



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10509/2019**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On the 5<sup>th</sup> October 2022**

**On the 4<sup>th</sup> January 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN  
DEPUTY UPPER TRIBUNAL JUDGE S H STOREY**

**Between**

**ANE  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**REPRESENTATION**

For the Appellant: Mr J M Rene, Counsel instructed by JDS Solicitors  
For the Respondent: Ms Cunha, Senior 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 the appellant or any member of the appellant's 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

### Background

1. This is a re-hearing of the appeal of the appellant, a national of Nigeria, against a decision of the respondent made on 14 November 2019 rejecting his claim for asylum and humanitarian protection. The basis of the appellant's original application for asylum lodged in October 2018 was twofold. He claimed that he feared he would be killed on return by his cousins who blamed him for the death of their father over an ongoing land dispute. He also claimed he feared the police and government on return due to his participation in the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) when in Nigeria and in the Indigenous People of Biafra (IPOB) in the UK. He said he was an active member of IPOB in the UK.

2. In relation to the appellant's claimed fears arising out of the land dispute, the respondent considered he had provided insufficient evidence to suggest that it was ongoing or any evidence that the death of his father's brother was due to him. In relation to the appellant's involvement with MASSOB, the respondent noted that on his own account the appellant was no longer a member of it. As regards his claimed membership of IPOB, the respondent noted that he had failed to produce satisfactory evidence of this; that he had also failed to provide evidence of attendance at meetings or rallies in the UK prior to the date of his asylum claim; and that the photos he had produced to show his attendance at meetings and rallies at most showed that he had attended some meetings or rallies, not that he had been involved in organising them.

### Procedural history

3. The appellant appealed against this decision on four grounds, namely that:

- a) the respondent had failed to consider the appellant's protection claim adequately or at all;
- b) her assessment of credibility was flawed;
- c) she had failed to attach adequate weight to the documentary evidence before her; and
- d) she had failed to place adequate weight to other evidence in assessment of future risk.

4. The appellant's appeal was dismissed by Judge Wilsher, sitting in the First-tier Tribunal Immigration and Asylum Chamber on 26 February 2020. The judge accepted that the appellant was involved with MASSOB in Nigeria as a member from 2000 onwards until coming to the UK in 2009, including helping with organising demonstrations at a local level; and that he was genuinely committed to the cause of Biafran independence.

5. With regards to the appellant's sur place activities, the judge accepted that he had been a member of the IPOB since 2018 and had not fabricated his interest in, or support for, IPOB. However, the judge concluded that he had not been a member of IPOB as claimed since 2016 and that he would not engage with the Biafran cause on return 'due to indifference'.

6. In a decision sent on 12 October 2021, Upper Tribunal (UT) Judge Sheridan decided that Judge Wilsher had materially erred in law in failing to explain the basis for his finding that the appellant would be indifferent to, and uninterested in expressing support for, Biafran independence on return to Nigeria. UT Judge Sheridan decided that none of the findings of Judge Wilsher could be preserved.

## **Evidence**

### ***The appellant***

7. In his witness statement dated 3 February 2020 the appellant maintained that he had joined IPOB in 2016 but documentary evidence that could help him prove this had unfortunately been lost in storage in a friend's garage. He stated that he was no longer a member of MASSOB and did not now believe that his cousins remained a threat to him.

8. In his supplementary witness statement, the appellant stated that since the hearing on 3 February 2020, he had continued to be actively involved in IPOB activities and that he was a member of its Welfare/Security Committee both at local chapter (Barking and Dagenham) and national level. He said that he had been involved in virtually all of the organisation's activities since the Covid-19 lockdown. He then identified photos relating to: 'personal evangelism in East London, 2021'; Hero's Day at Trafalgar Square, 20 May 2022; AGM meeting in Leicester, 10 September 2022; protest at Westminster, 8 April 2022; Biafra Education Awareness Dissemination (BEAD) at Goldsmith University, 20 September 2022; various meetings (Feb—May 2022); rally at Milton Keynes, 27 August 2022; and function at Woolwich, 2022; London Igbo Day, 16 July 2022. He further stated that the activities of the organisation were mainly limited to virtual meetings during the Covid-19 lockdown period. He wrote that he feared for his life if returned to Nigeria. He said that the Nigerian government have escalated their activities in Anambra State where he comes from and 'a good number of our members have recently been killed or displaced'.

