



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

Appeal Number: PA/02309/2020

THE IMMIGRATION ACTS

**Heard remotely at Manchester Civil
Justice Centre
On 4 June 2021**

**Decision & Reasons
Promulgated
On 16 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MOO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood

For the Respondent: Mr Bates, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a female citizen of Nigeria. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 21 February 2020 refusing her international protection. The First-tier Tribunal, in a decision promulgated on 22 October 2020, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing on 4 June 2021, Mr Bates, who appeared for the Secretary of State, told me that the respondent considered that the judge had erred in law such that his decision fell to be set aside. The Secretary

of State agrees that the judge's finding at [27] that it was not reasonably likely that the appellant, having escaped from one demonstration 'with her life', would have attended another rally ignored the possibility that a committed individual would take such a risk in pursuit of a political aim. To make such a finding against an appellant is to proceed on an assumption that her political opinions are not genuine before making a holistic assessment of all the relevant evidence. The appellant relies on the Court of Appeal judgment in *EG (Russia)* [2007] EWCA Civ 354 at [6-7]:

"But before I come to it, I want to say something about the first of the immigration judge's grounds for dismissing the asylum and human rights claims. This is what the immigration judge said after summarising the applicant's evidence, but before turning to the critique of the detail of it. At paragraph 28 in the decision of Immigration Judge Birkby, prepared on 3 October 2005, one reads:

"What I find of most concern was why the First Appellant and the First Appellant's husband continued their involvement in a civil rights organisation bearing in mind that the more they got involved the more they suffered horrendous treatment from the authorities. It was not just treatment as against the First Appellant, the mother, but also the treatment as against her daughter, the Second Appellant, her husband and her son. Despite all of that ill treatment the First Appellant and her family allegedly continued their involvement and continued to seek to publicise their case. Both the First Appellant, the Second Appellant and the First Appellant's husband were simply not credible in the explanations they gave as to why they continued to take the risks that they did. They were hesitant in accepting that what they were doing was risky in any event. Their evidence in my view was evasive. Their main reason for saying that they continued to pursue their plight with the human right's organisation was in order to secure more protection as they said the[y] believed that the more publicity they obtained the safer they would be. Bearing in mind that the First Appellant is obviously a highly intelligent lady, who I accept to have worked in Russia as a paediatrician and a TB specialist, and that the husband was a highly qualified engineer, and that the daughter was at university, their evidence beggars belief."

I am bound to say that as at present advised, I find this passage disturbing, even shocking. Russia, on the in-country and expert evidence, is a state where things like this can and do happen. There may well of course be asylum seekers who falsely claim to have faced local or state sponsored violence and threats, but there must also be brave and principled people who, for as long as they can stand it, refuse to be cowed and who fight back, if only by joining with others and trying to obtain publicity for what is happening to them."

3. The parties agree that the fact-finding exercise conducted by the judge has been wholly vitiated by the error and that the appeal will have to be considered again in the First-tier Tribunal. I agree.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (**not Judge Mailk; first available date after 1 July 2021; Manchester; no interpreter**) for that Tribunal to remake the decision following a hearing *de novo*.

Signed

Date 4 June 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.