



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00552/2019

THE IMMIGRATION ACTS

At: Manchester Civil Justice Centre (remote)  
On: 15<sup>th</sup> March 2021

Decision & Reasons Promulgated  
On: 28<sup>th</sup> May 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

COI  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Allison, Counsel instructed by Duncan Lewis & Co  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria born in 1988. He appeals with permission against the decision of the First-tier Tribunal (Judge Siddall) to dismiss his appeal on protection and human rights grounds.

**Anonymity Order**

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential

Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **History of the Appeal and Matters in Issue**

3. The basis of the Appellant’s claim for protection/ leave on human rights grounds was that he has a well-founded fear of persecution in Nigeria for reasons of political opinion, *viz* active support for a group called the Indigenous People of Biafra (IPOB) in the United Kingdom. He further claimed to face a real risk of serious harm from a university based criminal gang known as the Aye confraternity, this group having attacked him in 2012. Finally the Appellant asserted that his removal from the United Kingdom would be contrary to the United Kingdom’s obligations under Article 3 of the ECHR, first because the Appellant is HIV+ and would receive no treatment in Nigeria, and second because there was a real risk that he would commit suicide if returned there.
4. The Respondent rejected these claims. The Appellant appealed and by its decision dated 21<sup>st</sup> June 2019 the First-tier Tribunal dismissed the appeal on all four grounds.
5. The First-tier Tribunal accepted that the Appellant had been involved with the Aye confraternity whilst at University, and that he was brutally beaten when he wanted to leave. His injuries and PTSD lend support to that account which is consistent with the country background information. The Tribunal however found that the assault was not the reason that the Appellant came to the United Kingdom – he came because he wanted to study. It was not satisfied that there would be at any risk arising today. There would be no reason why the Aye confraternity would be interested in tracking him down or harming him some seven years after the events described. The Tribunal found that if in fact he did face a risk, he would receive sufficient protection from the Nigerian authorities. In respect of the relevance of the Appellant’s HIV+ status, the Tribunal was not satisfied that there was a real risk of serious harm in Nigeria, since the government there have introduced access to free anti-retroviral therapies. In his application for permission to appeal the Appellant took no issue with either of those conclusions. He did initially seek to challenge the findings of the Tribunal on the risk of suicide, but this ground was subsequently withdrawn with my consent.

6. When the matter came before me at Manchester Civil Justice centre on the 19<sup>th</sup> October 2020 the only issue remaining was whether the Judge had erred in her approach to the Appellant's political commitment to Biafran independence.
7. This historical claim advanced by the Appellant was that when in Nigeria he had been a supporter of a Biafran rights group called MASSOB. After he had come to the United Kingdom he had supported IPOB. The Tribunal accepted that he may have attended a demonstration in 2009/10, but that his evidence of political involvement prior to departure from Nigeria was otherwise "vague" and "inconsistent". It placed little weight on what purported to be warning letters and a certificate of membership but was prepared to accept that at least until 2016 the Appellant did have some limited involvement with IPOB here. He has however had no contact with the organisation since 2017. He only ever attended two demonstrations, and has not adduced any independent evidence in respect of his claim to have helped the group with its website. There is no reason to think that he has ever come to the adverse attention of the Nigerian authorities. No risk therefore arose.
8. At that preliminary hearing in the Upper Tribunal Mr Allison submitted that in disposing of the issue in that way the Tribunal had only completed half a job. It has erred in failing to consider whether there is a real risk that the Appellant would express his political beliefs in Nigeria, or be prevented from doing so for fear of persecution. In his oral evidence the Appellant had said that he would want to protest, despite the risks. This evidence had to be evaluated in light of the accepted evidence that the Appellant had been involved in a Biafran group as long ago as 2009 and that he had renewed this political interest in the United Kingdom with his support for IPOB. It had been his evidence that the issue remained "very important" to him but had been forced to cease current involvement simply because of circumstances - the IPOB leadership were effectively in hiding and the Appellant could not afford to travel to take part in any more events. His HIV+ status and mental ill-health had further prevented him from taking more active steps to re-engage with other politically active Biafrans here.
9. By my decision promulgated on the 21<sup>st</sup> October 2020 I found that the First-tier Tribunal had omitted to consider whether the Appellant was politically committed to the IPOB cause; at paragraph 58 the decision records the evidence that the "issue remains very important to him" but the Tribunal does not go on to make findings on whether that claim is true. There was therefore no consideration of the Appellant's evidence that he would continue to hold those beliefs if returned to Nigeria, and that given the opportunity he would wish to manifest those views by taking part in activities such as demonstrations. It cannot be said that that omission was immaterial. I was unable to infer from the findings, as the Secretary of State invited me to do, that the Tribunal rejected the Appellant's evidence on the point. Had the Appellant's credibility been

entirely rejected I may have been prepared to do so, but as is evident from the foregoing it was not: the Tribunal accepted a good deal of the Appellant's factual claims. Nor was I able to find that the omission was irrelevant to the question of risk: it was the Respondent's position in this case that IPOB activity would indeed place an individual at risk of politically motivated persecution in Nigeria.

10. I therefore set the decision of the First-tier Tribunal aside to the limited extent identified above. In view of the narrow scope of the appeal going forward I retained the matter in the Upper Tribunal. There was, as a result of the pandemic, some delay in re-listing but at the hearing on the 15<sup>th</sup> March 2021 I was able to hear oral evidence from the Appellant as well as submissions from the parties, who were in agreement that the only question for me to decide was whether there is a real risk that if he was to be returned to Nigeria the Appellant would engage in political activities in support of Biafran independence/IPOB, or otherwise refrain from doing so because of a fear of persecution.

### **The Re-Made Decision**

11. In reaching this decision I have read all of the relevant documents but I have had particular regard to the following material relating directly to the Appellant:

- a) the Appellant's asylum interview dated 8<sup>th</sup> August 2018;
- b) photographs depicting IPOB meetings, featuring the leader Mr Mazi Nnamdi Kanu and the Appellant;
- c) the evidence as recorded by the First-tier Tribunal at its [§37-§44]
- d) Witness statement dated 14<sup>th</sup> February 2019
- e) Supplementary witness statement 12<sup>th</sup> March 2021
- f) Appellant's oral evidence

12. Although the risk of persecution for IPOB activists had not been placed in issue in this case I have also read the country background material produced by the Appellant, and the CPIN Nigeria: *Biafran Separatists* (April 2020). The CPIN states that IPOB has been declared an illegal terrorist organisation in Nigeria [2.4.7] at and that whilst in general "low ranking sympathisers" would not be at risk for that reason, there is a risk of arrest/violence for activists, particularly on demonstrations:

2.4.9 IPOB has in recent years become the dominant Biafran group. Since 2015 the security forces have reportedly killed 10s and arrested 100s of IPOB supporters, usually when disrupting demonstrations or marches to promote Biafran independence, particularly during 2015 to 2017. Also a number of IPOB senior members have been arrested, including the IPOB leader Nnamdi Kanu who was jailed for 2 years and then subsequently released and is reported to have the left

the country. Following the ban of IPOB in 2017, when all its activities were declared illegal, 100s of supporters of IPOB (but also some members of other pro-Biafran groups) who have attended protests and processions have been arrested and detained. There have also been a few reports of persons who publicly display Biafran independence through flags and other insignia being arrested...

13. Having had the benefit of hearing directly from the Appellant, and having read the detailed responses he gave to questions at interview, I have no doubt at all that he is genuinely committed to Biafran secession from Nigeria. He spoke with fluency and confidence about the history of Nigeria since independence, the Biafran war of independence and why he sees himself as culturally and politically distinct from other Nigerians. The Appellant believes that the religious, cultural and social differences between the different regions, in particular between the north and south of Nigeria, are such that it was post-colonial mistake to ever try and amalgamate all of these various peoples into one nation state. The Appellant explained that after independence the new Nigerian army was from the outset dominated by northerners. He believes that this gave them the idea that they were "born to rule", and that they brought this arrogance to bear over the peoples of the south and east. Millions were killed in Biafra during the war - bombed by Nigerian planes without the weapons to fight back. People cannot just forget that.
14. This was the background to the Appellant's most recent involvement in Biafran politics. In 2015 he met with the leader of IBOP in London, and decided to join the organisation. Although the Appellant is aware of other political movements with the same agenda as IPOB he decided to join them because he believes in Kanu's vision, having listened to his speeches etc online. The Appellant states that between 2015 and 2017 he helped with the IPOB website, but also disseminated awareness and literature about the issue in the Biafran community in the United Kingdom. For instance, he put up posters in areas like Woolwich and Peckham. He attended protests outside Abuja House when President Buhari came to the United Kingdom demanding a referendum on Biafran independence.
15. The Appellant has not had any active involvement in IPOB since 2017. This cessation in activity was the focus of submissions before me: whilst Mr McVeety did not call into question the Appellant's stated political convictions, the Secretary of State does challenge the extent of his commitment to them, given his apparent lack of interest in the past few years. McVeety asks me to weigh that matter in the balance when assessing whether or not the Appellant would want to engage in political activity should he return to Nigeria.
16. The Appellant himself says that there are several reasons why his involvement came to an end. Firstly because developments in Nigeria meant that Kanu and other members of the IPOB leadership had to go into hiding. In September 2017 a court in Nigeria revoked the bail that Kanu had been on since 2015 and ordered his arrest. A raid on his home in Nigeria left a number of IPOB

supporters dead. Everyone who the Appellant had previously been in contact within the United Kingdom, including Kanu himself, went into hiding. Secondly, a series of personal difficulties prevented the Appellant from engaging. He was placed in immigration detention around the same time as the IPOB leadership had to go into hiding (I note from the objective material produced that there is some suggestion that a number of them sought sanctuary in Israel). When he came out he was living on NASS support and had no money to travel to meet with other Biafrans. He found it impossible to re-establish his old contacts and his security credentials for the website no longer worked. Although he did manage to speak to a couple of people no-one knew the codes to get back in. The situation was further complicated by the fact that the Appellant was told that he was HIV+, and was thereafter diagnosed with depression, anxiety and PTSD, connected to events in Nigeria before he came to the United Kingdom. The Appellant is currently living in dire financial circumstances and has no access to a computer so has not tried recently to get back onto the website, although when he has accessed it from his phone he can see that it is still active so he knows that someone, somewhere, is maintaining it. In addition to all of that the Covid-19 meant that for over a year the Appellant has been required to shield, because he is immuno-suppressed.

17. Although the Appellant has not, for all of these reasons, been actively involved in the United Kingdom over the past couple of years, he averred before me that he has continued to take a day to day interest in developments. He exhibited to his witness statement a number of key articles on recent events in Nigeria as examples of the kind of material he is reading. These include pieces on Biafran politics as well as recent news items about IPOB supporters being killed in clashes with Nigerian security forces. In respect of his future intentions the Appellant says this:

“If I were to return to Nigeria, I would try to get even more involved in the movement’s activities by protesting, sharing flyers, and anything that would bring more attention to the struggle. I am more convinced now that Biafra should be an independent state. I am aware that openly supporting the pro-Biafran independence movement carries risks of being harmed or arrested by the Nigerian authorities, but I have nothing to lose and this is the most important issue to me”.

18. In my evaluation of the truthfulness of this statement I bear in mind that the burden of proof lies on the Appellant, and that he must show that it is reasonably likely to be true. In favour of his claim are the following matters. I accept that he is genuinely committed to Biafran independence, to IPOB and to Mr Kanu in particular whom he describes as a charismatic and “supreme” leader. I accept that the Appellant has had a long history of interest in the matter, having attended at least one protest before he ever left Nigeria, and that in the United Kingdom, when able to do so, he undertook activities including

volunteering for work on the IPOB website, distributing leaflets, putting up posters and talking to other Nigerians about the issue. I accept that his commitment to this cause has probably intensified over the years and that he has kept abreast of developments and maintains a keen interest in IPOB. As the parties before me identified, the real question is whether the 'gap' in activities in the last few years is such that the Appellant's assertions about his intentions can properly be rejected. After weighing all of the available evidence I am not satisfied that they can. The Appellant has given several very good reasons why he ceased his activities in the United Kingdom after he was taken into immigration detention. I accept that if he were to be returned to Nigeria, into the centre of the dispute, that the Appellant would feel moved to resume the activities that he has not latterly felt able to undertake here. If he did so, the Respondent has accepted, there would be a real risk of persecution for reasons of his political belief. It follows that the appeal must be allowed.

### Decisions

19. The decision of the First-tier Tribunal is set aside to the extent identified above.
20. The decision in the appeal is re-made as follows: the appeal is allowed on protection grounds.



Upper Tribunal Judge Bruce  
17<sup>th</sup> March 2021