IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000495
First-tier Tribunal Nos:
PA/52064/2020
IA/01752/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 April 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR JEMGBAGH CALEB INGBIAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Winter, instructed by Latta & Co Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at George House, Edinburgh on 3 August 2022

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Gillespie, promulgated on 14 September 2021. That was an appeal against a decision of the Secretary of State made on 16 October 2020 to refuse his protection and human rights claims. The appellant's wife and daughter are dependants on his claim.

2. The appellant's case is that he is of Tiv ethnicity and a Christian. His family owned extensive lands in Benue State, Northern Nigeria which they farmed. In March 2017 he attended a meeting with his father, uncles and others over attacks on their land by Fulani herdsmen as a result of previous attacks. In April, his father and another person were attacked on the farm, his father dying of his injuries on 20 April 2017. The appellant arrived just in time, having been working in Spain for an oil drilling company. He was warned that the herdsmen were out to get him and had been chanting his name at the time of attack. The funeral was attacked by herdsmen who were looking for him. He and his wife were able to

escape. The police were contacted but no action was taken. He went with his wife to her family home in Kaduna.

3. Following that incident, the appellant was sent to Liberia and Ivory Coast until he left for the United Kingdom to study for a Master's degree in oil engineering. His mother-in-law was killed by herdsmen in her home state as well as an uncle and cousin. As a result his wife's family are hostile to him and intent on killing him on the basis that he has brought misfortune to their family.

4. The appellant entered the United Kingdom on 22 September 2017 to study, obtaining a postgraduate certificate in drilling and well engineering at Robert Gordon University. He claimed asylum on 13 February 2019.

5. The Secretary of State did not accept that the appellant and his family had been attacked by Fulani herdsmen; or, that he is at risk due to the general situation in Nigeria; or, that he was at risk from his in-laws. The Secretary of State drew inferences adverse to him from inconsistencies in his accounts of the attacks and considered that his account of being able to escape on the final occasion was not plausible. Inferences adverse to the appellant were drawn also from the late claim for asylum. The Secretary of State considered that in any event, there would be a sufficiency of protection for the appellant and/or that he would not be at risk if he were relocated to other parts of Nigeria and it would be reasonable for him to do so, noting he had been educated to university level with a postgraduate certificate in drilling and well engineering.

6. The respondent did not consider that the appellant met the requirements of the Immigration Rules set out in Appendix FM or paragraph 276ADE(1) and having had regard to the best interests of their child, considered that removal was proportionate and not a breach of Article 8 rights.

7. The judge heard evidence from the appellant and his wife. He also had a bundle produced to him including an expert report from Dr Iwilade relating to the risks which would face the appellant on return to Nigeria, dealing in particular with the threat from Fulani herdsmen.

8. The judge appears to have accepted the appellant's account of the attacks but considered that, taking into account Dr Iwilade's report, the appellant would be able to relocate to, for example Lagos, there being in reality and in light of the expert's opinion no real risk of him being followed there, finding [27] that there is no evidence of sufficient weight to prove that the Fulani herdsmen who allegedly harmed his wife or his wife's family would have any ability to locate and harm them far away from Benue State. He did not accept the appellant's evidence that his primary occupation was that of a farmer. He was educated as an engineer and came to this country to study oil drilling. The judge found the explanation that the appellant would not be able to obtain lawful employment in Lagos as he has no other work experience in Nigeria other than farming to be disingenuous, noting his work history and his purpose of him coming to the UK was not consistent with his activities in the oil industry being secondary to farming. The judge found it was not credible for him to say he was unable to obtain employment in Lagos or indeed elsewhere far away from the family lands in Benue or the Middle Belt of Nigeria given his education and employment background as a graduate engineer working in oil. The judge also found [29] that the appellant was not at risk of harm from his wife's family but even so if internal relocation would be the solution and the couple would be able to live somewhere and have no further contact with their families. The judge also considered [30]

that the appellant's delay in claiming asylum damaged his overall credibility but in doing so he states "I have largely assessed his claim on a practical acceptance of what took place in Benue State because as Mr Swaby said, this case does not stand or fall on credibility". The judge considered also that it would not be disproportionate in terms of Article 8, nor did the appellant's wife's health condition reach the high threshold to engage Article 3.

9. The appellant sought permission to appeal on the grounds that the judge had erred:-

(i) in wrongly interpreting the expert report to have concluded that the risk that the appellant faces from the Fulani herdsmen is isolated to the family farm on the contrary to the expert's opinion on the will and ability of Fulani herdsmen to track down and target individuals;

(ii) in failing to make clear findings as to the risk the appellant would face on return to Nigeria, wrongly conflating risk on return with internal relocation and failing to make a clear finding in the light of the appellant's ethnic and religious profile;

(iii) in finding that the appellant had not adopted an outspoken public position in regard to the activities of the Fulani tribesmen, the appellant's evidence clearly outlining his position on this matter and in complaining to the police on return (see paragraphs 24 and 26) and the comments made directly by the herdsmen indicative that he had an outspoken public position against them;

(iv) in failing to provide clear reasons in light of the finding that the appellant was not at risk from his wife's family and failing to consider the case in the round;

(v) in misdirecting himself with regard to the appellant's wife's medical claims in not following the correct test set out in **AM (Zimbabwe) [2020] UKSC 17**;

(vi) in failing to have regard to the background and country evidence in that he had failed to give appropriate weight to the evidence of the expert in assessing that the appellant had a close connection between the Fulani herdsmen and the Nigerian authorities and the corresponding background evidence in assessing internal relocation;_in failing to engage with the difficulties the appellant's ethnic religious and geographical profile would have in relocating outside his home area as noted in the expert report; in failing to address the expert's evidence that safe relocation from violent hotspots like Benue State to major cities required extensive prior social networks; and, failing to note the registration requirements in Lagos.

