



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No:
PA/10035/2019

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On the 30 January 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

MOA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Wood

For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 7 November 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision promulgated on 29 July 2022, I set aside the decision of the First-tier Tribunal and adjourned the appeal for a resumed hearing in the Upper Tribunal. My reasons were as follows:
 1. The appellant is a male citizen of Nigeria who was born in 1984. He entered the United Kingdom as a student in 2014 and subsequently was refused leave to remain as a spouse in 2016. He claimed asylum in 2018. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 8 April 2019 refusing his asylum claim. By a decision promulgated on 11 February 2020, the First-tier Tribunal dismissed his appeal. By a decision promulgated on 14 October 2020, the Upper Tribunal set aside the First-tier Tribunal's decision and returned the appeal to the First-tier Tribunal to remake the decision. By a decision promulgated on 29 July 2021, the First-tier Tribunal dismissed the appeal. The appellant now appeals against that decision to the Upper Tribunal.
 2. At the outset of the initial hearing at Manchester on 5 July 2022, Ms Young, who appeared for the Secretary of State, told me that the respondent acknowledges that the judge materially erred in law in her assessment of the appeal on Article 8 ECHR grounds. In particular, the judge had failed to take account of the appellant's mental health problems as part of the relevant circumstances in determining that the appellant did not meet the requirements of paragraph 276ADE of HC 295 (as amended). However, she sought to oppose the appeal in respect of the First-tier Tribunal's decision on asylum/Article 3 ECHR grounds. Mr Wood, who appeared for the appellant, told me that the appellant wished to continue with the appeal on asylum/Article 3 ECHR grounds.
 3. The appellant claims to be bisexual. He claimed that in 2008 and again in 2012 whilst living in Nigeria he had been assaulted by a student and 'nightguards' on account of his sexuality.
 4. The judge found that the appellant had been 'horribly mistreated, assaulted and scarred' and was suffering from PTSD and depression as evidenced by a medical report. However, she did not find that the appellant is a bisexual or that he had been assaulted in 2008 and 2012 on account of his sexuality.
 5. Mr Wood submitted that the judge had failed to consider whether the appellant would be at real risk on return to Nigeria on account of his mental health problems, irrespective of any view she might take of his sexuality. There had been generic country evidence [eg. appellant's bundle at 103] which described the difficulties facing those with mental illness in Nigeria. The appellant also argues that the judge unreasonably found that the appellant is not bisexual. He asserts that the judge did not properly consider the 'appellant's account of his realisation that he was bisexual whilst living in Nigeria' or the 'homophobia on the part of his attackers.' [grounds, 14] and had wrongly conflated sexual orientation with sexual activity, finding that a lack of evidence of the latter indicated that the appellant's claims regarding the former were untrue.
 6. I find that the judge did not err in law at all in her assessment of the appellant's sexuality. She reached findings of fact which were available to her on the evidence, including the finding [61] that, had the

appellant genuinely been a bisexual man, he would have been able to provide more evidence of his sexuality. I find that the judge has supported her findings regarding the claim of bisexuality will cogent and sufficient reasons [52-64]. The judge was entitled to take a poor view of the appellant's credibility as a witness on account *inter alia* of his long delay in claiming asylum [64] and the findings of the Family Court [51] in proceedings involving the appellant under the Children Act 1989. I reject the submission that the judge has wrongly conflated or confused sexual activity and orientation. I find also that the judge was not obliged to accept the appellant's claimed cause of the appellant's physical injuries despite accepting that the injuries had occurred [62].

7. I agree with Mr Wood, however, that the judge failed to consider whether the appellant's mental health problems would expose him to real risk on return to Nigeria, irrespective of his claimed bisexuality. Mr Wood stressed that the appellant did not advance an Article 3 ECHR medical claim concerning his mental health but did argue that individuals with mental health problems are exposed to levels of ill treatment in Nigeria which breach Article 3 ECHR.
8. I have considered whether the matter of the risk posed by the appellant's mental health problems was raised as a discreet issue before the First-tier Tribunal. Unfortunately, the Tribunal file does not contain a full copy of the grounds of appeal to the First-tier Tribunal. There is a copy of a skeleton argument dated 14 May 2020 which certainly pre-dates the First-tier Tribunal decision currently under appeal. Paragraph 8 (viii) of the skeleton argument asks, "Would a risk of harm arise as a result of the appellant's mental health?" In the circumstances, I am satisfied that the issue was before the First-tier Tribunal when it heard the appeal in May 2021. The judge should have engaged with that part of the appeal. By failing to do so, she fell into legal error.
9. I set aside the decision of the First-tier Tribunal. The judge's findings as regards the appellant's sexuality are preserved and that aspect of his appeal, including the alleged assaults he claims to have suffered in Nigeria, shall not be revisited. The only issues remaining to be determined are (i) Is the appellant at real risk on return to Nigeria on account of his mental health problems? and (ii) Having regard to all relevant circumstances (including his mental health problems) does the appellant satisfy the provisions of paragraph 276ADE of HC 295 (as amended) and should his appeal succeed on Article 8 ECHR grounds? The decision in respect of those issues will be remade in the Upper Tribunal following a resumed hearing. Both parties may adduce further evidence so that the Upper Tribunal may consider all relevant circumstances as at the date of the resumed hearing. Mr Wood indicated that he would endeavour to obtain updated evidence regarding the proceedings in the Family Court.

Notice of Decision

The decision of the First-tier Tribunal is set aside. Findings of the First-tier Tribunal are preserved as detailed at [9] above. The decision shall be remade by Upper Tribunal Judge Lane in the Upper Tribunal following a resumed hearing.

2. The resumed hearing proceeded by way of submissions only. Mr Tan, for the Secretary of State, submitted that the appellant's contention that his family in Nigeria would not assist on account of his mental health problems could not stand because the appellant had been shown to be unreliable witness who was likely to dissemble if it was his advantage to do so. The medical evidence did not support the appellant's contention that he could not cope with living in Nigeria. The Nigeria CPIN (section 22) indicated that the anti-depressants and psychological treatment was available. Mr Tan submitted that discrimination against individuals on the basis of their mental health occurred across a 'spectrum of issues and severity.' Significantly, the appellant's mental health problems were unlikely to manifest in public and the appellant had insight and control over his feelings which would enable him to conceal his condition.
3. For the appellant, Mr Wood submitted that the First-tier Tribunal had found that the appellant had been assaulted when in Nigeria and that he would not be returning to a 'welcoming household'. Self-isolation, as proposed by the respondent as a means of avoiding discrimination, would further expose the appellant to the risk of suicide. He had attempted to take his own life on several occasions in the past.
4. Delays have occurred in the conclusion of this appeal whilst the appellant's solicitor sought a copy of a final order for contact made on the appellant's application in the Liverpool Family Court on 5 May 2022. The parties acknowledged that an order for the appellant to have contact with his children might potentially be of relevance in the appeal on Article 8 ECHR grounds before this Tribunal. However, it transpires that the Family Court ordered only indirect contact between the appellant and his children living in the United Kingdom. Mr Wood agreed that this order did not constitute a relevant factor in favour of the appellant's appeal on Article 8 ECHR grounds. The appellant's relationship with his children was no further considered as a relevant issue in this appeal.
5. I have had regard to all the evidence before reaching my decision. The two issues are (i) whether the appellant's mental health condition will expose the appellant to a real risk of ill treatment on return to Nigeria and (ii) whether there are very significant obstacles to his reintegration in the society of Nigeria.
6. I have considered in detail the report of consultant forensic psychiatrist, Dr Michael Shortt MBBS MSc MRCPsych MBA. Dr Shortt found that the appellant is suffering from depression and Post Traumatic Stress Disorder (PTSD). He found [17.20] that the appellant's depression could be treated with drug therapy and that the appellant is fit to fly. At [17.15] the doctor considered that 'The deterioration of both conditions carries the risk of increased frequency of suicidal thoughts and behaviours consistent with self-harm and attempted suicide. It is therefore unlikely that [the appellant] would be able to restore any form of normal living in Nigeria in the medium to long term.' However, Dr Shortt makes no mention of the possibility of the appellant accessing support from his family in Nigeria or from NGOs which the CPIN indicate operate there. At [17.6], Dr Shortt considered that the appellant's PTSD would benefit with treatment in the form of 12 sessions of Trauma Focused Psychotherapy. It is unclear why, in the 18 months since Dr Shortt made this recommendation, the appellant has not received this treatment or, if he has, what effect it may have had on his symptoms. I note also that Dr Shortt's assessment is based at least in part on the appellant's false claim that he is homosexual and has been assaulted in the past in Nigeria on account of his sexuality.

7. In my opinion, Mr Tan was correct to submit that there is little in Dr Shortt's report to support that the appellant's contention that his mental health condition crosses the high threshold of proving the likelihood of exposure to real risk on return to Nigeria. I find that I agree with Mr Tan's submission that the claim of the appellant (found in other parts of his account to have been an unreliable witness) that his family would give him no support on return cannot be accepted. I consider it likely that the mental health of the appellant will have improved as a result of drug and other therapies he will have received during his lengthy residence in the United Kingdom. He will, in my opinion, have some support from his family, at least in the short term following his return to Nigeria. I agree also with Mr Tan the appellant's mental health condition is not such that others would be aware of it in public spaces. Dr Shortt [17.12] considered that return to Nigeria might increase the appellant's risk of self-harm to 'a high level' but that assessment was made on the basis that the appellant would have no support. In any event, it is not an assessment which should justify a grant of leave to remain on grounds of suicide risk.
8. The same observations apply to the application of the facts to paragraph 276ADE. I am not satisfied that the appellant will be unable to access support, at least in the short term, on return. He is unlikely to face hostility because his mental health conditions are likely to be concealed and, since he is not gay, he will not face any difficulties in that respect. He is familiar with the society and mores of his country of nationality. He speaks one of the main languages and, as a Christian, is an adherent of one of the main religions. To use the expression employed by Mr Tan, the appellant will 'be able to cope' notwithstanding any ongoing health issues.
9. In the light of what I have said, I find that the appellant will not face a real risk of ill treatment or very significant obstacles to his integration on return to Nigeria. Consequently, his appeal against the decision of the Secretary of State is dismissed.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 8 April 2019 is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 9 January 2023