



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

Appeal Number: UI-2021-001682  
PA/03104/2020

**THE IMMIGRATION ACTS**

**Determined without a hearing**

**Decision & Reasons Promulgated  
On 26th August 2022**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

**Between**

**LMN (NIGERIA)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) the Tribunal has ORDERED that no one shall publish or reveal the name or address of LMN who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

## Introduction

1. **Determination on the papers:** This appeal was listed for a hearing on 26 June 2022. On 19 June 2022, the Appellant emailed the Tribunal and applied for his appeal to be determined on the papers. I initially refused that application, but at the hearing (at which the Appellant did not attend), the Respondent, through Miss Lecointe, indicated that she consented to the matter being dealt with on the papers given the full Rule 24 response that had been filed to which she had nothing of substance to add in the absence of the Appellant. In those circumstances, I decided that, having regard to the views of both parties and being satisfied that I could fairly determine the appeal without a hearing, I would determine the appeal on the papers, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, which I now do.
2. The Appellant is a citizen of Nigeria who came to the UK illegally in either 2003 or 2005. In 2019 he applied for asylum on the basis of his claimed support for Biafran independence. His claim was refused by the Respondent and, by a decision of First-tier Tribunal Judge Wilsher promulgated on 19 July 2021 his appeal to the First-tier Tribunal (“FTT”) was also dismissed. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Pickering on 26 October 2021 on all grounds.
3. Given the nature of the Appellant’s claim, it is in my judgment appropriate to grant him anonymity in the terms set out above. In my judgment, notwithstanding its importance, the open justice principle is outweighed in this case by the risk to the Appellant on return if his claim is well founded.

## The First-tier Tribunal’s Decision

4. The Appellant relied on his membership of two groups supportive of Biafran independence as giving rise to a real risk of his ill-treatment on return to Nigeria. First, the Appellant claimed to have been a member of the Movement for the Actualization of the Sovereign State of Biafra (“MASSOB”) prior to coming to the UK and to have been tortured as a result of taking part in a protest with that group. More recently, the Appellant claimed to have joined the Indigenous People of Biafra (“IPOB”) in 2018 and to have taken part in activities in the UK.
5. The Judge, at para 10, found that his claimed activities for MASSOB were not credible. The Judge’s reasons for this were as follows:

“In his statements he confirmed that he was arrested following a protest. He did not however make any claim for asylum upon his arrival in the UK in 2003. Furthermore he has not produced any court documents or police documents relating to this arrest even though he says that he was bailed by his brother. He was asked at the hearing whether or not he could have secured any documents of that kind but he merely said that his brother had died in 2010. He did not however indicate that he had made any effort to

get documentation prior to his brother's death or from the police station or the court in Nigeria. He was also not able to produce any medical evidence to show any injuries arising from this torture. In all the circumstances I found that the claim that he had been tortured in 2003 due to his MASSOB activities not made out at the lower standard of proof."

6. The Judge found in the alternative that, given the passage of time and the fact that he was able to leave Nigeria without difficulty having apparently not been arrested again, the Nigerian authorities would have had no interest in him arising from that incident.

7. At paras 8-9, the Judge considered the claim in relation to the Appellant's activities with IPOB. As to this, the Judge found the Appellant's claim to be a member of the Croydon IPOB branch to be credible and that he had been involved with this branch since 2018. More particularly,

"This has involved him attending meetings and also giving out leaflets. He has also attended a number of demonstrations at the Nigerian High Commission. I also accept that he may have given interviews that have been posted on the internet regarding Biafran rights. He is from Biafra originally and there is some consistency therefore with his embrace of this cause."

8. However, the Appellant's involvement, the Tribunal found, is at a relatively low level, he did not have a role of national importance and is one of many such low-level members in the UK who are engaged in the daily activities of the group.

9. At paras 12-17 the Tribunal considered the question of whether the Appellant would, in light of these accepted *sur place* activities, face a real risk of ill treatment. The Judge's reasons can be summarised as follows:

(a) There was no doubt that IPOB was subjected to serious repression by the Nigerian authorities, had been proscribed and that a large number of peaceful demonstrators had been killed in recent years. The question was however the specific risk to this Appellant in light of his activities.

(b) The most recent country evidence indicated that the authorities' repressive activities were linked to a particular military operation and it was not possible to discern any incidents whereby IPOB members were simply arrested on the basis of surveillance undertaken entirely separately from any public manifestations of support for the group.

