed by First-tier Tribunal Judge Hudson on the 3rd July 2018. The Appellant appealed to the Upper Tribunal, *inter alia* on the ground that the First-tier Tribunal had erred in failing to give adequate weight to, and allowance for, the fact that the Appellant is a vulnerable witness who had been judged by a consultant psychiatrist as not fit to give evidence. The Upper Tribunal (Deputy Upper Tribunal Judge Juss) dismissed the appeal on the 23rd November 2018. The Appellant sought permission to the Court of Appeal. The application came before Upper Tribunal Judge Jackson who indicated to the parties that she was minded to 'set aside' the decision of Judge Juss on the grounds that he had overlooked the binding Court of Appeal authority of AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123. By her decision of the 25th February 2019 she invited submissions from the parties, in the absence of which she would treat the 'set aside' as agreed by consent and remit the matter for consideration by another Upper Tribunal Judge. No such submissions having been received, Judge Juss's decision was accordingly set aside and the matter listed before myself on the 24th May 2019. At that hearing the Respondent was represented by Senior Presenting Officer Mr Bates, and the Appellant by Mr Karnik of Counsel.

5. Following that hearing I determined, by my written decision dated the 26th May 2019, that the decision of First-tier Tribunal Judge AR Hudson was defective for error of law and it was set aside to a limited extent. My reasoning is replicated below under the heading 'error of law'. At the resumed hearing I heard submissions from Mr Diwnycz and Mr Abraham and I reserved my decision, which I now give, under the heading 'the re-made decision'.

Accepted Facts

6. Before I proceed to set out my findings it is appropriate that I mark those matters that are no longer in issue. Those are that during the Ife-Modakeke conflict of 2000-01, the Appellant was violently raped, and subjected to horrific assaults, by a number of men. The First-tier Tribunal proceeded on the basis that this aspect of the claim is true, and at the initial 'error of law' hearing Mr Bates accepted on behalf of the Secretary of State that this amounted to a positive finding of fact in the Appellant's favour.

7. Her evidence about those events is that at the time she was living in her family home in Modakeke, a town close to Ibadan in South West Nigeria. A local war had erupted over land and resources, between Modakeke farmers and Ife militants, who presented a constant threat. Lots of people lost their lives and

many homes were burned down. In 2000 the Appellant was approached by a police officer, subsequently joined by two colleagues, who suggested that they could 'keep her family safe' if she agreed to have sexual intercourse with them. The implicit threat in this 'offer' was that if she did not submit to having sex, her parents and siblings would be in danger. The Appellant accordingly agreed to have sex with these three officers. She was ordered to a house where these encounters took place approximately three times per week for approximately three months. If she did not show up they would come looking for her. In her witness statement the Appellant says of this abuse: "I felt degraded and used. I came to despise and distrust the police as a result".

8. The abuse by these officers came to an end because the conflict arrived on the Appellant's doorstep: "bullets were spraying everywhere and civilians were being killed". The Appellant found herself running away from the gunfire along Famia Road with members of her family and neighbours. In the chaos she became separated from them as she run towards the bush. She realised that she was running alongside a group of men. The men told her to come with them to a farmhouse. Once she reached the farmhouse she realised that things were not right. It was isolated in the countryside, and four other women were being held there. The Appellant tried to run out but the men grabbed her and made her kneel on the floor as they surrounded her. One of them took a dagger and placed the point under her chin, forcing her head back. The dagger pierced her flesh and she still has a scar there today. The same man then heated the blade in the fire and placed it between the Appellant's breasts, causing her skin to burn: again she still bears this scar. He told her "I am not playing". The Appellant was made to kneel on the stony ground in the same position for the rest of that day. It became clear to her that she was held captive, with the other women, for the purpose of sexual exploitation.

9. Altogether six men were involved. The Appellant, and the other women, were repeatedly raped and subjected to violence. When they were not being raped they were expected to cook and clean for the men and wash their clothes. The Appellant now believes that the men were performing 'black magic' rituals. Two of the captive women had had their heads closely shaved. One night one of these women was taken out by the men; the other women heard her scream and then they did not see her again. The following day they saw blood in the farmyard outside. Approximately two nights later the other lady with a shaven head was taken out. As the Appellant and the two remaining women watched from the window, the men beheaded the shaven-headed woman.

