



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09040/2019

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business
On the 4 September 2020

Decision & Reasons Promulgated
On 15 September 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

O
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Faryl, Counsel instructed on behalf of the appellant

For the Respondent: Ms. R. Petterson, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Nigeria, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtT") who dismissed her protection appeal in a decision promulgated on the 21 November 2019.
2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the

circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 4 September 2020, by means of *Skype for Business*, which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.
4. I am grateful to Ms Faryl and Ms Petterson for their clear oral submissions.

Background:

5. The immigration history of the appellant is set out in the decision letter and the earlier decision of Judge Moxon.
6. The appellant applied for a multi-entry visit visa to the United Kingdom in 2007. That application was refused, and she withdrew her appeal in 2009 by which time she submitted a further application in 2008 which was refused on 30 September 2008.
7. A further application entry clearance by way of a multi-entry business Visa was made by her in 2009 but that was refused also on 2 September 2009. She made a further application on 5 October 2019 and this was granted on 12 October 2019 valid until April 2010. A further application for a business Visa was granted in 2010 to expire on 25 March 2012.
8. She applied for multi-entry visit visa on 21 March 2014 but that was refused on 8 April 2014, but she was granted to visit visa on 11 June 2014 to expire on 11 June 2016.
9. The appellant entered the United Kingdom on 25 May 2016 and claimed asylum two years later on 24 January 2018.
10. In her claim to the Secretary of State it was stated that she was a pastor, writer and publisher and having started as a youth minister in 2002. In or about April 2007 the appellant claimed whilst travelling from Nigeria to Ghana she was kidnapped by unknown youths, her money was taken, and they demanded a ransom. However, after being held for 12 hours she was able to escape. She further detailed that she was kidnapped in July 2012 but was also able to make her escape.

11. Between July and September 2015, the appellant stated that she had joined the “Indigenous People of Biafra” (hereinafter referred to as “IPOB”). She claimed to have a role related to finance and also “bringing youth together” to make them good citizens. It was claimed that she started to receive threatening phone calls at the end of 2015 and in April 2016 when driving over from church, the five men with guns were following her.
12. It was further claimed that since she had entered the United Kingdom she had been involved in IPOB since late 2016 and in 2018 was appointed as media personnel and had covered protest in London in April and May 2018.
13. The basis of her claim was that if returned Nigeria she would be killed by the government and authorities because she was a high-profile activist with IPOB.
14. In a decision letter of 25th of July 2018, the respondent refused her claim for asylum. In that decision the respondent noted a number of inconsistencies within the appellant’s factual account and also in relation to her account of involvement in IPOB.
15. The appellant appealed that decision and her appeal came before the First-tier Tribunal (Judge Moxon) in October 2018. In a decision promulgated on 1 November 2018 Judge Moxon dismissed her appeal. It is not necessary at this stage to set out his detailed reasons for dismissal of her claim but the judge reached the conclusion that he was not satisfied that she had any affiliation, or imputed affiliation with IPOB or that she had ever been a pastor or a reverend. He did not accept either that there was any footage or images of the appellant at IPOB events which was accessible or would not be deleted prior to return to Nigeria. The FtTJ made a finding of fact on the evidence that the Nigerian government would not identify her in any event due to the lack of any political profile in Nigeria.
16. Permission to appeal that decision was refused on 6 December 2018 and also by the Upper Tribunal on 7 March 2019.
17. The appellant then submitted further submissions to the Secretary of State on 11 July 2019.
18. Those further submissions were refused by the Secretary of State in a decision letter dated 10th of September 2019.
19. This led to a second appeal before the FtT in November 2019 (FtTJ Frantzis) and is the decision under challenge in these proceedings.
20. The appellant’s claim is summarised in the decision of the FtTJ at paragraph 9. The Appellant claimed to be a member and active supporter of IPOB. IPOB was designated a terrorist organisation in Nigeria as of 20th September 2017. It is claimed that the Appellant’s face was publicised attending an IPOB event on 19th April 2018 and that the event was aired live in Nigeria. The claim was made

that the Appellant's involvement with IPOB would reasonably likely to be known to the Nigerian authorities and would lead to her arrest, detention and ill treatment on return to Nigeria. The Appellant also asserted that the Nigerian Government monitored the activities of IPOB in the diaspora and as such her membership and support for IPOB shall be known to the Nigerian State

21. In a decision promulgated on 21 November 2019 the FtTJ dismissed her appeal on all grounds.
22. Permission to appeal was sought but was refused by Resident Judge Phillips on 31 December 2019.
23. An application was made to the Upper Tribunal for permission to appeal and permission was granted on 28 January 2020 by Upper Tribunal Judge Allen who stated as follows:

“although clearly there are difficulties in the appellant's case, I consider that on balance the grounds identify points of sufficient weight to make appropriate permission to be granted.”

The hearing before the Upper Tribunal:

24. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
25. Ms Faryl, Counsel on behalf of the appellant relied upon the written grounds of appeal. There were also further written submissions dated 15 May 2020 which she had prepared for the hearing.
26. There were also written submission filed on behalf of the respondent dated 7 May 2020.
27. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

The submissions on behalf of the appellant:

28. Mrs Faryl began her submissions by relying on the grounds and the written submissions dated 15 May 2020.
29. The original grounds submit that the judge misdirected herself in fact at paragraph 27. Whilst it is accepted that the majority of articles edited by the appellant bears the name x , the FtTJ omitted to consider her own published article with her picture clearly placed side-by-side with the leader (respondent's bundle page 190 - 191). Whilst that copy was not legible, the Tribunal was

provided with clean copies. The lack of reference to this piece of evidence is a significant failure and should have regarded this published article alongside the articles edited in the name of x.

30. It was further submitted that the FtTJ failed to make any findings as to whether the Nigerian government were capable of monitoring the Internet or unable to recognise published pictures. It was submitted that the Nigerian authorities did have capacity to monitor the Internet.
31. It was submitted that the judge wrongly applied the guidance in *Devaseelan* and failed to give adequate reasons for “heavy reliance” on the previous findings and failed to give adequate reasons why she disbelieve the appellant’s claim (paragraphs 3, 4, 5, 6 of the original grounds).
32. Ground 4 was entitled “procedural unfairness” and it was submitted that the criticism of the expert report was “vague and not in accordance with the law” and there was no record that the expert was questioned by the respondent all the judge as set out at paragraph 27. The judge acted unfairly in failing to disclose her concerns to the representative.
33. It was submitted that the judge rejected her membership of IPOB but would appear to have accepted her association and participation in IPOB activities in the UK albeit opportunistic. It was submitted that the judge should have gone further to consider the implication of her participation as per the Nigerian criminal code.
34. It was submitted there were no findings that the appellant did not believe the oath taken on the date “he” joined IPOB.
35. It is further submitted that a deportee or failed asylum seeker is handed over to the Nigerian police for further investigation and the judge did not consider the principles in *RT (Zimbabwe)*.
36. The renewed grounds assert that it was difficult for the appellant to adduce evidence to substantiate activities in Nigeria and that her account of events was traumatic and therefore any inconsistencies which may have arisen was due to that. Nonetheless her account was corroborated by the treatment of IPOB members and supporters in Nigeria.
37. It is further submitted that the appellant’s status within IPOB or intentions were immaterial as it was accepted that IPOB was a prescribed organisation in Nigeria and are targeted regardless of their status.
38. It was further submitted that improper weight was placed on the appellant’s expert report and questioning her expertise was not justified and therefore the judge failed to give any weight to the report.

39. It was submitted that the fact that no evidence was adduced as to the circumstances of IPOB supporters returned to Nigeria did not demonstrate that she would not be in danger on return. There are violations against IPOB members in Nigeria.
40. In her oral submissions, Ms Faryl submitted that the substantive issue before the Tribunal was whether the appellant, a member of IPOB, writer/editor and campaigner activist will be identified as such and therefore be at risk on return to Nigeria. The respondent at paragraph 22 of the decision letter did not contest that IPOB affiliation may give rise to a risk.
41. The appellant had an expert report which stated that both high and low profile pro-Biafran activists will be persecuted in Nigeria as the security forces have been empowered to monitor their online activity.
42. The appellant had relied upon the evidence of L who could vouch for the appellant and that the appellant had written articles. However, the judge noted that the appellant's case was that "vast majority of the articles of those she has edited not written".
43. Also, at [28] the FtTJ noted that L referred to the appellant as one of our media personnels" as opposed to providing any more definition. It is asserted on behalf of the appellant that it is likely that L may have misunderstood or use the two terms, edit and write, interchangeably a matter which is not difficult to do is to edit means to prepare written material. In any event as noted by the FtTJ whilst the vast majority of the articles were edited others were written (and not edited by the appellant.
44. Thus, it is submitted on behalf of the appellant that an editor would fall into the category of "media personnel".
45. It is submitted that if there had been any need for clarification by the judge in relation to the evidence of L, the FtTJ should have sought that clarification (relying on the decision in B (DR (Congo)) [2003] UKUT 12. Whilst in that case the Tribunal refer to evidence from the appellant, it was submitted that that would include evidence of a witness like L.
46. In her oral submissions Ms Faryl submitted that a key issue was whether the appellant was an active member of IPOB, and it was unclear whether the judge accepted the appellant was such an active member. She referred to the evidence of Mr N who was not present at the hearing, who was head of IT. In her oral submissions, she drew the Tribunal's attention to paragraph 29 of the FtTJ's decision where the judge stated "overall, I accept that Mr N's factual assertion supports the appellant's claim to be editor and I consider this in the round having afforded the appropriate weight." She contrasted this with the finding made at [31] where the judge stated "stepping back and considering all of the evidence the round, for the reasons I've given I am not satisfied the appellant has been promoted to editor." Therefore, she submitted the judge had made a

material error of law because the judge failed to make a clear finding as to whether the appellant was a member of IPOB.

47. Ms Faryl also relied upon paragraph [34] of the FtTJ's decision where the judge stated that he accepted, based on the evidence of L and the photographic evidence that the appellant attended 12 demonstrations and events organised by IPOB. The judge also accepted at that paragraph that the appellant assisted with televising and streaming IPOB related events. Therefore, having set out that conduct the judge should have found that the appellant was a member or active member of IPOB.
48. The second issue identified by Ms Faryl in her oral submissions was whether the appellant would be identified by the Nigerian authorities. She submitted that the appellant had a "prolific presence in the UK as a writer/editor and activist on pro-Biafran issues" and that most of her work featured the shortened name as x rather than her surname but that the appellant was likely to be identified by her surname on return and that was the logical approach to take rather than the approach taken by the judge which was described as "splitting hairs" when considering the pseudonym. The articles taken together with the photographs of the appellant taken at various locations was evidence to demonstrate that there was a real likelihood that the appellant could be identified as a pro- Biafran activist.
49. Ms Faryl directed the Tribunal to the report prepared by Mr N (at 42 in the bundle) which provided commentary on the footage and images of the appellant at IPOB events and gave an account on the ability of the government to identify the appellant at IPOB events and stated at [44] "from appendix on into the web link show that the appellant is an active member and principal officer that participates in IPOB events. These web links cannot be permanently deleted or removed... Further he said, "I believe there is no way the contents could be deleted by default say prior to the appellant's return to Nigeria."
50. Therefore she submitted in relation to the identification of the appellant the evidence of Mr N is that the appellant could be easily identified by a simple search on any search engine and therefore it would disclose pictures of the appellant and it would not matter if she used a pseudonym.
51. Ms Faryl submitted that if the Nigerian authorities were looking into her background for any reason she would be identifiable and would be categorised as a "terrorist" given that IPOB is a prescribed organisation.
52. In her oral submissions she drew the Tribunal's attention to the report of the special rapporteur dated 2 September 2019 at p69 of the appellant's bundle. At paragraph 7- 9 was reference made to increased numbers of attacks and killings over the last five years and at paragraph 14 it was stated "in yet other eco-political systems of violence, the security response is dangerously quasi prospective, with individuals, communities and associations actively targeted

for what they may have done decades ago, or for what they may do or may become, rather than for what they are doing or have done (e.g. members of the IM N, IPOB". At paragraph 47 the report stated "since 2015, members of IPOB have faced arbitrary arrests, torture and extrajudicial executions, predominantly in the context of demonstrations. Between 2015 and 2016, it is alleged that law enforcement officials killed at least 100 IPOB members in different events in Aba (Abia state), and Awka and Onitsha (Anambra State). On 29 30 May 2016 during demonstration the Nigerian military opened fire on IPOB members and bystanders in Onitsha. At least 60 people were killed and over 70 injured, mainly shot in the back. Between 12 and 14 September 2017, IPOB followers gathered at the family home of their leader to take part in a peaceful vigil. The military operation carried out in the afternoon of 14 September 2017 is alleged to have resulted in the killing of hundred 50 persons. The IPOB leader went into exile and some of its follows remain disappeared since then. Following this event, the Federal High Court proscribed IPOB and designated it as a terrorist group." Paragraph 50 stated "it is alleged that not a single conviction against IPOB members have been secured since 2015, due to discontinuance or dismissal of charges. None of the killings of IPOB members and been investigated. On March 8, 2018, the African commission issued provisional measures asking the government of Nigeria to rescind its decision branding IPOB and its members as terrorists as well as the prescription and not take any further action pending the decision of the commission on this communication. It is stated "I'm not aware of any steps taken to implement the AC HR interim decision at the time of writing these preliminary observations" (para 52;p75).

The submissions on behalf of the respondent:

53. Ms Petterson relied upon the written submissions dated 7 May 2020.

By reference to ground 1 of the original Grounds of Appeal it was submitted that the FtTJ did consider the clearer copy of the article at pages 190-191 of the Respondent's bundle [30]. In finding that this evidence did not advance the Appellant's case further, the FtTJ considered that the Appellant was not easily identifiable from the picture and noted two credibility issues. The burden was on the Appellant to show that the Nigerian authorities monitored pro-Biafra political activity on the internet. At [37-39], the FTTJ properly considered the evidence before her on this issue.

54. As regards ground 2 of the original Grounds of Appeal, it was submitted that the FtTJ focussed on whether – on return to Nigeria - the Appellant would be at real risk of being identified by the authorities as the result of her pro-Biafra activities. She found that there was not such a risk. In considering whether the Appellant would engage in pro-Biafra activity in Nigeria, the FTTJ was entitled to consider whether the Appellant's commitment to the Biafran cause was sincere [48-50]. The FTTJ did not, as claimed in this Ground, find that only high-profile members of IPOB are at risk of persecution in Nigeria. The main issue for the FtTJ was whether the Appellant was likely to be identified on return to

Nigeria as the result of her activities. The FTTJ did discharge the duty on her to give adequate reasons for her findings. She did not treat the decision of the previous FtTJ as determinative. The FTTJ's findings are not, as claimed in this Ground, lacking in detail.

55. In answer to ground 4 of the original Grounds of Appeal as submitted above, the FTTJ did not question Ms Peters' expertise or criticise her report. There was no procedural unfairness.
56. In answer to ground 5 of the original Grounds of Appeal it was submitted that the FTTJ correctly indicated that the Appellant's claim under Articles 2 and 3 of the ECHR stood or fell with her claim under the Refugee Convention [55]. The FTTJ dealt adequately with the Appellant's claim under Article 8 of the ECHR [56]. It is clear that the FTTJ did not consider the Appellant's activities in the UK to be an obstacle to her integration in Nigeria for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules.
57. The FTTJ considered whether asylum seekers were routinely questioned by the authorities on their return to Nigeria [52]. There was no evidence before her that such returnees are immediately handed over to the police at the airport for further investigation, as claimed in this Ground.
58. It was submitted that the FtTJ's decision is comprehensive and detailed. In her assessment of the credibility of the Appellant's account and the risk to her on return to Nigeria [22-53], the FtTJ applied anxious scrutiny to the oral and documentary evidence before her, considering all of this evidence in the round, before reaching her findings. The FtTJ considered the risk to the Appellant from her claimed role as an editor of Biafran sponsored publications [23-32] and - as a member of the Indigenous People of Biafra [IPOB] - from her participation in (and live streaming of) IPOB events in the UK [33-52].
59. As a general point, it was submitted that the renewed Grounds of Appeal were different to the original Grounds, were rather general and did not engage in specific detail with the FtTJ's decision.
60. By reference to paragraph[3] of the renewed Grounds of Appeal, it was submitted that the FtTJ correctly - did not require documentation to corroborate the Appellant's account of her activities in Nigeria. The FtTJ assessed the evidence before her. The only points in her decision where the FtTJ held it against the Appellant that she had not adduced documentary evidence to substantiate her activities were [26] and [32(iv)]. In relation to both [26] and [32(iv)], the Appellant could have provided documentary evidence from the UK.
61. It was submitted that there was no evidence before the FtTJ about the Appellant's mental health, and which might explain inconsistencies in her account.

