



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01364/2020**

THE IMMIGRATION ACTS

**Heard at Field House
on 12 January 2022**

**Decision Promulgated
On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**O O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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 both to the appellant and to the respondent.

Representation:

For the appellant: Dr R. Rashmi, instructed by Gordon and Thompson
Solicitors

For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The basis of the appellant's original claim was that he feared Nigerian government officials at the Petroleum Technology Development Fund (PTDF) because he owed a large amount of money after having failed to complete a PhD programme funded by a PTDF scholarship. He feared that if he returned to Nigeria he would be at risk from people who worked for the PTDF and/or Fulani herdsmen who may be co-opted to kidnap and kill him on their behalf. The appellant did not articulate any fear of return for reasons of his religion in the original claim.

2. The appellant appealed the respondent's decision dated 29 January 2020 to refuse a protection and human rights claim. The grounds of appeal to the First-tier Tribunal stated:

'11. The Appellant is a Christian and believes that he is also persecuted for reasons of his religion as Christians from where he comes from are persecuted by Fulani herdsmen for religious and political reasons. We enclose documentary evidence to support his claim for asylum.

12. There are various reports that confirms (sic) that Fulani herdsmen, who are Muslim destroy houses, churches and seize properties belonging to Christian owners with impunity as the government of President Buhari, mainly dominated and controlled by Muslim from the North use the Fulani herdsmen as instruments of oppression and persecution against Christians from the South. There is evidence of targeted attack (sic) by Fulani herdsmen against Christian (sic). We enclose documentary evidence to support his claim for asylum.

13. In the circumstances, the Appellant believes that he will suffer religious persecution by Agents of the Nigerian Government or its agents. The Fulani herdsmen have killed thousands of people and destroyed more than 1300 Christian Churches with impunity. The Appellant believes that his claim for asylum is political, religious and ethnic in nature. The police have not taken any step to investigate or prosecute the Fulani herdsmen as they are agents of the State.

....
14. The Appellant believes that President Buhari and his Fulani herdsmen are behind the persecution of Christian (sic) from the south of Nigeria although they want the world to believe otherwise. There is evidence that the International Criminal Court is investigating President Buhari for crime (sic) against Humanity for acts committed by his government using Fulani herdsmen and Boko Haram as agents of persecution.'

3. These were general submissions made by the appellant's legal representative in the grounds of appeal. The appellant's evidence on the issue was extremely limited and did not even articulate a clear assertion that he feared persecution 'for reasons of' his religion. It was confined to the following brief statement in the witness statement prepared for the hearing:

'7. I am afraid for my life. I am a Christian from the southern part of the country; I have earlier received calls in form of threat, which I would have presented as evidence here, but for the advance technology involved I am not able to provide.

8. I am quite aware of the things going on in the country about the activities and terrors of the Fulani Herdsmen been used as instrument to target any one the government is willing to deal with.'

4. The skeleton argument produced for the First-tier Tribunal on 20 March 2020, and in response to directions, identified the issues for determination in the appeal as:

- '(a) Is A genuinely in fear of his life?
- (b) The fact that A has a right of appeal attests to the fact that R is satisfied that A has provided proof that that (sic) he is in fear of his life
- (c) Has R properly considered the article 8 right of A'

5. The skeleton argument made similarly vague and generalised submissions arguing that the decision maker had failed to consider the killing of Christians [20(1.1)], that there was evidence to show Boko Haram killed Christians ([20(1.4)], and that 'stories are everywhere, especially those who have scores to settle with the current government in Nigeria, more importantly if you are Christian from southern Nigeria' [20(1.6)].

6. First-tier Tribunal Judge M.R. Oliver ('the judge') dismissed the appeal in a decision promulgated on 12 January 2021. He outlined the background to the case, including the appellant's immigration history [11-18]. He outlined the account given by the appellant in interview [19-24]. He summarised the respondent's reasons for refusal letter [25-27]. The judge went on to summarise some of the evidence given by the appellant at the hearing [28-29]. The evidence did not appear to include anything of note relating to a fear of persecution as a Christian. The judge went on to make his findings. In respect of the generalised and limited references to attacks by Fulani herdsmen the judge said:

- '31. ... He has also claimed that he fears the government, acting through the Fulani herdsmen, but has not explained why they would have any involvement in acting on behalf of the government when their clashes are with Christian farmers over land and their kidnapping is of Christian women.'