10. Some time later the men called one of the other women. When she was returned to the room her head and pubic hair had been shaved and she was crying hysterically. Then the men called the Appellant. She tried to resist but was held down whilst her pubic hair was shaved with a knife. She felt a sharp pain between her legs and remembers screaming. The next thing she knew the man who was assaulting her ran out of the room. The other men were calling him –

the two remaining women had escaped and were running away from the farmhouse. The men all start chasing them. The Appellant tried to stand up but she was in excruciating pain. When she looked down she saw that she had been stabbed in the vagina and the knife was still implanted in her. She pulled out the blade and fled. She ran through the bush but was not pursued - the men had all headed after the other women. She ran until she reached a stream where some children were playing. She told them to fetch their mother and this lady came and helped her. She assisted the Appellant by taking her to her uncle's home. The Appellant was unable to describe to her uncle what had happened to her. She knew, and was advised by her friend, that she should keep it secret, otherwise she would be rejected by the community and "would struggle to find a husband".

11. After the conflict had subsided and the Appellant had returned to her family home she tried to get on with her life: "I decided it would be best if I never spoke of my past again". She enrolled to study nursing and in 2006 got married. She could not however escape her past. She now understands that she was deeply traumatised. She suffered from recurring flashbacks, severe depression and insomnia. The most difficult symptom for her to try and mask was the bedwetting. At night she would suffer from terrible nightmares and she would wake up having wet the bed. These problems led to tensions in her marriage and after the birth of her son in 2008 she confided in her husband about the events in 2000. His attitude towards her immediately changed. He became very distant and betrayed her trust by telling other people in the community. This made it worse because these individuals effectively blamed the Appellant herself, suggesting that she could have done more to escape or avoid the assaults. The Appellant's marriage broke down in 2011, and it was as a result of the attitudes she was facing that the Appellant decided to come to the United Kingdom in study in 2012.

12. It is the Appellant's case that she continues to suffer the psychological sequalae of these events today. The depression, insomnia, flashbacks and bedwetting continue to overshadow her daily existence. This too appears to have been accepted by the First-tier Tribunal Judge, who concluded at paragraph 20 of the determination "this incident must have been wholly terrifying and would almost inevitably lead to some form of post traumatic shock for the victim".

13. These then are the accepted facts.

Error of Law

14. The part of the claim that was *not* accepted was the Appellant's evidence that in 2016, whilst on trip home to visit her mother and son, the Appellant was once again subjected to sexual assault by a number of men. She claimed that they accosted her in the street and taunted her about her marriage to a white man in

the United Kingdom. She stated that these men have subsequently visited the her family home in Modakeke and assaulted and threatened her mother and son. The First-tier Tribunal rejected that evidence as untrue, and having done so found there to be no current risk to the Appellant in Nigeria. It therefore rejected the appeal on both asylum and human rights grounds.

15. The First-tier Tribunal had before it various items of medical evidence relating to the Appellant. For the purpose of this decision the most significant was a report by Consultant Psychiatrist Dr Suneetha Kovvuri. Dr Kovvuri diagnosed the Appellant as suffering from PTSD with associated symptoms of anxiety and depression; as I note above [at my §12] this appears to have been accepted by the Tribunal and was consistent with its acceptance of the narrated events in 2000/2001. Dr Kovvuri went on to state that in her view the Appellant was not fit to give evidence. Although the Appellant had been able to understand the interview, and the consequences of her asylum claim failing, Dr Kovvuri was concerned that the Appellant's conditions were impeding her ability to accurately recall events:

> "[the Appellant] has learnt to block out some of her memories, in order to cope with the intensity of her pain. She informed me, as is also indicated by the records, that her recollection of events has posed a problem when she gave her statement. [The Appellant] will also find it difficult to answer the questions as her anxiety levels will increase and she will also find it difficult to recollect the dates and the events in correct chronological order. This might offer the impression that she is not being truthful to the Court, when in fact this is not the case".

Dr Kovvuri further noted her own observations of the Appellant's tearfulness and upset when recalling certain events and expressed concern that if asked to do so in court, this would cause her psychological distress.

16. Before the First-tier Tribunal Counsel for the Appellant (not Mr Karnik) had relied on the conclusions of Dr Kovvuri and had not called the Appellant to give live evidence.

17. Of this decision the Tribunal had directed itself, at §12, that it was the Appellant's "right" not to give evidence, but records the advice given to the Appellant and her Counsel at hearing, that "the weight of the evidence within the bundles may be affected by the fact it could not be tested in cross-examination" [§8] and "the Respondent has been denied the opportunity to cross-examine her" [§12]. The Tribunal went on to draw two adverse conclusions about the medical evidence and the submission that the Appellant was 'not fit' to give evidence. The first is that the Tribunal did not accept the Appellant's "assertions about the level of her vulnerability" [§25]. The second is

that the discrepancies in the account "are not explained by any depression or PTSD" [§26].

