



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003152

First-tier Tribunal Nos: PA/01672/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 February 2025

Before

UPPER TRIBUNAL JUDGE OWENS

Between

OM
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Offiah, Solicitor Advocate
For the Respondent: Ms Nolan, Senior Presenting Officer

Heard at Field House on 30 January 2025

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. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bart -Stewart dated 25 April 2024 dismissing his protection and human rights appeal against a decision by the Secretary of State dated 31 October 2023.

Background and appellant's claim

2. The appellant is a national of Nigeria. He entered the United Kingdom as a student on 18 September 2004 and had extensions of leave until 2012. On 16 October 2020, he claimed asylum on the basis that he has been a member since 2014 of the Indigenous People of Biafra Movement known as IPOB and that he has been a financial secretary since 2019. He says he attends meetings events protests, rallies and conferences. He claims that he will be seen as an enemy of the state and killed or arrested in Nigeria as a result of his involvement with the IPOB movement. He believes he received a phone call from the Nigerian government on 16 April 2023 but he did not answer the call.

Respondent's case

3. The respondent refused the appellant's application on the basis that he had failed to supply supporting evidence of his activities. His claim lacked specificity and detail. His involvement was in the UK. He had not faced problems so far and he did not demonstrate that he had the profile of a person who would be of interest to the government of Nigeria. S8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 also applied because he failed to give a reasonable explanation for his delay in claiming asylum.

The Judge's Decision

4. The appellant elected to have his appeal dealt with on the papers. This meant that the judge was limited to the documentary evidence before her. It is unclear from the error of law bundle which evidence was before the judge because the appellant's bundle and respondent's bundles were not replicated in the error of law bundle. Further, because the appellant was a litigant in person the material is not uploaded onto the Case Management System.
5. The judge found that it was not credible that the appellant had been telephoned by the Nigerian authorities. She found that the appellant's claim to have involved with IPOB since 2014 was not sufficiently evidenced. The photographic evidence was limited to four photographs, two of the appellant at Lunar House and one at Liverpool football club and that this was insufficient to demonstrate that the appellant is involved in IPOB as claimed. Similarly the receipts were not sufficient to demonstrate that the appellant was a finance officer. The witnesses had not attended court to be cross examined and she placed little weight on the letters from the witnesses. Finally s8 applied because there was a significant gap between the appellant's alleged involvement and his claim for asylum and no reasonable explanation for the late claim. In summary, she did not accept that the appellant was involved with IPOB and found that his claim for asylum was a complete fabrication.
6. Even if the appellant was involved, having regard to the 2022 CPIN which was the relevant background material at the time, she found that the appellant would not have come to the attention of the Nigerian authorities. His activities had been in the UK. He was not in contact with IPOB members in Nigeria. His family had not been threatened. She found that the appellant was not at risk of serious harm.

Grounds of appeal

7. The grounds are drafted as follows:

Ground 1/2

8. The grounds claim that the judge found that the appellant was carrying out IPOB activities at a low level or on an opportunistic basis. It is asserted that she erred in the assessment of the appellant's activism, failed to engage with the fact that the IPOB has been proscribed as a terrorist organisation and that any association would place a member/supporter at risk regardless of their role or profile. The judge failed to adequately consider risk on return.
9. The judge failed to consider the country reports and the risk that the appellant was likely to face in Nigeria. How the appellant would be perceived was not considered by the judge. The judge failed to consider the principles in YB (Eritrea) [2008] EWCA Civ 360 because clear evidence of officials photographing protesters was presented to the judge. It is absurd to suggest that the Nigerian government is not interested in IPOB when the organisation was founded in the UK and the leader has British citizenship. The judge should have considered whether by his actions he would be perceived as an IPOB member by the Nigerian authorities.

Ground 3

10. The judge misdirected herself in law by relying on an absence of documentation that was not readily available to support his claim. The judge without rational explanation disregarded the appellant's witness evidence.