10. On 7 January 2021 the Upper Tribunal granted permission on all grounds.

The Hearing

11. I heard submissions from both representatives. I also had before me a detailed response pursuant to Rule 24. I deal with the grounds in turn.

Ground 1

12. Dr Iwilade's report is predicated on the basis that the appellant has given a true account of what happened in Nigeria and as to his activities as a farmer as opposed to being an oil worker. In his report, Dr Iwilade considered that the account of the attacks was plausible in the light of what had happened in the area, as was the account of repeated attacks in the area [84] but it is significant that at [90] Dr Iwilade said "I am unable to comment on whether Mr Ingbian is directly targeted as an individual by Fulani herdsmen or whether this targeting, if it were the case, would translate to an attack anywhere in Nigeria". Whilst he does refer to attacks outwith the area, elsewhere in the report, it is sufficiently clear from reading the report as a whole that the First-tier Tribunal gave adequate and sustainable reasons for concluding that the Fulani herdsmen would not be able to track the appellant, nor would they have the will to do so. In that regard it is of note also that the judge found [21] that the expert had said that there is little concrete evidence that indicates coordination of attacks. Further, for reasons set out below, the judge was entitled to conclude that the appellant had not established a particular profile.

Ground 2

13. Contrary to what is averred, it is not evident that the judge erred in his assessment of the risk to the appellant on return. There is no challenge to the judge's findings regarding the appellant's skill-set and ability to work and in that context, there is insufficient material to show that the appellant would face despite his ethnic and religious profile, a risk on return on that part alone.

Ground 3

14. Despite Mr Winter's attempt to persuade me otherwise in his submissions, it is not arguable that the appellant had, even on his own evidence, adopted an outspoken public position. His evidence is only that he attended a meeting and spoke to the police. It was open to the judge on that basis and for the reasons given to conclude that he had not established a profile and it is telling that his evidence is as was recorded in the decision at [24] that the attackers appeared not to know who he is. It was also open to the judge to note that if the attackers had now obtained possession of the land, and the father had no written title because it was recognised by custom alone, there would be little further purpose in seeking the appellant elsewhere in Nigeria and it was open to the judge to conclude that as a Tiv man minding his business in Lagos and working in the oil industry he would not be at risk on the basis of his ethnicity alone [25], the tenor of the expert report being that attacks are directed to the temporary appropriation of lands in rural areas. The judge also at paragraph 27 directed himself properly as to **Januzi** considering the evidence of the possibility of internal relocation at [26].

Ground 4

15. Whilst the explanation at paragraph 29 for not accepting the risk from the appellant's wife's family is somewhat unclear, it is still nonetheless adequate in all the circumstances of this appeal. It is sufficiently clear from the findings and reading the determination as a whole in the round that the judge had found that the appellant's wife's family would not be able to track them to another part of Nigeria and that is sufficiently clear also from his decision at [29] finding first that he was not satisfied that there would be any risk of harm from his wife's family if in any event they could relocate. Again these findings are adequately and sustainably reasoned.

Ground 5

16. There is no merit in this ground whatsoever. It is sufficiently clear even taking the evidence at its highest that the appellant's wife's ill health was in no way sufficiently serious to engage Article 3 and it is telling that, as Mr Winter accepted, this was not the case put to the Secretary of State or the judge.

Ground 6

17. Contrary to what is averred, and Mr Winter's submissions, it cannot be said that the judge erred in the weight given to the expert's report on the ability of the Fulani herdsmen to relocate the appellant in Nigeria. Weight, as is trite law, is a matter for the judge and the grounds fail to establish that the weight attached by the judge to the factors set out in the expert report were sufficiently serious to be perverse. There is, in any event, in sufficient evidence of active collusion on the part of the state.

18. The judge gave adequate and sustainable reasons for concluding that the appellant would not have the difficulties claimed in the south of Nigeria, noting in particular his educational qualifications and work experience. Further, it is difficult to see how the difficulties of Islamisation of traditionally Christian areas in Northern Nigeria would be relevant to whether the appellant could relocate in the primarily Christian southern part of Nigeria.

19. It was open to the judge to reject the expert's report as to the difficulties that there would be in a safe relocation and he gave adequate and sustainable reasons for doing so. The expert's opinion, in particular at paragraph 39, is predicated on the assumption that what he, the appellant, had told him was true. It does not take account of the findings with regard to education and work experience, that is it does not take account of the particular characteristics of the appellant and accordingly, was a finding open to the judge who had clearly not believed the appellant's account and major aspects and gave adequate and sustainable reasons for doing so. Further, there is simply no basis for what is averred at ground 6(iv). Mr Winter made no submissions on this issue but even if the judge's attention was drawn to the requirement to register in a town in which they reside within Lagos to obtain status, there was no inability that the appellant would be unable to do so or that this material would be available to the herdsmen or that they would in any event seek to track him through this means.

20. Accordingly, for these reasons, none of the grounds are made out. I therefore find that the decision of the First-tier Tribunal did not involve the making of an error of law affecting the outcome.

Notice of Decision

(1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it. No anonymity order is made.

(2) Note: this decision was dictated on 3 August 2022 but, owing to an administrative error, was not typed until 6 April 2023.

Signed Date: 6 April 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul