IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003919

First-tier Tribunal No: PA/54998/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

26th February 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IAA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Maksud instructed by IIAS Solicitors.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 14 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision promulgated on 23 November 2023 the Upper Tribunal found material error of law in the decision of a judge the First-tier Tribunal who allowed the appellant's appeal against the decision to give directions for his removal to Nigeria, following the refusal of his claim for asylum and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Nigeria born on 20 March 1963. The findings relating to the appellant's nationality and his Christian faith are preserved.

3. The appellant's home area is in Osun State in south-west Nigeria, an area mainly populated by the Yoruba people.
4. The appellant has provided in his bundle documents the claims originate from the schools he attended. One of these, dated 11 August 1977, is described as a Primary School Leaving Certificate recording his attendance at the Nawair-ud-Deem School, Ikirun, and a further document described as a Primary School Testimonial naming the same school, recording attendance for an individual aged 14 years between 1969 to 1974 and stating previous attendance at RCM School Iferedo in 1968. That document is dated 12 July 1974.
5. The appellant, having been born in 1963, would not have been 14 years of age in 1974. He would have been 11 which Mr Bates submitted cast doubt upon whether the documents produced actually relate to the appellant and are genuine documents.
6. The appellant claims he faces a real risk as a result of his conversion from Islam to Christianity and has provided a letter which is undated, contains no address for the sender, and is written in English, stating he was born into a Muslim family, and enrolled at Nawair-ud-deem primary school, which is a Muslim school, in the year 1968 until 1974, and later proceeded to secondary school. There is nothing to support the identity of the author of the letter who was not made available for cross-examination, or even to indicate whether the individual is in Nigeria or in the UK. I consider the weight I can give to this evidence together with the other evidence in the round.
7. The appellant has also provided a photograph of an individual holding up what purports to be a letter written in English. He claims that person is his mother, but the document is illegible, meaning little weight can be attached to it.
8. The appellant has also provided a letter written by Imam Akinola O.S from the Owokoniran Mosque whose address is stated to be in Lagos, Nigeria. The letter is dated 20 February 2015 and reads:

   > I am writing as the Imam of the above named mosque to recommend IAA was born into an exact Islamic home at [address anonymized].
   > He was from an Islamic home and has been practising the religion since the time that I known him till now.

9. Although the letter does not specify from when the Imam knew the appellant it is not the appellant's case that he was practising Islam by 20 February 2015. When the discrepancy between the content of the letter and the appellant's own evidence was put to him by Mr Bates his reply was to claim that the Imam did not know that he had left Nigeria, was in the UK, and converted. That statement does not explain why, if this is a genuine letter, it appears the Imam is stating he has personal knowledge that the appellant practised the Islamic religion until the date of that document. Although the appellant was not in Lagos the author of the letter appears to know he was in Salford in Manchester, as his address is shown on the document, and was therefore aware that the appellant was not in Nigeria. I find the contradiction with the appellant's evidence in relation to his claim not to be practicing Islam and the claim he was undermines the weight I can give to the letter, which is little.
10. The appellant has also provided copies of notification of results for examinations taken by him, issued by the West African Examinations Council, a number of which are not fully legible as a result of copying issues, which indicate dates of issue in June 1980, August 1981, March 1985, and January 1988.
11. The appellant's immigration history includes a claim he entered the UK on 4 March 2001 as a visitor but overstayed. He applied for leave to remain on the basis of his Article 8 rights on 20 February 2012 but was refused without a right of appeal on 19 March 2013.

12. The appellant made a further claim for leave to remain on the 10 year route based on his family/private life on 10 January 2014 which was refused without a right of appeal on 7 March 2014.
13. The appellant was served with form IS151A as an overstay on 28 March 2014 and claimed asylum on the same day which was refused on 11 July 2014.
14. The appellant appealed the refusal of his protection claim which was dismissed on 4 September 2014. The appellant became appeal rights exhausted on 23 January 2015.
15. Further submissions dated 4 November 2015 were refused without a right of appeal on 11 November 2015. Further submissions on 27 January 2016 were refused without a right of appeal on 29 January 2016.
16. Further submissions of 1 October 2020 were refusal which forms the basis of this appeal.
17. In accordance with the Devaseelan principle the starting point has to be the findings of First-tier Tribunal Judge Foudy in a determination dated 4 September 2014, in which it is written:

"The Appellant gave lengthy evidence in the hearing and confirmed that the account he had given in his witness statement was true and accurate. The Appellant claims that he is single however after some persuasion he reluctantly agreed that he was indeed legally married to a woman in Nigeria and that he has not divorced her. The Appellant's reluctance to admit to this fact casts doubt upon his overall credibility. As Ms Masuku did not attend the hearing I do not know whether she is aware that her fiancé is already married. (p.16)

I find it incredible that the Appellant was born into a Muslim family as he showed a negligible knowledge of Islam in his interview. Given that he was 22 years old when he abandoned the religion he was born into, and given that he claims that his family were devout, if not fanatical, Muslims, it is incredible that he has retained almost no knowledge of his first religion. Islam is not just a religion but an entire way of life. I cannot believe that a man who lived for 22 years in a devout Muslim home would not have a reasonable recollection of the faith's daily rituals and observances. (p.17)

I also find that, by the Appellant 's own evidence, he was able to live safely in Lagos for a number of years. He told me that Lagos was about 50/50 Christian and Muslim" therefore he would surely be able to live safely there where there is a large Christian population. Moreover, although he asserts that he was attacked because he was a Christian, in cross-examination he admitted that he was robbed in the attacks and that only 2 of the 6 men who attacked him were Muslims. I find that the Appellant was the victim of street robbery and there is no reliable evidence that his attacks were sectarian in nature. (p.19)

I must also take into account the fact that it took the Appellant 13 years to make his asylum claim, even though he now claims that he fled Nigeria because of persecution. I do not accept that he knew nothing of the asylum process because the Appellant is an English speaker, who has lived with a refugee for 4 years. It is inconceivable that he did not acquire a reasonable knowledge of the asylum process while living illegally in the IJK for over 10 years. Moreover, the Appellant made 2 other applications to the Home Office before making an asylum claim. I find that his asylum claim is clearly a last ditch effort to remain in the UK. A genuine refugee would not have that immigration record. (p.20)

I therefore find that the Appellant is not at risk on return because he is Christian and has no wellfounded fear of persecution in Nigeria. (p.21)

I find that there are no particular features of this case that make the requirement to relocate unjustifiably harsh for the Appellant and his partner. The Appellant 's partner has HIV however there is medical treatment available in Nigeria for the infection, as the Appellant admitted. His argument was that the treatment he and his partner receive in

the UK is better than that in Nigeria. That may be the case however that is not a good reason to allow the Appellant to remain here. Whether Miss Masuku chooses to remain in the UK is a matter for her as she is settled here, however she knew when she started her relationship with the Appellant that he was an illegal immigrant and therefore it must have been in her mind that at some point she may have to relocate to Nigeria with him. (p.24)"

18. The appellant's case is that he has now provided further evidence to support his claim to have been brought up in a Muslim family and attended an Islamic school which is the evidence I have commented upon above. The appellant when asked by Mr Bates about the schools he attended accepted that one of the schools was a Catholic school, but claimed it was of mixed religion and more inclusive. There was no other evidence to support such a claim.
19. In his witness statement dated 18 January 2023 the appellant refers to Nigeria being a secular state with religious freedom enshrined in its constitution but claims Christians have been marginalised and discriminated as well as being targeted for violence, claiming that happens not only in the Sharia states of the North but also the Sharia middle belt states where Sharia law has not been formally implemented. The difficulty for the appellant is that he is not from the North and there is no need for him to return to the north. The appellant also previously lived without difficulty in Lagos, the point to which he will be returned in Nigeria.
20. The appellant also provided to the Secretary of State a printout of an email from a Mr Lawal together with photographs of the identity page of his UK and Nigerian passports. The Secretary of State in the reasons for refusal letter at [35] noted that some of the email had been cut off but no issue was raised in relation to that before me. Of more importance is the comment made in that paragraph in the following terms:

> From what remains, it can be seen that the author states he has known you since childhood and, when visiting Nigeria, met with your family. He claims you father remains upset at your conversion and wants nothing to do with you. He then claims that some other persons (this has been cut off in the printout) are more belligerent and have made threats. He also claims you would be in danger on return to Nigeria. It is noted, however, that Mr. Lawal does not explain when he went to Nigeria, why he met with your family, or what threats were made against you (i.e. the nature of the threat, what action was demanded to avoid this action being taken). If this represented a serious threat to your life or wellbeing, it is considered that your friend would be able to include more details. The letter does not specify why you would be in danger on return or why this danger would exist throughout the country. For these reasons, this email can be given little weight.

21. The appellant has failed to provide sufficient evidence to deal with the concerns recorded above. I agree with the assessment that little weight can therefore be given to that part of the evidence.
22. The appellant's claim to face a real risk on return as a result of being apostate and the desire his father to inflict serious harm upon him, including death, is undermined by the submission made by Mr Bates that according to the appellant's own chronology his father knew of his Christian beliefs before he left his home area with no evidence of anything adverse happening to him. This suggests that either the claim to have converted from Islam to Christianity is false or the appellant is exaggerating the consequences for him if he was returned to Nigeria.
23. Judge Foudy specifically noted that [17] that it was not credible that a person would live for 22 years in a devout Muslim home yet did not have had a reasonable recollection of the faith's daily rituals and observances. That is a

rational conclusion especially in the light of the appellant's claim is his father is a devout follower of Islam. The appellant's chronology suggests he was 22 years of age when he abandoned Islam. Before Judge Austin the appellant was said to have recited passages from the Koran albeit in a different language than English, but that does not establish anything other than the appellant had learned what he was repeating. I do not find that undermines Judge Foudy's conclusions that it was significant that the appellant did not demonstrate knowledge of faiths daily rituals and observances.

24. The evidence now provided to support the appellant's claim have been a follower of Islam is the documents allegedly originating from his primary school, the letter from the Imam, and from his friend who claims he return to Nigeria, on which I find very little weight can be attached when considered in the round together with the other evidence in accordance with the guidance provided in the case of Tanveer Ahmed.
25. I do not find the appellant has established that his claim he will face a real risk on return as an apostate, namely a person who has converted from Islam to Christianity, is credible. I find insufficient evidence to warrant departing from the finding of First-tier Tribunal Judge Foudy that the appellant is not at risk on return because he is a Christian, that he has no well-founded fear of persecution in Nigeria, and that he is not credible.
26. I find that conclusion is also supported by the fact the appellant was able to live in Lagos after leaving his home and tribal area for sixteen years, study, raise a family, and work openly, with no evidence of adverse interest being taken of him.
27. The appellant has also provided photographs which he states he shows he was baptised on 10 September 2011 in Manchester. Even if that is the point at which the appellant was confirmed as a follower of the Christian faith I do not find that creates any real risk to him on return to Nigeria, as bar his claim to be an apostate nothing else was pleaded in relation to his faith that had any merit.
28. In relation to time in the UK, the appellant claims to have over 20 years here, having entered in 2001, but there is insufficient evidence , bar the appellants claim, of this fact. Mr Bates explored with the appellant other possible sources of evidence that may have corroborated his claim but despite the appellant stating that a person with whom he previously lived, who now based in Peterborough, may be able to assist, there was no witness statement from that person or any other evidence. The appellant claimed his studies at the Manchester Metropolitan University, from which he graduated in 2010, was on a three year course, but that would only support a claim of having been here since 2007. I do not find the appellant has made out on the evidence that he has been in the United Kingdom for over 20 years.
29. His time in the UK has, in any event, been during the time his immigration status has been precarious and/or unlawful. His private life appears to be composed of friends, work within the community, support for charitable events, and his personal needs, but there is nothing to warrant anything other than a little weight being attached to the same in accordance with section 117B of the Nationality, Immigration Asylum Act 2002.
30. I find the appellant has not established an entitlement to remain in the United Kingdom under the Immigration Rules, the 2002 Act, or any other relevant policy or provision.
31. In relation to the claim the appellant's age, health, and general situation will create insurmountable obstacles to him if he were returned to Nigeria, I find no merit has been establish in relation to such a claim. It is accepted the appellant was born in 1963 but his evidence is that he has family in Nigeria and there is insufficient evidence to show that they will not be able to provide assistance to

him whilst he re-establishes himself. The appellant's own evidence is that he has contact with at least one daughter. The appellant is a graduate and clearly a very intelligent individual and it was not made out he had made any enquiries to establish whether he would be able to obtain employment or not, from which he could support himself within his home country. I find the appellant has failed to discharge the burden of proof upon him to the required standard to show that there are credible insurmountable obstacles or anything exceptional in relation to his circumstances, by reference to the Immigration Rules and Article 8 ECHR to warrant the appeal been allowed on that basis.

32. The remaining aspect of the appellant's claim relates to Article 3 ECHR on the basis of his medical needs. It is accepted that the appellant is HIV+. The evidence provided shows that his condition for that and other issues is being monitored by the NHS.
33. Whilst I accept this may be the main reason the appellant wishes to remain in the UK, the leading case in relation to medical claims is AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 which applied the decision of the ECtHR in Paposhvili v Belgium (Application No. 26565/05) as to the effective Article 3 and set aside the judgement of the House of Lords in N v Secretary of State for the Home Department [2005] UKHL 31.
34. The test is that an individual must prove a real risk on account of the absence of appropriate treatment in the receiving country or lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. As recognised in AM (Zimbabwe) 'significant' means 'substantial' and were reduction in life expectancy to be less than substantial it would not attain the minimum level of severity which Article 3 requires.
35. In relation to the availability of medical treatment for HIV in Nigeria the appellant claims that it is not available in all areas of Nigeria but has not demonstrated it is not available in the major conurbations or cities such as Lagos, to where he will be returned and where he lived previously. Even if there are areas of the country where treatment is not available or less available than in others, that does not mean that it is not available in the legal sense as envisaged in AM (Zimbabwe) and Paposhvili. Treatment for HIV in the UK is recognised as being world leading but there are still areas of the country where resources are less than in other places, but it could never be said that treatment is not available here.
36. The Secretary of State has clearly established that treatment is available. In the refusal letter is detailed reference to the Country Policy and Information Note Nigeria: medical treatment and healthcare (December 2021) from [82]. At [83] it states that HIV treatment is freely available to all who need it and in many states antiretroviral's are free. It is also noted that the antiretroviral medication the appellant has been taking in the UK is available in Nigeria.
37. The refusal letter also notes a fund of up to £2000 from the Voluntary Return Service might be available to the appellant to assist with any medical costs.
38. The appellant referred in his evidence to people dying in Nigeria as if this suggested the treatment available was not sufficient or effective, but I find such claim without merit. People receiving treatment in the UK die. People with HIV die for various reasons. The appellant has not established that treatment is not available or not accessible or not sufficient to meet his requirements in Nigeria. The appellant has provided no evidence to corroborate his claims or to show they have arguable merit.
39. Whilst I appreciate the appellant would prefer to remain in the UK where he can benefit from treatment on the NHS I do not find he has established a real risk on account of the absence of appropriate treatment in Nigeria, or lack of access to

such treatment, of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in his life expectancy.

40. I find the appellant has failed to show that he is able to meet the high threshold of Article 3 in relation to his medical needs.
41. Whilst I accept that as part of the appellant's Article 8 private life he may also refer to the work he has done for HIV charitable organisations and any connection with the medical services in the United Kingdom, I do not find either to be determinative for sufficient to outweigh the strong public interest relied upon the Secretary of State in his removal.
42. In summary, I agree with the findings of the First-tier Tribunal that the appellant's claim to face a real risk on return as an apostate lacks credibility and that in this respect the appellant is not a credible witness. I do not accept the appellant has established it can satisfy the high threshold set out in AM (Zimbabwe) in relation to his medical needs, including his HIV. I do not find the appellant has established he has been in the United Kingdom for a period of at least 20 years. In relation to Article 8 ECHR, having weighed the points in favour of the appellant, including time it is accepted he has been in the UK on the evidence, and all the issues referred to above and in the evidence, I find the respondent has established that the public interest in removal outweighs those matters relied upon by the appellant and that the decision is proportionate.

Notice of Decision

43. The appeal is dismissed on all grounds.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 February 2024