9. At the re-hearing on 5 October 2022 the appellant gave evidence. He confirmed that his previous witness statements were true and correct. He identified individual photos as evidencing his attendance at a rally in various locations mainly in London in 2018-2022. He said he was part of a team that is responsible for rallies and the welfare of members and that he was part of the Executive. He stated that copies he had submitted of

his Facebook posts referring to the struggle for Biafran independence had been posted in 2017-2021.

10. In addition to the appellant's evidence before us, we also have before us the record of the evidence he gave before Judge Wilsher in February 2020 as recorded at paras 3-4.

11. Cross-examined by Ms Cunha, he said that Church members had helped with money so he could attend demonstrations. The numbers of people attending rallies vary but can be 100-200. He had demonstrated against killings in Nigeria in 2015, but at that time he was not part of IPOB.

**Witness - Dr Justice Ukachi-Lois**

12. We next heard from Dr Justice Ukachi-Lois who confirmed his written statements were true and correct. Before us Dr Okachi-Lois confirmed that he was a purely personal witness. He was national co-ordinator of IPOB and had given evidence in asylum appeals previously. He added that if a person does not belong to IPOB, he would not support them in their asylum appeals. He said that the appellant had told him he was a member of MASSOB in Nigeria. He described how he had bumped into the appellant at gatherings and at a rally in May 2019. Dr Okachi-Lois told us he receives intelligence from people who work for IPOB, that in Nigeria they called IPOB members terrorists, and that it was unsafe for IPOB members in the UK to return to Nigeria. According to information provided to him, low profile members disappear without trace, many members were languishing in prisons and no one has access to those in detention.

13. In his witness statement of 3 February 2020, Dr Ukachi-Lois had recalled the appellant attending a 30 May 2019 Heroes Day rally at Trafalgar Square where the appellant had helped organise events. On that occasion Dr Okachi-Lois had seen officials of the Nigerian Embassy taking photos of his members. IPOB rallies in the UK typically had been 40-60 in attendance. He referred to two Biafrans who had had difficulties on return to Nigeria, including a UK-based blogger. Dr Okachi-Lois believed that following the designation of IPOB as a terrorist organisation, all members, supporters and associates of IPOB are at risk, regardless of their status.

14. In his recent supplementary witness statement, he stated that he was the National Coordinator of IPOB before March 2021, when he moved to become the Director of Medical Corps Worldwide of the Organisation. He recalled meeting the appellant at several events and rallies organised by the organisation since the last hearing. These included: Biafra Remembrance Day held on 30 May 2022 at Trafalgar Square; BEAD on 20 August 2022 at Goldsmith University, London; the AGM in Leicester on 10 September 2022 and London Igbo day 16 July 2022. He stated that the appellant was a committed member of the organisation and he feared for the appellant's safety if he were removed to Nigeria. He added that the incidence of torture, killings and persecution being meted out to IPOB

members in Nigeria was 'rife especially in the appellant's state of origin -Anambra state'.

**Witness - Mr T Asanye**

15. We next heard from Mr Asanye who confirmed his written statement as true and correct. He declared that he was the Zonal Coordinator of Barking/Dagenham Chapter of IPOB. He had been a member of IPOB since 2015 and was co-ordinator of the Barking and Dagenham Unit. He had known the appellant for 3-4 years. He said he was an asylum seeker, claiming asylum for similar reasons to the appellant.

16. Mr Asanye stated that the appellant attends his chapter of the organisation where he is a member of the Welfare/Security Committee of the Organisation. He was aware that the appellant was also on a similar committee at the national level. He said that the appellant's duties include paying his dues, checking on members in relation to their welfare and well-being, organising rallies and activities, soliciting support from the public and any other duties that he might delegate to the appellant. He said he was aware that the appellant had attended virtually all the meetings of the organisation held remotely during the Covid-19 lockdown period as well as meetings, rallies and activities attended personally after the lockdown. The latter included: Hero's Day celebrations in Trafalgar Square on 30 May 2022; New Year Festival in London on 16 July 2022; and a protest at Westminster on 8 April 2022. He stated that he feared for the appellant's welfare if he is removed to Nigeria where IPOB members were being tortured, persecuted and killed.

**Written evidence and other documentary evidence**

17. Written evidence specific to the appellant includes the aforesaid report by Dr Uzo-Peters dated 30 January 2020, a Nigerian lawyer and legal academic. This report refers to persecution of IPOB members and supporters of Biafra independence in Nigeria. It noted that IPOB has been outlawed as a terrorist organisation in Nigeria and that membership is a crime. She considers that the evidence relating to the appellant in terms of his social origins was consistent with the profile of Biafran separatist activities. She found his account of involvement with MASSOB to be consistent with what is known about this organisation's status and structure at the time. She considered it plausible that the appellant became involved in the UK with IPOB because of the high-profile arrest of the IPOB leader Mr Kanu, in Nigeria. She considered it plausible that the authorities in Nigeria would be aware of the appellant's involvement in IPOB and that if they were, he would face arrest on return. She referred to the Nigerian military declaring that pro-Biafra groups will be monitored.

18. Other documentary evidence on file specific to the appellant includes:

- a) a number of copies of Facebook posts made by the appellant;

b) a letter from IPOB's UK deputy national coordinator, Maxi Valentine Ebuzoeme dated August 2019 stating that the appellant is a 'committed and active member' and a 'very visible and active believer in the right of the indigenous people of Biafra to self-determination;

c) a letter from Jennifer Chime Abazuwa dated 27 January 2020 (attesting that she knows the appellant to be a bona fide member of the Biafra movement who both in and out of the movement wears Biafra clothing, hat and wrist band and that he has been an advocate for Biafra members on the social media where he posts pictures of gatherings);

d) a letter from Miss Toochukwu Jennifer Abazuwa dated 28 January 2020 (attesting that the appellant had stored some of the appellant's property in her garage which was subsequently damaged by rain);

e) a letter from Chief Ike Chukwu Nice Nwokoro, IPOB National Coordinator dated July 29, 2022 (which states that the appellant is a member of IPOB's Welfare/Security Committee at both zonal and national levels. It also states that in the last few years the Federal Government has conducted a brutal clampdown on self-determination activist. In June 2021 the IPOB leader worldwide, Mazi Nnamdi Kanu was the subject of extraordinary rendition from Kenya to Nigeria and had been held under torture by the State Secret Police (DSS)); and

f) numerous photos; several receipts for monthly dues for IPOB dated 2019-2022.

19. The background materials on file include an Amnesty International report dated 24 November 2016 and an Amnesty International Press release dated 5 August 2021. The latter reported eyewitnesses telling Amnesty International that the security forces have used excessive force, physical abuse, secret detentions, extortion, burning of houses, theft and extrajudicial killings of suspects and that human rights groups had estimated that the death toll of violence between January and June 2021 in Anambra, Imo, Abia and Ebonyi States might run into the hundreds. Many of the victims' relatives told Amnesty International that they were not linked to the Eastern Security Network ESN, the armed wing of IPOB. Additionally, the report noted arrests in Imo state of at least 400 people allegedly linked to ESN violence. This report also noted that the principal concern of the security forces has been the killings and violence widely attributed to the ESN. Finally, there was a Guardian Nigeria piece dated 18 August 2022 titled 'IPOB raises the alarm over arrests and detention of Biafran passengers at Igbo airports.'

20. Also among the background materials produced in this case is a report from Agnes Callamard, UN Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, dated 2 September 2019, in which she referred to 'the repression of the Indigenous People of Biafra (IPOB)'. Her

report states that since 2015, members of IPOB have faced arbitrary arrests, torture and extrajudicial executions, predominantly in the context of demonstrations. Between 2015 and 2016, it is alleged that law enforcement officials killed at least 100 IPOB members in different events in Aba (Abia State), and Awka and Onitsha (Anambra State). On 29 and 30 May 2016, during a demonstration, the Nigerian military opened fire on IPOB members and bystanders in Onitsha. At least 60 persons were killed and over 70 injured, mainly shot in the back. (para 47). She notes that in September 2017 the authorities launched a military operation (as part of Python Dance II) resulting in the killing of 150 persons. As a result, the IPOB leader, Nnamdi Kanu went into exile. The Federal Court in Abuja proscribed IPOB and designated it as a terrorist group. On March 2018, the African Commission on Human and Peoples Rights (ACHPR) issued Provisional Measures asking the Federal Government of Nigeria to rescind its decision branding IPOB and its members as terrorists. She was not aware that the Government had taken any steps in response (paras 48-52). The report dated 12 March 2018, detailing the findings of the said Commissions noted that the ACHPR had said that such Provisional Measures were necessary since if the allegations made by Mr Kanu and IPOB were true, they would constitute a gross violation of the provisions of the African Charter.

21. The EASO Country Guidance on Nigeria dated October 2021 notes at 1.3.3. that:

Since August 2020 violence between IPOB and the Nigerian security forces has escalated, with reported killings of civilians and retaliatory security incidents. Violence has taken the form of armed clashes and IPOB has also been accused of attacks against police stations. In December 2020, IPOB established a paramilitary wing, the Eastern Security Network (ESN) and armed clashes with Nigerian state forces ensued. A ceasefire was declared in January 2021, however clashes continued.

22. At 2.3 this guidance states:

In 2020 and 2021, the Nigerian government has been deliberately targeting persons suspected to be IPOB members. Since August 2020, violence between IPOB and the Nigerian security forces has escalated, with reported killings of (suspected) members of the group and retaliatory security incidents. In December 2020, IPOB established a paramilitary wing, the Eastern Security Network (ESN) and armed clashes with Nigerian state forces ensued. The security situation in relation to IPOB in South-East Nigeria, is rapidly deteriorating, as several incidents in Abia, Imo, Ebonyi, and other south-eastern states have shown. In 2021, security forces increased operations against ESN and in January of the same year, IPOB declared that the 'second Nigeria/Biafra war' had begun. On 18 February 2021, helicopters and hundreds of troops were deployed in Imo state, razing several ESN camps

23. In this same section this guidance concludes:

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: level and nature of involvement, visibility of the applicant (e.g. high profile, prior arrest, media appearance), participation in gatherings or manifestations, etc.

24. The Country Policy and Information Note on Nigeria: Separatist groups in the South-East, Version 3.0 March 2022 states that:

2.4.20 While there are reports that some IPOB supporters and leaders arrested have been charged with treason, sources do not indicate whether these cases have led to prosecutions and convictions for treason or other crimes. Sources claim that some of those arrested have been held without charge and incommunicado, but do not provide specific information about the length or treatment of members or supporters of IPOB in detention (see [Clashes between state and secessionist groups](#), and [Treatment of IPOB](#)).

2.4.21 IPOB is a proscribed terrorist organisation in Nigeria and has been implicated in inciting and acts of violence against the state and other actors. The government has a legitimate interest in pursuing and arresting persons who are, or are suspected of being, involved with or supporting the group. In general, IPOB supporters or members who are fleeing prosecution or punishment for a criminal offence, including human rights violations, are not likely to be refugees.

2.4.22 However, prosecution may amount to persecution if it involves victimisation in its application by the authorities. For example, if it is the vehicle or excuse for persecution or if only certain groups are prosecuted for a particular offence and the consequences of that discrimination are sufficiently severe. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also amount to persecution (see the section on prosecution in the Asylum Instruction on [Assessing credibility and refugee status](#)).

2.4.23 Where a person is able to demonstrate that because of their links to IPOB they are likely to face prosecution or punishment which is disproportionate to the crime committed or discriminatory; or faces detention in degrading or inhuman conditions or torture then such treatment is likely to amount to persecution (see country policy and information note, [Actors of protection](#) and [Country Background Note](#) for more information about the criminal justice system, including detention conditions).

2.4.24 Each case will need to be carefully considered on its facts, taking into account the individual's behaviour and actions, previous state interest and conduct of family members.



25. Under a sub-head Sur Place activity, this report states:

2.4.28 Open-source material suggests that the Nigerian government may monitor groups it considers a threat in Nigeria and that it may have blocked websites advocating 'Biafran' independence. However, there is no specific information in the sources consulted indicating that the Nigerian government monitors the activities of members of the Nigerian diaspora in the UK, including supporters of 'Biafran' separatist groups (see [Separatist groups outside of Nigeria](#) and [Bibliography](#)).

2.4.29 Decision makers must consider each case on its facts, taking into account:

- the legal status, profile, size, and organisation of the group/organisation to which the person belongs and its activities
- whether a person in the UK would wish to continue their activism if returned to Nigeria (if not, why not)
- whether the group/organisation has a presence in Nigeria as well as outside of the country and any evidence that it is being monitored by the government
- the person's profile and political activities (including those online) and relevant documentary or other evidence
- the profile and activities of family members
- past treatment of the person
- evidence that their activities in the UK may have come to the attention of the Nigerian security agencies.

2.4.30 Decision makers will also need to take into account whether the person supports and is active on behalf of IPOB, which is a proscribed group in Nigeria, and whether they fear prosecution rather than persecution.

2.4.31 The onus is on the person to demonstrate that they are of interest to the government because of their profile and activities and are at risk of serious harm or persecution.

## **Closing Submissions**

### ***Ms Cunha - for the respondent***

26. In closing submissions Ms Cunha stated that she relied on the respondent's reason for refusal. She also relied on the respondent's Rule 24 response dated 24 September 2020 and the respondent's skeleton argument dated 5 October 2021 produced for the error of law hearing in October 2021. She urged the panel to find the appellant's evidence about his involvement in IPOB activities in the UK implausible and lacking in

credibility. She said he was inconsistent about whether he lives in or travels to Gillingham. There was no evidence to support his claim that the appellant paid membership subscriptions via help from friends. She considered the appellant had made up his case after he was arrested in 2018. His leafletting activities do not demonstrate that he is a pro-Biafran independence propagandist. She asked that we should also find the evidence of the doctor about what happened to pro-independence people on return to Nigeria unreliable.

27. However, she asked that we regard the evidence of the second witness, Mr Asonye, as genuine and credible. Referring to the CPIN report, she asked the panel to conclude that this indicated that action taken by the authorities in Nigeria against pro-independence activities was more akin to prosecution than persecution and was directed at riots and violent incidents rather than peaceful protests. She said that people are not arrested purely for being IPOB members and that the only IPOB members targeted were high-profile members.

### ***Mr Rene - for the appellant***

28. Mr Rene asked that we find the appellant and his witnesses credible. Given Ms Cunha's own submission that we find the second witness credible, it was significant that this witness had said the appellant was a member of IPOB and that his life would be at risk on return to Nigeria. Mr Rene asked that we also find the doctor's evidence reliable and reminded us that he corroborated that the appellant is a member of IPOB. There were no significant discrepancies said Mr Rene in the evidence of the witnesses about where the appellant lived or how asylum seekers paid subscriptions to IPOB.

29. Mr Rene asked us to regard the CIPIN report as demonstrating that both MASSOB and IPOB members faced serious difficulties in Nigeria. He asked that the expert report of Ms Adure Uzo-Peters should be accorded significant weight and reminded us that according to the expert's evidence, it was plausible that the Nigerian authorities had knowledge of adverse Facebook posts and so would be aware of the appellant through his Facebook posts.

### **Findings and Conclusions**

30. We must assess the appellant's case taking account of the evidence as a whole and asking whether it is reasonably likely that he will face a real risk of persecution on return.

31. The findings we reach on the credibility of the appellant's account are mixed. We identify below aspects of his account that we accept and those we reject. As regards his two witnesses, we found both Dr Justice Ukachi-Lois's and Mr T Asanye's description of their involvement with and knowledge of the appellant to be reliable. Each was able to give precise

details and what they described tallied with the photographic evidence regarding the appellant. We were unable to attach significant weight, however, to Dr Justice Ukachi-Lois's assessment of what the situation is in Nigeria and what the appellant's circumstances would be if returned. He was vague about his own sources and too prone to making sweeping statements.

32. Notwithstanding Ms Cunha's submission that we attach no weight to the expert report of Ms Adure Uzo-Peters, we consider that in large part her report draws on reputable sources and reflects a balanced approach. On some matters, however, as we will address later, we consider she was offering speculation rather than analysis.

33. Bearing in mind that originally the appellant based his asylum claim on two grounds, one of which related to fear of persecution by cousins who blamed him for the death of their father following a land dispute, we note that the appellant has now himself stated that he no longer relies on this ground, as he does not consider that there is a continuing risk from such persons. His case turns solely therefore on his claimed political involvement with Biafran independence organisations.

34. In relation to his claimed membership of MASSOB from 2000 until he left Nigeria in 2009, we note that this was not expressly disputed by the respondent in the reasons for refusal letter nor did Ms Cunha specifically challenge the appellant's evidence relating to this period. Even though no findings of fact made by Judge Wilsher have been preserved, we find ourselves of similar mind in relation to his assessment that the appellant was involved with MASSOB before coming to the UK and was involved at a local level for several years including by helping to organise demonstrations and that, prior to leaving Nigeria, he was genuinely committed to the cause of Biafran independence.

35. The appellant's evidence regarding this period in his life has been broadly consistent and he was able to give significant details of his activities. Like Judge Wilsher, however, we find that during this period he did not face a real risk of persecution. We are unable to accept that he was, as claimed, the subject of a police search in late May 2009 as he made no mention of this in his asylum statement dated 13 March 2009, and on his own account he was never detained. He did not leave Nigeria until 26 August 2009 and during this three-month period he was able to apply for a visa and was also able to leave the country on his own passport without difficulty. We note that in his most recent evidence, the appellant has not sought to substantiate his claims to have been the subject of adverse police attention in 2009. Nor (as Judge Wilsher noted), did he claim asylum on arrival in the UK. His claim for asylum was in fact made on 12 November 2018, shortly after his arrest on 25 October 2018.

36. However, his prior history of involvement in a pro-Biafran independence organisation (MASSOB) is relevant when it comes to assessing his sur place profile, since paragraph 339P of the Immigration Rules lays down that:

A person may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin and/or activities which have been engaged in by a person since they left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

37. As regards the appellant's activities since arrival in the UK, we note that there is very little evidence that he continued to take an active interest in Biafran independence between 2009-2018. However, we note that none of his witnesses or letters of support specifically identify the appellant as being active in IPOB before 2018/2019. Whilst it may well be that prior to 2018 the appellant lost certain documents when these were stored in a friend's garage, we are not persuaded that they included evidence of his membership of IPOB between 2016 - 2018. We consider that if he had been a member during that period, he would have been able to produce a letter from someone in the organisation who expressly vouched for that claim. We note that during his asylum interview he was asked if he could provide a letter to confirm the date, he started his role as an IPOB member. He said that it would be possible (Q132) but he has failed to do so.

38. We also count against the appellant that he delayed in claiming asylum. On his own account, if he had joined IPOB in 2016, he would have known that this was a basis for claiming asylum at that time. We do not accept that he was unaware of the possibility of claiming asylum at that time, as he had legal assistance in relation to an EEA claim.

39. On the other hand, we are satisfied that he has been a member of IPOB since 2018. Ms Cunha herself asked us to accept as genuine and credible the evidence of the second witness, Mr T Asonye, who described the appellant as an 'ardent and committed member of [IPOB] who had attended virtually all the meetings of IPOB held remotely during the Covid-19 lockdown period as well as several events in 2022'. He further stated that the appellant's duties included 'organising rallies and activities, soliciting support from the public...' Mr Asonye expressly vouched for the appellant's membership in 2019. The appellant has also produced evidence of membership dues paid dating from 2019.

40. In addition to the evidence of the second witness vouching for the appellant's active role in IPOB activities in the UK, we note that the photographic evidence does tally with his own and his witnesses' evidence of his attendances. His own evidence regarding these activities has been consistent and detailed. The only issues Ms Cunha took with the appellant's credibility related to whether he lived in Gillingham and whether he had had help from friends paying his IPOB subscription dues. We consider that whilst his evidence on both of these issues was vague, they are at worst minor inconsistencies.

41. Accordingly, we accept that the appellant has been an active member of IPOB in the UK since 2018/2019. The level of his involvement is further supported by his Facebook posts. We agree with the observations made by the respondent in the reasons for refusal letter that his Facebook evidence must be treated with caution as it was simply a photocopy of selected entries.

42. We also bear in mind the guidance given by the Upper Tribunal on Facebook posts in **XX (PJAK - sur place activities - Facebook) Iran CG** [2022] UKUT 23 (IAC). At the same time, we note that the appellant's entries are highly consistent with what is known from the background country information about the views of those campaigning for Biafran independence and also consistent with the appellant's and his witnesses' account of that movement's perceptions and stated objectives. We would agree with the respondent that the evidence does not indicate that the appellant is a political journalist or effective political writer or 'propagandist' in any defined sense. But it does, in our judgement, indicate that he is an active organiser and has a profile as such. Whilst in other respects our assessment of the appellant's UK activities is similar to that reached by Judge Wilsher, we do not agree that 'there is no suggestion that he has attained any kind of profile'.

43. One key issue in this appeal is whether or not the appellant's sur place activities are to be viewed as opportunistic. Para 339J of the Immigration Rules provide that assessment of a protection claim requires taking into account, inter alia:

(iv) whether the person's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for making a protection claim or a human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if returned to that country.

44. In this connection we count against the appellant that, even on his own account, he was not involved in any pro-Biafran independence activities in the UK between 2009, when he arrived in the UK until he claimed to have joined IPOB in 2016 - a period of over 10 years. Further, as noted by the respondent, he was not able at interview in July 2019 to demonstrate much knowledge of IPOB. He also claimed that his role in MASSOB was bigger than his involvement with IPOB. We find that he has not been able to substantiate his claim to have been a member of IPOB since 2016 and that accordingly his actual involvement seems to have commenced shortly after he was arrested in 2018. We consider that in view of the above there has been an element of opportunism in the appellant's account of his IPOB activities in the UK.

45. However, we are equally satisfied that, in view of his prior active involvement in pro-Biafran independence activities when in Nigeria between 2000-2009, his joining of and active involvement in IPOB from 2018/2019 onwards does represent a genuine recommitment to pro-Biafran independence and reflects the realities of his life as a Biafran in

the UK, involved in interconnected Christian and political activities together with fellow-Biafrans. We reiterate the point that Ms Cunha asked us to find the evidence of the second witness credible and genuine and that he vouched for the strength of the appellant's commitment to the IPOB cause.

46. We note that in any event paragraph 339J (iv) of the Immigration Rules requires decision-makers, even when satisfied that an applicant has engaged in sur place activities 'for the sole or main purpose of creating the necessary conditions for making an asylum claim or establishing that he is a person eligible for humanitarian protection or a human rights claim', to still assess '*whether these activities will expose the person to persecution or serious harm if he returned to that country.*'

47. The respondent in her reasons for refusal letter has doubted that the appellant's activities in the UK will be known to the Nigerian authorities. Whilst we lack full evidence on this, we cannot accept the respondent's view on this matter. It is clear from the background country information (including the CIPIN Note of March 2022), that:

a) the Nigerian authorities view IPOB as a significant threat to the territorial integrity of the Nigerian federal state . They have branded the organisation as a proscribed terrorist organisation without differentiating between its main body or its armed wing. The security forces have taken active steps on a number of occasions since 2016 to crack down on pro-Biafran independence bodies, IPOB in particular; and

b) given that the appellant has been involved in the UK in rallies including ones in Trafalgar Square, it would be naive to think that Nigerian officials in the UK were not keeping a close watch on IPOB members, particularly since the IPOB leader, Mr Kanu, had been in the UK before returning to Nigeria in 2015. We attach weight to the CIPIN mention that the Nigerian military recently declared that the activities of pro-Biafran groups would be monitored and also to Dr Uzo-Peter's statement in her report that the proscription of IPOB has made it more likely that the Nigerian authorities would monitor members of IPOB in other countries.

48. Having regard to the CIPIN Note's guidance at 2.4. 29 (as well as the EASO guidance), we consider that we must consider each case on its facts, taking into account the following:

- i) the legal status, profile, size, and organisation of the group/organisation to which the person belongs and its activities;
- ii) whether a person in the UK would wish to continue their activism if returned to Nigeria (if not, why not);
- iii) whether the group/organisation has a presence in Nigeria as well as outside of the country and any evidence that it is being monitored by the government;

- iv) the person's profile and political activities (including those online) and relevant documentary or other evidence;
- v) the profile and activities of family members;
- vi) past treatment of the person; and
- vii) evidence that their activities in the UK may have come to the attention of the Nigerian security agencies.

49. Having regard to such matters, we consider that when assessing risk on return the appellant is to be viewed as someone who has developed since 2018/2019 a renewed and deepened commitment to the Biafran pro-independence cause. In our assessment he will on return seek to involve himself in IPOB activities in his home State of Anambra. We do not need to consider *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 31 principles since we consider it unlikely, he would seek to abstain from involvement in IPOB activities on return. Projecting his established profile in the UK, he will be someone who on return will not be (and will not be perceived to be) a high-profile member of IPOB. However, he will be, and will be perceived to be, someone having a role as an organiser of pro-Biafran independence rallies and similar events.

50. We do not consider we have sufficient information to reach a firm conclusion on whether the appellant would face arrest or detention at the airport on return. Our finding that the Nigerian authorities will know of his involvement with IPOB in the UK is a factor indicating that he might face such difficulties during the return process. On the other hand, there is a lack of firm country evidence demonstrating that the authorities at the airport consistently arrest and/or detain IPOB members or supporters. However, we do not consider that this is determinative of the question of whether the appellant would be at risk on return.

51. We agree with the respondent that the background evidence does not establish that mere membership of IPOB will place a person at risk of persecution in Nigeria. We also agree with the respondent that the appellant was not able to demonstrate knowledge of IPOB activities in his home area and gave no specific evidence of how he might continue such activities himself.

52. At the same time, we disagree that only high-profile members of the organisation would be at risk. The background country evidence indicates that in 2017 not only did the Nigerian government proscribe IPOB but also undertook an operation called 'Python Dance II' designed to target IPOB members and supporters. It is clear from the CIPIN and EASO sources that the Nigerian authorities have become more concerned about IPOB since its leader's request that the whole south east of Nigeria should boycott the presidential election in February 2019. The security forces seek to target those known to be in some way connected to the armed wing, even if they are not actually so connected.

53. This last observation is relevant to the issue raised by Ms Cunha of whether any government action taken against the appellant would

constitute 'prosecution rather than persecution'. We do not consider that a good point. Firstly, there is no evidence to suggest that the appellant himself would involve himself in IPOB's armed wing. His pro-independence activities both when back in Nigeria and in the UK have been consistently confined to peaceful protests and similar activities. Secondly, whilst it is certainly true that the EST has conducted violent attacks on Nigerian police and security forces and possibly sometimes civilian targets, it is equally clear that the security forces have targeted many who have no connection with the EST.

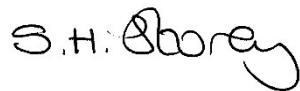
54. We note that the respondent does not seek to argue in the appellant's case that he would be able to internally relocate within Nigeria without continuing risk or undue hardship.

### **The Decision**

55. For the above reasons, we conclude that the appellant's appeal should be allowed on the basis that his removal from the UK would breach the UK's obligations under the Refugee Convention.

**Signed:**

**Date:** 23 December 2022



**Deputy Upper Tribunal Judge S H Storey**