



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02260/2015**

THE IMMIGRATION ACTS

**Heard at Field House, London
On 11 November 2015**

**Determination Promulgated
On 13 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

GODSON IWUJI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms R Read, instructed by Lawrence Lupin Solicitors

For the respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Nigeria, appealed to the First-tier Tribunal against a decision by the respondent of 9 January 2015 to refuse his application for asylum. Judge of the First-tier Tribunal N M Paul dismissed the appeal. The appellant now appeals with permission to this Tribunal.

2. In summary the background to this appeal is that the appellant claims to have arrived in the UK in 2004 and claimed asylum following his arrest in December 2012. He claims that he was arrested twice in Nigeria for political offences in relation to his involvement with the Biafra separatist movement. He

claims to have been involved with a number of organisations in Nigeria and that he was shot at a demonstration in March 2004. He says that he came to the UK in 2004 to compile a report about the treatment of those supporting the Biafran cause and to raise awareness internationally. He claims that the report was shared with the Good Shepherd Movement (GSM), with whom he had become affiliated in the UK, and that his former colleagues at the Movement for Actualisation of Sovereign State of Biafra (MASSOB) were angry about this. He claims that the report was shared with the British Government and that this puts him at risk in Nigeria. The appellant claims to have continued with his political activities in the UK.

3. The First-tier Tribunal Judge heard oral evidence from the appellant and a witness who says he is a senior figure within the GSM. The Judge found that the appellant had not given a credible or reliable account and that the background evidence is *'all (to some extent) historic'* [47]. And that the activities being undertaken by the *'multiplicity of organisations'* to which the appellant and his witness refer is *'of marginal relevance to the current political situation in Nigeria'* [49].

4. In the grounds of appeal and in her oral submissions Ms Read contends that the First-tier Tribunal Judge erred in failing to consider the oral evidence of the witness and the statements and letters of support before him. Ms Read highlighted the supporting statements in the appellant's bundle and the letter to the Secretary of State from the Biafran Messianic Defense Force which, she said, supported the appellant's case but which were not considered by the Judge. She submitted that this evidence contradicts the Judge's finding that the appellant's evidence given by the appellant was in *'a complete vacuum in relation to the alleged threats that had been made to him by the organisation in Nigeria'* [43]. It is contended that the Judge failed to make findings as to the appellant's account of his involvement with the Biafran cause in Nigeria and in particular his claim that he was shot or as to the authorities' knowledge of the appellant. It is contended that the Judge erred in asserting that the evidence of the appellant's witness was *'vague and in the most general terms'* given the record of the appellant's witness's oral evidence in the determination. Ms Read submitted that the appellant and his witness did give detailed evidence and that the Judge failed to say why the evidence was not accepted.

5. Mr Staunton submitted that the First-tier Tribunal Judge set out all of the evidence before him on the day of the hearing at paragraphs 13-25 of the determination. He submitted that it is therefore clear that the Judge was mindful of this evidence. He submitted that the Judge clearly considered the evidence before him in paragraphs 47-49 of the determination.

6. Mr Staunton submitted that the Judge made findings on the core of the appellant's claim at paragraphs 43 and 44. At paragraph 43 the Judge found that the appellant had not provided any evidence of the actual disclosure of the report said to have been submitted to the British government or any evidence that the government had disclosed the report to the Nigerian authorities. The Judge noted that there was no supporting evidence from any of the people who were apparently part of the group who came to the UK in 2004 and Mr Staunton submitted that this too was a finding in relation to the core of the

appellant's claim. He submitted that given these findings the contention that the Judge failed to engage with the background evidence falls away.

7. However, although the Judge identified the issues at the heart of the appellant's claim and purported to deal with them, I am satisfied that the Judge was wrong to say that the appellant's evidence in relation to the report was given in a 'complete vacuum'. There was other evidence as to the report and the appellant's role from the witness and in the letters of support in the appellant's bundle. It was, of course, open to the Judge to reject the other evidence in relation to his matter but instead of engaging with it he concluded that the appellant's evidence was given in a 'vacuum'.

8. Ms Read contended that, in finding that there are no ongoing difficulties in Nigeria for those supporting the Biafran cause, the Judge failed to engage with the extensive background evidence before him. Ms Read submitted that the Judge failed to consider this evidence which dates from 2012, 2013 and 2014.

9. I find that the Judge's findings in relation to the appellant's claim are tainted by his assessment of the background evidence as being '*historic*' and of '*marginal relevance to the current political situation in Nigeria*'. I find that the Judge's findings as to the appellant's credibility were made in the light of his assessment that the oppression of pro-Biafran groups is historic. There was a considerable amount of recent evidence before the First-tier Tribunal Judge. I accept Mr Staunton's submission that, if the appellant was not found to be credible in his own account, the Judge did not need to engage with the background evidence. However the Judge did consider the background evidence at paragraph 47 before concluding that the appellant has not given a credible or reliable account. It is therefore clear that the Judge took into account his inaccurate assessment of the background evidence before reaching a final conclusion as to the appellant's credibility. I find that this was a material error.

10. The First-tier Tribunal Judge made a material error in failing to adequately engage with the evidence and in failing to give reasons for not considering all of the evidence before him. For that reason the findings of the First-tier Tribunal are unsustainable and I set aside the decision of the First-tier Tribunal in its entirety.

11. In light of the issues with the Judge's findings I am satisfied that none of the findings can stand. I am satisfied that the appellant has not therefore had his case properly considered by the First-tier Tribunal. The parties were in agreement that, if I decided to set the decision aside, the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date: 11 November 2015

A Grimes

Deputy Upper Tribunal Judge