62. At [15] of the refusal decision dated 10 September 2019, the Respondent accepted that some IPOB members are subjected to violence in Nigeria. Further, at [50] of the refusal decision, the Respondent accepted that IPOB members are considered to be terrorists by the Nigerian authorities. The FtTJ referred to these two points at [12]. Having considered the evidence, however, the FtTJ found that the Appellant had not – as claimed – been promoted to editor for any pro-Biafra or pro-IPOB sponsored media publication [31]; that – even if she had been promoted as claimed – she would not be identifiable on return to Nigeria as a result of her editing role [32]; that the Appellant did not have a sincere commitment to the Biafran cause [48-50]; that the Appellant was not at risk of being identified by the Nigerian authorities as the result of her IPOB activities in the UK [51]; and that – as a failed asylum seeker – the Appellant would not be at risk on arrival by plane in Nigeria [52].
63. In answer to paragraph [5] of the renewed Grounds of Appeal it was submitted that given that this Ground refers to “her expertise”, the Respondent presumes that it is referring to the report of Ms P, not that of Mr N. Although Ms P’s report of 24 June 2019 was addressed to the protection claim of another person [10(iii)], the FtTJ gave it due weight when reaching her findings [37-39] [47] [52]. The FtTJ did not question Ms Peters’ expertise or criticise her report
64. In answer to paragraph [6] of the renewed Grounds of Appeal it was submitted that the FtTJ carefully considered the evidence before her about the treatment of IPOB supporters by the authorities on their return to Nigeria [38-39] [47]. As noted above, the FtTJ was aware that IPOB is a proscribed organisation in Nigeria and that some IPOB members are subjected to violence in Nigeria. In finding that the Appellant was not at real risk on return, the FtTJ gave adequate reasons.
65. In her oral submissions, Ms Petterson addressed the points raised by Ms Faryl. She submitted that the FtTJ had considered the likelihood of the appellant’s activities coming to the attention of the Nigerian authorities at paragraphs 38-39. The judge noted that other than that cited by the expert there was no evidence for the Tribunal of this which was notable “in light of the opinion of the expert that the persecution of Biafra supporters is heightened since the Proscription Order in 2017.
66. Ms Petterson also addressed the issue of whether the appellant would be identified on returned Nigeria at the airport. The judge dealt with this at paragraph [47] the judge did not discount the possibility that the Nigerian embassy may have informers within IPOB in the United Kingdom but did not accept that the appellant was someone who the informers would be interested in. The judge noted that whilst the order of 2017 had extraterritorial effect and it was indicated that the military would monitor social media, there was no evidence before the Tribunal (and from the expert) over two years later that those low-level members of IPOB in the diaspora are a sufficient interest to be identified, placed on a list and rested on return to the airport in Nigeria.

Therefore, she submitted the appellant would not be identified on return. Similarly, at paragraph 52 the judge considered the expert report and forcible returns to Nigeria from abroad but noted that the expert did not provide evidence as to any specific mechanism of return failed asylum seekers nor in particular of their processing at the airport upon arrival in Nigeria.

67. Thus, she submitted that the FtTJ taken account of all the evidence and that the grounds as advanced on behalf of the appellant did not disclose the making of an error on a point of law.
68. Ms Faryl in her reply submitted that the submissions made on behalf of the respondent was silent on the inconsistency in the finding of whether the appellant was an active member of IPOB.
69. She further submitted that at paragraph 47 the judge failed to give reasons as to why the appellant would be of interest to any informer and that given the authorities monitor social media and the appellant's profile in the light of the evidence of Mr N and L, the judge gave insufficient reasons for reaching the conclusion that she would not come to the attention of the authorities on return.
70. Ms Faryl therefore invited me to find that there was a material error of law in the FtTJ's decision.
71. At the conclusion of the hearing I reserved my decision which I now give.

Discussion:

72. The appellant's claim is summarised in the decision of the FtTJ at paragraph 9. The Appellant claims to be a member and active supporter of IPOB. The history is set out in the country materials before the Tribunal. The Biafra war spanned the years between 1967 – 1970, but groups who sought the revival of Biafra only reappeared shortly after Nigeria returned to democracy in 1999 (following periods of military rule). They formed splinter groups to support the Igbo ethnic group and pro-Biafra sentiments which gave rise to movements such as Masscob for the restoration of Biafra through non-violent means. Other groups were formed which included Radio Biafra and IPOB; the latter being founded in 2011. Most pro-Biafra groups are either aligned with or subsumed under IPOB. Their leader was arrested in 2015 and not released on bail until 2017 which led to protests in parts of SE Nigeria. IPOB was designated a terrorist organisation in Nigeria as of 20th September 2017.
73. As set out in the decision letter at [15] the respondent accepted that some IPOB members are subjected to violence in Nigeria and that IPOB was a proscribed organisation.
74. In respect of the appellant's factual claim, it had been claimed that the Appellant's face was publicised attending an IPOB event on 19th April 2018 and that the event was aired live in Nigeria. The Appellant in her witness statement

asserted that she is one of the editors of the Biafra Telegraph, Biafra Times and is “Admin/Moderator in Biafra Television (BTV)” and that her name features prominently in many published articles. As such, the claim was made that the Appellant’s involvement with IPOB would reasonably likely to be known to the Nigerian authorities and would lead to her arrest, detention, and ill treatment on return to Nigeria. The Appellant also asserted that the Nigerian Government monitored the activities of IPOB in the diaspora and as such her membership and support for IPOB shall be known to the Nigerian State. Such membership and support are against the law.

75. I have given careful consideration to the grounds advanced on behalf of the appellant, both the written grounds and those given by Ms Faryl before the Tribunal. In general terms, the original grounds comprise of a number of assertions and unevidenced challenges to the decision of the FtTJ. For example, at paragraph 3 it is asserted that the judge made “ a repeated error on the expert despite the CV placed before the judge”. That is not reflected in the decision of the judge at all and it is plain that the FtTJ properly accepted the report. At paragraph 2 it is asserted the judge misdirected herself with respect to refugee law and it had no regard to the fact that the claim could succeed even if she acted in bad faith or was not a good witness citing the decision in Danian. However, the judge expressly considered this in detailed findings of fact at paragraph 47 – 53. Many of them can properly be categorised as disagreements with the decision reached but do not go demonstrate any error of law reached in the judges’ decision. Ms Faryl has provided further written submissions which have summarised below which she submits set out her “key points”. I have summarised them above.
76. In so far as it is argued in the original grounds that the FtTJ failed to apply the principles in Devaseelan that is plainly not made out when considering the decision of the FtTJ.
77. The FtTJ noted that the appellant’s case before the previous judge was that she had been involved with IPOB in the United Kingdom since late 2016 and in January 2018 was appointed as media personnel covering protests in London in April and May 2018.
78. Judge Moxon made the following findings of fact on the evidence in October 2018:
 - (i) whilst the photographs and video footage show that the Appellant has attended at least two demonstrations in London in 2018 (April and May 2018), the footage of her as a news anchor is rudimentary, as are the on-screen graphics that could have been easily manufactured (paragraph 58);
 - (ii) he was not satisfied that the Appellant had an affiliation, or an imputed affiliation, with the IPOB: she had fabricated an account to pursue an unmeritorious claim for asylum (paragraph 61).

(iii) he did not accept that there is any footage or images of the Appellant at IPOB events that is publicly accessible or would not be deleted prior to return to Nigeria (paragraph 62).

(iv) the reliability of the documents produced by the Appellant had been subjected to detailed challenge by the Respondent in the reasons for refusal letter and it was surprising that the Appellant had not sought to address those challenges within her written or oral evidence (paragraph 57);

(v) the evidence of L was undermined by the fact that he introduced evidence not within his earlier statements or accounts, namely that during a demonstration in London the Appellant had been photographed by Nigerian officials. His attempts to explain why the evidence was not included earlier was an effort to mislead (paragraph 59b.)

79. At paragraph 19 the FtTJ set out the principles of the decision in BK (Afghanistan) v SSHD [2019] EWCA Civ 1358 which summarised the guidance provided by the Tribunal in the case of Devaseelan. The FtTJ went on to summarise the factual findings of the previous judge and then highlighted the evidence that had not been before Judge Moxon and expressly described that evidence at paragraph [21]. Thus, the FtTJ identified the key evidence which was not before the previous FtTJ [19-21] and then considered whether this evidence should lead her to reach different findings of fact [22-53].
80. There is no merit in the submission that the FtTJ failed to apply the principles in Devaseelan or that the judge heavily relied upon the previous findings as asserted in the original grounds.
81. I now turn to address the principal submissions relied upon by Ms Faryl. She submitted that the substantive issue before the FtTJ was whether the appellant as a member of IPOB and writer, editor and campaigner and activist and would be identified as such and therefore be at risk on return to Nigeria. In this context she submitted the appellant had relied upon an expert report that high and low profile pro-Biafran activists would be persecuted in Nigeria as the security forces had been empowered to monitor their online activity (I refer to her oral submissions).
82. She properly highlighted that the respondent at paragraph 22 did accept that some IPOB members in Nigeria were subjected to violence and that at paragraph 50 it was accepted that IPOB had become a proscribed organisation in 2017. That had been noted by the FtTJ in her decision at [12].
83. There is no dispute that the issue that the FtTJ was required to resolve was whether in fact the appellant's activities carried out in the United Kingdom were such to give rise to a real risk on return. Whilst Ms Faryl's submissions are predicated on the basis that she was a "writer, editor and campaigner and

activist” those were precisely the issues that the FtTJ was required to consider in her analysis of the evidence before the Tribunal.

84. Turning to that, Ms Faryl submitted that a “key issue” was whether the appellant was an active member of IPOB, and it was unclear whether the judge accepted the appellant was such an active member. She referred to the evidence of Mr N who was not present at the hearing, who was head of IT. In her oral submissions, she drew the Tribunal’s attention to paragraph 29 of the FtTJ’s decision where the judge stated “overall, I accept that Mr N’s factual assertion supports the appellant’s claim to be editor and I consider this in the round having afforded the appropriate weight.” She contrasted this with the finding made at [31] where the judge stated “stepping back and considering all of the evidence the round, for the reasons I have given I am not satisfied the appellant has been promoted to editor.” Therefore, she submitted the judge had made a material error of law because the judge failed to make a clear finding as to whether the appellant was a member of IPOB in the light of those 2 paragraphs.
85. Having considered the decision of the FtTJ, I am satisfied that the judge did not err in law in the way submitted by Ms Faryl. Indeed, in my judgement the FtTJ undertook a clear analysis of the evidence relating to the appellant’s association with IPOB and the specific role/position she claimed in relation to that organisation and in the context of her attendance at demonstrations. That is plain from the findings of fact set out at paragraphs [22 – 52] of her decision.
86. The FtTJ recited the earlier findings of Judge Moxon at paragraph 20-he had reached the conclusion that he was not satisfied that she had an affiliation with IPOB (or imputed affiliation) or that she had been appointed as media personnel and had fabricated her account to pursue an unmeritorious asylum claim. The judge then set out the further evidence presented on behalf of the appellant summarised at paragraph [21 (i)-(iv)] which included further evidence relating to her asserted role in the media and which included evidence from L (who gave evidence before the Tribunal) and Mr N who had provided a report (5 July 2019) but who did not give oral evidence. The judge also had the expert report of Ms P (dated 24 June 2019) and whilst that report was addressed to the protection claim of another person and not the appellant (see [10 (iii)]) and thus did not consider the particular factual circumstances of this appellant, the judge considered and gave weight to that report when undertaking her analysis of the issues of risk on return. Insofar as the original grounds of challenge assert that the FtTJ unfairly criticised the report, and acted unfairly in not disclosing her concerns, that is plainly not made out on the evidence nor has Ms Faryl identified any such procedural unfairness undertaken by the judge in her analysis of the report. Indeed, as the respondent submits the FtTJ did not question Ms P’s expertise but was entitled to consider the contents of the report in the context of the appellant’s claim (see grounds 4 of the original grounds entitled “procedural unfairness”).

87. There is no error in the FtTJ's assessment on the basis submitted by Ms Faryl. In my judgement the FtTJ plainly proceeded on the basis that the appellant had an association with IPOB, and her analysis of the evidence went to the issue of her role, her profile, identification by the Nigerian authorities and associated risks on return.
88. Whilst Ms Faryl relies upon two particular paragraphs in the decision, paragraphs [29] and [31], they should not be read in isolation but in the context of the FtTJ's assessment of the evidence concerning the appellant's role at paragraphs [22 - 31]. Within those paragraphs, the FtTJ gave careful consideration to the evidence, both documentary and oral, as to the appellant's association with IPOB and her role as an editor. The judge gave adequate and sustainable reasons based on the evidence to reach her omnibus conclusion, at [31] that she was not satisfied that the appellant had been "promoted to editor for any pro- Biafra or IPOB sponsored media publication (whether online or broadsheet)".
89. Those reasons can be summarised as follows:
 1. The appellant's current role and her title was unclear which undermined the credibility of her case; in October 2018 the appellant (on her own case) had no specific role within IPOB and not one of any prominence as editor of online or other hardcopy news publications. Thus, any change in a position must have come about in the last 12 months. However, the judge observed that the list of articles edited by X cited by Mr N at appendix 1 began with articles edited in June 2018 and therefore prior to the appeal hearing before Judge Moxon. The judge therefore found that her evidence was inconsistent, both with her case having been promoted to editor since the appeal hearing and also with her genuine fear of reprisal based upon this article on the basis that it had not been raised before Judge Moxon. The judge also observed that her finding was supported by an article on page 89 of the bundle purporting to show her in a journalistic role in 2018 when that evidence did not appear to feature before Judge Moxon nor had she elsewhere claimed that she'd spoken with a team of by Afrin journalists in September 2018 which is the subject of a newspaper article (at [34]).
 2. The evidence as to her formal title in a current role was contradictory and again did not assist in establishing her credibility. The judge identified the differences between the evidence of L and that of Mr O and in particular that in relation to the evidence of Mr O it was a role she appeared to no longer hold based upon his evidence dated 26 days after her supposed appointment to it. The judge identified that only Mr N and Mr O refer to the appellant having an "editorial role" and the other evidence did not refer to her having a defined role at all (see [25]).

3. In that context, the judge considered that if the appellant held an editorial role, it was reasonable to expect evidence of correspondence with writers/and/or other editors or with publications themselves regarding the articles the appellant is said to have edited but that “no such evidence was put before the Tribunal” (at [26]).
4. The judge considered the name of the editor of the articles which had been claimed to have been edited by the appellant and observed that the name was different to that of the appellant. The judge considered the explanation for the difference in name but having considered that, the judge found that there was “no clear reason why she had chosen to edit under the short name when purporting to act in a professional capacity”. The judge also took into account her evidence and cross-examination regarding a knowledge of the names of journalists that she worked with and found that her evidence and that was “vague” for the reasons set out at paragraph 27 (i); she was not able to answer and cross examination questions about the journalist with whom she worked with by reference to the article in the bundle at page 244; she was unable to identify correctly the journalist with him she said she was working closely with; and her answers cross-examination were not those of an “Informed editor”.
5. At [28] the FtTJ consider the evidence of L and whilst the judge considered that he was genuinely trying to assist the Tribunal, his evidence was inconsistent with that of the appellant; his evidence was that she had “written” the articles whereas the appellant’s case was the vast majority of those are ones that she had edited not written. The judge also gave reasons as to why the evidence of L did not further her claim; the judge was not satisfied that he knew the appellant or her position in I pop well enough to vouch for her and whilst he knew her through her interaction at events there was no evidence that he had any “independent knowledge of her role outside with his liaising with her”.
6. At [29] the FtTJ made reference to the evidence of Mr N who had provided a report but had not attended for cross-examination. The judge considered that whilst he appeared to be the publisher of articles edited by someone in the name of X , there was no opportunity for the factual assertions he made at the appellant was in fact a.k.a. x to be tested on the basis of how he had liaised with her, has he met her and therefore concluded that the weight placed upon his evidence was limited.
7. At [30] the judge considered the one article written by the appellant in which a picture appeared (page 190 – 191). That image was unclear but having been handed a clearer copy, the judge found that she was “not easily identifiable from the picture”. Pausing here, I cannot accept the submission made at paragraph 1 of the original grounds that the judge misdirected herself in relation to that

evidence. The judge did not omit a reference that article but expressly considered it at paragraph [30]. The judge took into account the previous finding made by Judge Moxon that the appellant relied upon photographic evidence that was easily manufactured (paragraph 58 of his determination) and reached the conclusion that the evidence did not advance her case further. The judge also importantly noted that whilst it was claimed that her role was a social commentator and she had contributed to a publication based in the UK, the judge's attention "was not drawn to any publications based in the UK to which the appellant had contributed".

90. Having addressed the evidence at paragraphs [24 – 30], the judge then gave her omnibus conclusion at [31] stating as follows; "Stepping back and considering all of the evidence in the round, for the reasons that I have given I am not satisfied that the appellant has been promoted to editor of any pro- Biafran or IPOB sponsored media publication (whether online or broadsheet)".
91. As can be properly seen from those paragraphs, at [29] the reference made by the FtTJ was that Mr N's factual assertion could be viewed as capable being viewed as support for her claim to be editor but on the judge's analysis of all the evidence in the round as set out at [31], and including that of Mr N, the judge did not find that she was satisfied that the appellant had in fact been promoted to any such role. Consequently, there is no inconsistency between paragraphs 29 and 31 as submitted by Ms Faryl.
92. The second issue identified by Ms Faryl in her submissions was whether the appellant would be identified by the authorities on return. In support of that submission, she stated that the evidence advanced on behalf of the appellant demonstrated that she had a "prolific presence as a writer editor and activist", that most of her work featured with a short name rather than her full name and that the evidence taken together along with the photographs of her was sufficient to demonstrate that there was a real likelihood that she could be identified as a " pro- Biafran activist. "
93. Ms Faryl identified the report prepared by Mr N, (page 42) and that the appellant could be easily identified by a simple search on the search engine.
94. That submission fails to take account of the detailed factual findings made by the judge and her analysis of the evidence. As set out in the preceding paragraphs, at [24 – 31] the FtTJ gave adequate and sustainable reasons as to why the judge rejected her claimed profile as an editor and activist. Those reasons were supported squarely by the evidence including that undertaken in cross examination. It is plain from those findings of fact that the judge regarded her credibility to be undermined by the lack of consistency between her evidence and the evidence of the other personnel involved as to her role, and evidence in support of that role. As at [26] the judge observed that if she held an

editorial role, there would be evidence of correspondence with writers and other editors of the publications the appellant was said to have edited, but no such evidence is before the Tribunal. Ms Faryl has not pointed the Tribunal to any evidence to contradict or undermine those findings of fact.

95. The only point raised in the grounds and in oral submissions relates to the shortened name given in the articles said to be edited by the appellant. Ms Faryl submits that the judge was “splitting hairs” when considering the pseudonym used by the appellant. I do not consider that that criticism is made out. The judge was entitled to consider on the material before her whether the articles would necessarily identify the appellant or would lead to her identification. This was considered by the judge at [27] who found that the appellant was not able to give any clear reason why she had chosen to edit under that “shortened name” but also identified a number of credibility points at [27] (i)-(iv) which undermined her claim.
96. Furthermore, the FtTJ returned to this issue of identification of the appellant on the alternative basis that if she was wrong about her role, whether she was identifiable as a “pro Biafra activist” at [32]. For the reasons given at that paragraph, the judge was not satisfied that she would be so identified taking into account that on the articles her name was “markedly different” to her real name and that there was no evidence before her as to how common the pseudonym was in Nigeria or as abbreviated despite being on notice that this was an issue raised by the respondent in the decision letter. The judge found there was no background evidence to support the assertion that the government would place “two and two together” given where the appellant came from in Nigeria and addressed the evidence of Mr N that search engine keywords would have to be precise and that on his evidence, the appellant had not shown that if the Nigerian authorities were to search for the name used on the articles, such images would identify the appellant. The judge also dealt with the appellant’s evidence that she expressed views on Facebook but none of that had been placed before the Tribunal and was “notable by its absence” (see [32 (iv)]).
97. Contrary to Ms Faryl’s submissions, the judge did analyse the evidence of the appellant’s attendance at 12 demonstrations and events organised by IPOB. At [34] the judge accepted the evidence of L and the photographic evidence that she had attended such demonstrations. The judge also accepted that she been involved in the streaming of events but identified at [35] that the “question for me is whether, to the lower standard of proof, her attendance and role places her at a real risk of persecution on return.” At paragraphs [36 – 45] the judge undertook a detailed analysis of the evidence and whether such attendance would be likely be either monitored by the Nigerian authorities or in fact whether she would be identified.
98. It has not been demonstrated by either the written or the oral submissions that those factual findings were not open to the judge to make on the evidence before her or that she failed to take into account the evidence. I have not been

taken to any evidence during the course of submissions to undermine those factual findings. Ms Faryl relied upon the evidence of Mr N in his report that the evidence of the IPOB events is available online and that it would come to the attention of the authorities. However, the judge considered this at [37] in the context of the report of Ms P in that it is plausible that the Nigerian military have been seen to closely monitor activities of pro-Biafra groups. The source of that opinion is an announcement on a website in 2017 that the military “will now monitor anti-government social media activities”. At [38]-[40], the FtTJ undertook an assessment of the evidence, including the country evidence to see if that declaration had been followed up or carried out with any adverse consequences after 2017. In doing so the judge considered the expert report of Ms P and of the arrest in January 2018 of a journalist and online blogger. However the judge gave reasons as to why the appellant did not have a profile of a similar nature- that the journalist was not arrested at the airport on return but in Nigeria as his name was already known through his journalistic activities and also that this was one example but the report at paragraph 31 had not been sourced by the expert. At [39] the judge found that there had been no other evidence cited in behalf of the appellant to show that online or other monitoring of pro-Biafra groups in the diaspora had led the adverse consequences on return to Nigeria such that the appellant would reasonably likely to be identified.

99. At paragraph [40] addressing the evidence of Mr N, the judge noted that there was no footage shown but also the witness did not say that the appellant was identified by name and in the photographs or videos and at [41] the judge observed that she was taken to no evidence to show that the appellant’s full name been published on social media is participating in the events; on one event the appellant confirmed she could not be seen on camera, and the judge gave other reasons at paragraphs [42 – 44] as to why the judge found that she would not be identified as a result of any activities and concluded at [45] the appellant was a “face in a crowd of people”. The judge’s conclusion at [46] that it had not been shown that the government had the ability to identify the appellant or to cross-reference any pictures they may have IPOB protests or meetings in the UK.
100. Insofar as the renewed grounds of appeal assert that because there was no evidence adduced as to the circumstances of IPOB supporters returned to Nigeria that this does not mean there was no risk on return, in my judgement it was open to the FtTJ to analyse the evidence including that in the report of Ms P as to whether such a risk existed to this particular appellant. The judge resolved that issue in her comprehensive findings of fact set out above.
101. A further issue raised in the original grounds’ states that “a deportee or failed asylum seeker is immediately handed over to the Nigerian police for further investigation”. No evidence in support of that assertion is cited in the grounds and the FtTJ considered the evidence as to circumstances of a return at [52] observing that the expert report did not provide evidence as to any specific

mechanism of return or in processing at the airport upon arrival. There was no evidence as to whether or not all returnees are screened or whether they would be asked questions about their activities in the United Kingdom. The FtTJ also addressed this at [47] by contrasting the lack of evidence to show those in the diaspora are of sufficient interest to be identified and arrested on return and contrasted that with the situation of those present in Nigeria.

102. The original grounds also assert that the FtTJ failed to make findings regarding the culture of oath in IPOB and failed to have regard to the principles in RT (Zimbabwe) and HJ (Iran) (see paragraph 7). However the FtTJ at paragraphs [47] –[52] set out her analysis of the appellant’s evidence and gave reasons as to why she had reached the conclusion that she was not satisfied that the appellant was sincere in her commitment to the organisation and at [50] expressly considered the issue of the oath, and that having heard the evidence she was not satisfied the appellant would demonstrate in Nigeria, and at [52] further considered RT (Zimbabwe)[2010] EWCA Civ 1285.
103. The FtTJ had the advantage of hearing the oral evidence before the Tribunal. In the well-known case of Piglowska v Piglowski [1999] UKHL 27, Lord Hoffmann said this:

“... the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge’s evaluation of those facts. ...”
104. In so far as it is asserted in the written grounds that there was a lack of reasoning for consideration of the evidence in the determination, when considering claims of international protection, a judge is required to consider the core issues and to make findings upon them. Following Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC) judges need to resolve the key conflicts in evidence and explain in clear and brief terms their reasons for preferring one case to the other so that parties can understand why they have lost. Reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by a judge: Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), at [10]. I accept the submission made on behalf of the respondent that this was a clear and detailed decision in which adequately reasoned findings were made with anxious scrutiny and in accordance with the evidence.
105. The question whether the decision contains a material error of law is not whether another Judge could have reached the opposite conclusion but whether this Judge reached a conclusion by appropriately directing himself as to the relevant law and assessing the evidence on a rational and lawful basis.

106. The judge had the advantage of considering all the evidence in the case. As the Supreme Court stated in Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 at [62]:

“It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.”

107. For those reasons, I am satisfied that it has not been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision was one that was reasonably open to her on the assessment of the evidence.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated 10 September 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.