18. The Appellant's first ground of appeal was that these findings were not open to the First-tier Tribunal and that the Tribunal erred in law by failing to apply the guidance, binding upon the Tribunal and placed before it, in the *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* ("the Guidance"). Reliance was further placed on the guidance in AM (Afghanistan). Both the Guidance and AM require Tribunals to take procedural and substantive steps to ensuring that vulnerable appellants have a fair hearing, and that their evidence is properly assessed in light of their vulnerabilities. In particular Mr Karnik submitted that the Tribunal was required to:

    (i) state on the face of its decision whether it accepted the Appellant was in fact a vulnerable witness;
    (ii) ensure that the Appellant had a fair hearing; and
    (iii) ensure that the Appellant's voice was heard in the proceedings.

19. As to (i) Mr Karnik took me to paragraph 15 of the Guidance:

> 15.The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind.

He submitted that the findings in the determination are equivocal. Nowhere does the Tribunal state whether or not it accepts that the Appellant is vulnerable. This was a significant failure because it led to the second and third.

20. As to (ii) and (iii) Mr Karnik submitted that the Tribunal failed to make allowance for the fact that the Appellant was unable to give evidence, either by way of introducing procedural safeguards to ensure a fair trial, or by properly reading her written evidence.

21. At paragraph 15 of the determination the Tribunal begins its consideration of the issue as follows:

> "I have seen a letter dated 13th June 2018 asserting that the appellant 'has been identified as vulnerable' and therefore would not be giving evidence…".

There then follows a lengthy examination of the circumstances surrounding the Appellant and her case until at §25 the Tribunal concludes "I'm afraid that I do not accept [the Appellant's] assertions of the level of her vulnerability".

22. On one reading it could be said that this reasoning was equivocal. The Tribunal had already accepted that the Appellant had been subject to horrifying trauma and that she suffers from PTSD as a result. This would most certainly place her in the category of 'vulnerable': see footnote 2 of the Guidance "some individuals are vulnerable because of what has happened to them eg they are victims of trafficking or have sustained serious harm or torture or are suffering from PTSD". Having accepted that evidence it certainly could be said that the Tribunal should have stated with clarity: "the Appellant is vulnerable".

23. That said, it is I think implicit from the reasoning that the Tribunal accepts that she *is*. When the Tribunal concludes [at §25] "I'm afraid that I do not accept [the Appellant's] assertions of the level of her vulnerability" that is a finding entirely consistent with the Guidance itself, which specifically directs that decision-makers assess the *level* of vulnerability: "It is a matter for you to determine the extent of an identified vulnerability" [at §3 of the Guidance]. The conclusion is supported by detailed reasoning: the determination contrasts, for instance, the claim that the Appellant is terrified of men with the fact that the Appellant has been able to work and support herself for many years, in public roles necessarily involving interaction with strange men. I do not accept therefore that the Tribunal failed to direct itself to the guidance, to the suggestion that the Appellant was vulnerable, or to the implications of that. It did not draw a conclusion with which Mr Karnik agrees, but that is not an error of law.

24. Nor am I satisfied that the First-tier Tribunal can legitimately be criticised for its approach to the hearing itself. Mr Karnik again took me to the Guidance and to the Court of Appeal decision in AM, to submit that it was for the Tribunal to ensure that the Appellant was able to participate in the hearing, for instance by intervening or managing cross-examination. This was an Appellant who had experienced legal Counsel and specialist immigration solicitors representing her. Together they took the decision that she would not be called to give evidence. They did not make any special requests to the Tribunal to facilitate her giving live evidence or otherwise participating in the hearing beyond simply observing it; no doubt properly acting on medical evidence they simply decided that she would not be called. I am unclear on what, in those circumstances, the Judge might be expected to do other than explain the procedure to the Appellant, which she apparently did. At that point there was no scope for the co-operative and collaborative decision-making procedure recommended in AM, and I note that at case management stage no request had been made for the Appellant to be treated as a vulnerable witness.

25. I am however satisfied that at least one of the criticisms under this head of challenge is made out. That is that Mr Karnik's third complaint, that the Tribunal has not done enough to ensure, in the absence of live evidence, that the Appellant's 'voice was heard'. Put simply, that ambition could have been

served in this case by properly reading the written evidence, and if omissions were there found, by giving the Appellant an opportunity, post-hearing if necessary, to comment or expand upon her evidence. That this did not occur in this case can be illustrated with reference to these adverse conclusions in the determination:

(i) At paragraph 24 the determination contrasts written evidence supplied in affidavit form by the Appellant's mother (that both she and the Appellant's son had been beaten by men who came to their home) with the Appellant's asylum interview where she says it was just her mother who was assaulted. Here the Tribunal failed to have regard to the fact that immediately after the interview the Appellant's solicitor had written to amend the record to state that the child had been also been assaulted (in fact other issues had arisen at interview with the interviewer finding it difficult to follow the Appellant's accent);

(ii) At paragraph 23 the Tribunal draws adverse inference from the Appellant's failure to report the 2016 to the police, without having any regard to her written evidence that she distrusted and feared the police (or indeed the accepted evidence that she had been raped by three police officers over an extended period in 2000);

(iii) At paragraph 22 the Tribunal finds that the Appellant failed to mention the 2016 incident at her screening interview. This is incorrect, as the attack itself, as well as the context involving the discovery that the Appellant had married a white man and so was a "fake" Muslim, are all recorded in that interview. The 2016 incident is mentioned at in the Appellant's responses to 2.5 ("during my last travels there was one incident in April 2006" (*sic*)) and 4.1 ("My son was ill. I took photos from my wedding and my mum took them to get enlarged and people saw I was married to a white man and called me a fake Muslim. They said my head wasn't covered. My mum displayed it. I take walks at night and I was raped").

26. The Tribunal is always under an obligation to assess with "anxious scrutiny" the evidence in protection cases, but where an applicant is unable - or even just reluctant – to give evidence because she is too distressed and psychologically unwell to do so, the written material will inevitably assume even greater significance. I accept that here it is not clear that the Tribunal has read and given full account to the 'rebuttal' statement signed by the Appellant, nor in the matters identified above, read with the appropriate level of care the Appellant's interview records or the correspondence which followed. This brings me to the second ground.

27. It is submitted on behalf of the Appellant that the reasons given by the First-tier Tribunal for rejecting the account of the 2016 assault are inadequate and unsustainable in law. As to the findings that aspects of the account were implausible, reliance is placed on HK v Secretary of State for the Home Department [2006] EWCA Civ 1037:

> Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in Awala –v- Secretary of State [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account merely on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in Ghaisari, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by…Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

28. It is trite asylum law that judges in this jurisdiction should be slow to assess the actions of others through the lens of their own understanding. What may be regarded as normal or rational behaviour in one country or social group may be regarded as bizarre and unexplainable in another and vice versa. In this case, for instance, the Judge had rejected as "unlikely" the evidence that the Appellant would walk on her own at night in Nigeria without having regard to the fact that in countries where daytime temperatures are very high it is common for the streets to be full of people late into the evening. The Judge further found it implausible that the Appellant's mother would want to enlarge and display photographs of the Appellant's wedding to her white husband without taking into account the fact that it is a cultural norm to display large family portraits, and to weigh this in the balance when considering whether hostility from what appeared to be a very small group of the local population would prevent her from doing this. For my own part I did not find any of the matters identified as "unlikely" at paragraphs 22-23 to be inherently implausible; that perhaps illustrates the dangers inherent in such subjective assessment, as elucidated by Lord Justice Neuberger in HK.

29. There are other reasons given in the determination. At paragraph 26 the determination finds there to be "many" inconsistencies in the account, concluding "I'm afraid that such discrepancies are not explained by any depression or PTSD". Without wishing to return in detail to the submissions made under ground (i), this seems to me to entirely miss the point made in the medical report by Dr Kovvuri. The point broadly made therein is that the narrative of an individual suffering the profound psychological sequalae of violent and atrocious persecution is likely to be a bit hard to follow. It may change in emphasis between each telling, or include details entirely omitted

previously. That is the nature of human recollection, its frailties further weakened by trauma.

30. At paragraph 26 the determination identifies three discrepancies. One is that refugee support group RASA recorded that the men who assaulted in the Appellant in 2016 wanted to blackmail her for financial gain. I note that this is not of course inconsistent with them having targeted her because she was married to a European, but Mr Karnik's real complaint was that the Appellant was not asked to comment on this apparent 'inconsistency'. Similarly, the Tribunal identifies that the Appellant has given two reasons why her second marriage broke down; first that she and her husband had argued over whether she should bring her son to the United Kingdom, and second because of domestic violence. Again, it is difficult to see that this necessarily amounts to a discrepancy at all; it is perfectly possible that both were true. The determination also records that her GP believed that in the 2000 abduction the Appellant was forced to work as a cook in an "Army camp"; whilst it could be said on the facts that this was a misunderstanding easily explained (it was a war, she was abducted by a group of armed men and forced to work for them), it was also entirely irrelevant, given that the First-tier Tribunal already accepted that the Appellant's account of events in 2000-01 was true.

