Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04305/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 July 2021	**On 17 August 2021**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

S B A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, instructed by Tower Hamlets Law Centre
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the respondent made on 18 March 2018 to refuse the appellant's asylum claim, her claim for humanitarian protection and her claim pursuant to Articles 2, 3 and 8 of the Human Rights Convention. Her appeal against that decision was heard by the First-tier Tribunal on 8 October 2019. For the reasons given in a decision of 24 October 2019 that appeal was dismissed on all grounds. For the reasons set out in my decision of 18 January 2021, that decision was set aside in its entirety. A copy of my decision is attached.

The Appellant's Case

2. The appellant is a Nigerian national born on 5 January 1968 in Ogun State. She was married to OAB with MBA born May 2004 and MOB born March 2008.

3. On her return from a visit to London in 2013, the appellant saw that her younger son, MOB, had marks put on his abdomen. She was told by her husband that they were the mark of a cult known as the Ogboni meaning that his son would be forced to join when he was 18. She did not miss this and fled with her sons to Zaria in the north of Nigeria. Her husband found out he was there and she returned then to Lagos where she stayed for about two months. Wishing to return to the United Kingdom she contacted her husband and asked him to renew the sons' passports promising that she would not run away again. He did so and, so she had them, she returned to her friend in Lagos. She and her siblings sold land and bought plane tickets travelling to London.

4. Shortly after arrival she met Mr Williams, who was a friend of a friend, and she became pregnant with her daughter, F, who was born in the UK on 21 November 2014. The appellant's case is that on return, her husband will find her and force her son to be initiated into the Ogboni; she also fears domestic violence at the hands of her former husband. The appellant claimed asylum on 4 April 2017.

5. In addition, the appellant's case is that her daughter, F, is a British citizen and that it would be a breach of her, and the rest of the family, Article 8 rights to require them to return to Nigeria. That is in particular also because F has specific medical needs as a result of her suffering serious burns in an accident in the United Kingdom.

The Respondent's Case

6. The respondent's case is set out in the refusal letter dated March 2018 and in a supplementary letter dated 16 September 2019.

7. The respondent considered that it was inconsistent for the appellant to have returned to her husband if she feared he would force her son into a cult. It was also observed that the sons' passports had been valid from 10 February 2012 until 9 February 2017 and thus, at the time she claimed to arrange passports for them, they already had valid passports. It is noted also in the appellant's evidence, as regards the reasons for her coming to the United Kingdom were inconsistent including that she wanted to obtain a British passport for her daughter [47]. The Secretary of State drew inferences adverse to the appellant for her failure to claim asylum on arrival and subsequent delay. It was noted in particular that she had not claimed asylum until after a decision had been taken to remove her from the United Kingdom.

8. The Secretary of State did not accept that the appellant had a genuine and subjective fear on return to Nigeria and in any event that any fear was not objectively well-founded as there would be sufficient protection from the authorities noting also that there was no evidence of compulsory membership. It was considered also that there was a sufficiency of protection for her were she the victim of domestic violence and that in any event it would be reasonable to expect her to relocate elsewhere within Nigeria.

9. The respondent did not consider either that the appellant met the requirements of paragraph 276ADE (1) of the Immigration Rules or that there were exceptional circumstances pursuant to paragraph GEN.3.2 of the Rules that her removal would be disproportionate, having had regard also to the best interests of the children.

10. Although the Secretary of State did not initially accept that Mr Williams had the right of abode and that therefore the appellant's daughter was not a British citizen, in the letter of 16 September 2019 it was confirmed that he had the right of abode but it was not accepted that he was the daughter's father given the appellant arrived on 12 March 2014 and gave birth on 21 November 2014, just over 36 weeks after her arrival and, in the absence of evidence that she was born prematurely, and the credibility issues raised in the letter, it was not accepted that he was the biological father.

The Hearing

11. The appellant gave evidence in Yoruba with the assistance of a court interpreter. In addition I had before me the following:

    (1) Respondent's bundle.

    (2) Respondent's additional refusal letter.

    (3) Appellant's bundle.

    (4) Appellant's supplementary bundle.

    (5) CPIN Nigeria: internal relocation.

    (6) Excerpts from EASO, Country of Origin Information Report Nigeria targeting of individuals November 2018.

