



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004720

First tier number:  
PA/55663/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 6<sup>th</sup> of March 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**KINGSLEY EMEKA ANI  
(no anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr AJ Offiah, Solicitor JDS Solicitors  
For the Respondent: Ms S Lecoite, Senior Home Office Presenting Officer

**Heard at Field House on 3 January 2024**

**DECISION AND REASONS**

1. The Appellant is a national of Nigeria born in 1975. He appeals with permission against the decision of the First-tier Tribunal (Judge Swinnerton) to dismiss his appeal on protection and human rights grounds.
2. The basis of the Appellant's protection claim is that he has a well-founded fear of persecution in Nigeria for reasons of his political opinion. He claims to be a member of the Indigenous Peoples of Biafra Organisation (IPOB). The Respondent's published guidance on the risk to individuals associated with IPOB is currently to be found in the March 2022 CPIN *Nigeria: Separatist Groups in the South-East*. In brief precis the information therein is that IPOB have been proscribed as a terrorist organisation in Nigeria and that some members and supporters have suffered serious harm at the hands of the Nigerian authorities.

3. The Appellant's case was that he has been involved in the group since approximately 2017 in the United Kingdom. He asserts that he is their Security Officer and that he is heavily involved and associated with figures in the IPOB leadership. Three political associates came to give live evidence in support of his case. One, Dr Justice Vkachi Lois served as the UK co-ordinator of IPOB between 2017-2021. He testified that he knows the Appellant well and could confirm his involvement in various IPOB activities in the UK including attending demonstrations and meetings etc. Another witness, Mr Chibuikwe John Nebeokike explained that he had mentored the Appellant in his role as part of the IBOP media team.
4. The Tribunal dismissed the appeal. It found at its paragraph 24:

24. Based upon the available evidence, I find that the Appellant is not the Chief security officer at the IPOB in the UK. I find that the Appellant does not have any specific role within the IPOB in the UK. I find that the Appellant has never had a specific role within the IPOB in the UK. I find that, at most, the Appellant has attended some events of the IPOB in the UK since 2017.
5. The Appellant now appeals those conclusions on the following grounds:
  - i) They are unsupported by reasons;
  - ii) In rejecting the Appellant's case that he has a specific role for IPOB in the UK the Tribunal has failed to have regard to the positive finding that he did, made by the First-tier Tribunal Judge Flynn in 2019, contrary to the guidance in Devaseelan [2002] UKIAT 702.
  - iii) It is not clear from the face of the decision whether the Tribunal had regard to supporting documentary evidence including online articles and numerous photographs (some showing him guarding Nnamdi Kanu, an IPOB leader) and to the extent that it did refer to some of the corroborative material, it erred in the manner identified in Mibanga [2005] EWCA Civ 367, ie failing to have regard to all of the evidence in the round. In particular the Tribunal declined to place any weight on this material because it had already rejected the Appellant's claim to have that security role;
  - iv) Further the Tribunal failed to make reasoned findings on whether the Appellant genuinely believes in Biafran independence. If that is his genuinely held political belief consideration had to be given to whether he would continue to campaign on that issue if returned to Nigeria, and if not, why not: HJ (Iran) (FC) [2010] UKSC 31.
  - v) Even if it had concluded that the Appellant's political beliefs were not genuinely held, the Tribunal had to consider whether they would be imputed to the Appellant by the Nigeria authorities. In doing so the Tribunal failed to have regard to the commentary made by Lord Justice Sedley in YB Eritrea [2008] EWCA Civ 360 to the effect that it could be inferred that repressive regimes would have an interest in monitoring opposition activity in the diaspora.
6. Although Ms Lecointe had initially indicated that she would be opposing the appeal, having heard the submissions of Mr Offiah she conceded that ground (iii),

as it is summarised above, was made out. I am satisfied that this was a concession well made. The First-tier Tribunal rejects the Appellant's claim to have had a security role within IPOB. The only reason it gives for rejecting that evidence is set out at paragraph 23 of the decision: it is because neither the Appellant nor any of his witnesses refer to this specific role in their written evidence. There follows the conclusions at paragraph 24 (which I set out above). Then in the paragraphs which follow, the Tribunal addresses the photographs. At paragraph 28 the Tribunal mentions that it was provided with two online articles about a 'steward' for Mr Nnamdi Kano facing possible deportation to Nigeria. The articles name the individual. Two of the names given correspond with two of the Appellant's three names. The decision then says this:

"29. I have found that the Appellant is not the Chief security officer at the IPOB and I have found also that the Appellant has no specific role within the IPOB. Neither do I accept that the Appellant is a steward or security officer for Mr Nnamdi Kanu. I therefore attach little if any weight to either of these articles".

7. This is an unfortunate *Mibanga* error. The evidence is rejected, *therefore* no weight is attached to potentially corroborative material. The proper approach was to weigh all of the evidence in the round. It is also right to acknowledge that the Tribunal does not appear to have addressed the oral evidence which was given to the effect that the Appellant did have this security role. As Mr Offiah properly acknowledged, it would have been open to the Tribunal to reject this testimony on the basis of its observations about the witness statements, but it was required to engage with all of the evidence before it.
8. It follows that I need not address the remaining grounds, since ground (iii) went to the heart of the decision. I would however add that I accept that the decision does not appear to reflect the totality of the evidence, in particular the testimony of the additional witnesses. If the oral evidence of, for instance, Dr Lois about the extent of the Appellant's involvement was to be rejected as untrue, then clear findings and reasons to that effect should have been given.
9. I note that the grounds also challenge the Tribunal's conclusions on the human rights grounds advanced by the Appellant. He has lived in the UK a long time and argued that it would be a disproportionate interference with his Article 8 rights to refuse to grant him leave. The Tribunal dealt with that claim in a few short lines. It was quite right to do so. As Mr Offiah agreed, the Article 8 claim was in reality premised on facts that stood and fell with the protection claim: ie the Appellant should be permitted to remain in the UK where he could carry on his political activities unhindered.

## **Disposal**

10. In my 'decision and directions' of the 3<sup>rd</sup> January 2024 I ordered that the decision of the First-tier Tribunal be set aside in its entirety.
11. I then invited the parties to consider whether this case would be an appropriate vehicle for the Upper Tribunal to give country guidance on the potential risk to IPOB supporters in Nigeria. I am grateful to the parties for the consideration that they have given to this matter, and to their respective submissions. Having considered those submissions I have decided that it is not appropriate that this

case be designated as potential country guidance. The appropriate course is, as I am invited to do, remit this matter to be heard *de novo* in the First-tier Tribunal by a judge other than Judge Swinnerton.

12. I have discharged the anonymity order made on the 3<sup>rd</sup> January 2024. As I observed in my directions that day, the Appellant is already named online for his involvement with IPOB. There is therefore no justification for keeping his identity private in these proceedings.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
20<sup>th</sup> February 2024