31. That being the case, the adverse findings in respect of the 2016 incident boil down to two 'discrepancies' that are arguably not discrepancies at all, and the Tribunal's own assessment of whether the account is inherently implausible. I am satisfied that these findings are not a sustainable basis for rejecting this claim, particularly given the medical evidence and the fact that much of the Appellant's account had already been accepted.

32. In his submissions Mr Bates made the very good point that it is arguable that any error identified in the decision of the First-tier Tribunal is immaterial. Although the Secretary of State accepted that the Appellant is a 'member of a particular social group', namely women in Nigeria, it is not clear what the ongoing risk would be if the Appellant were to be returned there today. Presumably it is not being argued that the level of sexual violence is such that any woman in Nigeria faces a real risk of serious harm at any given time. Mr Bates made a further good point in that the Tribunal did make 'in the alternative' findings on internal flight at its §27, and at §30 addressed Article 8. I therefore gave careful consideration to those matters and to whether the errors in approach established by the grounds are such that the decision must be set aside.

33. Bearing in mind that this is a protection claim, and that this is a woman who has been accepted to have significant mental health issues arising from terrible and brutal assaults, I concluded that it would not be appropriate to dismiss her appeal on the basis advanced by Mr Bates. The errors of law go to the overall assessment of the Appellant's credibility, and that formed the background to

any forward looking risk assessment, including any internal flight alternative. It is important that findings are made on the 2016 incident so that the Appellant's ability to return to Modakeke could be assessed; any analysis of whether it would be 'reasonable' to expect her to relocate within Nigeria would similarly be subject to whether that incident is proven. For that reason I set the decision aside and directed that I would remake the decision in the appeal on these matters. This would necessarily involve me making my own assessment of the Appellant's vulnerability: whilst the Tribunal was entitled to reach the conclusion that it did about the extent of her vulnerability, in remaking I too will be entitled to reach my own conclusions.

The Re-Made Decision

34. At the resumed hearing Mr Abraham informed the court that the Appellant would not be giving evidence. She came into the hearing room to hear submissions but with permission left when the subject matter became distressing for her.

35. The parties agreed that following the 'error of law' decision there were three issues for me to determine:

    i) Did the Appellant and members of her family encounter persecution in 2016?

    ii) Is she at risk in her home area of Modakeke today?

    iii) If the answer to (ii) is in the affirmative, would it nevertheless be reasonable to expect her to relocate within Nigeria.

36. As a preface to all of that I should begin by considering whether I accept that the Appellant is a vulnerable person and if so the extent of her vulnerability. As a postscript I may also consider whether the Appellant would be entitled to leave to remain in the United Kingdom on human rights grounds, although I note that neither party made discrete oral submissions on this issue.

The Appellant

37. Dr Kovvuri's report is dated the 10th April 2018. She has been a Consultant Psychiatrist since 2008. No issue is taken with her expertise, nor with the contents of her report. Her central findings are that the Appellant:

- Suffers from PTSD, depression and chronic levels of anxiety;
- Has symptoms including loss of appetite, nightmares, flashbacks, bedwetting and insomnia (she sleeps no more than five hours per night)

- Suffers from such severe anxiety that she is at a high risk of suicide;
- Will, without appropriate treatment in a safe environment, suffer a continuing deterioration of her mental health.

38. Dr Kovvuri's assessment took place in April 2018. At that point the Appellant had been in psychological counselling for approximately six months, and had been prescribed maximum dose anti-depressants for approximately 2 years. The most up to date medical evidence is a letter written in July 2019 from Minds Matter, a talking therapies service run by Lancashire Care NHS Foundation Trust, confirming that the Appellant has more recently been referred for CBT. She continues to take anti-depressants.

39. I accept, as did the First-tier Tribunal, that the Appellant does suffer from the sequalae of trauma in the manner described by Dr Kovvuri. The issue that concerned the First-tier Tribunal was to what extent the Appellant may be exaggerating her symptoms in order to strengthen her protection / human rights claim. The Tribunal noted, for instance, that the Appellant has been able to pursue her studies so as to qualify as a nurse, and has managed to get married and undertake a public facing role involving interacting with strange men. These features of the evidence led the Tribunal to conclude that the Appellant was not in quite as bad a state as she claimed.

40. I have given careful consideration to that matter. So did Dr Kovvuri, who appears to have explored the Appellant's personal history, post the events of 2000, in some detail. What is apparent from that history is that the Appellant has had periods where she is able to function, and has managed to get on with her life, and others where she has really struggled. For instance the Appellant told Dr Kovvuri that when she was training to be a nurse in the years immediately following the Modakeke-Ife conflict she found it very difficult to concentrate, and that she failed a number of modules as a result. She was required to resit exams so that the course took 4 years instead of the expected 3. During that period she was living alone and started to suffer nightmares and bedwetting – she had wet herself during the incident where she escaped the men in the farmhouse and she believes the two matters to be connected. She could not watch the news because the sight of armed men would induce panic attacks. After a particularly difficult episode she would find herself unable to engage with those around her for a few days. As a result she made few friends at university and isolated herself. This was a particularly bad period. Conversely after the Appellant found her first job she felt that her situation had improved. She started to feel better because she liked her work and it gave her self-respect. These periods of 'ups' and 'downs' have characterised the last 19 years for the Appellant. Two marriages and the birth of her son gave her some semblance of normality, but both of those marriages broke down in large part because of her mental health issues, and she has left her son behind because she does not feel safe in Nigeria. Having had regard to all of the detailed evidence in Dr Kovvuri's report, and the Appellant's own statements, I am of the view

that it would be overly simplistic to assume that the Appellant's ability to function 'normally' in society is any indication that she is well, or psychologically recovered from her ordeals.

41. I further note that in accordance with the Istanbul Protocol Dr Kovvuri has recorded her own clinical observations made when assessing the Appellant. Whilst the Appellant was generally able to maintain eye contact and give a clear account, when asked to speak about the assaults she has suffered the Appellant became visibly distressed, crying and unable to look at Dr Kovvuri. I note that this was consistent with the Appellant's behaviour during the hearing in the Upper Tribunal.

42. Having taken all of that evidence into account I am satisfied that the Appellant is a vulnerable witness because she is a survivor of serious harm who is suffering from PTSD. She continues to receive treatment and the uncontradicted medical opinion is that it would be distressing and difficult for her to give evidence; in fact Dr Kovvuri did not consider her fit to give evidence. I am satisfied that the Appellant is extremely vulnerable and that this should be taken into account when approaching her appeal; in particular no adverse inference should be drawn from her decision not to give evidence.

2016

43. The account itself is a fairly straightforward one. It is the Appellant's evidence that in April 2016 she returned to Nigeria to visit her mother and son. Although she was having problems with her second husband by that time, she did not tell her mother this because it had taken her mother some time to accept that she had married in the United Kingdom and she did not want to distress her. The Appellant brought with her some photographs of her wedding. The Appellant's mother was happy to see these photographs and took them to the local photo shop to get copies for herself. I have been shown copies of these photographs. The Appellant is depicted in a white wedding dress and one shows her signing the register with her then husband. They are both happy and smiling. The Appellant's head is uncovered and there is nothing obvious in the pictures to indicate that she is Muslim.

44. It is the Appellant's evidence that one evening shortly after her mother visited the photo shop she was walking in the neighbourhood. A group of men – possibly as many as eight – approached her. They started to verbally abuse her. They taunted her and said that she was a 'fake' Muslim, and they knew that she did not wear a headscarf when she was with her white husband. The Appellant surmised from this that they had seen the photos that her mother had taken to the print shop. The men dragged her into a secluded spot and raped her. One of them ripped her headscarf from her head, and repeatedly admonished her

for not being a proper Muslim. She heard some of them talking about how they might be able to get money out of her.

45. The Appellant did not report the incident to the police because she was traumatised and ashamed. Nor, because of her previous experiences, did she trust the police. She made arrangements to leave Nigeria and returned to the United Kingdom. When she got back here she was detained because her EEA national husband had withdrawn his sponsorship of her family permit. It was whilst she was in detention that her spoke with her mother, who informed her that men had come to the house looking for her. They had pushed and threatened her mother. It was only after her release from detention that her mother informed her that these men had also assaulted her son.

46. The account is consonant with the country background material. Mr Abraham took me to a good deal of evidence demonstrating that rape and other sexual assaults on women are depressingly frequent events in Nigeria. I need not set out that evidence in any great detail since none of it is contested, but it suffices to note that the Secretary of State accepts that the account of events in 2016 is plausible in light of the country material.

