



IAC-AH-CJ-V1

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

Appeal Number: DA/00891/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2016**

**Decision & Reasons Promulgated
On 11 April 2016**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

**MR OLUWAFEMI LONGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lingajothy
For the Respondent: Mr Norton, Home Office Presenting Officer,

DECISION AND REASONS

1. The appellant, a national of Nigeria, challenges the determination of First-tier Tribunal (FtT) Trevaskis sent on 1 September 2015 dismissing his appeal against the decision by the respondent on 25 April 2014 to make a deportation order by virtue of

s.32(5) of the UK Borders Act 2007. This decision was made in view of the appellant's criminal record. On 28 October 2011 the appellant was convicted of four counts of robbery and one count of possessing an imitation firearm. On 2 December 2011 he was sentenced to a total of seven years' imprisonment.

2. The appellant arrived in the UK on 13 April 2002 as an unaccompanied minor aged approximately 13½. The asylum application he made was refused but he was granted ELR until 5 November 2006. Subsequent applications by him for ILR were refused. On 27 October 2011 he was served with notice that he was an overstayer and on 28 October (as already noted) he was sentenced to seven years' imprisonment. By a letter dated 30 July 2013 the appellant had been notified of his liability to deportation under s.72 of the Nationality, Immigration and Asylum Act 2002. The decision to make a deportation order set out reasons why he was subject to a s.72 certificate, why his claim for asylum, humanitarian protection and Article 3 ECHR were being refused and why he could not succeed under either the Immigration Rules or on an exceptional circumstances basis. The appellant's appeal against refusal of his claim was dismissed on 12 September 2014 by First-tier Tribunal Judge Miller.
3. The respondent had previously served the appellant with a notice of liability to deport and a decision to deport on 29 April 2014. At that stage the basis of his asylum claim was that he was a gay Muslim who feared that on return to Nigeria he would face forcible recruitment by Boko Haram. Part of his evidence was that his father was a prominent Christian pastor who had been killed by Islamic extremists. The FtT Judge heard evidence from the appellant and his mother. Judge Trevaskis upheld the s.72 certificate and dismissed the appeal on the basis of his claims for asylum and/or humanitarian protection. The judge also decided to dismiss the appellant's appeal on Article 8 grounds. At paragraphs 101-102 the judge stated:

“101. I have considered the medical evidence which the appellant has relied upon in support of his appeal. The appellants medical conditions do not reach the very high threshold required to render his removal from the United Kingdom a breach of articles 2 and/or 3 ECHR, which would require demonstration that his removal would almost certainly result in his death, due to the lack of appropriate medical treatment in Nigeria. There is evidence which the respondent relies, which shows that treatment is available, which is appropriate to the appellant's claimed needs.

102. I have also considered the medical issues in conjunction with any other issues raised under articles 2, 3 and/or 8, excluding those matters which fall to be disregarded by virtue of section 72 (2) NI&A Act. I have found that the appellant does not have family life in the United Kingdom which engages article 8. Although his private life does engage article 8, I have found that it would not be a disproportionate interference with that private life for him to be removed. I further find

that there are no aspects of his private life, in conjunction with his medical and mental health issues, which would together amount to a disproportionate interference. Neither do I find that those factors in conjunction would render his removal a breach of articles 2 and/or 3.”