    (7) Refugee Documentation Centre, Ireland, Nigeria: research compiled by the RDI 8 June 2010 - Information on Ogboni cult in Nigeria.

12. In addition to these, I have also taken into account the CPIN country background note January 2020, act as a protection March 2019 and medical healthcare issues Nigeria January 2020.

13. The respondent also sought to rely on two Country Guidance cases regarding the Ogboni:

    BL (Ogboni cult, protection, relocation) Nigeria CG [2002] UKIAT 01708.

WO (Ogboni cult) Nigeria CG [2004] UKIAT 00277.

Mr Tufan also sought to rely on NA (Bangladesh) v SSHD [2021] EWCA Civ 953.

14. The appellant adopted a witness statement adding that she had seen Mr Williams on 13 March, the day after arrival. She said that she had last seen a doctor about her daughter's burns in July and she was seen every two months. She had at the time of the accident suffered 56% burns.

15. In cross-examination, the appellant confirmed she had been to the United Kingdom in 2011, 2012, 2013 and finally had arrived in 2014. She said that she had funded these visits from money given to her by her ex-husband and she usually came with her children. She said that she and her siblings had sold land in 2014 and that was when they (she and her sons) "ran". She said the land belonged to all of them but the money had been given to her as she was the one with problems. She said that she and her siblings were 6 in number: only one remained in Nigeria.

16. The appellant said that she had fled to Zaria and stayed with her mother's sister. Her husband had found out and threatened her, told her to leave and she then went to Lagos and it was then she was introduced to Mr Williams who was the brother of her friend and they had started to talk on the telephone.

17. The appellant said that her husband found out that she was in Lagos and that at that time she had a valid visa but her sons did not. They had to get their visa from him, that she had pretended that they wanted to go on holiday to London with Majid. She said let him get the visa, that they should then go on holiday and then he could be initiated into the cult. She said he got the visa for them.

18. Asked about the report from Professor Katona regarding her PTSD she said she had been told initially to go for counselling and she did so every Wednesday. There was no re-examination.

19. Mr Tufan relied on the refusal letters, submitting that there was nothing in the material to suggest that the Ogboni cult or its members have the power to persecute people within Nigeria. He submitted also it was averred then that most of the members were Yoruba relying on WO at [18] and [24]. He submitted having had regard to the CPIN given the size and population of Nigeria that the appellant could relocate within the country.

20. Mr Tufan submitted that the appellant could not provide evidence to show that her family would not be able to support her financially and that she could get assistance with her medical condition – PTSD cannot return. He submitted further that the appellant could relocate.

21. Turning to Article 8, Mr Tufan submitted that, relying on NA (Bangladesh), the natural expectation is that the child would return to Nigeria with the

parent although she is receiving skin grafts it is a slow process, there was no right to remain.

22. In response, Mr Eaton relied on his skeleton argument, submitting that the appellant was credible and that the First-tier Tribunal had gone wrong in assuming that the Ogboni were largely benign. He submitted it was evident from the IRBD, a credible source, that membership of the cult was relevant and it was clear that it had a propensity to use violence.

23. Mr Eaton submitted further that the appellant's ex-husband had shown that he was driven on this issue: she had sought to relocate twice and she had been tracked down, the threats being made to her aunt. He submitted that she would not be safe and, as a single woman, with a British citizen daughter, she would be at risk. He submitted further that Article 8 claim was made out, the guidance from the Secretary of State being in the past that they would not normally seek to remove a family where there was a British citizen child. In addition, their daughter had long-term serious and proper health problems which required ongoing treatment.

The Law

24. It is for the appellant to show to the lower standard that she or her children are at risk of persecution on return to Nigeria. In assessing the appellant's case, I have considered all the evidence in the round in the medical report from Dr Katona and in the light of the background evidence regarding the Ogboni cult. The "country guidance" are now of a significant vintage. The first, **BL**, contains little of relevance and little reference to any evidence. At its highest it states at [10] that there is a lack of objective material supporting the proposition that police will not or cannot exercise control of the Ogboni nor had any Convention reason been identified [11].

25. In **WO** the Tribunal had reference at [13] onwards to the CIPU Report which noted that the Ogboni were a secret society. It was therefore hard to obtain reliable information about them. They also noted that the society had been powerful historically and at [17], the Tribunal noted that there was no authority for the proposition that the Ogboni have any significant membership drawn from tribes other than the Yoruba. They also agreed that their power had been curtailed [19] and nothing to support the account of a level of physical attacks [20] perpetrated by them in that case. Some support for the appellant's claim arises from what is recorded by the Tribunal at [21] and [22].

