Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/01899/2020 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*
On 14 April 2021

Decision & Reasons Promulgated
On 26 April 2021

Before

UT JUDGE MACLEMAN

Between

IZIEGBE BLESSING AMADSUN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Peter G Farrell, Solicitor
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 25 February 1975. She sought asylum in the UK on the basis that her son has been diagnosed with autism. The respondent refused her claim for reasons given in a decision dated 11 February 2020.

2. The appellant appealed to the FtT on grounds of "a well-founded fear of persecution due to membership of a particular social group, namely the mother of a child who suffers from severe autism" and because removal would "breach my rights under articles 2, 3 and 8 of the ECHR and those of my husband and 3 children".

3. FtT Judge Prudham dismissed the appellant's appeal by a decision promulgated on 14 October 2020.

4. The appellant was granted permission to appeal to the UT on these grounds:

> (1) The judge reaches the conclusion that although the child might be stigmatised … and discriminated against, that conduct will not amount to persecution … the judge considered the objective materials … he was not entitled to reach that conclusion from a proper reading of those sources.
>
> (2) … the judge was asked to reach conclusions from the different conclusions in 2 reports … the ASD in Nigeria article by Project Muse and the EASO report. The judge dealt with the Project Muse article … at [26]:
>
> > "… the article referred to children with ASD in Nigeria suffering stigma and derogatory comments form neighbours. As a consequence, it is said, many parents … hide such children away … depriving them of early interventions that improve prognosis. The article also refers to the Child's Rights Act 2003 which promises equal opportunities to every Nigerian child. Although it was noted not every Nigerian state had adopted the Act."
>
> (3) … the following criticisms can be made of the judge's interpretation … Firstly, [the article] does not restrict the consequence of failure to act as depriving children of "early interventions…" It specifically states, "…many children with ASD are still being locked up or hidden away in their homes and … prevented by desperate parents … from accessing <u>any</u> form of intervention". This is especially important since the respondent sought to distinguish the position of the child here because … having received treatment in the UK… he did not fall into the category of somebody who had not received early intervention treatment.
>
> (4) In the second place … with reference to the Act … while the judge noted that it did not apply in every Nigerian state, he omitted to add that even among those that have done so, its implementation had been hindered by a number of cultural and socio-political factors especially among … children with ASD.
>
> (5) Against that, the judge was happy to attach particular weight to [2 lines] in the EASO report that the Act "protects children against all forms of physical, mental and emotional torture and abuse" … while it might have been the objective of the Act to provide that level of protection, there is nothing in the report to demonstrate that the Act … lives up to its purpose … Indeed, the Project Muse article states the opposite:
>
> > 'a mixture of stigma and psychological burdens have combined to prevent many children … with ASFD from having the opportunity of any form of intervention … despite the existence of the law that promises equal opportunities for every Nigerian child.'
>
> (6) … a proper reading of these sources would lead one to the conclusion that the appellant's child will suffer persecution on return to Nigeria.

5. Mr Farrell submitted closely along the lines of the grounds. He relied also on the grant of permission by FtT Judge Adio on 20 November 2020: …

> "(3) The definition of persecution which includes systematic harm would also apply … where a particular group is not protected from experiencing systematic harm and it is arguable that the fact that children are being locked up and hidden away in their homes and have no access to any form of intervention can amount to persecution in the situation with the applicant's children, particularly as there is no indication that the law is being implemented in the states and … is just a federal law."

6. Mr Farrell said that the UT should set aside the decision of the FtT and reverse the outcome.

7. Ms Everett said that the evidence disclosed attitudes in Nigeria which might lead to persecution in some instances, and it would have been misguided to find that the 2003 Act eliminated all such risk. However, the judge had not erred on either point. He applied the background evidence to the circumstances of the appellant. He noted that the main source of risk was from parents and families of children with ASD. In this instance, the parents were supportive. There was evidence from teachers and from specialists that they had engaged with the issue, shown the desire and developed the skills to support their child. The judge had been entitled to note that they were from Benin, a large city where there were facilities for children with ASD, although not equivalent to those in the UK. The judge decided the case on its facts. His decision should be upheld.

8. Mr Farrell in reply said that a supportive family did not indicate a lower likelihood of persecution. The EASO report cited churches as well as parents as making witchcraft accusations. Families were not exclusively or even mainly the source. In an environment where there was also a risk of accusations from neighbours, it was easy to see that parents might opt to hide a child away.

9. I reserved my decision.

10. I am not persuaded that the background evidence led to only one outcome, or that there is any legal error in the judge's reasons for finding no real risk in this case.

11. The passage in the EASO report which was the subject of the final submission for the appellant says:

> 'Among the profiles of children at particular risk of accusation of witchcraft are children living with a psychological disorder. The main accusers are reportedly usually members of the church or parents unable to care for their children.'

12. The judge at [29] found no risk from church or parents:

> "… the evidence made it clear that the main accusations of witchcraft tended to come from within the family, usually from parents who are unable to care for a child. This is not the position in [this child's] case as … his parents have sought assistance and treatment. The only other group of accusers referred to was … pastors of certain churches.

> I heard no evidence from the appellant of any link with Revivalist / Pentecostalist churches and so did not consider this to be of any risk to her son."

13. No error has been shown in that clear analysis, in either respect.

14. The judge did not fall into the error of considering that the 2003 Act gave all children in Nigeria 100% protection against all abuse and was a complete answer to the appeal. The grounds at (5) take one sentence out of context. The judge was describing the purpose of the Act , not its effect. It is hardly likely that the judge might have thought that Nigeria has attained a practical level of child protection which would take it beyond any other country. It is obvious from the decision as a whole that he recognised that implementation is patchy.

15. The decision of the First-tier Tribunal shall stand.

16. No anonymity direction has been requested or made.

Hugh Macleman

15 April 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.