47. The Secretary of State does not however accept that the account is internally consistent. In her asylum interview, conducted in January 2017, the Appellant told the officer that a friend in Nigeria had advised her mother to go to the court and set out her account of what happened in May 2016 when some men visited her home. This account was produced in affidavit form and given to the officer at the interview. The Secretary of State's assessment of that document appears at paragraph 52 of the 'reasons for refusal' letter:

> "The affidavit does not reflect what happened that night. You firstly claimed that it was while you were outside the property, as it was too hot (AIR Q177). The affidavit alleges that 7 men "forcefully entered the house with some weapons, guns, dagger (sic), knives (Annex B)". The affidavit also mentions a threat of beheading, which you did not mention in your asylum interview. There is also an inconsistency with the legitimacy of the date. When asked about the date, instead of giving the date, you just referred to the affidavit, in case you made an error on the date. You did, when asked again, state that it was the 17 May 2016 (AIR Q8-10). This is the date on the affidavit, however, quite clearly on the affidavit, a written statement of fact voluntarily made by an affiant or deponent under and oath or affirmation administered by a person authorized to do so by law, a mark in ink from a biro or equivalent pen has put a '1' in front of the 7, thus making 17 May 2016. The date you have supplied both in the affidavit and your asylum interview is inconsistent with the fact you claimed asylum in the United Kingdom on the 15 May 2016 (SCR 3.3)"

48. Although I regret to use the phrase, this paragraph requires some unpacking. First, neither party before me was able to produce a copy of the affidavit that the Appellant submitted at her interview. It is accepted that such a thing existed, produced after her mother visited the court in Modakeke to record her version of events in May 2016. There is, in my home office bundle, no 'annex B' and Mr Diwnycz was unable to find anything on the Home Office file. Second, it is apparent from the reasoning that the officer had conflated the incident in which the Appellant herself was attacked after taking a walk at night – which on her evidence occurred in April 2016 – with the incident where a group of armed men presented themselves at her family home and forced entry – said to have occurred on the 17th May, after the Appellant had left Nigeria. The references to the asylum interview – and indeed that whole record - demonstrate that the Appellant clearly describes two distinct incidents. This error is obviously fundamental to the Secretary of State's assessment of the Appellant's credibility on this point. Third, the decision maker appears to draw some negative inference from the fact that the Appellant hesitated to identify the date of an event that she was not party to – I am unsure what that might show other than that the Appellant did not want to give inaccurate information. Fourth the officer further draws negative inference from the fact that the document had been amended by hand. I am unable to say whether that in itself is suspicious but at first hand it is difficult to say why it might be – if the account was invention the Appellant could just as easily have stuck with the date of the 7th May. I am not persuaded that any of this reasoning in the refusal letter is cogent.

49. Having read her interview and statements with care I am satisfied that the Appellant's account of the two events has been largely consistent. In relation to the first – the attack on her – it is right to say that the Appellant did not, on each telling, reveal each and every detail about the ordeal. Had she done so that would, in the circumstances, be extremely surprising. In relation to the second, she was not there, and has offered only what information she herself has been given. I find there to be nothing implausible in the account. There is nothing implausible in the Appellant wishing to show her mother her wedding photographs and keep her under the impression that her marriage is a good one. Nor is there anything implausible in the Appellant's mother wanting copies of these photographs of her daughter in her wedding dress. In a small town in rural Nigeria it is entirely unsurprising that someone other than the individual who took receipt of the photos in the print shop got to see or hear about them. The men who attacked her appear to have been motivated by a mixture of things: anger that she has 'betrayed her religion', perhaps anger that she has 'betrayed' men in Modakeke by marrying out, poverty and greed. None of that is implausible.

50. Applying the lower standard of proof I am satisfied that the account of events in 2016 is true. I therefore find that in three separate incidents the Appellant

has been subjected to serious persecution in Nigeria for reasons of her gender. In 2000 she was subjected to repeated rape and sexual exploitation by three police officers. Shortly after that she was abducted and held in brutal sexual servitude where she witnesses horrifying scenes of other women being murdered. She left Nigeria because the latter event became known in her community and her trauma was exacerbated by shame and stigma. When she returned in 2016 to visit her family she was then again subject to a serious sexual assault.

Current Risk

51. Paragraph 339K of the Immigration Rules provides:

> 339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

52. The effect of this *Demirkaya* presumption[1] in this case is that I must assess whether there are good reasons to consider that if returned to Modakeke the Appellant would not face a real risk of harm from the men who attacked her in 2016.

53. There is no evidence that anything has happened to the Appellant's mother or son since the attack on the family home in May 2016. Nor, however, is there any evidence to indicate that the men who attacked the Appellant have left the town, or have suffered any consequences of her mother reporting the matter to the authorities: had some action been taken, I would have expected the Appellant's mother to have been informed. The risk faced by the Appellant must be assessed in light of that incident. These men became aware of her return to Modakeke, and her circumstances, within a couple of weeks of her arrival there in 2016. There is no good reason to consider that they would not do so again. Mr Diwnycz was not able to point to any information indicating that the situation on the ground may have changed. There have not for instance, to my knowledge, been any meaningful improvements in the state prosecution of rapists, or assistance for their victims. The Appellant still lives in the United Kingdom, and as far as anyone in Modakeke is aware, is still married to a white man. There is no reason to believe that the motivations of the Appellant's attackers have changed. In view of that I am satisfied that there is a real risk

[1] Demirkaya v Secretary of State for the Home Department [1999] EWCA Civ 1654

that if she returned to Modakeke the Appellant would once again become the target of these men.

54. I must now consider whether there would be a sufficiency of protection from any future assault. This is a woman who has been subject to three terrible and significant periods of sexual abuse. The first of these was perpetrated by three police officers. Her reluctance to approach the police is therefore understandable: Souad Noune v Secretary of State for the Home Department [2000] EWCA Civ 306. Her suspicions would appear to be well-founded. In the Home Office Country Information and Guidance Note *Nigeria: Women fearing gender-based harm or violence* (Version 3.0, published August 2016) the Respondent cites research conducted by the Canadian Immigration and Refugee Board about police attitudes [at 5.1.1]:

> 'In correspondence with the Research Directorate, the National Program Coordinator of the Network on Police Reform in Nigeria (NOPRIN), a network of 46 civil society organizations working on police accountability and human rights in Nigeria (n.d.), indicated that police "characteristically exhibit bias and discriminatory attitudes in their treatment of female victims of violence" which is "informed by cultural beliefs and notions which devalue and subjugate women," and often "blame the victim" (NOPRIN 11 Oct. 2014)….'

55. And at [2.3.6]:

> Rape is widespread. Societal pressure and the stigma associated with rape reduce the percentage of rapes reported and the penalties imposed on conviction. Sentences for persons convicted of rape and sexual assault were inconsistent and often minor. Security services committed rape and other forms of violence against women and girls largely with impunity. Women detained for criminal offences, relatives of criminal suspects and sex workers who cannot pay bribes are often targeted for rape and other abuse by police officers…

56. Against this background the CPIN reproduces a shocking statistic cited by Mr Abraham: that as of 2016 there have only ever been 18 successful prosecutions for rape in the country's legal history [at 6.3.3]. Whilst there may be laws in place against sexual violence, and the government may be taking measures to support victims of such crimes, the CPIN acknowledges that such laws are often not implemented [see for instance 2.4.1]. In light of this country background material, and the Appellant's personal history, I cannot be satisfied that there would be for her a sufficiency of protection in Nigeria.

Internal Flight

57. Mr Diwnycz submitted that there is, in general, a freedom of movement in Nigeria, and that women are able to move without legal or any significant social restriction around the country. He acknowledged, however, that the Appellant's ability to do so had to be analysed in light of her own personal characteristics and history.

58. I think, in light of what is set out above, that I can be brief. The internal flight alternative exists in refugee law to protect host countries from spurious claims. Where an individual can reasonably be expected to avoid localised harm by simply moving to another part of his own country, there is no obligation in international law for a host country to accept his claim. This principle, as it has developed in this country, requires decision makers to consider whether it would be *reasonable,* in all the circumstances, to expect the individual concerned to internally relocate. Put another way, would to do so be 'unduly harsh'? This is a woman who has been brutally and repeatedly raped by three distinct sets of men in Nigeria, one of whom was a group of police officers. She continues to suffer the significant psychological sequalae of those events. The unchallenged evidence of a consultant psychiatrist is that she is unlikely to get better unless she receives meaningful mental health treatment in an environment she regards as safe. The Appellant does not regard Nigeria as safe. So whilst the Appellant may be able to find work as a nurse, pay her own way and find accommodation, I am far from satisfied that it would be reasonable to expect her to do so. Living alone in Nigeria would be extremely frightening and disturbing for her. That psychological pressure upon her would be immense, and in all the circumstances would be unduly harsh.

59. It follows that the Appellant's appeal is allowed on human rights grounds.

Human Rights

60. Neither party made oral submissions on human rights other than to point out that an Article 3 claim would stand and fall with the protection claim. I would simply add that in respect of Article 8 the evidence strongly indicates that removal would amount to a disproportionate interference with the Appellant's established private life in the United Kingdom, including her relationships with the mental health professionals who have treated her thus far. To expect her to return to the scene of her abuse would in my view be disproportionate and unjustifiably harsh.

Anonymity

61. The Appellant is accepted to be a survivor of serious sexual assault with significant mental health problems. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

62. The decision of the First-tier Tribunal contains material errors of law and it is set aside.

63. I re-make the decision in the appeal as follows:

'the appeal is allowed on protection and human rights grounds'.

64. There is an order for anonymity.

Upper Tribunal Judge Bruce
28th August 2019