7. The judge rejected the appellant's claim to have received threats from the PTDF on the ground that he had not mentioned those threats in previous applications and only belatedly raised the issue when he claimed asylum in 2019. The judge also found the appellant's oral evidence to be vague and evasive. He rejected the appellant's claim that he had been threatened by members of the PTDR or the government [32].

8. The judge then turned to consider the human rights claim. He noted that the appellant's medical conditions were 'unexceptional' and could not found a claim under Articles 3 or 8 of the European Convention on Human Rights. He had no claim in respect of family life in the UK. The judge found that there was little evidence of the appellant's private life beyond a few character references. Although the judge incorrectly referred to there being no 'insurmountable obstacles' to the appellant returning to Nigeria it is clear that he was referring to the 'very significant obstacles' test

contained in paragraph 276ADE(1)(vi) of the immigration rules because (i) he made this finding with reference to the appellant's private life to which that paragraph relates; and (ii) he made direct reference to paragraph 276ADE [33]. The judge considered the appellant's length of residence but concluded that he did not meet the requirements of the immigration rules for 10 years continuous lawful residence because he had been without leave to remain from 2017 [34]. The evidence before him did not identify any other exceptional circumstances that might render removal disproportionate with reference to Article 8.

9. The grounds of appeal to the Upper Tribunal are poorly pleaded and not clearly particularised. The following three points might be discerned from the general submissions made:
 - (i) The appellant disagrees with the judge's conclusion that he had not been threatened. The judge failed to consider the Scholarship Bond between the appellant and PDTF dated 28 September 2010.
 - (ii) The judge failed to consider the Article 8 claim properly. He failed to consider that there would be obstacles to the appellant reintegrating in Nigeria although the grounds do not identify what those obstacles might be. The appellant produced evidence from friends and his Pastor as evidence of his connections to the UK. The judge failed to consider whether the appellant's (unparticularised) medical conditions amounted to exceptional circumstances.
 - (iii) The judge failed to consider whether the appellant would be at risk for reasons of his religion in light of what he said at paragraph 7 of his witness statement.
10. First-tier Tribunal Judge Sills granted permission to appeal to the Upper Tribunal in the following terms:
 2. The somewhat diffuse grounds of appeal at para 4(d) raise the fact that the Appellant claimed to fear persecution on return to Nigeria due to his Christianity. This claim appears to have been made for the first time in the grounds of appeal. The Judge fails to deal with this issue in the decision and reasons. This failure is an arguable error of law.
 3. While the other grounds pursued appear to have less merit, for the avoidance of doubt, permission to appeal is granted on all grounds.'

Decision and reasons

11. The application for permission to appeal to the Upper Tribunal was poorly pleaded, made nothing more than general assertions that the appellant should not be returned to Nigeria, and failed to articulate any potential errors of law clearly.
12. The case was no better presented at the hearing. Dr Rahmi prepared a skeleton argument which stated that the issues were (i) whether the

appellant has a well founded fear of persecution for reasons of his religion; (ii) whether the appellant qualifies for humanitarian protection for non-payment of the scholarship funds; and (iii) whether 'A qualify for private life in UK'. The skeleton argument made general submissions with reference to background evidence that was not before the First-tier Tribunal and outlined trite principles and basic case law that does not need to be cited to an expert tribunal. Dr Rashmi did not appear to have even a basic understanding of the error of law jurisdiction of the Upper Tribunal contained in sections 11 and 12 of The Tribunals, Courts and Enforcement Act 2007 or the procedures pertaining to hearings in the Upper Tribunal contained in The Tribunal Procedure (Upper Tribunal) Rules 2008.

13. In so far as the original grounds appeared to raise three broad points I will deal with them in turn. The first ground merely stated that the judge failed to consider the Scholarship Bond. It is difficult to see how this could possibly amount to an error of law when all that evidence does is to support his claim to have been granted a scholarship, a fact that was not disputed by the respondent. The issue was whether the appellant had received threats for non-repayment of the funds after he failed to complete his PhD. The judge gave adequate reasons for rejecting that aspect of his account on the ground that (i) he was a vague and evasive witness; (ii) the appellant failed to mention the threats on several occasions when he could have done so; and ultimately (iii) there was no evidence to support the appellant's claim to have been threatened.
14. The second ground touches on Article 8 but merely makes general statements about the appellant's private life in the UK without articulating any error of law in the First-tier Tribunal decision. Although the judge's findings were not as structured or detail as they could have been, they dealt with the necessary legal elements adequately on the facts of this case.
15. The judge noted that the appellant did not meet the requirements of the immigration rules, which are the respondent's measure of where a fair balance is struck for the purpose of Article 8. The appellant did not meet the requirements for 10 years lawful residence under paragraph 276B of the immigration rules because he entered the UK in 2010 and had remained without lawful leave since 2017. In fact the chronology suggests that the appellant has not had lawful leave since previous appeal rights became exhausted in November 2016. The appellant fell far short of the private life 20 year long residence requirement contained in paragraph 276ADE(1)(iii) of the immigration rules. Although the judge incorrectly referred to there being no 'insurmountable obstacles' to the appellant returning to Nigeria, it is clear that he was in fact referring to the test under paragraph 276ADE(1)(vi) of the immigration rules as to whether there were 'very significant obstacles' to the appellant's reintegration in Nigeria. Having rejected his claim to be at risk on return it was within a range of reasonable responses to the evidence to find that there would be no obstacles given the appellant's age, pre-existing work experience in

Nigeria, and the high level of his education. The judge was correct to note that there was no evidence to suggest that the appellant had a family life with a partner or children that might engage Appendix FM of the immigration rules. The grounds fail to particularise how or why the appellant's medical conditions might constitute exceptional circumstances that might outweigh the public interest in maintaining an effective system of immigration control in circumstances where the appellant did not meet the requirements for leave to remain under the immigration rules. The highest the evidence went was to show that the appellant suffers from hypertension. A common medical condition for which there is likely to be treatment in Nigeria. Elsewhere he had mentioned that he suffered from panic attacks and depression but there was no evidence of significant mental health issues. In light of this it was open to the judge to conclude that the appellant's medical conditions did not disclose any exceptional circumstances.

16. The last ground discloses a procedural issue, but ultimately does not disclose an error of law that would have made any material difference to the outcome of the appeal. It is clear from the evidence, and Dr Rashmi accepted at the hearing, that the appellant did not articulate a claim that he would be at risk 'for reasons of' his religion when he first claimed asylum although he did mention attacks by Fulani herdsmen. It is accepted that his legal representative only raised the possibility for the first time in the grounds of appeal to the First-tier Tribunal. Despite directions for the parties to agree the issues, it was still not articulated clearly in the skeleton argument prepared for the First-tier Tribunal beyond general assertions about the evidence that shows that Fulani tribesmen have attacked Christians in certain regions of Nigeria. The appellant's witness statement only made a vague assertion and did not particularise how or why he thought he would be at risk.
17. Mr Clarke noted that any claim grounded on a different issue such as risk on return for reasons of religion would amount to a 'new matter' for the purpose of section 85(5) of The Nationality, Immigration and Asylum Act 2002. Neither the judge nor the representatives at the First-tier Tribunal hearing appear to have been alert to this issue despite the fact that it was only raised for the first time in the grounds of appeal. Even if the respondent, in a hypothetical scenario, had given consent for the judge to consider the issue of risk on grounds of religion as a 'new matter' it is clear that the judge did touch on the evidence relating to the targeting of Christians by Fulani herdsmen at the end of [31] of the decision.
18. Even if the judge failed to make adequate findings in relation to this issue I conclude that such an error would have made no material difference to the outcome of the appeal. Any claim based on risk on return on grounds of his religion was bound to fail. First, the appellant failed to articulate any clear claim on this ground. Second, the background evidence shows problems for Christians only in certain areas of central and northern Nigeria where there are Muslim majorities and non-state extremist groups

such as Boko Haram operate. The reliance on such evidence by the appellant's representatives to suggest that Christians would be at risk in all areas of Nigeria, in my assessment, raised professional conduct issues. A legal representative has a duty not to mislead the tribunal by asserting that evidence shows a risk when there is none in another area of the country. Third, the appellant was born in Lagos and says that he lived and worked in Ogun state, which borders Lagos state. In other words, the appellant's home area in the south west of Nigeria is not one of those affected by religious violence towards Christians. In any event, it is not arguable that it would be unduly harsh or unreasonable to expect him to relocate to Lagos where he could find work and establish himself. For these reasons, any claim that he had a well-founded fear of persecution for reasons of his religion was bound to fail.

19. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed M. Canavan Date 13 January 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email