



IAC-FH-CK-V1

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

Appeal Number: PA/06399/2019

THE IMMIGRATION ACTS

**Heard remotely at Field House
On 19th April 2021**

**Decision & Reasons Promulgated
On 19th May 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**TSAO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, instructed by Fadiga & Co Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born in 1973. His wife and five children are dependent on his claim. The Appellant appeals against the decision of First-tier Tribunal Judge Burnett promulgated on 26 November 2020 dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Appellant's claim can be summarised as follows. On 9 January 2013, the Appellant obtained a multi-entry visit visa to the UK valid until January 2018. It is the Appellant's case that on 12 April 2014 his friend [KO], a member of the All Progressive Congress [APC], was killed after being targeted by members of the Peoples Democratic Party [PDP]. In September 2014, his wife was attacked at their home by PDP members (who came to kill the Appellant) sustaining an injury to her eye. The elections took place in Nigeria on 28/29 March 2015. In April 2015, the Appellant's mother died and the Appellant claimed this was a result of the regular attacks on his family by the PDP. In May 2015, the Appellant came to the UK with two of his children for a two-week visit. In July 2015, the Appellant's wife was attacked again at their home causing an injury to her hand.
3. On 30 November 2015, the Appellant, his wife and five children came to the UK. The Appellant returned to Nigeria at some point thereafter and claimed that there was an attempt to kill him when his home was broken into and his car was vandalised. After this the Appellant decided to return to the UK and he arrived in March 2016. The Appellant's wife claimed asylum in September 2016, giving the Appellant as her dependant and the Appellant himself claimed on 27 December 2017, naming his wife and children as his dependants.
4. The First-tier Tribunal Judge made the following relevant findings.
 - (i) The Appellant was involved in politics at a low level. He had no particular profile and certainly not a high one.
 - (ii) There was little to support the Appellant's account of his role and level of involvement in the APC between 2012 and 2016.
 - (iii) The judge gave little weight to the letter from the APC dated 21 April 2020 because the information contained in the letter came from the Appellant and therefore was not independent.
 - (iv) The judge attached little weight to the expert report from Mario Aguilar for the reasons given at [58] to [60].
 - (v) The judge attached little weight to the medical report showing that the Appellant's wife had suffered a retinal detachment of her eye in September 2014 for the reasons given at [61]. The judge did not accept that it was due to an attack by the PDP upon the Appellant's wife.
 - (vi) The judge found that, given the chronology of events, it was not credible that the Appellant came to the UK on holiday with two of his children in May 2015 for two weeks.

- (vii) The Appellant and his family resided in Nigeria from May 2015 to 30 November 2015 when they came to the UK. (The Appellant went back to Nigeria).
- (viii) The Appellant returned to the UK in March 2016 to his family, who remained here. Their daughter started school in January 2016 and the Appellant's wife had applied to enrol her in December 2015. The judge found that this undermined the Appellant's credibility because he had not yet claimed asylum and so the family had no basis to stay at that point.
- (viii) The Appellant arrived in March 2016 but did not claim asylum until December 2017 and wife did not claim until September 2016.
- (ix) The judge concluded that these were not the actions of someone in need of genuine protection.
- (x) It was accepted that there were tensions between the APC and PDP at the time of the elections in 2015.
- (xi) The judge did not accept that the Appellant was caught up in those attacks.
- (xii) The Appellant had failed to establish any risk profile for members or supporters of the APC.
- (xiii) The current President of Nigeria is from the APC Party.
- (xiv) The Appellant has failed to demonstrate that he would have been targeted as described given his political profile.
- (xv) The Appellant and his wife were unsatisfactory witnesses and most of the Appellant's claims were incredible.
- (xvi) The judge rejected the Appellant's claim to have been the subject of attacks by the PDP opposition.
- (xvii) In conclusion, the Appellant had attempted to create a claim to asylum and there was no risk of persecution to the Appellant in Nigeria from the opposition party or anyone else.

5. Permission to appeal was sought on three grounds.

- (1) The judge's finding that the Appellant failed to demonstrate there was any risk profile for members or supporters of the APC was perverse, given that it was accepted that there was political violence during the 2015 election and there was expert evidence of a greater level of violence in Osun State. The judge erred in law in rejecting the Appellant's account for the sole reason that it was implausible. Secondly, the judge failed to consider the further attacks on the Appellant's wife and in particular the attack on the Appellant himself in 2016 and the judge misapplied section 8 Asylum and Immigration (Treatment of Claimants etc.) Act 2004.
- (2) The judge failed to give reasons for finding the Appellant's wife was not credible, given the medical evidence of assault/trauma and the background evidence of violence at the time of the elections.

- (3) There was a failure to properly consider the expert evidence or alternatively the judge's conclusions were perverse in light of that expert evidence.
6. Permission to appeal was granted by Upper Tribunal Judge Martin on 5 January 2021 for the following reasons. "It is arguable, as asserted in the grounds, that the judge has erred in giving no reasons for rejecting the evidence of the Appellant's wife who it was claimed was attacked herself more than once. Her evidence is not set out and so the lack of findings about what she said may be material. While the other grounds are less strong, all may be argued."
7. In the Rule 24 response dated 18 January 2021, the Respondent submitted that the judge had assessed the Appellant's claim looking at all the evidence in the round and had provided a detailed explanation for why the Appellant's account failed at [52] to [70] of the decision. The judge considered the background information and expert report, correctly noting that there was no specific evidence regarding incidents against members of the APC. The expert had not considered key evidence in the Appellant's history and there was a lack of recent 'on the ground' analysis to enable the expert to determine the level of risk generally to the party and its members for the reasons given at [58], [59] and [65] of the decision.
8. The judge had regard to the evidence of the Appellant's wife and there was nothing in the grounds to suggest that the Appellant's wife's evidence had any significant difference to that given by the Appellant: [54] and [69] of the decision. It was open to the judge to find that the Appellant and his wife were not credible. The judge would not need to give separate reasons if the evidence in and of itself was manifestly the same.
9. Given the Tribunal's rejection of the Appellant's claim it was submitted that the expert report addressing the issue of internal relocation would only be partially of assistance because the basis of the Appellant's fear had fallen away. It was open to the judge to find that the Appellant would not be at risk and the judge had given a number of reasons for why he attached little weight to the expert report at [58] to [60].
10. In conclusion, the decision was sufficiently reasoned to enable the Appellant to understand why his appeal failed and the outcome was one which was reasonable on the evidence presented: Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085.

Submissions

11. Mr Eaton relied on his skeleton argument dated 8 February 2021. He submitted that, in relation to ground 2, the judge failed to give any reasons for not accepting the evidence of the Appellant's wife and for concluding that she was not a satisfactory witness. The evidence of the Appellant's wife was important because she gave evidence about two specific acts to which the Appellant was not a party. The Appellant's wife gave evidence of persecution and her account was supported by

medical evidence. The judge wrongly rejected this evidence at [61] and failed to give reasons for doing so. The medical evidence showed that the Appellant's wife received a blow to her eye. There were no reasons why Appellant's wife was not a satisfactory witness, given the medical evidence supporting her injury. This could not be a clearer error of law. The judge had ignored the evidence of a witness notwithstanding there were two medical reports which supported her account of being attacked in the way she described. The Respondent's submission that the Appellant's wife was not credible because the Appellant was not credible was an erroneous approach because the Appellant's wife gave evidence of incidents to which the Appellant was not a party.

12. In addressing ground 1, Mr Eaton submitted it was accepted there was evidence of political violence around the 2015 elections and the judge accepted the Appellant's involvement in politics at that time. The judge failed to give adequate reasons for rejecting the Appellant's account. At [62], the judge ignored two key events, namely the attack on the Appellant's wife in July 2015 and the attack on the Appellant in 2016. This final incident caused the Appellant to leave Nigeria and come back to the UK. The judge had failed to consider the ongoing attacks on the family after the elections. He had a mistaken view that there were no incidents after the elections and this was the only reason for not accepting the Appellant's account. Against the background of political violence at the time of the election and the accepted membership of a political party, coupled with evidence from the Appellant's wife of two attacks, there was no reason why the Appellant's account was not credible.
13. Mr Eaton submitted the Appellant came to the UK in May 2015 because he thought that the violence would end after the election. The judge had rejected his account on implausibility grounds, which were insufficient. The Appellant returned to Nigeria and was subject to a further attack, which the judge failed to consider. The judge's reason for rejecting the Appellant's account was that he did not believe the Appellant would behave in this way. These reasons were not sustainable.
14. In relation to ground 3, Mr Eaton submitted it was uncontentious the Appellant may have been subject to violence around the time of the elections. The judge had not reached a finding that the Appellant's fear was not well-founded. The evidence before the judge demonstrated that there was something more going on. Internal relocation was not a sustainable finding, on the basis that the level of political violence elsewhere was less, if it was likely that the Appellant was a victim of political violence. In summary, the judge had failed to consider the evidence of the Appellant's wife, there were no reasons for the Appellant's lack of credibility and the judge had not properly dealt with sufficiency of protection and internal relocation.
15. Mr Melvin relied on the Rule 24 response and his skeleton argument dated 1 February 2021. He submitted the judge had properly set out the Appellant's and the Respondent's positions and the submissions made before him. The judge had taken into account all relevant matters and had made clear findings. The findings at [58] to [70] were open to the judge on the evidence before him and included consideration of the expert evidence and the medical evidence. The judge had given clear findings on

credibility. There was no claim for asylum for many months after the Appellant came to the UK in 2016. This undermined the Appellant's credibility, given the claimed attack on his wife in 2014. The judge took into account the subsequent attack on the Appellant's wife in July 2015 at [17] and [30]. The Appellant and his wife gave consistent evidence. The children were enrolled in school a year before the asylum claim was made. There was a lack of evidence in the expert report. The judge's rejection of the Appellant's credibility was open to him on the evidence before him and there was no background evidence that violence continued after the elections in March 2015.

16. Mr Melvin submitted the judge made an assessment of the Appellant's claim as a whole. The evidence of the Appellant's wife was consistent with that of the Appellant, therefore it was not necessary for the judge to make specific findings on evidence of the same events. The Appellant said that he was 'elusive' and the judge rejected the evidence of the Appellant and his wife in considering the totality of the evidence. The medical evidence did not show that the trauma to his wife's eye was caused by politically motivated violence. The eye injury could have been caused by any type of accident. Although there was no specific paragraph dealing with the evidence of the Appellant's wife, she was referred to in many of the judge's findings which were open to him. Looked at holistically, the decision was sustainable. The grounds of challenge amounted to disagreements with those findings and repeated the submissions made before the judge.
17. In response to a question from me about the adequacy of reasons, Mr Melvin submitted the claim had to be looked at in the round. The judge found the claim was without credibility and one of the reasons given was the settling of the family one year before the asylum claim was made. Mr Melvin submitted that, if the Appellant and his wife had experienced the difficulties claimed, they would have sought asylum sooner. The judge found there was no real evidence that the Appellant would suffer sustained political violence if returned in 2021. Against the evidence that there was some violence in 2015, the Appellant's own party now maintained power in the 2019 elections. It was difficult to see on the evidence before the judge, given the Appellant's political weight, that the Appellant would be at risk. There was no evidence that supporters of the APC were at general risk of persecution. In any event, the Appellant could internally relocate. There was no real evidence of a well-founded fear of persecution. Any error in not recording the judge's conclusions about the evidence of the Appellant's wife was not material to the outcome of this case.
18. In response, Mr Eaton submitted the judge had fundamentally failed to look at the evidence in the round. There was accepted evidence of political violence at the time of the elections and the Appellant was politically active at that time. Given the evidence of the attacks on the Appellant's wife, and considering all these matters in the round, the judge should have come to a different conclusion. The judge had failed to consider the attack in July 2015 at [62]. It was clear the judge was confused about the timeline because he found that there was a six-month period when nothing happened. On the contrary, something quite significant happened. The only point

the judge made to support his credibility finding was that the family did not run away straight away. These reasons were not sufficient. The judge had to make findings on key parts of the evidence. The evidence of trauma to the Appellant's wife's eye, although not conclusive, was corroborative and the judge failed to consider it. There were no sufficient reasons for finding the Appellant's claim was not credible.

Conclusions and Reasons

19. The judge accepted there was political violence during the 2015 elections and the Appellant was politically active at that time, although at a low level. Thereafter, the judge rejected the remainder of the Appellant's claim. The grounds submit that, given these accepted findings, the judge's finding that the Appellant was not at risk as a member of the APC was perverse and lacked reasons.
20. Ground 1: I am not persuaded by Mr Eaton's submission that the judge failed to consider the attack on the Appellant's wife in July 2015 for the following reasons. The judge stated at [10] that he had taken into account the evidence of the Appellant's wife and referred to her statement. The judge specifically referred to the attack in July 2015 at [17] and [30]. The judge stated at [68]: "In forming my conclusions above I have had careful regard to the Appellant's wife's evidence." At [62] the judge acknowledged the Appellant's wife was attacked on several occasions, in particular September 2014. I am satisfied the judge took into account the attack on the Appellant's wife in July 2015 in finding that the claim was not credible.
21. I am similarly of the view that the judge was well aware of the Appellant's claim to have been attacked on return to Nigeria in 2015/2016. The judge set out this part of the Appellant's claim at [19] and [20] and any failure to specifically refer to this at [62] was not material because the judge noted the chronology of the Appellant's claim, which he had previously set out at [13] to [20]. The judge took into account the Appellant's witness statement at [10] and [21] and his explanation for going to the UK on holiday at [22]. The judge considered the submissions of the parties at [39] to [48]. I am satisfied the judge considered the totality of the Appellant's claim.
22. I am not persuaded by Mr Eaton's submission that the only reason for rejecting the Appellant's credibility was that the judge relied on the implausibility of his account. On the contrary, the judge gave several reasons for why he did not accept the Appellant's account. The judge gave adequate reasons for placing little weight on the documentary evidence at [57] to [61]. The oral evidence of the Appellant and his wife was rejected because the Appellant went on holiday to the UK soon after he claimed to have suffered persecution in Nigeria. The Appellant relied on three significant events which he attributed to the PDP: his friend/colleague, KO, was killed; his mother died and his wife sustained a serious injury to her eye. Further, the Appellant returned to Nigeria (after his two-week holiday) where he remained for six months before bringing his family to the UK. The Appellant then returned to Nigeria alone where he remained for a further four months. In addition, the Appellant and his wife

did not claim asylum at the first opportunity and there was a significant delay which undermined their credibility. I find that the judge's reasons were sufficient to support his conclusion that the Appellant's claim lacked credibility and there was no misapplication of section 8 of the 2004 Act.

23. The judge considered the background evidence of violence between the parties before and after the elections in 2015 and found that the Appellant had failed to show that he and his family were caught up in that violence at [64]. The judge took into account the circumstances existing at the date of hearing, namely the President of Nigeria was from the APC party, in concluding the Appellant had failed to establish any risk profile for members or supporters of the APC or that he would be at risk on return. The judge's findings were open to him on the evidence before him. There was no error of law as alleged in ground 1.
24. Ground 2: I accept that the judge did not deal with the evidence of the Appellant's wife in a separate paragraph and it would have been wise for him to do so. The evidence of the Appellant's wife was consistent with that of the Appellant and it is apparent from [68] that the judge took her evidence into account. I am satisfied that when the decision is read as a whole and consideration is given to [10], [17], [30], [61], [62], [63], [67] and [68] that the judge considered how the evidence of the Appellant's wife supported the Appellant's claim. The judge gave adequate reasons for attaching little weight to the medical evidence. Mr Eaton specifically referred me to this evidence in submissions. The judge did not accept that the trauma was caused by an attack by the PDP. This finding was open to the judge on the evidence before him.
25. The Appellant claimed his wife was attacked by members of the PDP at their home when they came to kill him. The Appellant claimed he had managed to evade his persecutors because he was 'elusive'. The judge found that, had the Appellant's wife sustained such a terrible attack, it was not credible the Appellant would have left her alone in Nigeria with three children while he went on holiday in the UK with two of his children. The judge gave adequate reasons for why he attached little weight to the medical evidence at [61] and why the account of the attack on the Appellant's wife in September 2014 was not accepted.
26. The Appellant's claim that his wife was attacked because of his political involvement was undermined by his visit to the UK shortly after the elections and the claimed attack on his wife. If the Appellant genuinely believed he and his wife were at risk of persecution at that time, it was not credible he would have left her and three of his children in order to visit the UK for two weeks. The Appellant's claim is further undermined by his return to Nigeria on two occasions after the attack and threats to his life.
27. The Appellant's explanation that he came to the UK in May 2015 because he did not consider his wife would be at risk at that time supports the judge's conclusion at [69] that there was no risk of persecution to the Appellant or his wife from the opposition party in Nigeria or anyone else. The judge did not misunderstand the evidence and

did not solely rely on section 8 to determine the entirety of the credibility of the Appellant's claim.

28. The judge gave adequate reasons at [61] to [63] and [66] for why the accounts of the Appellant and his wife were not credible. The background material does not establish any risk profile for members or supporters of the APC and the current President of Nigeria is from the APC Party. The tension and violence between the parties at the time of the 2015 elections did not give rise to a well-founded fear of persecution and the Appellant would not be at risk on return in 2021. The Appellant's own actions demonstrate he did not have a well-founded fear of persecution. There was no material error of law as alleged in ground 2.
29. Ground 3: The judge considered the expert evidence at [58] to [60] and gave cogent reasons for the weight he attached to the expert report. The acceptance of a high level of political violence in Osun State during the 2015 elections and the Appellant's low level political involvement with the APC was insufficient to demonstrate that the Appellant had a well-founded fear of persecution or that he would be at risk of persecution on return to Nigeria in 2021. Issues concerning sufficiency of protection and internal relocation were not relevant in this case. The Appellant's human rights claims were not pursued and were not the subject of this challenge.
30. I find that there is no material error of law in the judge's decision promulgated on 26 November 2020 and I dismiss the Appellant's appeal.

Notice of Decision

Appeal 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 him or any member of his 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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 April 2021

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal I make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 April 2021

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