Ground 4

11. The judge failed to consider whether the appellant's membership and association with IPOB is a significant obstacle to integration.

Permission

12. Permission was granted by Upper Tribunal Loughran on 14 November 2024 on the basis that the judge arguably failed to have regard to background evidence and arguably failed to assess the risk to the appellant in Nigeria because of his perceived activities in the UK.

Response

13. The respondent provided a Rule 24 response opposing the appeal.
14. Both representatives made submissions which are recorded in the Record of Proceedings. Mr Offiah focused on Ground 1 in that he argued that the decision was perfunctory and the judge had failed to assess the risk to the appellant properly notwithstanding that she had found that the appellant's claim was manufactured. The issue is the perception that the Nigerian authorities would have of the appellant and the risk to him because of that perception.

Discussion

15. I have had regard to Latayan v Secretary of State for the Home Department [2020] EWCA Civ 191. This is authority for the fact that a Tribunal should be slow to interfere with findings of fact by a First-tier Tribunal judge.

16. I also find that there are some errors in the grounds as pleaded. I do not agree that the judge found that the appellant was carrying out IPOB activities at a low level. I find that the judge was not satisfied that the appellant was a member or low level supporter of the IPOB at all.
17. The judge had before her limited documents and evidence. The respondent pointed to a lack of supporting evidence in the refusal letter. In support of his appeal, the appellant who was unrepresented, provided four photographs, screen shots regarding a phone call, two letters from the IPOB in the UK and some receipts. As I have already stated the appellant chose not attend his appeal to give oral evidence. Nor did any witnesses attend on his behalf. In the bundle prepared for the error of law hearing there is additional evidence of the appellant's attendance at demonstrations but as Mr Offiah accepted, this evidence was not before the judge.
18. It is not asserted by the appellant that the judge overlooked or failed to take into account any evidence submitted by the appellant in relation to his claim to be an IPOB member and activist.
19. At [8] the judge considered the appellant's claim that he was called by the Nigerian government. The judge did not accept the appellant's evidence for the reasons given in that paragraph. This finding is not challenged in the grounds and I am satisfied that the finding was adequately reasoned and grounded in the evidence.
20. At [9] the judge considered the appellant's claim to be a financial secretary who collects payments from members into his own bank account and which are then transferred to the movement. The judge referred to the lack of evidence of the receipts of payments from party members and the failure of the appellant to explain why payments would go through his account rather than direct to the organisation. The judge also noted that the appellant's own receipts are initialled by a financial secretary or treasurer who has different initials to the appellant. The judge unequivocally found the assertion that the appellant is financial secretary who collects receipts for the party to be a fabrication. Mr Offiah did not seek to challenge this finding and I am satisfied that this finding is sustainable and adequately reasoned.
21. At [10] the judge finds that although the appellant claims to have been active for ten years there is very little evidence of attendance at events. The judge placed little weight on two supporting letters purportedly from coordinators of the organisation because the appellant chose to have his appeal dealt with on the papers and the veracity of the letters and their contents had not been tested by oral evidence. The judge found that they were not evidence that the appellant is involved with the organisation as claimed. The judge's approach and this finding was not challenged and as Ms Nolan submitted the burden is on the appellant to make good his claim.
22. At [11] the judge turned to the supporting photographs. There was a total of four photographs. (There were many more photographs in the error of law bundle but these were not before the judge). The judge noted that two appeared to have been taken on the same occasion outside Lunar House and another was with a smaller group of people at Liverpool Football Club. The judge comments that the appellant does not state why these venues were chosen, nor how the appellant would be identified. I note here that contrary to the grounds which assert that

the appellant produced a photograph of him being photographed there was nothing before me to show that such evidence was before the judge. I can see no error in the judge's approach to these very limited photographs. As the judge said they show very little.

23. Finally at [12], the judge deals with the delay in the appellant claiming asylum. She noted that the appellant's response was vague and general. She noted that the appellant's alleged interest in the organisation started when his leave expired in 2012. IPOB was declared a terrorist organisation in 2017. The appellant did not claim asylum until 2020 and the judge found that it would have been reasonable for him to have claimed earlier if he were genuinely in fear of for his safety. This finding is not challenged in any detail and in any event I am satisfied that the judge's approach to s8 was legally correct and that she gave adequate reasons which were rational and reasonable for her finding that the appellant's credibility is damaged on this basis.
24. At [13] the judge concluded the entire account was a manufactured claim to prevent removal. I do not agree with the assertion in the grounds that the judge found that the appellant was a low level supporter. My view is that the judge found that the whole claim was fabricated. The appellant was not a finance secretary, nor a member of IPOB and that the 4 photographs were not sufficient to evidence to demonstrate that he was even a supporter or active in the organisation.
25. Given that these findings which are not challenged and I am satisfied that they are entirely sustainable and adequately reasoned, the judge's finding that the appellant would not be at risk in Nigeria for his actual political opinion is sustainable. Further, it is not suggested that the judge should have gone on to consider how the appellant would have behaved on return because the clear inference is from the judge's findings that he would not supported the organisation or be actively involved in Nigeria because he had not demonstrated to the sufficient standard that he was involved in the UK.
26. Mr Offiah's main point was that the judge, notwithstanding her finding that the claim was manufactured, should have considered the Nigerian authorities perception of the appellant and the risk to him on that basis. He submitted that the judge did not have regard to the CPIN to his effect.
27. Firstly, I am satisfied that the judge did have regard to the CPIN in force at that time (March 2022) which was referred to at [12]. The judge was not obliged to set out the contents of the CPIN in full. The appellant did not put forward any other background material. The CPIN states that if a person has been involved in IPOB consideration should be given to excluding the claim. Supporters of IPOB have been arrested and killed at different events and in armed clashes with the government. Senior members have been jailed. At 2.4.28 the CPIN stated that there is no specific information that the Nigerian government monitors the diaspora in the UK and refers to the factors that a decision maker should consider when considering whether an individual is at risk. The first of these factors is whether the person would continue their activism (in the case of the appellant there is an inferred finding that he would not) and also inter alia, past treatment, evidence of monitoring, the person's profile and the profile and activities of family members. It is certainly not the case as asserted by Mr Offiah that any individual associated with IPOB would be at risk by reason of the organisation being proscribed.

28. At [13] the judge makes an alternative finding that even if the appellant is a member of IPOB he would not come to the attention of the authorities were he to return. The reasons given by the judge address the factors above. The appellant is not in contact with anyone in Nigeria who is involved in the organisation and he has family in Nigeria who have not been contacted by the authorities or come to harm. It can also be inferred that the judge's reasoning included the findings that he did not have a high profile, had not in the past been subject to mistreatment and had not been active in Nigeria. In my view these findings are entirely in line with the CPIN and are sustainable. The reasons may be brief but they are tolerably clear.
29. Ground 4 is manifestly not made out because if the judge's approach to the protection aspect of his claim is sustainable there can be no argument that the judge's approach to insurmountable obstacles is flawed and Mr Offiah did not seek to persuade me that this was the case.
30. I can discern no error in the approach of the judge on the material she had before her at the date of the hearing.

Conclusion

31. It follows that none of the Secretary of State's grounds of appeal are made out and the appellant's is dismissed.
32. I take into account that the appellant now has further evidence of his activities and that the updated CPIN in 2024 is helpful to him, but this evidence was not before the judge and it is not an error of law for the judge to have had no regard to evidence which was before her. The appellant may have the option of making a fresh claim and is able to seek legal advice in respect of this.

Notice of Decision

33. The decision of First-tier Tribunal Judge Bart-Stewart dismissing the appellant's asylum and human rights appeal stands.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 January 2025