



THE IMMIGRATION ACTS

IN THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
ON APPEAL FROM THE FIRST-TIER TRIBUNAL (IAC)
FIRST-TIER TRIBUNAL JUDGE J BARTLETT
Appeal Number: PA/01467/2021

Appeal No: UI-2022-002471 (PA/01467/2021)

Heard at Field House
On 20 January 2023

Decision & Reasons Promulgated
On 28 February 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

D.B.A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: No Representative

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal, brought with permission of the First-Tier Tribunal, from the Decision of First-Tier Tribunal Judge J Bartlett (“the judge”) promulgated on 28 February 2022. By that Decision, the judge dismissed the Appellant’s appeal from the Respondent’s decision refusing to

recognise him as a refugee, or as a person otherwise requiring international protection.

2. The Appellant is a national of Nigeria. He last arrived in the United Kingdom on 26 April 2019 with entry clearance conferring leave to enter as a visitor. He claimed asylum on 30 April 2019. The primary basis of claim was that in July 2014 he was captured by Boko Haram, detained in a camp and tortured. Whilst in captivity he agreed to join them. On 30 October 2014 he was taken out of the camp to take part in a raid. He escaped and crossed the border into Cameroon and returned to Nigeria after a couple of weeks. He subsequently resumed his university studies where he was spotted by Boko Haram and escaped a second time. Thereafter he received telephone threats and was last seen by Boko Haram in 2018. He then fled Nigeria. In 2019 his wife was attacked by Boko Haram at their previous residence in Ibadan. She initially fled to her mother-in-law's home in Lagos and then moved to Ilorin to be with her sister.
3. On 27 August 2021, the Respondent refused the application.

The Appeal to the First-tier Tribunal

4. The Appellant's appeal from the Respondent's decision was before Judge Bartlett on 21 February 2022. The Appellant was represented by a solicitor from Barnes Harrild and Dyers Solicitors, the Respondent was unrepresented. The judge heard oral evidence from the Appellant.
5. Having set out the salient facts and supporting documentary evidence the judge accepted the Appellant was abducted by Boko Haram in North East Nigeria and tortured. She concluded that the Appellant would be at risk of persecution if he returned to North East Nigeria; the area in which Boko Haram operates. At [21]-[24] the judge did not accept however, that he had been pursued by Boko Haram in Ibadan in 2018, or that his wife was attacked in 2019. The judge described the Appellant "at best a useful foot soldier" and rejected any suggestion that he would be pursued by Boko Haram over a course of four to eight years after his escape through various regions in Nigeria. She concluded that the documentary evidence purporting to establish such a continuing interest by Boko Haram in the Appellant added little to his claim.
6. The judge then considered whether the Appellant could internally relocate outside the North East of Nigeria and reviewed the background evidence. In so far as it is relevant to the issues raised in this appeal, the judge set out the evidence relied on by the Appellant at [19] as follows:

"...

- (ii) A report by the Internal Centre of Investigative Reporting dated 2 October 2022 sets out that Boko Haram has taken over 8 wards in Niger state;

(iii) Voice of America News dated 22 October 2021 sets out the United States is monitoring reports militants aligned with Boko Haram are taking over communities in North Central Nigeria but that “U.S. officials are wary of drawing any conclusions given the fast evolving terror landscape, which has seen the fortunes of Boko Haram and its Islamic state aligned rival IS West Africa rise and fall multiple times over the past several months”. It also identifies that Boko Haram are on the backfoot and had recent set backs partly because their leader was killed;

(iv) an article by the LSE centre for Africa dated 26 October 2021 refers to the poor state of security in Nigeria and the resurgence of banditry particular in the northwest of Nigeria;

(v) Briefing notes from the Federal Office for Migration and Refugees Germany dated the 29 November 2021 sets out that Boko Haram have recently expanded their sphere of operations towards northwest Nigeria;

(vi) an article from the United Nations news centre dated 10 January 2022 condemns attacks where 200 people were killed and 10,000 displaced in attacks by armed bandits following military air raids. The location of these events was northwest Nigeria;

(vii) An article from the Global Centre for Responsibility to Protect refers to the same banditry events in North West Nigeria as above;

...”

7. In light of that evidence the judge concluded that:

“20. ... Boko Haram did not “operate or poses a threat to individuals outside the North East of Nigeria”; (sic)

24. ... Boko Haram does not have reached beyond north-east Nigeria and he has no profile with Boko Haram to warrant the continued and extensive attentions of Boko Haram.” (sic)

8. The judge then considered the Respondent’s Nigeria Country Policy and Information Notes (CPIN) on Internal Relocation, September 2021; Islamic extremist groups in North East Nigeria; July 2021; and Actors of Protection, October 2021 at [25], and set out an extract from a CPIN at [27], albeit, she did not identify which. Nevertheless, the CPIN noted, inter alia, that whilst there were ongoing security issues in the North East, the Middle Belt, the Niger Delta region, the South-East and Zamfara state, many Nigerians continued to migrate across the country for economic and other reasons. In general it was said that internal relocation would be reasonable, but would depend on the nature of the threat and the person’s circumstances.

9. At [28] the judge considered the reasonableness of internal relocation taking into account the background evidence and the individual circumstances of the Appellant. She noted that he was highly educated,

worked as a teacher and as an IT consultant in Nigeria, professions he could continue in Lagos or Abuja. The judge noted that Boko Haram did not have a presence in Lagos where his mother lived and that both he, his wife and children stayed with his mother at times. The judge was also satisfied that the Appellant could safely reside with his wife in Ilorin where she was living with her sister without encountering any problems and again where Boko Haram had no presence.

10. In her omnibus conclusion at [28] the judge stated thus:

“I find that the appellant would be able to internally relocate to Lagos and Ilorin. This is because his only fear is of Boko Haram and they do not operate outside the north-east and he does not have a profile of any note with Boko Haram.”

11. She dismissed the appeal.

The Appeal to the Upper Tribunal

12. The Appellant’s representatives applied on his behalf for permission to appeal to the Upper Tribunal. The grounds of appeal contend that the judge erred; i. in disregarding evidence about the advance of Boko Haram into the rest of Nigeria; ii. in her assessment of risk on return and, iii. in her assessment of sufficiency of protection.

13. Permission to appeal was granted by the First-tier Tribunal on 29 April 2022. It was considered arguable that the judge’s assessment of risk on return was flawed in view of the evidence of recent incursions outside the North East of Nigeria. Whilst it was considered there was less merit in the third ground, permission was granted on all grounds.

14. Mr Avery, in his Rule 24 reply dated 9 June 2022, on behalf of the Respondent, opposed the Appellant’s appeal. He submitted that the grounds were no more than a disagreement with the judge’s findings which were properly reasoned and based on a proper consideration of the evidence.

15. On 1 January 2023 Barnes Harrild and Dyer Solicitors notified the Tribunal that they no longer acted for the Appellant and, the Appellant, in his email to the Tribunal of 9 January 2023 confirmed he would attend the hearing without a representative. He attached to that email a copy of his written submissions and an application for anonymity (which we consider below).

16. On the morning of the hearing the Appellant appeared in person and Mr Avery appeared on behalf of the Respondent. The Appellant confirmed that he would be representing himself and we were satisfied that there was no prejudice to him in doing so; he is highly educated, was able to prepare detailed written submissions and spoke fluent English. We indicated at the outset that we had read the salient documents and explained to the Appellant that it was for him to persuade us that the judge had made a legal error.

17. The Appellant relied on the grounds of appeal and his written submissions. In amplification he added that the judge was wrong in her assessment that he could internally relocate. He referred to news reports stating that sympathisers of Boko Haram were members of the government and the security services, and that citizens were being targeted in schools in Lagos. He submitted that he would be recognised on return and would be unable to escape from Boko Haram for a third time. He submitted that he previously moved to Ibadan in the South West of Nigeria, where his wife was attacked and the police failed to provide protection.
18. Mr Avery observed that the reports referred to by the Appellant were of limited assistance and made no material difference to the outcome. He referred to the judge's findings at [28] and submitted there was no evidence that any person with the Appellant's history would be targeted in Lagos, and pointed out the judge found there would be no continuing interest in the Appellant.
19. In reply the Appellant submitted that the events of 2018 and 2019 demonstrated that Boko Haram continued to take an interest in him. He reminded us that he could not reasonably be expected to obtain evidence proving that he was at the "forefront and part of the authority in the camp".
20. We reserved our decision.

Discussion

21. We are satisfied that the judge's decision discloses no material error of law. Our reasons are as follows.
22. In this appeal no issue is taken with the judge's findings of fact. They are mixed. The judge accepted the Appellant was abducted in 2014 in North East Nigeria by Boko Haram and tortured. She did not accept the full extent of his claims of mistreatment for the reasons she gave at [15], but she was prepared to accept "that he did suffer torture in the form of having to look at the sun". She concluded given that Boko Haram continued to operate in North East Nigeria that the Appellant would face a real risk of persecution if he returned there. Whilst the Appellant before us referred to the events of 2018 and 2019, the judge did not accept that he was pursued by Boko Haram in Ibadan or that his wife had been attacked for the reasons she adequately explained at [21].
23. In her application of the facts to the applicable legal framework, the judge rightly recognised, the requirement to consider the question of internal relocation.
24. The correct legal approach to the issue of internal relocation requires a decision-maker to evaluate the evidence holistically in order to determine whether relocation is reasonably open to an individual: see *Januzi* [2006] UKHL 5; [2006] WLR 397 and re-stated by the Supreme Court in *SC*

(Jamaica) v SSHD [2022] UKSC 15 at [53]-[62] per Lord Stephens. At [58]-[60], Lord Stephens summarised the approach as follows:

“58. The test of reasonableness involves consideration of all the relevant circumstances looked at cumulatively. In *Januzi* Lord Bingham summarised the correct approach to the problem of internal relocation. He stated, at para 21 that: “The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department* [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts.”

25. Whilst the judge’s consideration of this issue is slightly disjointed, it is appreciably clear that she was aware of the applicable test, but it is her application of it that is criticised. The Appellant submits that the judge failed to properly consider the background evidence that indicated the reach of Boko Haram was not confined to the North East region, an error which in turn infected her assessment of future risk. This is essentially the essence of ground i. and ii.
26. No issue is taken with the judge’s legal approach to the issue of internal relocation. She took into account the background evidence and assessed the Appellant’s individual circumstances. The question for us, therefore, is whether the judge failed adequately to deal with the issue of whether the Appellant could reasonably be expected to live in an area outside the North East region, namely, either Lagos (Southwest Nigeria) or Ilorin (Western Nigeria).
27. We accept the judge misstated the position in concluding at [20] & [24] that the activities of Boko Haram were confined to North East Nigeria. The evidence that she referred to earlier at [19(ii), (iii) and (v)] in particular, indicated that Boko Haram had expanded their operations towards North Central Nigeria and the North West. Whilst we accept that was an error we are satisfied it is not material.
28. The difficulty with the Appellant’s challenge to the judge’s assessment of risk, is that it fails to acknowledge that she also found the Appellant had no profile “to warrant the continued and extensive attentions of Boko Haram at [26] and, at [28], gave several reasons why the Appellant could reasonably be expected to live without risk in a Southwest/Western state.
29. We acknowledge that the background evidence before the judge indicated that there had been some historic reports of bombings in Lagos and Abuja [20] (the grounds of appeal indicate these occurred in 2014), but there was no evidence that Boko Haram had by the date of hearing advanced its operations towards any southern or western state. The judge explicitly

stated at [28] that Boko Haram had no presence in either Lagos or Ilorin where the Appellant's mother and wife reside respectively without encountering any problems. The judge then gave detailed consideration to the Appellant's personal circumstances. We have carefully considered the evidence and are of the view that there was no evidence before the judge to substantiate a claim that the Appellant's circumstances, on return, would meet the "stringency of the reasonableness test" or be "unduly harsh" in order to establish that internal relocation was not properly available to the Appellant. Indeed, we would go so far as to say that the judge's finding that the Appellant could reasonably internally relocate was inevitable on the evidence and in the light of her unchallenged (and unassailable) findings in relation to the Appellant's claim to be at risk.

30. The grounds of appeal and the Appellant's written submissions quarrel with these findings and are to an extent premised on the basis that the Appellant is of continuing interest to Boko Haram, notwithstanding the judge's findings to the contrary. We agree with Mr Avery these amount to no more than a disagreement with the judge's findings. The fact that there was no evidence that anyone with the Appellant's history would be targeted in Lagos is, we consider, a complete answer to the Appellant's challenge in respect of her assessment of future risk.
31. The Appellant's written submissions of 9 January 2023 are in essence a summary of three source materials in respect of Nigeria that were not before the judge. These include two BBC news articles and an extract from the Foreign travel advice website in respect of Terrorism in Nigeria. Whilst no application has been made under rule 15(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, we are mindful that the Appellant is unrepresented and so we have considered them. We agree with Mr Avery that they are of limited assistance. We are not persuaded that if this evidence was before the judge that it would have made a material difference to the outcome. We note that the first news article relates to comments made by a former President of Nigeria alleging that some government officials and members of the security services were sympathetic to Boko Haram. We note that this article is dated 8 January 2012. No probative value could have been placed on this evidence as it is considerably out-of-date. The second news article is dated 23 April 2021, and whilst more up-to-date, it pre-dates the evidence considered by the judge. It concerns the revelation of extreme Islamist views expressed by a Minister. We cannot see how this news report or the advice given to tourists and foreign nationals resident in Nigeria to avoid all essential travel to certain states in Nigeria, that does not include the states where the Appellant could internally relocate, assists his case.
32. In those circumstances, we have no hesitation in concluding that grounds i. and ii. are not made out. As for ground iii. we would go as far as to say that there is no merit in this ground either. The grounds argue that the judge failed to adequately assess the issue of sufficiency of protection and refers inter alia to corruption and bribery within the police force in Nigeria. The issue of sufficiency of protection, like that of internal relocation, is

entirely fact sensitive. The judge considered the police reports and the letter from a lawyer purporting to confirm the Appellant's and his wife's attempt to obtain police protection but to no avail. The judge gave sufficient reasons why that evidence was of no assistance. Whilst we recognise that this was the limit of the judge's consideration of the issue, we are satisfied that she did not need to go any further in view of her finding that Boko Haram had no continuing interest in the Appellant, and that he could safely relocate to an area where Boko Haram had no presence. We are satisfied the grounds are attempting to reargue the Appellant's case and fail to engage with the judge's findings of fact upon which she based her assessment.

33. We take into account the restraint with which appellate courts and tribunals should exercise in reviewing such findings. The principles have been summarised at length in many authorities. A recent summary of the appellate approach to first instance findings of fact may be found in *Volpi v Volpi* [2022] EWCA Civ 464 at [2] to [5], recalling, amongst others, the approach taken in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114]. It is not necessary to recount that guidance here, but we have adhered to it.
34. In summary, although the Appellant submits that the judge reached findings that cannot fairly stand, standing back and reading the decision as a whole, it is in our judgement clear that in reaching her decision, the judge considered all the evidence before her in the round, and reached findings and conclusions that were open to her on the evidence. The findings reached cannot be said to be unreasonable or findings that were not supported by the evidence. The grounds of appeal in the end amount to a disagreement with the findings and conclusions reached by the judge.

Decision

35. For the above reasons, the decision of the First-tier Tribunal to dismiss the Appellant's appeal did not involve the making of an error of law. That decision, therefore, stands. Accordingly, the Appellant's appeal to the Upper Tribunal is dismissed.

Anonymity Order

The First-tier Tribunal did not make an anonymity order. Before us the Appellant has applied for an order. The First-tier Tribunal identified the Appellant as a Vulnerable Adult and having regard to the Presidential Guidance Note No 2 of 2022, and the Overriding Objective, we consider that an anonymity order is justified in the circumstances of this case. We therefore make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

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 him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

R.Bagral

**Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)
Date: 31 January 2023**