



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02272/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17 August 2017

Promulgated

On 4 October 2017

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR COLLINS IROABUCHI CHIBUZOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Anyene, Counsel, instructed by JDS Solicitors

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is Collins Iroabuchi Chibuzor, a citizen of Nigeria born 28 September 1988. In October 2013 he was granted entry clearance with a Tier 5 sports migrant visa valid until 27 February 2014. Prior to expiry he made no further application. On 5 January 2017 he was encountered working illegally and attempted to evade Immigration Officers by running out of the back exit of a restaurant in which he was working. He was arrested.

2. On 6 January 2017 he claimed asylum. The immigration request form in respect of this claim was lodged by the respondent's representative at the beginning of the hearing before the First-tier Tribunal. Attached to it was a handwritten statement explaining the reason for his claim. In essence he stated that he left Nigeria because his life was threatened by his partner's family. His partner was pregnant and her family was not "happy" about it because he was a Christian. They and their daughter were Muslims. He was therefore forced to leave because they wanted to kill him. They hurt him physically. In particular, he claimed that they had hit him on the head with a machete. On 19 January a further immigration request form was filled out by him in which he stated that he could not go back to Nigeria because his life was at risk. He would be "prosecuted and persecuted". He gave no further details.
3. He was served with a notice under Section 120 of the Nationality, Immigration and Asylum Act 2002 and responded thereto by a statement dated 27 January 2017. This is set out at pages 129 to 131 of the appellant's bundle. He stated there that he claimed that his return to Nigeria would be in breach of the Refugee Convention, The Qualification Directive and Article 3 of the ECHR. He feared arrest, detention and torture based upon his membership of the Biafran community in the UK and a personal encounter with President Buhari on 5 February 2016. He thought that the Nigerian Secret Services were monitoring the activities of the Biafran community in the United Kingdom. He further feared that if he was returned to Nigeria he would be detained and ill-treated. His life would be in danger.
4. On 30 January 2017 he was subjected to a screening interview. In Part 4 of that interview he was asked to explain all of the reasons why he could not return to his home country. He stated that "when I came here I joined Biafra community. I am Biafran in Nigeria. Our president came to UK 5 February 2016 to Kingston Hotel". He went on to claim that he was a member of the Biafra community and his life as in danger because the Nigerian Government already held the chairman of that organisation.
5. A further interview was carried out on 8 February 2017. He was asked whether he wished to amend anything in respect of his previous interview. He answered "no" and in answer to the question "Who do you fear in Nigeria?" he responded "the Nigerian government because of their attitude". He again referred to his affiliation with Biafran agitators and his fear of his life due to that. In answer to question 15 "Were you ever a member of the BM (Biafran Movement) in Nigeria?" he stated that that was the reason he left Nigeria for the United Kingdom. At question 38 he was asked what had happened to him on 28 June 2013 when he had said that he had had "problems" and his brother was murdered. He answered that he had been injured and showed scars on his cheek, right lower leg, arm and head. He further explained in answer to the question "What treatment did you receive? (number 65) that he had been stabbed on his head and his wounds had been stitched up.

6. The respondent refused his claims for asylum, refugee status and humanitarian protection by letter of 20 February 2017. In the reasons for refusal at paragraph 2 it is stated that his claim for asylum was based on his fear that he would face mistreatment on return because of his political opinion, being a member of the Biafran movement. In addition to the contents of his interviews, consideration was given to various documents he produced. One was an ID card pertaining to his membership of the Biafran movement and a letter from the Biafran community in the UK dated 10 February 2017. Various other articles and press reports relating to the Biafran movement in the United Kingdom and elsewhere were produced. At paragraph 29 it was noted that the documents submitted had been considered in line with **Tanveer Ahmed IAT [2002] UKAIT 00439**.
7. It was pointed out that it was for the appellant to show that any documents relied on to support the case should be or could be relied on. However, various discrepancies in the documents were noted. At paragraph 34 it was pointed out that the card produced stated that his membership in the UK started on 5 January 2016 although the appellant had stated that he had joined on 1 January 2016. The card did not have a membership number on it. He could not explain that absence, only saying that he did not know the number. He could produce no supportive evidence to demonstrate that he had joined such an organisation in Nigeria. It was noted that he failed to demonstrate any basic knowledge of the Biafran movement. As a result, it was not accepted that he had been involved in any such movement as he claimed.
8. There were certain inconsistencies in his account in relation to his involvement in the Biafran movement and when he had taken part in a protest against the Nigerian president in the UK (see paragraphs 42 and 43). The letter from the Biafran community in London dated 10 February 2017 was a photocopy. No original had been provided. Reference was made to the inconsistencies in the ID card and to a copy of a charge sheet which related to charges laid against the senior leadership of the Biafran movement in Nigeria. These were considered to be self-serving and no weight was placed upon them. As to the injuries he claimed to have suffered, it was considered that they could have been inflicted in a number of different ways and were not determinative of his account. Accordingly his claims were refused.
9. He appealed that decision to the First-Tier Tribunal. As stated above, at the outset of the hearing the respondent's representative asked for leave to lodge the immigration request forms of 6 and 19 January. That was allowed. The appellant produced a witness statement and was cross-examined by the respondent's representative. At one stage during cross-examination it was put to him that forged documents were readily available and the ID card looked like something anybody can produce with simple home office equipment. There was an intervention by the appellant's representative at that stage on the basis that the refusal letter made no assertion of fraudulent documents. In any event, the appellant had stated that he did not provide any fake documents. At paragraph 40

the judge states that the line of questioning had in any event been completed but “the question of fraudulent documents was always in a judge’s mind and the representative should make submissions about it”.

