



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

Appeal Number: PA/12800/2017

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**On 13 January 2022**

**Hybrid hearing by Microsoft Teams**

**Decision & Reasons  
Promulgated**

**On 08 February 2022**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OOA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer

For the Respondent: Ms S Rudd, instructed by Albany Solicitors

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (OOA). This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will hereafter refer to the parties as they appeared before the First-tier Tribunal: appellant (OOA) and respondent (Secretary of State for the Home Department).

### **Introduction**

3. The appellant is a citizen of Nigeria who was born on 12 December 1980. She arrived in the United Kingdom in October 2011.
4. On 29 June 2017, the appellant claimed asylum. Her two sons “TA” and “KA” were dependent upon her claim. The appellant’s claim was that she had been subject to domestic violence and that she was at risk on return of mistreatment by her husband and his family in Nigeria.
5. On 23 November 2017, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and under the ECHR.

### **The Appeal to the First-Tier Tribunal**

6. The appellant appealed to the First-tier Tribunal. In a determination sent on 11<sup>th</sup> November 2019, Judge Richards-Clarke allowed the appellant’s appeal on asylum grounds and under Arts 2 and 3 of the ECHR. In the light of that, however, the judge did not go on to consider the appellant’s appeal under Art 8 of the ECHR.
7. In paras 26 and 27 of her decision, the judge concluded that there was a real risk that the appellant would be trafficked on return to Nigeria and there was a likelihood of a “vulnerable subsistence life, relying on strangers for food and shelter for herself and her children”. In addition, the judge found that internal relocation was not available to the appellant as a “safe and reasonable alternative”. The judge also found that it would be “unduly harsh” to expect the appellant to relocate internally within Nigeria.

### **The Appeal to the Upper Tribunal**

8. The Secretary of State sought permission to appeal to the Upper Tribunal on a number of grounds set out in twelve (somewhat discursive) paragraphs in the application.
9. First, the judge failed to identify the specific risk to the appellant on return and conflated considerations relating to an asylum claim with that of humanitarian protection.
10. Secondly, the judge’s finding that the appellant had been trafficked to the UK was “weak and somewhat non-committal” and it was not a matter relied upon by the appellant prior to the hearing.
11. In reaching that finding, the grounds also contend that the judge erred in relying upon an expert report which asserted that the appellant and her

sons were likely to be caught up in exploitation/trafficking without any supportive evidence or case law.

12. Thirdly, as regards any fear from her husband and his family, there had been no evidence of threats from him or claim that he was able to trace her and she had not been in contact with him for seven years. In any event, the judge had found (at para 23) that the appellant would obtain a sufficiency of protection against any risk on return.
13. Fourthly, in concluding that the appellant could not internally relocate, the judge failed properly to apply the country guidance decision in HD (trafficked women) Nigeria CG [2016] UKUT 454 (IAC).
14. In that regard, and elsewhere, the judge failed to give adequate reasons for his credibility finding, in favour of the appellant, including finding that she would be unable to support herself and her children on return.
15. On 19 December 2019, the First-tier Tribunal (DJ Manuell) granted the Secretary of State permission to appeal on all grounds.
16. Following a number of Case Management Review/For Mention Hearings, principally because the appellant is detained in a psychiatric hospital because of her mental health issues, the case was listed for a hybrid hearing at the Cardiff Civil Justice Centre on 13 January 2022. The appellant was represented by Ms Rudd who was in court. The respondent was represented by Mr Bates who joined the hearing by Microsoft Teams as did the appellant, accompanied by her social worker, at the psychiatric hospital. I was present in court.

### **The Judge's Decision**

17. Before the judge, it was accepted that the appellant was a Nigerian national who had been subject to domestic violence from her former husband and his family in Nigeria and that she has a genuine, subjective fear of that on return. It was also not disputed that the appellant potentially was member of a particular social group, namely a single woman returning to Nigeria.
18. However, the respondent contended: that the appellant did not have a well-founded fear of persecution on return; that the Nigerian authorities would provide a sufficiency of protection; and that, in any event, it would be reasonable to expect the appellant to internally relocate within Nigeria.
19. The respondent relied upon the *CPIN*, "Nigeria: Women fearing gender-based harm or violence" (August 2016), the *CPIN*, "Nigeria: Internal relocation" (March 2019; and *CPIN*, "Nigeria: Trafficking of women" (July 2019). In addition, the judge referred to the country guidance decision in HD (Trafficked women) Nigeria CG [2016] UKUT 454 (IAC).
20. The appellant relied upon an expert report from the Reverend Dr Carrie Pemberton Ford dated 9 March 2019.

21. As regards the background material, it suffices to set out the judicial headnote in the country guidance decision of HD which the judge set out at para 12 of her decision as follows:

- “1. The guidance set out in PO (trafficked women) Nigeria [2009] UKAIT 00046 at paragraphs 191-192 should no longer be followed.
2. Although the Government of Nigeria recognises that the trafficking of women, both internally and transnationally, is a significant problem to be addressed, it is not established by the evidence that for women in general in Nigeria there is a real risk of being trafficked.
3. For a woman returning to Nigeria, after having been trafficked to the United Kingdom, there is in general no real risk of retribution or of being trafficked afresh by her original traffickers.
4. Whether a woman returning to Nigeria having previously been trafficked to the United Kingdom faces on return a real risk of being trafficked afresh will require a detailed assessment of her particular and individual characteristics. Factors that will indicate an enhanced risk of being trafficked include, but are not limited to:
  - a. The absence of a supportive family willing to take her back into the family unit;
  - b. Visible or discernible characteristics of vulnerability, such as having no social support network to assist her, no or little education or vocational skills, mental health conditions, which may well have been caused by experiences of abuse when originally trafficked, material and financial deprivation such as to mean that she will be living in poverty or in conditions of destitution;
  - c. The fact that a woman was previously trafficked is likely to mean that she was then identified by the traffickers as someone disclosing characteristics of vulnerability such as to give rise to a real risk of being trafficked. On returning to Nigeria, it is probable that those characteristics of vulnerability will be enhanced further in the absence of factors that suggest otherwise.
5. Factors that indicate a lower risk of being trafficked include, but are not limited to:
  - a. The availability of a supportive family willing to take the woman back into the family unit;
  - b. The fact that the woman has acquired skills and experiences since leaving Nigeria that better equip her to have access to a livelihood on return to Nigeria, thus enabling her to provide for herself.
6. There will be little risk of being trafficked if received into a NAPTIP shelter or a shelter provided by an NGO for the time that she is there, but that support is likely to be temporary, possibly for just a few weeks, and there will need to be a careful assessment of the position of the woman when she leaves the shelter.

7. For a woman who does face a real risk of being trafficked if she returns to her home area, the question of whether internal relocation will be available as a safe and reasonable alternative that will not be unduly harsh will require a detailed assessment of her particular circumstances. For a woman who discloses the characteristics of vulnerability described above that are indicative of a real risk of being trafficked, internal relocation is unlikely to be a viable alternative.”

22. Then at para 19 of her decision, the judge set out an extract from the report of the Reverend Dr Pemberton Ford as follows:

“19. The appellant relies on the opinion of this expert that she would be vulnerable to exploitation on return. It is the opinion of Reverend Dr Ford that: *‘Without a strong protective network, a woman with small children has increased risk of being subjected to sexual pressure by exploitative pimp boyfriends, and also to random acts of violence where there is not the presence of a protective wider household or male. The state is no alternative. Without any access to social support, strong social networks, or professional salary, life in Lagos or any city in Nigeria would not provide secure and will expose [the appellant] to the danger of being sucked into a range of exploitative and criminal networks’* and while there is shelter in Lagos reports from IGOs ... make it clear that *‘shelters are seriously underfunded, few in number and not a long-term solution to developing the economic and social independent required for increased resilience for single women, and divorced women with children to find a situation in which they can flourish.’* [140]. Reverend Dr Ford concludes that *‘Wherever there is economic and social vulnerability, such as that which [the appellant] as a divorced woman, who has presently lost contact with her wider family network, there is undoubtedly a measure of risk that she could become part of an exploitative network which could see her and her children caught in traffic exploitation. More likely though is the outcome of an extremely vulnerable subsistence life, relying on strangers, outreach subsistence life, eking out her children’s days in the substance and the blanket of the Nigerian economy. At some point she may find those with whom she can establish a longer term arrangement to address the immediate housing and food supply issues she will undoubtedly encounter, to being to rebuild her life in Nigeria. However, it is a road full of uncertainty and risk, with two children under 2 years old to care for, one of whom carries a malformed hand, despite reconstructive surgery’.* [164]”

23. At para 20, the judge said this as regards the report:

“I found this report to be detailed with measured, balanced conclusions consistent with the Country Guidance case law. I do attach weight to this report with respect to the risks to the Appellant on return.”

24. The judge dealt with the appellant’s evidence at two points in her determination in paras 8 and 21 as follows:

“8. The appellant adopted her Witness Statements dated 17 December 2018 [A1 - 3 appellant’s bundle] and 12 September 2019 [AD1 appellant’s additional bundle]. The appellant then gave evidence which is set out in full in the Record of Proceedings. It is the appellant’s claim that she suffered domestic violence in Nigeria and is at risk of harm on return to Nigeria from her husband and her family. With respect to her travel and time in the United Kingdom it is the appellant’s evidence that in around

2008 she began domestic work for a husband and wife known to her as [UR] and [MJ]. For this work the appellant was given food and money occasionally. In 2011 [UR] arranged the visa paperwork for the appellant to work for a friend of theirs in the United Kingdom. The appellant was collected at the airport by a woman then taken to her home where she [ ] cooked and cleaned in return for food. After around 3 months the appellant moved to live with one of the women's friends to cook, clean and care for children in return for food and somewhere to live. In 2012, the appellant went to live with a friend and then in 2013 began living [with] a man that she had met in December 2012. This relationship ended in 2014/2015 because the appellant's boyfriend was unhappy with her pregnancy and so the appellant terminated the pregnancy. The appellant then lived alone in 2015 and supported herself by offering domestic services and hair braiding. The appellant entered into a new relationship and this relationship ended when the appellant became pregnant with her twin sons born on 29 April 2017.

....

21. The appellant relies on her interview answers, her two witness statements and her evidence before the Tribunal. It is not in dispute in accepted *[sic]* that the appellant is the victim of domestic violence and she has a genuine subjective fear on return to Nigeria and that the respondent has found key elements of the appellant's account to be credible. I found the appellant to be a credible witness and I find it unlikely that she was the Company Owner of the Shelter Design Partnership as was stated on the Visa Application Form 18 August 2011. I accept the appellant's evidence that this was completed for her by [UR] as he arranged her travel to the United Kingdom. I further accept the appellant's evidence that she is estranged from her husband, 4 children and other family members in Nigeria. I also agree with the submission made by Mr Edwards that the appellant['s] account of domestic work in Nigeria, her travel to the United Kingdom was arranged and her domestic work without pay in the United Kingdom to be indicative of human trafficking and domestic servitude. The appellant has entered into two relationships that have both ended once the appellant became pregnant. I am satisfied the appellant had previously been reliant [on] others for food and shelter in return for domestic work. She does not have a supportive family or social support network in Nigeria and that she has two young children, one of her sons has a disability requiring further corrective surgery."

25. The judge then stated at para 22 that she brought forward all her findings of fact and that she applied the law as she had set out above. At this point, the judge gave no indication whether she accepted that the appellant was at real risk of persecution, and, if so, on what basis. At para 22, she stated that she then turned to consider whether the Nigerian state would be able to provide "state protection" and whether it would be "reasonable to expect the appellant to relocate in Nigeria".

26. At para 23, the judge made a finding in relation to sufficiency of protection which, on its face, would appear to be determinative of the appeal against the appellant. The judge said this:

"23. I have had regard to **Horvath v SSHD [2000] UKHL 37** and the background evidence relied upon by the respondent there is a functioning police service in Nigeria although it [is] susceptible to

corruption and inefficiencies. It is the appellant's evidence that she has not sought the protection of the Police or the Nigerian authorities. On the evidence before *[sic]* *I am not satisfied that authorities in Nigeria are unwilling or unable to provide protection to the appellant.*" (my emphasis)

27. On its face, that would appear to be a finding that the appellant would be able to obtain a sufficiency of protection and, it would follow, the appellant could not succeed in establishing her international protection claim.

28. Nevertheless, the judge went on in paras 24 – 27 to deal with internal relocation. Having referred to *Januzi v SSHD* [2006] UKHL 5 and extracts from the *CPINs* of March 2019 and July 2019, the judge reached these findings in paras 26 and 27:

"26. The appellant is the single parent of twins with a son with a disability, she does not appear to have a supportive family, social support network or means of supporting herself in Nigeria, has a history of domestic violence from her estranged husband and has given an account indicative of trafficking in the United Kingdom. In these circumstances I find the appellant is vulnerable to exploitation on return. I place reliance on the Expert Report of Reverend Dr Carrie Pemberton Ford 9 March 2019. I find that there is a real risk of the appellant being trafficked on return and a likelihood of a vulnerable subsistence life, relying on strangers for food and shelter for herself and her children. I am not satisfied that internal relocation will be available as a safe and reasonable alternative or that it will not be unduly harsh given the appellant's particular circumstances.

27. I therefore find that it would not be reasonable to expect the appellant to relocate internally in Nigeria and for reasons set out above I find it would be unduly harsh to expect her to do so."

29. Of course, the judge had yet to make a finding in her decision that the appellant is at real risk of persecution or serious harm in her home area.

30. At para 28, the judge made that finding as follows:

"28. Taking all the evidence in the round, I am therefore persuaded that the appellant comes within the categories of person at real risk of persecution and serious harm on return to Nigeria. I say this for the reasons above. For these reasons I also reach the conclusion that the appellant has demonstrated that there is a real risk that she would face treatment contrary to **Article 2, Article 3** or **Article 8**. I therefore reach the conclusion that the decision under appeal in relation to the appellant's claim for international protection is not in accordance with the law."

31. As a result of that finding, at para 29 the judge stated that she would not consider the appellant's human rights claim further.

### **The Respondent's Challenge**

32. The respondent's grounds of appeal raise a number of points. The overarching point, emphasised by Mr Bates in his submissions, was that the judge had failed to give adequate reasons for her finding.

33. First, the judge had failed to specify precisely the real risk of what the appellant faced on return to Nigeria.
34. Secondly, the judge had not clearly found that the appellant had been trafficked to the UK in finding that she was at real risk of being re-trafficked. He also submitted that the judge had failed to give adequate reasons in para 21 why the appellant's description of coming to the UK in para 8 amounted to trafficking. Mr Bates pointed out that although the judge had said aspects of that were "indicative of human trafficking and domestic servitude" that might be enough to establish a positive Reasonable Grounds decision by the NRM but without further reasons, the judge had failed to adequately explain why she had found that the appellant had indeed been trafficked given that there might not have been any element of coercion and that she had, on her own evidence, lived independently (albeit with a friend) and had a number of relationships from 2012 in the UK. Mr Bates pointed out that the appellant had not previously raised the issue of modern slavery/trafficking with the Secretary of State or engaged the NRM mechanism.
35. Thirdly, the judge's findings, such that they were in relation to risk on return, failed properly to engage with the country guidance in HD and a failure to apply that decision could not be justified on the basis of the expert report.
36. Fourthly, to the extent that the claim relied upon any real risk of domestic violence from her husband and his family, although the appellant had a subjective fear based upon past persecution, the judge failed to explain why any such risk existed in the future.
37. Fifthly, the judge made a finding, in any event, that there was a sufficiency of protection available from the state.
38. Finally, and Mr Bates placed some reliance upon this in his submissions, the judge failed to give adequate reasons why she found the appellant to be a credible witness, which was an issue relied upon by the respondent at the hearing. He submitted that the judge had failed to give adequate reasons why she accepted that the appellant was not only estranged from her husband, but was also estranged from other family.
39. Mr Bates submitted that there were sufficient errors in the judge's reasoning that her decision could not stand. He acknowledged that, if his submissions were accepted, the appeal should be heard *de novo* even though the judge had made a finding in para 23 that the Nigerian authorities would provide a sufficiency of protection.

### **The Appellant's Submissions**

40. On behalf of the appellant, Ms Rudd made a number of detailed submissions addressing the Secretary of State's grounds.



41. First, she submitted that the judge had given adequate reasons for her findings by reference to the country guidance, background evidence and evidence from the appellant.
42. Secondly, she submitted that the judge had clearly found a Convention reason, namely that the appellant was a member of a particular social group as a single woman returning to Nigeria. Further, the judge had accepted that the appellant was a victim of trafficking.
43. Thirdly, Ms Rudd submitted that the judge was entitled to find that the appellant was unable, reasonably or without undue harshness, to internally relocate for the reasons set out at para 26 of her decision applying the country guidance in HD and background material.
44. Ms Rudd submitted that the judge was entitled to rely on the expert report of the Reverend Dr Pemberton Ford in relation to the risk to the appellant of being re-trafficked and her vulnerability. She submitted that the judge was entitled to conclude that the appellant was credible and that, given all her circumstances, she could not internally relocate within Nigeria.
45. Ms Rudd invited me to dismiss the Secretary of State's appeal and uphold the judge's decision allowing the appellant's appeal on asylum grounds.

### **Discussion**

46. As Mr Bates emphasised in his submissions, the crux of the legal issue relied upon by the respondent is whether the judge gave adequate reasons for her findings leading her to conclude that the appellant's appeal should be allowed on asylum grounds.
47. In reaching findings, a judge has an obligation to provide adequate reasons such that the parties are able to understand the basis upon which they have either lost or succeeded in the appeal. The Court of Appeal set out the duty of a judge to give reasons for their findings and decision in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605 where Lord Phillips MR (giving the judgement of the Court) said this at [15]-[19] and [21]:

"15. There is a general recognition in the common law jurisdictions that it is desirable for Judges to give reasons for their decisions, although it is not universally accepted that this is a mandatory requirement - "there is no invariable rule established by New Zealand case law that Courts must give reasons for their decisions", per Elias CJ in *Lewis v Wilson & Horner Ltd* [2000] 3 NZLR 546 at 565. While a constant refrain is that reasons must be given in order to render practicable the exercise of rights of appeal, a number of other justifications have been advanced for the requirement to give reasons. These include the requirement that justice must not only be done but be seen to be done. Reasons are required if decisions are to be acceptable to the parties and to members of the public. Henry LJ in *Flannery* observed that the requirement to give reasons concentrates the mind of the Judge and it has even been contended that the requirement to give reasons serves a vital function in constraining the judiciary's exercise of power - see Professor Shapiro's article

'In Defence of Judicial Candor' (1987) 100 Harv L Rev 731 at 737. The function that judgments play under the common law in setting precedents for the future has also been identified as one of the justifications for the requirement to give reasons, although as Mahoney JA stated in *Soulemezis v Dudley Holdings* (1987) NSWLR 247 at 273:

"The court's order is a public act. The judgment given for it is a professional document, directed to the parties and to their professional advisers. It may, in a particular instance, delineate, develop or even decorate the law but that is peripheral and not essential to its nature."

16. We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost.

17. As to the adequacy of reasons, as has been said many times, this depends on the nature of the case: see for example *Flannery {v Halifax Estate Agencies Ltd* [2000] 1 WLR 377 at page 382. In the *Eagil Trust [Co Ltd v Piggott-Brown* [1985] 3 All ER 119 case, Griffiths LJ stated that there was no duty on a Judge, in giving his reasons, to deal with every argument presented by Counsel in support of his case:

"When dealing with an application in chambers to strike out for want of prosecution, a judge should give his reasons in sufficient detail to show the Court of Appeal the principles on which he has acted, and the reasons which led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on a judge in giving his reasons to deal with every argument presented by Counsel in support of his case. It is sufficient if what he says shows the parties, and if need be the Court of Appeal the basis on which he acted... (see Sachs LJ in *Knight v Clifton* [1971] 2 AER 378 at 392-393, [1971] Ch. 700 at 721)." (p.122).

18. In our judgment, these observations of Griffiths LJ apply to judgments of all descriptions. But when considering the extent to which reasons should be given it is necessary to have regard to the practical requirements of our appellate system. ....

19. It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the Judge reached his decision. This does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon.

.....

21. When giving reasons a Judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the

terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the Judge's decision."

48. In Budhathoki (reasons for decisions) [2014] UKUT 00241 (IAC) (Haddon-Cave J and UTJ Coker) re-iterated, albeit in briefer terms, the general approach in the context of immigration appeals in the headnote as follows:

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons so that the parties can understand why they have won or lost".

49. In my judgment, there are a number of significant difficulties, identified in the respondent's grounds and Mr Bates' submissions, with the judge's reasons for allowing this appeal.
50. It seems palpably clear that the judge accepted, as it was not in dispute, that the appellant was a member of a particular social group as a single woman in Nigeria. That, however, did not in itself establish precisely what the real risk of persecution or serious harm is to the appellant. One possibility is that she would be at risk of domestic violence from her husband and her family, to which she had been subjected before coming to the UK. However, the judge does not base her decision on that risk – and probably rightly so on the evidence. The basis of her decision appears to be that set out in para 26, albeit in the context of internal relocation. There she refers to the appellant as being at "real risk of ... being trafficked on return and a likelihood of a vulnerable subsistence life, relying on strangers for food and shelter for herself and her children." The latter, of course, looks less like "persecution" (and the basis for an asylum claim) and more like "serious harm" (and the basis for an Art 3 claim). At para 28, she concludes that the appellant falls within a category of persons "at real risk of persecution and serious harm on return to Nigeria" which she states "I say this for the reasons above".
51. There are two principal difficulties with this basis for allowing the appeal.
52. First, the basis upon which it is said that the appellant is at risk of being re-trafficked is because she has been trafficked to the UK initially. But, the judge's finding is not clear in that regard. What the judge says in para 21, and she repeats this in para 26, is that the circumstances claimed by the appellant of her coming to the UK is "indicative of human trafficking and domestic servitude". The judge does not make a clear finding that it is not only "indicative" of human trafficking and domestic servitude but that is what actually happened to the appellant. I agree with Mr Bates' submission that the evidence before the judge contained elements "indicative" of trafficking but the judge did not engage with the precise evidence of the appellant set out at para 8 which, on another view, might be said to lack an element of coercion or exploitation important to any

view as to whether she had been trafficked and was, therefore, at risk of being re-trafficked on return.

53. Secondly, given the judge's finding that the Nigerian state would provide a sufficiency of protection (at para 23), it is not clear why the judge came to the conclusion that, if she had been trafficked, there was a real risk of re-trafficking in the future.
54. The country guidance decision in HD, the judicial headnote of which I set out above, emphasises the importance of a fact-sensitive assessment of whether a person who had previously been trafficked is at real risk of being re-trafficked afresh by her original traffickers on return. In HD, at para (3), it is recognised that there is "in general no real risk of retribution or of being trafficked afresh by her original traffickers".
55. Important in that fact-sensitive assessment would be the vulnerability of the individual, the absence or presence of a supportive family and the skills and work experience of the individual. Reverend Dr Pemberton Ford's report provides support to the appellant's claim on the basis that she has no supportive network and is vulnerable given her circumstances. The judge made reference to that at para 26. However, it was an issue, relied upon by the respondent, that the appellant had not established that she had no family to support her in Nigeria even if her husband and his family were estranged from her because of the accepted domestic violence. The judge accepted in para 21 and again in para 26 that she had no family support in Nigeria. That finding was based upon the judge's conclusion that the appellant was a "credible witness". As Mr Bates submitted, the judge gave no supportive reasons for that finding which was disputed by the respondent even if some aspects of the appellant's account were accepted. The positive credibility finding is not adequately reasoned.
56. Despite Ms Rudd's spirited defence of the judge's decision, the judge's reasons are not adequate to sustain her finding in favour of the appellant on her asylum claim. The finding, such that it is, as to the real risk that the appellant faces on return, is inadequately reasoned including being based on an inadequately reasoned credibility finding. Likewise, the finding that the judge was not satisfied that the authorities in Nigeria were unable to unwilling to provide protection to the appellant was, on its face, wholly inconsistent with her finding that the appellant has a well-founded fear of persecution and should succeed in her asylum claim. It is wholly unclear why, the judge found in the appellant's favour and engaged with the issue of internal relocation in the light of her finding in para 23 as regards the sufficiency of protection from the Nigerian authorities.
57. In truth, the reader of the judge's decision cannot be confident as to the reasons why the appellant succeeded in her asylum claim. I am left in no doubt that the judge's decision is unsustainable in law.

58. None of the judge's findings can be preserved and the appeal must be reheard and the decision made *de novo* and, any findings, whether favourable or otherwise to the appellant, properly reasoned on the basis of the personal and country background evidence relied upon at that re-hearing.

### **Decision**

59. For the above reasons, the decision of the First-tier Tribunal to allow the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
60. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Richards-Clarke. None of the judge's findings are preserved.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
26 January 2022