4. The grounds of appeal contended that the judge had failed to assess the appellant’s Articles 3 and 2 ECHR rights in relation to the issue of whether the appellant would be safe on return to Nigeria. The judge was said to have wrongly focused just on Articles 2 and 3 in relation to the appellant’s medical condition. There had been no assessment of the appellant’s subjective fears concerning Nigeria. The grounds avowed that the judge ignored the fact that “those involved in [the appellant’s] father’s assassination have gained strength”. The judge was also said to have disregarded the fact that the appellant’s conversion to Islam and his reconversion to Christianity would make him a vulnerable person, as in the eyes of his persecutors he would now be regarded as an apostate.
5. Challenges were also made as to the judge’s assessment that the appellant’s past criminal convictions meant that he posed a threat to the wider society, when his post conviction behaviour demonstrated an entirely different view. The appellant should have been regarded as a credible witness because he pleaded guilty during the criminal trial. The judge’s Article 8 assessment was also said to be flawed because he failed to take account of all relevant facts, including that the appellant came to the UK as a young boy and his father had been assassinated by a Nigeria-based extremist group and he had lost all ties with Nigeria and he had debilitating psycho-medical conditions, all of which amounted to “very compelling circumstances” within the meaning of s.117C(6) of the 2002 Act.
6. Permission to appeal was refused by a First-tier Tribunal Judge but granted by Upper Tribunal Judge Blum limited to the ground challenging the judge’s failure to assess risks the appellant may face from extremists.
7. At the hearing Mr Lingajothy and Mr Norton made submissions and I am grateful to both of them for their amplification of their respective arguments as set out in the grounds and in the respondent’s Rule 24 notice.
8. Whilst persuaded that the FtT Judge erred in law, I am not persuaded that his error constituted a material error.
9. Nowhere in the determination does the judge address the appellant’s expressed fears about risk on return to Nigeria, notwithstanding that the appellant gave evidence about his fears and that his Counsel (Mr Lingajothy on that occasion as well) made submissions regarding these fears. It may be that because the thrust of Mr Lingajothy’s submissions dwelt on the medical circumstances and the Article 8 issues that the judge inferred that the other grounds were not being pursued with any vigour, but that does not excuse the evident failure to make any findings on risk on return.

10. However, it would not be correct to set aside the judge's decision unless I was satisfied that this error was capable of having a material effect on the outcome of the appeal. I fail to see this was any such error. In this regard it is important to have regard to three matters in particular.
11. First, the appellant's claim regarding risk arising to him due to his father's killing by religious extremists had been addressed in a relatively recent judicial decision. In the determination by Judge Miller in September 2014 it was stated at [40]-[41] as follows:
 40. With regard to his claim for asylum, the evidence for which is obviously also relevant to any claim under Articles 2 or 3 ECHR or humanitarian protection, the Appellant has relied on various matters. His principal concerns, it has to be said, initially appeared to relate to the fact that he claims to have no family in Nigeria and, as he said in his statement, dated the 5th March 2012, (H20): "I would not know where to start from". He also, of course, stated that at that time he was concerned because his father and stepmother had been killed and "there is a lot of terrorism in the area where I am from". - However, and this was accepted by the Appellant, Nigeria is a very large country indeed, with areas differing greatly with regard to religious affiliation, and, given his age, and the fact that he is a single man, I see no reason why he should not be able to relocate if, for instance, he did not wish to live in one particular area. I am unable to find any significance in the fact that his father was allegedly killed. I fail to see how this would impact upon him, as it does not appear to arise out of a family feud.
 41. With regard to the risk of terrorism, again, there is no reason why the Appellant should have to live in a particular area, if (and there is no evidence to substantiate this) living in such an area might lead to his being forcibly recruited to a group such as Boko Haram. It is now, moreover, two and a half years since he made the statement. Were his concerns serious, I would have expected there to have been some evidence produced to support them."
12. That determination was before Judge Trevaskis and from Judge Miller's decision it can be seen that even on the assumption that the appellant's evidence about his father's assassination was accepted credible, it was considered he would have a viable internal relocation alternative because Nigeria was a very large country.
13. Secondly, in the Reasons for Refusal Letter accompanying the decision under challenge in this appeal, the respondent had set out in considerable detail relevant extracts from the Country of Origin Information Service (COIS) Report for Nigeria dated 17 June 2013. The extracts summarized highlighted, inter alia, that Christians make up around 40% of the population of Nigeria which comprises 170 million inhabitants and that although the majority of Christians live in the south, significant

Christian communities have resided and intermarried with Muslims in the north for more than 50 years. The tensions between the Muslim majority north and its Christian-majority south were recorded as fuelling periodic sectarian conflicts. At [36] the respondent concluded that it was in line with the objective evidence for the appellant to relocate in safety to another region within Nigeria.

