



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04162/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6th March 2019

**Decision &
Promulgated
On 19th March 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**A N
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Onuacharla (Legal Representative)

For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge I. Freer) (FtT) promulgated on 22nd May 2018 in which the appellant's protection appeal was dismissed.

Background

2. The appellant is a citizen of Nigeria. There were two previous determinations relating to EEA residence applications (7.12.2011 before UTJ Vaudin D'Imecourt and on 17.3.2015 FTJ Shepherd) that were in part relevant in the proceedings before the FtT following **Devaseelan** *[4]. The FtT in 2015 found that the appellant had been in the UK since 2011 and that neither he nor his uncle were credible witnesses. The FtT before FTJ

Freer heard an appeal in respect of the appellant's protection claim made in 2017. The appellant was interviewed in February 2018. His sur place claim was that he was a supporter of Biafran independence and had attended demonstrations in the UK. He produced photographs and called a witness Dr U-L from the movement Indigenous People of Biafra ("IPOB") [6]. He argued that IPOB was a banned movement in Nigeria [47].

Grounds of appeal

3. In lengthy grounds of appeal the appellant argued that the FtT erred as follows :

Ground 1 - the FtT failed to correctly apply the guidance in **Devaseelan** * and viewed all of the evidence thorough the lens of the previous decisions.

Ground 2 - the FtT failed to apply the correct guidance in dealing with the appellant's claim at [83] by failing to give adequate reasons why the FtT found the appellant insincere as to his motives for membership of IPOB and failed to apply **HJ(Iran)v SSHD** UKSC 2010. There was no background material from the SSHD on IPOB.

Ground 3 - the FtT failed in its assessment of credibility by starting from the viewpoint that he had been found to be lacking in credibility by the previous Tribunals.

Ground 4 - the FtT failed to place weight on the documentary and expert evidence [75 & 89], by playing down the evidence from Amnesty International and finding it lacked corroboration. The FtT's approach to credibility was contrary to guidance in **NA**(Palestinians - risk) Iraq CG [2008] UKAIT 0046.

Ground 5 - the assessment as to credibility in respect of Article 3 and humanitarian protection was inadequate [87-90].

Ground 6 - the FtT misdirected itself as to internal relocation, which was not raised by the respondent.

Ground 7 - the FtT failed to apply the law correctly at [96-105].

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted on renewal by UTJ Perkins who found that it was arguable that the FtT failed to give adequate reasons for placing little weight on the supporting material (ground 4). UTJ Perkins expressed doubt that the appellant would be able to show that the FtT was not entitled to disbelieve him or that the EEA rights had much to do with the decision complained of, but all grounds were arguable.

Submissions

5. At the hearing before me Mr Onuacharla representing the appellant argued that the main concern was that the FtT had relied on the previous decisions and had no proper regard to the new evidence. He relied on ground 1 and ground 4 only. The FtT was wrong to require corroboration of the background evidence from AI about IPOB. There was corroboration from the expert witness Dr U-L in any event. The FtT's reasons for rejecting the AI report were in adequate. The FtT ought to have considered if the appellant was a member of IPOB and thereafter to look at the consequences of that membership. Even if he was found to have made an opportunistic claim, it was still valid and could succeed. The appellant had

produced material at page 63 of his bundle as to risks faced by low level members which included the statutory provisions.

6. In response Mr Whitwell submitted that the decision and reasons was very clear and detailed and there was nothing that the FtT had failed to consider in terms of the evidence. The FtT considered the available background material on IPOB and made findings of fact at [67-75] having regard to the limited evidence about IPOB and the lack of evidence as to risk for its members. The FtT considered the evidence from AI and gave adequate reasons for placing little weight on the same [75]. The FtT assessed the evidence from the witness and gave reasons for placing little weight on the same. The FtT correctly applied **Devaseelan*** and gave adequate reasons for credibility findings [63-64] in relation to the new claim.

Discussion and conclusion

7. After the hearing I reserved my decision. The decision and reasons was very detailed and thorough and fully dealt with all issues raised in the appeal. The FtT correctly followed the **Devaseelan*** approach and set out the findings made by the previous Tribunals [63-64] which it observed were largely in relation to previous EEA applications and in part relevant to protection issues to which **Devaseelan** applied. The FtT considered the new evidence and followed a structured approach to his assessment of credibility having regard to the objective and subjective evidence. The FtT accepted that Dr U-L had in effect corroborated the appellant's recent activism [79] (also shown in photographic evidence) and which led to the FtT finding that the appellant was a low level activist. But that he placed little weight on the Dr U-L's evidence as to risk on return in light of his limited knowledge of the appellant and limited scope of his evidence [90]. The FtT found no evidence to show that a low level activist faced persecution in Nigeria [81] , nor that the appellant's involvement would come to the attention of the authorities [82]. He found the appellant lacked political sincerity and that he would not seek to pursue political activity on return to Nigeria. The FtT was entitled to look at the evidence in the round taking into account his immigration history, the previous findings as regards his credibility and that his activism lacked sincerity.
8. The FtT fully set out the available background material from [46] - [53] and which included the AI report and US State department reports. The FtT found that there was a lack of expert evidence about IPOB [68] and took the view that IPOB was not a terrorist organisation and the appellant was not a terrorist. At [75] the FtT found that the AI report required corroboration because it reported from subjective sources with limited corroboration and took the view that the more conservative evidence provided by the US State report was more reliable. That in my view was an entirely proper approach given that the burden falls to the appellant to establish his case and there was no country expert called on his behalf. The FtT also took into account that the material established a risk for those in leadership positions [86] but that the appellant had no political

involvement while in Nigeria [88] and would not pursue any political activities in Nigeria. The FtT considered the appellant's position fully in terms of any risk having regard to his claim at its highest [87-91].

9. There is no material error of law disclosed in the decision which shall stand.

Decision

10. The appeal is dismissed.

Signed

Date 14.3.2019

GA Black

Deputy Judge of the Upper Tribunal

ANONYMITY ORDER MADE
NO FEE AWARD

Signed

Date 14.3.2019

GA Black

Deputy Judge of the Upper Tribunal