



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

Appeal Number PA/01217/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 15th December 2017

Decision and Reasons Promulgated
On 15th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

OAA
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Akindele (Solicitor, Defank Solicitors)
For the Respondent: Mr C Bates (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application for asylum was made on the 29th of July 2016 and rejected by the Secretary of State for the reasons given in the Refusal Letter of the . The Appellant's appeal against that decision was heard by First-tier Tribunal Judge Shergill at Manchester on the 10th of March 2017 and dismissed for the reasons given in the decision promulgated on the 28th of March 2017. The Appellant sought permission to appeal to the Upper Tribunal and permission was granted on the 31st of July 2017 on the basis that it was arguable that the Judge had not given adequate reasons for

finding that the Appellant's account was not credible or why there would be adequate protection for the Appellant on return.

2. The Judge's findings on credibility are set out in paragraphs 22 to 42 of the decision. The Judge noted the adverse findings made by First-tier Tribunal Judge Narayan in the Appellant's appeal in December 2014. The Appellant had not claimed asylum until after that decision and the Judge had regard to the Appellant's remaining in Nigeria for 6 years after the claimed danger arose. The Appellant's explanation for the delay in claiming asylum was rejected.
3. Sufficiency of protection was considered in paragraphs 37 to 43. The Judge found that the objective evidence did not show that there was a generalised of specific risk to the Appellant or her children from kidnappers or Boko Haram in Nigeria. The Judge also found that relocation within Nigeria was an option.
4. At the hearing the representatives made submissions in line with their respective cases. These are set out in the Record of Proceedings and referred to where relevant below. Clearly Devaseelan applied and the findings of Judge Narayan were the starting point for the consideration of the evidence in this appeal. In the decision of Judge Narayan the position of the Appellant and her 2 children were specifically raised and considered.
5. The Judge noted the evidence of the Appellant in regard to working in Nigeria, an area where he could have departed from the findings of Judge Narayan but as was noted at paragraph 25 the Appellant did not give straightforward answers and was evasive. The Appellant's case had to be assessed against the background of her delay in leaving Nigeria, the previous findings and the delay in making this claim. Mr Akindele's submission that the previous credibility findings were not material is in my view simply wrong, the Judge had to assess the credibility of the Appellant on the basis of her previous conduct and having been found to have given unreliable evidence that was a factor that would count against her.
6. Paragraphs 32 to 36 come under the heading "Global assessment of evidence". That title is misleading as the preceding paragraphs from paragraph 21 onwards were headed "Findings of facts and reasons" and that is where the bulk of the Judge's assessment is to be found.
7. The complaint that the Judge had not considered the position of the children is misleading to some extent. This was a point covered by Judge Narayan and in rejecting the Appellant's asylum claim the same considerations would apply, there was no evidence that showed that circumstances were materially different if they were to be returned now. Mr Akindele did not point to any evidence that would suggest that the Appellant could not live in an area not under the influence of Boko Haram.

8. Given the previous findings made by Judge Narayan which were the starting point for the consideration of the Appellant's case the Judge approached the task correctly. Evidence was received on the issue that Judge Narayan had considered and there was clearly nothing reliable in the Judge's view to justify departing from his findings. The delay in leaving Nigeria was a point that was properly considered and the Judge was obliged to consider the delay in claiming in the UK. The failure to raise the issue before Judge Narayan was significant and the findings in paragraphs 28 to 31 justified.
9. The decision had to be read as a whole having regard to the Appellant's history and experience of the immigration system along with that of her family. The decision has to be read as a whole without taking matters out of context. The Judge was right to observe that there was no evidence to show that the Appellant and her daughters could return to Nigeria and that it would be reasonable to expect them to do so.
10. Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 27 gave made the following observations: "Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."
11. With that guidance in mind I am satisfied that the decision showed that the Judge was fully aware of what had to be considered and the relevant factors to be taken into account. The decision shows that the Appellant was not believed in relation to the core of the account and why that was so and that there was no evidence show that she and her children could not reasonably return to Nigeria. The decision was open to the Judge for the reasons given and is not affected by any error of law, the decision of Judge Shergill stands as the disposal of the appeal in this case.

CONCLUSIONS

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

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 
Deputy Judge of the Upper Tribunal (IAC)

Dated: 12 January 2018