



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/06191/2018 (P)

**THE IMMIGRATION ACTS**

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 18 September 2020

On 23 September 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

IO

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr J Greer, instructed by Fisher Stone Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

**DECISION AND REASONS (P)**

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion

of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Nigerian national with date of birth given as 13.5.83, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 28.10.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 30.4.18, to refuse his claim made on 30.10.17 for international protection on the basis of a risk of harm from his father-in-law because of the alleged disappearance of the appellant's wife, and on the basis of a risk of harm arising from his ill-health.
2. The appeal was originally listed to be heard on 1.4.20, a date which had to be vacated because of the COVID-19 pandemic. Following submissions from both parties, on 17.7.20 the Upper Tribunal issued directions for the error of law issue to be determined in a remote hearing.
3. I have carefully considered the decision of the First-tier Tribunal in the light of the written and oral submissions, and the grounds of application for permission to appeal to the Upper Tribunal.
4. Permission to appeal was refused by the First-tier Tribunal on 13.12.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Gill granted permission on 13.12.19, considering it arguable that although the decision of the First-tier Tribunal was very detailed, it appeared not to refer to the report of the independent social worker, Ms Ann Buckley, dated 8.10.19. Upper Tribunal Judge Gill stated, "*It is at least arguable that he may have materially erred in law by failing to take it into account, in view of the evidence as to the appellant's mental health and that it appears that there is no clear findings as to whether or not the appellant and his wife have separated.*"
5. The appellant's case was that his wife disappeared unexpectedly, leaving him to care for their two children alone, and that as a consequence of her disappearance he received threats from his father-in-law in Nigeria, and suffered a mental breakdown. The respondent's refusal decision had accepted that there was a reasonable degree of likelihood that the father-in-law had made threats against the appellant as a result of the disappearance of the appellant's wife. However, this concession was withdrawn at the appeal hearing in the First-tier Tribunal, the respondent arguing that the disappearance was a fiction which the appellant did not genuinely believe. The appellant has not appealed the withdrawal of the respondent's concession.
6. At [38] of the decision, the judge noted Mr Greer's concession on behalf of the appellant that if the judge found on the evidence that,

*"the appellant's wife had never disappeared, but had simply returned to Nigeria at the conclusion of her course, and that the appellant had been unwilling to do so, there was in reality no substance to the appeal, whether it was framed as a protection claim, or, as an Article 8 claim."*

7. The First-tier Tribunal Judge did reject the appellant's account of his separation from his wife, finding at [92] that the appellant had not told the truth, or even what he believed to be true. At [96] the judge was not satisfied that the appellant had ever believed that his wife had disappeared and found,

*"The evidence points overwhelmingly to a disagreement between them as to whether the family should return to Nigeria at the conclusion of her studies, as she desired to do, and to his insistence that the family should remain in the UK, against her wishes. I am satisfied that it is in that context that the appellant has been contacted by both his own mother, and by his father in law, in an attempt to persuade him to return to Nigeria with his children."*

8. The judge went on at [97] to reject the account of threats against the appellant emanating from his father-in-law, *"because I am not satisfied that his wife has disappeared, so the basis for the threat he has claimed was made simply never existed."* Neither did the judge accept that he would be at risk on return from any other family member. It is implicit from the decision that the appellant was not on bad terms with either his own family or that of his wife. The judge specifically stated that he was satisfied that the appellant remained in contact with his own mother.
9. It follows that the suggestion in the grant of permission that there was no clear finding as to whether the appellant and his wife had separated cannot be sustained. Obviously, if she had returned to Nigeria and the appellant refused to return with her, as the judge found, they were physically separated from each other. Whether they remained in contact and whether a relationship is continuing or may continue is not clear but was not an issue in the appeal to be resolved. However, it must follow from the findings made that the appellant had not demonstrate that there was any breakdown in the relationship with his wife, his claim that she had disappeared having been entirely rejected. I note from [36] of the decision that the respondent's representative argued that there was no reason why the children would not be able to be brought up by both parents and with the support of the extended family, in their own culture. In any event, at [99] the judge considered that in alternative *"even if the appellant would find himself a single father upon return, rather than reconcile with his wife"*, the claim also failed, on the basis that treatment for the appellant's mental health would be available and the judge being satisfied that the children would have support from both maternal and paternal families, who would ensure that the children were not left educated for lack of funds. On the judge's findings the protection claim failed entirely. Further, on the concession of Mr Greer, as the judge referred to again at [101] of the decision, there was no viable free-standing article 8 appeal once the protection claim failed.
10. Mr Greer now seeks to go behind that concession, arguing that the judge failed to take into account the report from the independent social worker as to the best interests of the two children to remain in the UK, notwithstanding the finding that their mother in Nigeria had not disappeared and that there was no reason why they would not have the support of both paternal and maternal families.

11. In this regard, the First-tier Tribunal Judge considering permission to appeal had refused, suggesting that although the social work report was short it was not material to the overall findings and would have made no difference. However, it may be that that judge was not looking at the correct document, stating that the report was relatively short. In fact, the report is some 16 pages in length.
12. Mr Tan accepted that there is no reference to the independent social worker report in the decision of the Tribunal. However, he argued that the omission is not material, relying on Mr Jarvis' response to the grounds of appeal, to which Mr Greer made further written submissions, dated 6.6.20.
13. Mr Jarvis points to Mr Greer's concession, which Mr Greer has not suggested was misrecorded in the decision and which he has not sought to withdraw. I accept the argument that the judge cannot be criticised for dismissing the article 8 appeal where the appellant's representative accepted such a claim had no merit. It follows, submits Mr Jarvis, the independent social work report is wholly irrelevant.
14. As it happens, between [89] and [91] of the decision, the judge did consider the best interests of the appellant's two children, neither of whom is a qualifying child for the purposes of s117B of the 2002 Act. The older child only entered the UK in August 2016 still only 2 years old, and the younger child was born here in July 2016. Unsurprisingly, given the other findings rejecting the appellant's core claim, the judge concluded that their best interests were best served by being able to grow up in their own culture, "*able at least to have contact with their mother, and to enjoy and develop relationships with the members of their extended family.*" There could not be a clearer statement that the judge found that on return the children would be able to at the very least have contact with their mother. That is a scenario far removed from that considered by the independent social worker.
15. The purpose of the report was ostensibly to evaluate the effect of the possibility of the appellant and his two children, then aged 3 and 6, being relocated to Nigeria and assess whether this was in their best interests. However, it is clear that the report proceeds on the basis of the appellant's claim that his wife had disappeared, leaving him in a state of shock when she did not return after three weeks. The author of the report believed that the appellant and his children would have nothing to go back to in Nigeria and no contact with their mother or any wider family support. None of that is sustainable, given the findings of the judge. It follows that the premise of the report is entirely undermined, the First-tier Tribunal rejecting the appellant's core account of his wife having disappeared, so that even if the report had been considered in detail, I am satisfied that the weight to be attached to it was very limited.
16. I am not satisfied that the report is objective or independent and find it overly sympathetic and biased towards the appellant. I note, for example, the assertion at [33] that it was a "*miracle*" that the appellant and his boys survived in the absence of their mother as some of the time they lived on the streets. At [34] the author described

support provided as having *“turned a seemingly sad and hopeless family case into a positive outcome.”* Similarly, at [34] the report states that there is a consensus of opinion from professionals and friends of the family that relocation to Nigeria would not be in their best interests adding, *“but I would go further than that to say it would be a disaster.”* The author goes on at [35] to state that it is clear that the appellant needs his network of people to support and assist him and at [36] that if returned to Nigeria the appellant would deteriorate very quickly *“and all the stability and contentment the boys have now would be immediately lost. They would not understand why they have to leave the people they love and all their friends. This family has nothing to go back to, and although (the appellant) is not sure what has happened to his wife, her family or his own, he is sure it would be unsafe to return for him and his children.”* The report concludes that to return the appellant and his sons to Nigeria would not be in their best interests and would not meet the boys’ needs. *“I would hope the Appeal Court will allow them to remain in Britain.”*

17. I am satisfied that the way in which the report has been prepared and the opinions of the author expressed is neither objective nor independent. For that reason, even if the judge had taken this report into account, I am satisfied that little weight could have been accorded to it.
18. Even if the report had been couched in more measured tones, the opinion that the best interests of the children were to remain in the UK was not determinative of the article 8 proportionality balancing exercise, especially given the ages of the children and that neither were qualifying children. It is obvious that at such young ages, they were very unlikely to have established any private life outside their family home. Given that there was no basis for the appellant himself to remain in the UK, in the “real world” assessment it is entirely reasonable to expect the children to accompany their father to the country of their ethnic and cultural background and nationality, where they would, on the judge’s findings, have at the very least contact with their mother and support from the wider family on both paternal and maternal sides. There were no exceptional or compelling compassionate circumstances justifying allowing the appellant and his children to remain in the UK when the basis of his protection claim had entirely failed. It was not surprising that Mr Greer made the concession he did that there was no merit in an article 8 claim where the judge rejected the claim that the appellant’s wife had disappeared but returned to Nigeria of her own accord. In his submissions to me, Mr Greer attempted to skirt around his concession, suggesting that the judge failed to make clear what he made of the family circumstances and appeared to accept that he would be returning as single father, and therefore that there was a risk of the children being taken into care. For the reasons set out above, I reject that submission as a misconstrued assessment of the impugned decision.
19. Neither is there any merit in the further argument that the judge failed to accord sufficient weight to the vulnerability of the appellant when assessing his credibility. As is clear from the decision, including at [22] and [53], the judge made full allowance for vulnerability including in the assessment of what he said in interview, but found, in

fact, that the appellant demonstrated that he was able to give evidence clearly, at length and in detail, with no problem or distress in recalling detail.

20. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

### **Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal did not involve any error of law.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 September 2020

### **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

*"Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 September 2020