10. He was also asked about the contents of his first claim made on 6 February 2017. He first of all said that his partner got pregnant in 2007 and then changed that to 2013. He gave an account that her family forbade the marriage and alleged he had raped her. They were Muslim and he stated that they would kill him. He did not know her date of birth nor when the family told him he could not marry her. He was asked whether this strengthened his resolve to join the Biafran community and his response was unintelligible to the interpreter who was involved. He then explained that he had entered the Biafran community because of that and it made him strongly involved in Biafra.
11. It was then put to him that he had previously said that he had joined the Biafran community in February 2012. His answer is set out in paragraph 44 of the First-tier Tribunal’s decision as follows:

“He joined in 2012 and then because of what happened he supported it. I asked what he meant, because it seemed to indicate that he did not support the organisation when he joined it. The appellant said that he supported it, but he was not very much into it at the time, and did not fully support it until later, when not being able to marry L (his partner) arose.”
12. He was also asked why he failed to mention his political beliefs that formed the basis of his current claim in his first application. The explanation for that was that he was not sleeping well.
13. The appellant’s representative handed up a skeleton argument and submissions running to ten pages to the First-Tier Tribunal. This makes no direct reference to any previous claim for asylum and concentrates on that based upon his membership of the pro-Biafra movement. A complaint was made that no challenge to the authenticity of the documents had been made by the Secretary of State in the reasons for refusal but a suggestion of forgery had been made in cross-examination and that was illegitimate and unfair. As to the previous claim for asylum, it was pointed out that no response was set out to either of the claims of 6 January or 19 January. There was a departure from the Secretary of State’s policy which was unacceptable and it was claimed that “only the higher standard of fairness was appropriate”.
14. The judge set out at paragraph 93 the facts that he found. These included that the appellant had no significant association or connection with the Biafra community and that he had not established that he was at any risk from parents of a girl he said he made pregnant. He found that the claim was entirely fabricated.
15. The judge then went on to explain that he concluded that the appellant had invented an asylum claim based on an attack by the parents of that

girl in his claim of 6 (*sic*) January 2017. He filled in a further form on 19 January 2017 without specifying any reason and when interviewed subsequently he had “come up” with another story about Biafran separatist activity. The judge found it wholly incredible that when writing the first form he would not mention that he had been attacked when taking part in demonstrations in Nigeria and had been beaten and slashed or that on that same occasion his brother had been killed. Furthermore the judge noted that the Section 120 statement dated 27 January made no mention of the family of the pregnant girl although it was prepared with the assistance of his solicitors. It was pointed out at paragraph 97 that the fact that no response is given to the request forms of 16 and 9 January 2017 did not enhance the appellant’s claim. That was because he had been interviewed on two occasions and in the first he was specifically asked to explain all of the reasons why he could not return to his home country. No mention at that stage was made of his first claim.

16. The appellant had no real idea about the history of Biafra and gave an incoherent account of why he supported independence. He was unable to advance an explanation as to why his support for that movement would make any difference to the family of his pregnant girlfriend. These factors rendered his accounts incredible. As to the membership card or the letter purporting to be from the Biafra community, the judge says at paragraph 100 that he attached very little weight to that. Reference was made to **Tanveer Ahmed**. The original card is described as homemade and a deeply unconvincing document. The letter was unconvincing. The absence of anybody from the Biafra community to support him was remarkable and was thought to damage his credibility.
17. The judge then proceeded to deal in detail with the appellant’s account of Biafran activity and rejected that as incredible. There were contradictions within his evidence and he became muddled in cross-examination. The scars on his body were not attributable to any cause by any medical evidence.
18. In all the circumstances it was considered that he had not met the lower standard of the burden of proof upon him and his claim was refused. His human rights claim was also refused.
19. The appellant was granted leave to appeal. This was principally on the ground of appeal which contended that procedural unfairness had occurred in allowing the issue of forged documents to be raised. Further the judge’s comment that the question of fraudulent documents was always in a judge’s mind might raise the question of bias.
20. Mr Anyene for the appellant advanced all his grounds of appeal before us. He submitted that the judge erred in his approach to the appellant’s membership of the Biafran organisation in the UK and in placing undue emphasis on lack of historical knowledge of the movement.
21. Ground 4 appears to be a complaint that there was a misdirection in fact and law in the assessment of the appellant’s participation in protests in

the UK because it was accepted that there is a repressive regime in Nigeria directed towards pro-Biafrans and there is no requirement of “affirmative evidence to establish” the work of intelligence services in that respect. It is submitted that the judge lost sight of the appellant’s evidence.

22. Mr Wilding for the respondent submitted that the grounds were wholly misconceived. The issue here was the credibility of the appellant which was dealt with comprehensively at paragraph 94. He had found that he could give very little weight to the documents for the reasons given at paragraph 100. He rejected both his asylum claims for reasons given at paragraph 94.
23. In relation to ground 5 this too was misconceived. It was incumbent upon the appellant to provide the grounds on which he advanced his claim for asylum and humanitarian protection and how he was a refugee. In the circumstances no separate decision on his earlier claim was required.

Decision

24. From the terms of the First-tier Tribunal Judge’s section on discussion and conclusion starting at paragraph 94 it is clear that he viewed this case as one which depended upon the credibility of the appellant himself as set out in paragraphs 87 to 92. Standing the two quite different claims made as to why he sought asylum in this country, it was open to the First-tier Tribunal Judge to reject his evidence as incredible, implausible and lacking in consistency. The analysis at paragraph 94 of his credibility cannot be faulted. As stated there, his credibility is adversely affected by the fact that he failed to mention in his first claim of 6 January 2017 anything about his support for the Biafran movement or that he had been beaten and slashed with machetes as part of a demonstration in Nigeria on the same occasion when his brother was killed. Indeed, it is to be noted that in his handwritten letter of 6 January 2017 he mentioned being physically assaulted with a machete “most especially on my head” in the context of an assault by his pregnant girlfriend’s parents. No further mention of such injuries was made and what injuries he had appeared to be ascribed in his later claims to the attack when taking part in a demonstration in Nigeria.
25. The dates for various events were self-contradictory as set out in paragraphs 41 and 42. Some of his evidence was described, not unreasonably, as incomprehensible. The conclusion at paragraph 96 that there is no credible or plausible explanation for the two claims other than they are both invented is, in the circumstances, entirely legitimate.
26. In the light of those conclusions, it cannot be said that the criticisms of the judge’s approach to the appellant’s claims about his involvement in the Biafran community in ground of appeal 3 have any merit. Although that ground is not easy to understand, it appears to be contended that the judge erred in failing properly consider whether the Biafran Community organisation existed in the UK. Standing the findings on the appellant’s credibility, that was a collateral matter to consider. But, in any event, we

do not agree that the judge found that organisation to be an invention. The judge was not persuaded that the appellant was a member of it. Nor can it be said that the judge placed too much emphasis on the appellant's lack of knowledge of the history of the Biafran movement in Nigeria. The comments at paragraph 98 about his ignorance of these matters are reasoned and legitimate in the assessment of whether his claimed support for the movement was genuine.

27. In relation to the criticism of the judge's approach to the documents submitted by the appellant, we do not agree that there was any express finding of forgery by the appellant. The burden is on the appellant to demonstrate that any documents he submits can be relied on. The judge was entitled to take account of the criticisms of the documents provided as explored in cross-examination of the appellant. In the light of those, he was entitled to place very little weight upon them, as he did at paragraph 100. It is worthy of note that the documents themselves were manifestly self-contradictory. The appellant's middle and surnames are spelt wrongly, the postcode and telephone number of the Biafra community differs between the letter and the membership card. In any event, standing the judge's conclusions on credibility already made, it cannot be said that the approach to this matter constitutes any material error of law. As to the criticism that there is the appearance of bias in what the judge said at paragraph 40 about "the question of fraudulent documents always being in a judge's mind", this comment needs to be considered in its context. It appears in the section of the decision where the judge is describing the terms of the objection taken by the appellant's representative to questions in cross examination about forged documents. It is not part of the judge's reasoning process on these documents. It does not seem to us that this remark could have led a neutral observer to conclude that the judge was biased or had already formed a view on the documents. On the contrary, he invited the appellant's representative to make submissions about the matter. When the judge came to consider these documents he did not dismiss them as forgeries. He expressly applied the guidance in *Tanveer Ahmed* and placed little weight on them for the reasons he sets out at paragraph 100.
28. As to the final ground of appeal it is submitted that the original claim of 6 February is a completely separate one and there is no immigration decision in respect of it. It is secondly submitted that the judge ignored the appellant's evidence in respect of that claim.
29. That "claim" was essentially based on fear of retribution from the parents of a pregnant girl and thus could not constitute a valid claim for asylum or humanitarian protection. Further, standing the fact that in his interviews he had mentioned only his Biafran activities as the reason why he could not return to his home country, it is not surprising that no further mention was made of that matter. His appeal against the decision makes no mention of the basis of his first "claim". However, the First-tier Tribunal Judge makes it clear in his determination that he considered this claim to be invented for the reasons he gives at paragraphs 94 to 97. Presumably, had the respondent's representative not produced the immigration

request form R2, this issue would not have arisen at all. As it is, the matter was not ignored but used to test the credibility of the appellant's later claims and proper reasons are given for the rejection of that particular account.

30. In the circumstances this appeal is refused.

Notice of Decision

The grounds of appeal are rejected/not made out. Accordingly, the decision of the First-tier Tribunal judge must stand.

No anonymity direction is made.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal