



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

Appeal Number: PA/02631/2020

THE IMMIGRATION ACTS

Heard at Field House

On 24 November 2021

**Decision & Reasons
Promulgated**

On 06 December 2021

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**R U N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Nnamani, Counsel, instructed by Samuel Louis Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. His date of birth is 27 June 1978. The First-tier Tribunal anonymised the Appellant as is the norm in protection cases. There is no reason for me to interfere with this.
2. The Appellant made an application on protection grounds on 3 September 2019. The application was refused by the Secretary of State in a decision of 5 March 2020. The Appellant appealed. His appeal was dismissed by the First-tier Tribunal (Judge Abebrese) in a decision dated 16 April 2021, following a hearing on 12 April 2021. The Appellant was granted permission to appeal against the decision of the First-tier Tribunal (by the Judge of the First-tier Tribunal Feeney). The matter came before me to decide whether the First-tier Tribunal erred in law.
3. The Appellant's claim is that he has been a member of the Indigenous People of Biafra (IPOB) since 2012. The IPOB has been a proscribed organisation in Nigeria since 2017. He is at risk on return as a result of *sur place* activities in the UK. Prior to coming to the UK in 2012 he was a member of the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB).
4. In a short decision, having heard evidence from the Appellant and witnesses, at [17] the judge made findings. He found that the Appellant was not credible because he had not made an asylum claim promptly and because he had been able to travel freely to Nigeria without experiencing problems.
5. At [18] the judge said that he had:

“... Read and taken into consideration the objective material especially those referred to me by the Appellant's representative and I find that there have been attempts made to resolve the situation in Biafra land. I am of the view that the overall picture indicates that the states are taking steps to resolve the problem. I have also taken into consideration paragraphs 42 - 53 of the Appellant's refusal letter. The Appellant will not be at risk in my view even when one applies the lower standard of proof.”
6. In the same paragraph the judge accepted that the Appellant is a member of IPOB (the Secretary of State did not accept this aspect of the Appellant's account) but that he does not have a prominent role. The judge in the same paragraph found that the Appellant would not be at risk on return and in any event he would be able to seek protection applying the test in Horvath [2000]. The judge went on to dismiss the Appellant's appeal on Article 8 grounds.

Error of law

7. At the error of law hearing, Mr Walker conceded that the First-tier Tribunal materially erred in law. I agree with him. There are no findings concerning the evidence of the witnesses which was capable of supporting the

Appellant's evidence of *sur place* activities and risk on return. It is not necessary for me to engage with the diffuse and unparticularised grounds in the light of Mr Walker's concession.

8. I set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal.
9. In the light of the nature of the error a fresh hearing is necessary. None of the findings of the judge are preserved.
10. I remit the appeal to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The decision of the First-tier Tribunal to dismiss the Appellant's appeal is set aside. The appeal is remitted to the First-tier Tribunal for a fresh hearing.

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Signed Joanna McWilliam

Date 29 November 2021

Upper Tribunal Judge McWilliam