(c) There was an expert report from Ms Adure Uzo-Peters. Some of this evidence was accepted but certain opinions expressed by her as to the risks faced in Nigeria lacked a sufficient evidential basis and were accordingly rejected.

(d) One aspect of the expert's evidence that was accepted by the Tribunal was that the Appellant would be exposed to a higher level of risk if he lives and chooses to protest in the south-east of Nigeria, the

hotbed of Biafran activities, than in other areas. Indeed, the Tribunal accepted that if the appellant were “to undertake protest activities in the south-east region during any of the IPOB set piece demonstrations then there would indeed be a real risk of him suffering ill-treatment and death”.

- (e) However, the level of activities in which the Appellant has engaged in the UK was not such to satisfy the Tribunal that he wishes sincerely to engage in protests if he were returned to Nigeria. The principle in HJ (Iran) [2010] UKSC 31 was not therefore applicable. In particular, in neither his witness statement nor his oral evidence did he claim that he wished to engage in political activity in Nigeria and, even if he had done, the level of activity he has undertaken in the UK would make such a claim unconvincing. He would not seek to engage in public protest on behalf of IPOB if he were returned. This was because “he is not sufficiently committed to the cause of IPOB to engage in such actions.”
- (f) There was no evidence from any source that ordinary members of IPOB from the UK had been interrogated upon return to Nigeria without more.
- (g) While it was accepted that, if the Appellant were detained and if the authorities did somehow draw a connection between him and IPOB in the UK, there would be a real risk of ill-treatment by the authorities, there was on the evidence no real risk that the authorities would come to find out about his activities in the UK. The claim that Nigerian authorities monitored UK activists and had the tools to connect any individuals caught on CCTV with their identities was not made out.

## **Grounds of appeal**

- 10. The Appellant seeks to impugn the FTT’s decision in reliance on three grounds of appeal:
  - (a) First, it is said that in paras 8-9 of the FTT’s decision, the Tribunal failed to make adequate findings;
  - (b) Ground 2 challenges, in various respects, the Tribunal’s findings as to the Appellant’s risk on return;
  - (c) Ground 3 challenges the conclusion that the Appellant would not engage in protest on return.

### Ground 1

- 11. In summary, in relation to paras 8-9 of the FTT’s decision, the Appellant submits that:

- (a) In relying on the Appellant's delay in joining IPOB after arriving in the UK to find that the Appellant's activities were low level, the Tribunal failed to take account of the history of that organisation;
- (b) Secondly, the Appellant suggests that the Tribunal erred in considering that only high-profile members of IPOB were at risk.

12. Taking these in turn:

- (a) The Appellant's first point is based on a misreading or misunderstanding of the Tribunal's reasoning. The Tribunal did not find that the Appellant's activity for IPOB was low level because there was a delay in his commencement of activities with them. The basis for considering him to be a low-level supporter was the nature of the activities in which the Tribunal accepted (at para 8) he engaged, namely attending meetings, giving out leaflets, attending demonstrations and posting interviews about Biafran rights on the internet. The point that the Tribunal was making about delay was not in relation to the Appellant's membership of IPOB (as to which the history of the organisation could, I accept, be relevant), but in relation to his lack of engagement in any pro-Biafran independence activity in the UK at all, prior to his involvement with IPOB. The Tribunal was in my judgment well entitled to take account of the fact that the Appellant did not undertake any such activity between his arrival in the UK and his joining IPOB in 2018 and to take that into account into determining the Appellant's level of commitment to the cause.
- (b) As to the Appellant's second submission, this too is based on a misreading of the Tribunal's reasoning. The Tribunal did not find that only high-profile members of IPOB were at risk. Indeed, the Tribunal expressly refers to ordinary demonstrators being maltreated by the Nigerian authorities. The relevance of the Appellant's low-level activities went, rather, to the question of (a) whether the authorities would find out, in the absence of any specific activities in Nigeria, that the Appellant was a member of IPOB, and (b) whether the Appellant would undertake pro-independence activity on return (and if not, why not). That issue arises under Ground 3. For each of those purposes, it was in my judgment legitimate for the Tribunal to consider the level of activity in which the Appellant was engaged.

13. Ground 1 accordingly fails.

Ground 2

- 14. Ground 2 makes three criticisms of the Tribunal's approach to the Appellant's risk on return. It is convenient to address them in turn.
- 15. **First**, the Appellant suggests that it was unfair to find that he had not been a member of MASSOB because of the lack of documentation he had

produced, given that he was no longer a member of MASSOB and any such documentation was not now available to him.

16. However, the lack of documentation was only one of the matters taken into account by the Tribunal in finding that the Appellant had not proved that he had been a member of MASSOB or ill-treated as a result of this and it is necessary to see the inference drawn from the absence of documents in its proper context. In particular, the Judge's view was based additionally on the Appellant's failure to claim asylum on entering the UK when he entered the UK shortly after the protest at which the Appellant says he was tortured and his failure to adduce any medical evidence showing that his alleged injuries in fact existed and were consistent with the torture he claimed to have suffered. In that context, the Judge was in my judgment entitled also to draw inferences from the absence of other documents, and of any attempt to obtain any such documents in assessing whether the Appellant's claim to have been a member of MASSOB was a credible one.
17. Even if the Judge had erred in this respect, such an error would in my judgment be immaterial in light of the (unchallenged) alternative finding that if the Appellant were a member of MASSOB, the Nigerian authorities would not now be interested in him for that reason if he were returned.
18. **Second**, the Appellant submits that the FTT erred in taking into account the fact that there was no evidence of the circumstances of IPOB supporters returned to Nigeria. Respectfully, this is an attempt to reverse the burden of proof, which was on the Appellant. In the absence of any evidence that returned IPOB supporters suffer ill-treatment in Nigeria, the Judge was entitled to find that they do not. The Judge was entitled not to speculate without evidence, that because demonstrators have been ill-treated, those not on demonstrations will also be so treated.
19. **Third**, the Appellant submits that the Tribunal, without rational justification, disregarded the expert evidence. I reject this submission. The Tribunal is required, or at least entitled, to critically evaluate an expert's opinion evidence. Even where an expert's evidence is unchallenged the Tribunal is not bound to accept it: *IM (Pakistan)* [2018] EWCA Civ 626. The Judge has in my view carefully considered the expert report and has given cogent reasons for not accepting all of the views expressed by the expert in this case.
20. Ground 2 therefore also fails.

### Ground 3

21. This Ground seeks to impugn the Tribunal's assessment of what the Appellant would do on return. The Appellant makes eight submissions, which I address in turn.
22. **First**, the Appellant submits that the fact that there was no "hard evidence" that the Appellant would not participate in activities in Nigeria

or continue to be a member of IPOB meant that the Judge was wrong to find that he would not do so. This seeks to reverse the burden of proof. It is for the Appellant to show, to the lower standard, that he would have engaged in further activity on return. The Judge noted the total absence of evidence that he would do so and was entitled to find that he would not. I therefore reject this submission.

23. **Second**, the Appellant submits that the Tribunal did not apply the approach mandated by the Supreme Court in HJ (Iran). I do not accept that. The Tribunal cited HJ and so clearly had it in mind. It is also in my judgment clear that it was applied. There was, the Tribunal considered, no evidence of risk from simply being a member, only from being involved in protest or other activities for IPOB. It followed that the Tribunal was required to then ascertain whether the Appellant would engage in such activities and, if not, why not. The Tribunal considered with care the Appellant's low level of commitment to Biafran independence and his lack of evidence that he would engage in any relevant activities. Having found that the Appellant would not do so, the Tribunal considered the final 'why not?' question and found that the reason was his lack of commitment to the cause, rather than out of fear of persecution. This is a proper application of the HJ principle, which discloses no error of law.
24. It does seem to me that the Tribunal's consideration of this point could have been better expressed. In particular the expression that the principle in HJ was "not applicable", when what was meant is that the test set out in that case was not satisfied, is unfortunate. It potentially gives the impression that the principle in HJ did not require to be considered at all. However, the Tribunal's reasoning is sufficiently clear that this does not itself amount to an error of law. I therefore reject this submission.
25. The Appellant's **third** submission is that he is not required not to protest in order to avoid persecution. That is correct so far as it goes, but the Judge found that the Appellant would not protest for a reason unrelated to persecution, namely out of a lack of commitment. This submission is therefore predicated on a misreading of the FTT's decision.
26. **Fourth**, the Appellant submits that the Tribunal erred in not inferring that a regime such as that in Nigeria would be likely to be monitoring activities in the UK. He relies on comments made by Sedley LJ in YB (Eritrea) [2008] EWCA Civ 360. In that case Sedley LJ said,
 

"Where, as here, the tribunal has objective evidence which 'paints a bleak picture of the suppression of political opponents' by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist

groups. The real question in most cases will be what follows for the individual claimant.”

27. However, as the Court of Session has recently emphasised, there is a context to those comments, namely the evidence that was before the court in relation to Eritrea in that case: see ELU (Nigeria) [2018] CSIH 61 at [13]. As the Court of Session said in that case, the reasoning in YB “cannot simply be transposed from one regime to another. One cannot simply delete ‘Eritrea’ and substitute ‘Nigeria’. All depends on the evidence.” I am not bound by decisions of the Court of Session, but I agree with its interpretation of YB. It cannot be right that, just because there is evidence of suppression of political opponents, it follows that a Tribunal must, as a matter of law, infer that that government has the means or desire to seek out those who protest against it abroad. That is not, in my judgment, what Sedley LJ was saying and is not the approach that the three-judge presidential panel of this Tribunal took in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC). Rather, in the absence of County Guidance, it will be for the FTT as the primary finder of fact in protection appeals to determine whether, on the evidence before it, such an inference is justified in any particular case.
28. In this case, I consider that the Judge was entitled not to draw such an inference. As the Tribunal noted, the background evidence was voluminous yet there was not a single example cited of someone returned to Nigeria who has been interrogated as a result of their sur place activities.
29. **Fifth**, the Appellant submits, as I understand it, that the finding that the Appellant would not undertake any activity on behalf of IPOB in Nigeria is unsustainable in light of the findings that he was a member and participated in their activities in the UK. I reject that submission. The FTT cogently explained why, notwithstanding the Appellant’s *sur place* activities in the UK, it did not consider the Appellant would undertake further activities in Nigeria and its explanation does not in my view disclose any error of law. The finding is not perverse.
30. The Appellant’s **sixth** submission is that the FTT failed to ask itself the correct questions in accordance with HJ (Iran) or make specific findings regarding number of protesters or publicity received, in accordance with BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). I have addressed and rejected the HJ (Iran) point already above. As to the BA point, that case gave general guidance on, among other things, the sorts of matters that could be relevant to assessing risk arising from sur place activities in the UK. It is not a shopping list of matters all of which must be considered in every case involving sur place activities. In a particular case, there may be other factors indicative of risk not mentioned in BA. In another case not every factor may be relevant. It is a matter for the FTT to assess, with which assessment this Tribunal cannot interfere absent an error of law. I can discern no error of law in the Tribunal’s assessment of the Appellant’s sur place activities in this case. Indeed, his account of his sur place activities was broadly accepted.



31. **Seventh**, the Appellant submits that SA (Afghanistan) [2019] EWCA Civ 53 requires the FTT to demonstrate that it has considered discrete aspects of a claim before it and that it failed to consider the number of protestors at the Nigerian High Commission or other venues and continued participation in a proscribed organisation.
32. The difficulty with this submission is that that is not what SA establishes. SA dealt with three claims by an Afghan national who had come to the UK as a minor. He complained that the FTT has misapplied section 117B of the Nationality, Immigration and Asylum Act 2002 and paragraph 276ADE(vi) in relation to his Article 8 claim and Article 15(c) of the Qualification Directive in relation to his humanitarian protection claim. Nowhere does the Court say that the FTT must demonstrate that it has considered discrete aspects of an individual's claim before it and I cannot see anything in the decision of the Court of Appeal that might be interpreted as so meaning.
33. It is however trite that the FTT must consider each element of a protection claim relied on by the Appellant. However, I am satisfied that that the Tribunal did so in this case. I have seen no indication that the Appellant placed any reliance on the number of protestors at demonstrations in the UK at which he attended. In relation to the Appellant's continued membership of IPOB, this has, as set out above, been adequately addressed by the FTT.
34. **Eighth**, the Appellant submits that the FTT placed insufficient weight on "the documentary evidence" in assessing the risk associated with the Appellant's membership of IPOB. Weight is axiomatically a matter of the fact-finding tribunal and giving evidence particular weight does not amount to an error of law unless the weight ascribed to it is perverse. The Appellant here is unable to identify which piece(s) of documentary evidence ought to have been given more weight and has not explained why the FTT's approach to it was perverse. This submission is (as are several of those already addressed above) no more than an attempt to dress up a disagreement with the findings of fact made by the FTT as an error of law where none exists.
35. It follows that Ground 3 also fails.

## DECISION

36. For the foregoing reasons, my decision is as follows:

The making of the First-tier Tribunal's decision did not involve the making of an error on a point of law. This appeal is accordingly dismissed and the decision of the First-tier Tribunal shall stand.

Signed P. R. Skinner  
Deputy Upper Tribunal Judge Skinner

Date: 11 July 2022