14. It is fair to say that the respondent's assessment at this stage focused on the appellant's claim to be Muslim and it was in that context that areas of possible safe relocation included "the north of the country which is predominantly Muslim", but the body of COI evidence identified made clear that there would equally be available safe areas for Christian returnees.
15. Thirdly the documentary evidence before FtT Judge Trevaskis, did contain more up-to-date information, which included evidence concerning the activities of Boko Haram but none of that indicated that this organisation, on its own or together with other Islamic extremists, had anything like an effective countrywide network or were ordinarily in a position to pose a significant threat to southern areas where there was a strong Christian majority.
16. Fourth, on the appellant's own account the killing of his father (and stepmother) had occurred in 2002 and indeed his mother was said to have returned to his home area for a week to bury his father's remains. The appellant did not produce any evidence that the killers had made any specific threats subsequently to him or other family members
17. It is true that on the appellant's own account he would not be in the position of an ordinary Christian in that (i) his father had been targeted and killed by Islamic extremists and was a well-known pastor; (ii) he had now "re-converted" to Christianity, which would mean he would be perceived by Islamic militants as an apostate. However as regards (i) there was simply no evidence to indicate that his late father had had or still had a profile outside his home area or even if he did, that this would still be recalled by the Islam extremists groups operating in 2015/2016, some 13-14 years later; and as regards (ii), there was no COI evidence demonstrating that the religious extremists who attacked the appellant's father or associated groups of extremists, including Boko Haram, have an organisational capacity or reach that would lead to them either identifying or taking adverse action against the appellant.
18. Put shortly, there was no evidential foundation for a tribunal Judge to consider that if the appellant relocated internally within Nigeria to Christian areas he would face a well-founded fear of persecution or ill-treatment. Of course, Article 8 of the Qualification Directive (paragraph 339O of the Rules) also contains a "reasonableness" limb which requires a decision-maker to assess whether the particular circumstances of an applicant would make internal relocation unreasonable. But again, it is important, however, to observe what the position was when the appellant brought his appeal.

19. First of all, the judge did consider the appellant's medical circumstances and had found that the background evidence adduced by the respondent demonstrated that there would be treatment available to the appellant in Nigeria. Second (albeit in the context of an Article 8 assessment) the judge had found that he would be able to reintegrate himself into Nigerian society without significant obstacles. It was noted that he had undertaken courses whilst in the UK that would benefit him in re-integrating. Further, the judge specifically rejected the appellant's claim that he would be regarded "as not a typical Nigerian".
20. In essence, therefore, the judge had decided and given adequate reasons bearing on the main matters that would apply when assessing reasonableness of internal relocation.
21. In light of those findings there was no realistic prospect of the appellant succeeding in his Article 3 claim even when these are considered holistically to encompass risk on return and his medical conditions.
22. For the above reasons I conclude that the FtT Judge did not materially err in law.
23. I would add that if I had found a material error of law necessitating that I set aside the judge's decision, I would then have gone on to re-make the decision without further ado. Despite being informed that they should identify and produce any further evidence on which they wished to rely, the appellant and his representatives had not done so prior to the hearing.
24. On the basis of the evidence that would have then been before me and considering matters holistically, I would have decided that the appellant failed to show that he faces a real risk of persecution or ill-treatment on return to Nigeria. If he is concerned at what his situation would be in his home area (Jos, Plateau State, in northern Nigeria), he would be able to relocate safely and reasonably. Thus the decision I would have re-made would have been to dismiss his appeal.
25. For the above reasons:

The First-tier Tribunal Judge did not materially err in law and his decision dismissing the appellant's appeal must stand.

No anonymity direction is made.

Signed

Date

Dr H H Storey
Judge of the Upper Tribunal