



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/11315/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 2 February 2016**

**Decision & Reasons issued
On 11 February 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A O

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Blair, promulgated on 17 July 2015, dismissing her asylum appeal.
2. The appellant based her case on a number of strands. The first related to her husband, a member of the Nigerian police force, being shot dead on 24 November 2008. Some evidence suggested that this was in the course of an armed robbery, but the appellant alleged that he was murdered at the instance of State Governor Fayose, against whom her husband was on his way to give evidence on corruption charges. On this branch of the

claim, the judge said that it was not necessary to reach a concluded view on credibility because there was evidence of Governor Fayose being put on trial and of a further arrest warrant issued against him, so there was sufficiency of protection. (The judge did not opine on whether risk might credibly extend to the appellant.) A claim based on fear of the Ogboni cult similarly failed even taken at highest, and was defeated in any event by internal relocation. Finally, the appellant based her claim on a history of trafficking, which was found to lack all credibility.

3. The determination is plainly a careful one, and it might be difficult to find a legal flaw within its four corners. However, the appellant's grounds firstly complain that the finding on state protection in relation to Governor Fayose is out of keeping with the background evidence which was before the Tribunal. The US State department Report 2009 noted "little progress in prosecutions of federal, state and local officials accused of corruption." It gave a series of examples of instances to support this, including that of Governor Fayose. Subsequent reports noted that his trial had still not been heard, but had been "moved from Federal Court to the State Court. He is currently Governor of Ekiti State ... with the Nigerian President actively campaigning for his re-election in 2015".
4. The report was also to the effect that Governor Fayose was immune from prosecution during his tenure. An excerpt in the appellant's fourth inventory, item B (page 13 of 21 of the report) includes this:

'Government Corruption and Transparency

Corruption was massive, widespread, and pervasive, at all levels of government and society. The constitution provides immunity from civil and criminal prosecution to the President, Vice President, governors and deputy governors while in office.'
5. Ms Loughran further sought to refer to evidence from the US State Department report, updated to 25 June 2015, to show that Governor Fayose won re-election, but that of course is not relevant to show error of law. It might become relevant in remaking the decision.
6. The appellant's second principal point in her grounds of appeal to the Upper Tribunal is based on the lack of a finding on her claim that she was assaulted and raped in 2010. That was mentioned by the judge granting permission. However, Ms Loughran accepted in the course of submissions that it is secondary to the main ground. If the judge had been justified in finding the claim defeated by sufficiency of protection, then credibility would, as stated at paragraph 40 of the determination, not have been crucial.
7. Ms Loughran pointed out that in view of the terms of paragraph 43 - "the fundamental difficulty for the appellant" - the judge's view of the active proceedings against Governor Fayose was plainly the nub of the decision.

8. Mrs O'Brien conceded that the findings regarding Governor Fayose and sufficiency of protection ran contrary to the background evidence, and that took away the logic of the rest of the determination.
9. The determination of the First-tier Tribunal is **set aside**. None of its findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the First-tier Tribunal chosen to reconsider the case are not to include Judge Blair.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized 'H' and 'M'.

Upper Tribunal Judge Macleman

5 February 2016