26. The material from EASO dates from June 2017 and confirms the existence of the Ogboni and states, relying on a fact-finding mission carried out by the French agency OFPRA 2016 that:-

> "According to a 1960 research article, members of secret societies claim to have mystical power, thereby affording them power and privilege over non-members; societies had a selective membership

> requiring qualification to enter the cult; the right to 'impose sanctions' on those who reveal the inner codes and procedures of the group to outsiders … The Ogboni Society is a caste of Yoruba priests who elected and controlled the Oba, the Yoruba king. The Ogboni had great political and societal powers (they could ultimately force the Oba to withdraw or kill himself) and it used to be highly prestigious to become a member. According to interlocutors of the OFPRA fact-finding mission, membership is hereditary for the eldest son or daughter, who joins voluntarily, even Christians. However, the Ogboni's influence has been declining since the 1990s. Nowadays, as OFPRA's interlocutors remarked, money is a greater means to access political power. Secret societies are not visible and members are supposed not to share their secrets with outsiders. One interlocutor compared them in this respect with the Freemasons.
>
> Even when rich and influential people deny that they are members of such cults, many people assume they are, simply on the basis they are rich and powerful".

27. At section 7.3 it is noted that there are different recruitment patterns but this section is concerned mostly with Campus cults.

28. In the second EASO Report, which builds on the 2017 Country Focus, it is observed that one source, Canadian Immigration and Refugee Board, characterises the Ogboni society as a criminal organisation. It notes that membership is declining and that "The only Yoruba parts of Nigeria where they still have some real influence on the traditional administration of the cities are in the Ebga, Egbado and Abeokuta parts of Nigeria [Ogun and Lagos State]". Another source, does give them a greater role, often part of the elite working in the police, judiciary and government institutions. It is noted also at 3.10.4 that membership is primarily voluntary but social pressure and intimidation to join can occur especially if the person has a close history with personal knowledge of the Ogboni and that new members are submitted to initiation rites and carry specific insignia. The intimidation tends to occur (3.10.6) where the person has a personal knowledge or where the parent has pledged the person would be his or her successor in the society. Refusal to join in such cases is difficult. That said it is also said "recent information on such cases could not be found within the timeframe of this report."

29. Further, it appears that the secrets in terms of rituals are not revealed (IRBD, 14 November 2012, AB pp6 to 8). It is difficult, however to attach much weight on the article from a Nigerian newspaper about the pressure being put on someone to get someone to join the Ogboni.

30. The IRBD report from 2000 states that no information on that Ogboni ritual in which the first born male child is ritualistically cut on the face could be found. That said there was a passage which reads:-

> "The anthropology professor also described the only incidence she could think of where the society might actively pursue a person who

> did not want to join was if that person's parents had 'dedicated' their child to the society, sometimes before they were born, then the society could go after the person and force them to join to ensure the fulfilment of the parents' promise. As such they might not be approached by the society until they are thought ready to join."

31. In terms of sufficiency of protection, it is important to note that the appellant's case is that she would returned as a single woman with children. In the CPIN on actors of protection at [2.3.11] it is stated:-

> "However, effective protection is not likely to be available in areas where there is armed or civil conflict including some parts of northeast Nigeria, the Niger Delta and the Middle Belt. Further, women, LGB persons and non-indigenes may face discrimination which prevents them from being able to access effective protection (see country policy and information notes on Women fearing gender-based harm or violence and Internal relocation)". That note is not available.

32. That said, the section on women in the CPIN Country Background Note from January 2020 at section 16 includes material indicating that women face significant problems including a lack of a comprehensive law for combatting violence against women and in respect of domestic violence (16.2); and, that the level of domestic violence is very high.

33. With regard to single women, the indication is that there are difficulties, and at section 16.8 there is material suggesting that police often turn away domestic violence victims if they report the offence continuing to view the issue as a private matter which should remain within the boundaries of the marital home and the police often refuse to intervene in domestic disputes or blame the victim for provoking the abuse.

34. With regards to internal relocation, at [2.2.5] it stated that a person fearing a non-state actor is likely to be able to relocate to another part of Nigeria depending on the nature of the threat but "however, relocation may be more difficult for single women and non-indigenes without access to support networks."

35. In assessing the appellant's evidence, I have considered it in the round through the prism of the background material and bearing in mind that she suffers from PTSD. That, I accept, following the report from Dr Katona may make it difficult for her to recall matters although in this case the PTSD is related primarily to what happened to her daughter who was badly scalded and scarred when she was young. That happened in the United Kingdom.

36. With regard to the scarring on the MOB's abdomen, this is noted by Southwark Social Services in the material provided by them and it is evident from their interview with him that he said that the scarring on his stomach was carried out by his father with three or four men.

37. The appellant also said in response to [Q28] that it is the father who is looking for MOB and not her per se [27]. She was asked about the cult [Q50 onwards] and what she said, about a grandfather joining then the father and then initiating sons, is consistent with the background material. It is not inconsistent with the material that she did not know about the cult until her husband told her about it, given that membership is secret. Given what was done to MOB, it is plausible that she would leave to go to Zaria to stay with a relative and that the former husband would seek to find them.

38. It is, however, difficult to understand why, if the father was so insistent on having control over his son, that he traced her to Zaria and made threats that he acquiesced in obtaining a visa which would allow the appellant to take MOB out of Nigeria and out of his control. That aspect of the claim causes me significant concern.

39. I accept that the appellant went to live in Lagos in her account and she did not know how to find out that they were in Lagos. [Q94]. It is also evident that she volunteered the information [101] that in 2013, early 2014 her husband renewed the passports for another six months and that she had convinced the husband to renew the passports as she had said they are not going to run away. She said that she had contacted him and that he would have found out they were in Lagos anyway. [Q109].

40. In her witness statement she said that she contacted her husband and returned to Abeokuta with the children [9] and she explains that she refers to extending the visa for six months as what she had meant to say rather than the passports. That is, I consider, a plausible explanation as a passport must be renewed for six months. But there is little explanation for a failure to claim asylum for some three years.

41. I consider also that it is wholly implausible that the appellant's ex-husband, who at best is a very controlling individual who had pursued her across Nigeria would have given her the opportunity to take the child he wanted to initiate into the cult, out of the country.

42. There is nothing implausible in the appellant knowing some details about the Ogboni cult as she explains in her interview that she had seen films about them and similar publicly available material; it does not follow that she learned about it from the husband.

43. Why her husband put a mark on their son I simply do not know. In her screening interview, to which I accept care must be taken when attributing weight, her answers at 3.1 are somewhat confused. Whilst the refusal letter does at paragraph 45 (refer to the appellant when offered assisted voluntary return), stating that she left Nigeria to flee domestic violence from her husband, that has not been produced.

44. Drawing these factors together, I note that there are positive factors to be taken into account. The account of what had happened in Nigeria is

broadly consistent and the appellant's second son has scarring consistent with tribal initiation. While I am mindful of the dangers of attaching too much weight to delays in claiming asylum, in this case there is little or no proper explanation for the delay.

45. Taking all of these factors into account, I am not satisfied that the appellant's account of her husband pursuing her with threats is true. Nor am I satisfied that he maintains any adverse interest in her or his sons, given he was prepared to assist in them leaving Nigeria.

46. I accept that MOB has been scarred and I note his evidence given to Social Services some years ago that it was done by his father and four other men. I am in the circumstances satisfied that he has been marked by some ritual regarding the Ogboni but it does not mean that he is at imminent risk. He is not yet 18 and there is no indication that his father is dead or that he would at any time proximate to return be forced to take up a position within any cult.

47. Given that I am not satisfied that there is any risk to the appellant or her son MOB and seven years have elapsed since they left Nigeria, is it not necessary for me to consider whether a sufficiency of protection or whether internal relocation would be necessary. I therefore dismiss the appeal on asylum grounds.

48. Given that I am not satisfied that the appellant faces any risk of ill-treatment on return to Nigeria, I am not satisfied that she is entitled to humanitarian protection.

49. I turn next to the claim based on article 8 under the Immigration Rules.

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

50. Paragraph 276(1) ADE (iv) of the Immigration Rules provides:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

...

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

51. The first issue in dispute is whether the appellant's daughter is a British citizen.

52. The starting point is that there is a presumption in law that the man named on a birth certificate is the father. Whilst that can be displaced, the parties seeking to do so must do so on the balance of probability.

53. In this case the inference from the Secretary of State's position is that the appellant and/or Mr Williams lied when registering the birth. The basis for that is circumstantial in that it relates to the date of birth of the child, less than 40 weeks after the appellant arrived in the United Kingdom. I take judicial not of the fact that the expected date of delivery is calculated from the last maternal period. If the appellant arrived on 12 March 2014, on day 14 of her cycle, expected due date of delivery would have been 7 December making delivery about two weeks early rather than 4, hence not premature. I am not satisfied that the Secretary of State has shown to the necessary standard that the appellant has perpetrated a fraud and on that basis I am satisfied that daughter F is a British citizen. Further, although I have doubts about the appellant's evidence, there is the evidence of Mr William's application for a passport for F, and his registration as the father long before the asylum claim was made which I take into account, and I find dispels any doubts that may flow for some aspects of the appellant's case.

54. On that basis, the daughter is a qualifying child as are both of the older sons as they have now lived in the United Kingdom in excess of 7 years.

55. I turn next to NA (Bangladesh) at paragraphs 29 to 30

29. It follows from that analysis that the Upper Tribunal Judge was right to reject the submission that "the powerful reasons doctrine" remained good law: to put it more plainly, the seven-year provision does not

> create a presumption in favour of a seven-year child, and thus their parents, being granted leave to remain. Accordingly, ground 1 of the appeal must fail.
>
> 30. It is important, however, to emphasise that the approach approved by Lord Carnwath in *KO (Nigeria)* does not provide for a presumption in the opposite direction. It represents no more than a common-sense starting-point, adopted for the reasons given at paras. 18-19 of his judgment. It remains necessary in every case to evaluate all the circumstances in order to establish whether it would be reasonable to expect the child to leave the UK, with his or her parents. If the conclusion of the evaluation is that this would not be reasonable, then the "hypothesis" that the parents will be leaving has to be abandoned and the family as a whole will be entitled to leave to remain. (To spell it out: in the case of a qualifying child that will be under paragraph 276ADE (1); in the case of the parents it will be under article 8, applying section 117B (6); and in the case of any non-qualifying child it will derive from the fact that the parents have leave.) Ms Masood made it clear that the Secretary of State acknowledged that in that evaluation the fact that the child had been in the UK for more than seven years would be a material consideration.

56. I start from the position that the daughter is a British citizen who continues to require significant input from the NHS to which she is entitled for the burns she suffered as a child. I accept that she has ongoing needs including further skin grafts and I accept also that this is a significant point in her favour. I accept also that both of the boys have undergone spent a significant part of their lives in the United Kingdom. They have grown, their adolescence has been here and I accept the material provided that they now have ties with the education system here and with peer groups and friends outside the family.

57. Given what was disclosed by the children to Social Services and given that I accept that the appellant is now estranged from her husband, I consider that there would, on the basis of the material regarding the position of single women in Nigeria, be some difficulty in her relocating there without support. I accept that the “powerful reasons” doctrine does not apply.

58. I approach the facts of this case on the “real world” basis. The appellant has no leave to be here and neither do her sons. But the daughter has every right to be here as a British Citizen. Further, if it is not reasonable for her to go to live in Nigeria, then her mother (and siblings) need to be given leave.

59. I consider that on the facts of this case in particular the difficulties arising for the daughter who is a British Citizen and would be compelled to leave if her mother were removed, and who has significant health needs which would not be met adequately in Nigeria to the standard here, that it would not be reasonable to expect her to leave. I find that her best interests require her to remain in the United Kingdom to get the care to which she is entitled. While I have not accepted the appellant’ case as regards asylum, I am satisfied, having had regard to the material from Social Services that

there is no contact with family in Nigeria; that the relationship with the former husband has broken down and that the appellant would be returning to Nigeria as a single woman with three children. I find that she would find it difficult to adjust again to life there, and would struggle to provide accommodation and support for her children.

60. With regard to the specific ages between which the appellant's sons spent in this country that it would not be reasonable to expect them to leave the United Kingdom and accordingly her sons meet the requirements of paragraph 276ADE(1)(iv) of the Immigration Rules.

61. In all the circumstances, I am satisfied also that there would accordingly be very compelling circumstances such that, pursuant to Section 117B(6), of the 2002 Act, it would be disproportionate to expect the appellant to leave the United Kingdom and therefore I allow her appeal on that basis.

Notice of Decision

1. The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2. I remake the appeal by:

   (a) dismissing it on asylum grounds and humanitarian grounds.

   (b) Allowing the appeal on human rights grounds.

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

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 29 July 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX - ERROR OF LAW DECISION

IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04305/2018V

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
By Skype for Business **On 4 November 2020**	.....

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

S B A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, Counsel instructed by Tower Hamlets Law Centre
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal was conducted remotely via Skype for business. Neither party objected, and although the video feed failed on several occasions, it proved possible to continue the hearing using audio only.

2. The appellant appeals with permission against the decision of First-tier Tribunal Judge MacDonald dismissing her asylum, protection and human rights case and upholding the decision of the Secretary of State to refuse that.

3. The appellant's case is this. She is a victim of domestic violence from her former husband. The ex-husband had unknown to her taken both of their sons to an Ogboni Fraternity meeting at which the younger son, who was 5 years of age at the time, was chosen. He was scarred in according with the tradition on the left-hand side of his abdomen and as a consequence would have to join the Ogboni upon turning 18.

4. The appellant's account is also that she had fled the family home with her sons and stayed for four weeks with her cousin's family in Zaria in Northern Nigeria. She was tracked down there by the ex-husband, who made threats to her and to the cousin's family. She then ran away to a friend in Lagos but when he saw the threats which she had received he too asked the appellant and her children to leave. It was as a result of that that she fears persecution on return to Nigeria.

5. In addition, since she has come to the United Kingdom the appellant was in a relationship, albeit for a short time, with a Mr William, who it now appears is a British citizen or had the right of abode at the time of the appellant's daughter's birth and I will turn to that in more detail in my decision later, it forming part of ground 3. The Secretary of State did not accept the appellant's account and at the time of the writing of the refusal letter did not accept that Mr William had the right of abode or was settled in the United Kingdom.

6. The judge heard evidence from the appellant, who was represented by Mr Eaton as she is today. There was also put before the judge a bundle which contained amongst other things a report from the European Asylum Support Office("EASO") on country conditions in Nigeria. There was also before the judge a medical report from Professor Katona relating to the appellant's mental health. In addition to these there is also substantial documentation from Southwark Social Services because the family had been of concern to them for a number of years.

7. The judge took the appellant's case at its high point and concluded that he was not satisfied that the appellant was at risk from the Ogboni. In doing so he did consider the report from the European Asylum Support Office and it was noted that he was provided with a number of articles from Nigerian newspapers which suggested that they were more dangerous than the background information by EASO supported but attached no weight to them on the basis that they go against the considered and detailed content of the country information produced by the government-sponsored bodies. The judge concluded that he was not persuaded that the Ogboni posed a threat either to the appellant, her son M or the appellant's other children if any returned to Nigeria and dismissed the appeal pursuant to Articles 2 and 3.

8. In turning to Article 8 the judge considered first that he was not satisfied that F, the appellant's daughter born in the United Kingdom, was a British citizen as he was not satisfied on the basis of a submission made to him by the Secretary of State, who had by this point accepted that Mr William did have either a right of abode or indefinite leave to remain, was in fact F's father, and the judge also concluded that having read the social enquiry report, it would not be disproportionate to require the children to leave Nigeria. He did not turn his mind in any great detail to paragraph 276ADE(1)(vi) and dismissed the appeal on all grounds.

9. The appellant applied for permission to challenge that decision on three grounds:

10. First, that the judge had erred in his assessment of the evidence of the threat from the Ogboni in that in particular he had failed properly to explain why he had rejected the objective evidence which he had found to contradict the EASO report and failed in particular to take into account evidence from the Canadian IRB, failed to give weight to the evidence that the first applicant's husband had made threats against her of sufficient severity that they fled to family who later asked them to leave, failed to take into account that the younger child had been the victim of torture in the terms of the ritual scarring and did not take in account that she had been the victim of domestic violence.

11. Second, that the judge had failed to consider other factors regarding the risk of very significant obstacles on return, specifically the report of Dr Katona indicating that the appellant has PTSD, and a deteriorating mental state; and, also the material from Southwark Social Services indicating concern on that point.

12. Ground 3, that although at all material times the respondent had proceeded on the basis that F was her father's daughter it was only in the 16 September 2019 that it was said that the issue was raised of whether F is the daughter and the judge failed to give weight to the evidence Mr William himself clearly considered F his daughter in 2015 when he had been added to the birth certificate as her father at the time she was born and also had applied for a passport for her in 2015.

13. I turn first to ground 1. I am satisfied that the judge had failed to give reasons for failing to take into account the material other than that set out in the EASO report. The judge has not explained why the evidence is contradictory and it would appear that rather than being contradictory or inconsistent it simply fills in gaps. The EASO report is relatively limited in that it takes a "broad brush" approach as to the existence of the Ogboni but gives no detail of any specific incidences in which the Ogboni cult had been involved in any activities. That is not the same with the newspapers and it is not the same with regard to the report from IRB in Canada.

14. Whilst it is open to a judge to attach different weight to material because for example one source is seen as more authoritative than another, the

simple fact that it comes from a government-sponsored source is not a sufficient reason for rejecting material and more to the point, it does not apply to the material supplied by IRB in Canada, which is a well-recognised and government-sponsored body.

15. With regard to the suggestion by the Secretary of State that this is in fact immaterial because the threat to the appellant is not imminent and indeed the threat to her son is not imminent in the sense that it would not apply to him until he were 18, at which point he would be at risk from the Ogboni society if he did not want to participate in their activities. I consider that this is not made out.

16. As Mr Eaton submitted, the threat is already in existence, there have been threats to the appellant because she has resisted the activities of the father, who, I accept, cannot in reality in these circumstances be separated out from the Ogboni cult, he would appear to be carrying out his activities in line with what they would want as he is a member of the cult himself and to that extent it cannot be said that this is simply a fear of what would happen at some indeterminate point in the future and accordingly, it is arguable that there would be an imminent risk on return, given what had happened in the past, the judge having proceeded on the basis that he took the case at its highest, which by implication includes the evidence that the appellant has suffered at the hands of her husband and that he had traced her twice across Nigeria, and for these reasons, I consider that ground 1 is made out. I would also add with respect to ground 1 that the judge did fail to note that the younger son had been subject to ill-treatment. Although this is perhaps of less materiality than the other reasons the ground is made out.

17. Ground 2. The Secretary of State has very fairly conceded in this case that the reasoning is not sufficient. I agree. The judge has not, in assessing whether the appellant would have difficulty on relating and particularly in looking after her children when returned to Nigeria, had regard to the evidence of Professor Katona as to her suffering from PTSD which is worsening and a deteriorating mental state which would render her unable to work to support herself and her children. It would have been open to the judge to disagree with that opinion, given proper reasons, but he simply has not engaged with it.

18. The judge has in reality not engaged either with the material from Southwark Social Services. There is a detailed report which details concerns but the judge has, and I say this with some concern, quoted selectively from that material and has omitted relevant material, and to that extent his reference at paragraph 91 that the boys were doing well at school is selective, and I am satisfied he has failed to give proper consideration to all the evidence on that point.

19. With regards to ground 3, I note that the Secretary of State is not conceding that Mr William is the father of F but is in effect conceding that the reasoning that the judge gave is not sufficient. It is, I consider it fair to

say, that the judge had not had regard to the fact that Mr William had in 2015 been present at the registration of F's birth. As a matter of law he would have to have been present to register the birth for his name to be put on the certificate as he was not at that point, nor has he ever been as far as I am aware, married to the appellant. That was not taken into account nor that he had in 2015 applied for a passport. These are material matters and are relevant to the issue of paternity when what the Secretary of State is seeking to do here is to say that, on no particularly good evidential basis, the judge should have looked behind an official document, specifically a birth certificate, and for these reasons also I consider that ground 3 is made out.

20. Accordingly, for these reasons I find that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

21. Having invited the parties to address me as to how the decision should be remade, I consider that it would be appropriate to retain the appeal in the Upper Tribunal.

Notice of Decision & Directions

1. The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2. The appeal will be remade in the Upper Tribunal on a date to be fixed.

3. Having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal can and should be held face-to-face on a date to be fixed as it may be necessary to have further oral evidence.

4. Any party wishing to adduce further evidence must serve it at least 10 working days before the next hearing, accompanied by an application made pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 explaining why it should be permitted

Signed Date 9 November 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul