IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002337

First-tier Tribunal No: HU/50903/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th of October 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MARIA OSARENREN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid instructed by Eric Smith Solicitors.
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 27 September 2023
(via Microsoft Teams in light of industrial action preventing the parties from entering the Court Building.)

DECISION AND REASONS

1. The appellant appeals with permission a decision on First-tier Tribunal Judge Choudhury ('the Judge'), promulgated following a hearing at Manchester on 7 February 2022, in which the Judge dismissed the appeal.
2. The Judge notes the appellant is a citizen of Nigeria born on 2 August 1957 who arrived in the UK lawfully as a visitor in November 2019. She applied for an exceptional extension to her visit visa which was granted until 31 May 2020.
3. The appellant applied for asylum during the course of her leave and was interviewed on 15 May 2020. The application for asylum and/or humanitarian protection was refused in a decision dated 5 February 2021.
4. Following consideration of the evidence the Judge sets out findings of fact from [42] of the decision under challenge.
5. The Judge records a number of concerns arising from the evidence before concluding at [58] that it was not found that the appellant would be at risk of harm in her home area as she had not provided a consistent account in relation to her claim. The Judge in that same paragraph writes "*for the sake of*

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completeness I find that she can relocate to be with her brother, who appears not to have been targeted by members of her ex-son-in-law's community."

6. Thereafter the Judge went on to consider the human rights aspects finding the appellant could not satisfy the requirements of the Immigration Rules and by reference to section 117 of the Nationality, Immigration and Asylum Act 2002, concluded the appellant could not succeed on that basis either, or in relation to medical needs or the claim of very significant obstacles to her integration into Nigeria.
7. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal and renewed to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Kamara on 15 May 2023 on the basis it is said to be arguable that if what is said in the grounds is accurate regarding matters outlined in [45 – 54] not been having been put to the appellant, the Tribunal has arguably erred in law. The grant contained a direction to the parties to obtain a copy of a recording of the proceedings before the Judge in readiness for the error of law hearing.

Discussion and analysis

8. Efforts were made to secure a copy of the recording of the hearing but that proved unsuccessful.
9. On behalf of the appellant Mr Rashid relied upon the grounds of appeal. These are dated 9 May 2022 and were drafted by Mr Rashid's colleague, Ms Patel who represented the appellant before the Judge.
10. The grounds can be divided into a number of specific heads of challenge. It is not disputed there was no Home Office Presenting Officer assigned to the hearing. The grounds assert in such circumstances the Surendran guidelines apply, arguing it was incumbent upon the Judge to raise matters of concern with the appellant or her representative at the hearing so they could be dealt with and that any failure to do so before coming to the adverse credibility findings amounts to a procedural irregularity capable of affecting the outcome of the proceedings and was procedurally unfair. The Grounds assert the Judge failed to put material matters to the appellant outlined at [45] to [54] of the determination.
11. A full transcript of the Surendran guidelines is to be found in the Annex to MNM v SECRETARY OF STATE (IAT (starred appeal) 00TH02423)
    THE SURENDRAN GUIDELINES (IAT Appeal No. 21679 heard 02/06/99)
12. Relevant sections include:

    4. Where matters of credibility are raised in the letter of refusal, the special adjudicator should request the representative to address these matters, particularly in his examination of the appellant or, if the appellant is not giving evidence, in his submissions. Whether or not these matters are addressed by the representative, and whether or not the special adjudicator has himself expressed any particular concern, he is entitled to form his own view as to credibility on the basis of the material before him.
    5. Where no matters of credibility are raised in the letter of refusal but, from a reading of the papers, the special adjudicator himself considers that there are matters of credibility arising therefrom, he should similarly point these matters out to the representative and ask that they be dealt with, either in examination of the appellant or in submissions.
    6. It is our view that it is not the function of a special adjudicator to adopt an inquisitorial role in cases of this nature. The system pertaining at present is essentially an adversarial system and the special adjudicator is an impartial

judge and assessor of the evidence before him. Where the Home Office does not appear the Home Office's argument and basis of refusal, as contained in the letter of refusal, is the Home Office's case purely and simply, subject to any other representations which the Home Office may make to the special adjudicator. It is not the function of the special adjudicator to expand upon that document, nor is it his function to raise matters which are not raised in it, unless these are matters which are apparent to him from a reading of papers, in which case these matters should be drawn to the attention of the appellant's representative who should then be invited to make submissions or call evidence in relation thereto. We would add that this is not necessarily the same function which has to be performed by a special adjudicator where he has refused to adjourn a case in the absence of a representative for the appellant, and the appellant is virtually conducting his own appeal. In such an event, it is the duty of the special adjudicator to give every assistance, which he can give, to the appellant.

7. Where, having received the evidence or submissions in relation to matters which he has drawn to the attention of the representatives, the special adjudicator considers clarification is necessary, then he should be at liberty to ask questions for the purposes of seeking clarification. We would emphasise, however, that it is not his function to raise matters which a Presenting Officer might have raised in cross-examination had he been present.

13. The Judge's findings start at [42]. At [45] is the Judge's assessment of the appellant's evidence, having had the benefit of considering both written and oral evidence, which the Judge found was "vague" and also the lack of detail concerning the identity of individual she feared was not credible for which adequate reasons are given. This is not the Judge raising a new matter but the Judge having assessed what weight should be given to the evidence.
14. I do not accept the suggestion that because there was no Presenting Officer present the Judge should have accepted the oral evidence of the appellant and her daughter, in which they provided an explanation for the discrepancies that had been identified in the refusal, as having been settled in the appellant's favour. The Surendran guidelines nor any other authority to which I have been referred support such a contention. Mr Bates referred to the prehearing review at which the issues at large would have been identified and the parties provided with adequate time to deal with the same.
15. The appellant was aware of the issues to be considered on which evidence was required. There is no error in the Judge not repeating the same at the outset of the hearing especially as the appellant was represented by very experienced counsel in the field of immigration and asylum law.
16. It is not made out here is anything in the determination which effectively ambushed the appellant or on which she had not been given prior opportunity to comment.
17. The purpose of the Surendran guidelines is not to place an obligation upon a judge to advise a party to proceedings of their thoughts having had the opportunity to assess the evidence before writing their determination, which would result in a very long winded burdensome process requiring a further hearing or draft determination being sent with the opportunity for parties to provide written representations, but to give advice to judges on how to question an appellant when there was no Home Office Presenting Officer to cross examine him or her. The Judge was therefore not required to put matters to an individual directly or through their advocate unless it was thought clarification on certain points was needed, which did not arise in this appeal.

18. At [46] the Judge is not raising a new point but rather setting out concerns regarding the evidence that had been provided by the appellant, having assessed that by reference to the material as a whole and deciding what weight could be given to that evidence. The finding by the Judge that it was not accepted the appellant has given a detailed and consistent account of her asylum claim, for which an example is provided, as well as at [49] is not the Judge raising a new point. It has not been made out the Judge's assessment of the evidence resulted in findings not within the range of those reasonably open to the Judge on the evidence.
19. Mr Rashid referred in his submissions to the fact the appellant's evidence was corroborated by her daughter who also gave oral evidence. The Judge was aware of this and at [48] makes specific reference to the evidence of both the appellant and her daughter. In that paragraph the Judge refers to the explanation for the discrepancies identified and contains the findings made by the Judge which have not been shown to be irrational or outside the range of those reasonably open to the Judge on the evidence.
20. At [49] the Judge refers to an answer specifically given by the appellant when asked to explain why her problems became worse in April 2020. The Judge records the appellant's reply but found it still unclear why the appellant's problems deteriorated in April 2020, especial as she remained in Nigeria for a month after she claimed people were looking for her. That is merely the Judge assessing the weight to be given to that evidence and setting out reasoned conclusions for the adverse assessment arising from the same.
21. At [50] the Judge refers the claim by the appellant's daughter that her mother's home was broken into in spring 2020 but noted the appellant had been out of the country for four months by that time with there being no explanation of what should have triggered the alleged event. That, again, is not Judge raising a new matter but merely commenting upon the evidence and assessing the same.
22. At [51] the Judge refers to a letter provided by a Pastor in the appellant's bundle. The Judge accepts some points arising from that evidence but did not accept that the appellant would have come to physical harm for the reasons set out at [52 – 53] which have not been shown to be irrational findings or not within the range of those reasonably open to the Judge on the evidence.
23. At [54] the Judge comments upon the lack of corroboration being telling with specific reference to the fact that although the property it is claims had been attacked is owned by her sister who lives in Germany, there was no statement from the sister. There is also no statement from a family member. This is not a new matter but a factual comment by the Judge in relation to the evidence provided. The Judge finds such evidence could reasonably have been obtained. That has not been shown to be a finding outside the range of those reasonably open to the judge on the evidence.
24. In relation to [45 – 55] I do not find it made out that there has been an infringement of the Surendran guidelines sufficient to amount to an error of law by the Judge.
25. The appellant also challenges the findings at [57] in which the Judge finds there will be no incentive to pursue the appellant to return to Nigeria, claiming that there will be such an incentive. That is no more than a disagreement with the Judge's findings and suggesting an alternative finding that the Judge could have made rather than establishing that the actual finding made on the basis of the evidence before the Judge is infected by legal error, which has not been made out.
26. The appellant challenges the finding at [58] in which the Judge finds the appellant can relocate to be with her brother, claiming the Judge failed to consider the appellant's brother lives in the same city as the appellant and

could be easily traceable by her ex-son-in-law's family. I find no merit in this claim. The Judge was fully aware of where the brother lives as that is specific mentioned in the determination. The brother lives in Benin City. There is no evidence that the brother had experienced any problems from any member of the family or ex-son-in-law's family indicating that he was either of no interest to them or they did not know where he lives. A more important point, however, is that the Judge's primary finding is that the appellant had not established she faced a real risk of harm sufficient to entitle her to a grant of international protection in her home area. On that basis the appellant could return home. The comments in relation to the availability of internal relocation are not the primary findings and are only obiter comment. No legal error is made out.

27. The appellant challenges the Judge's conclusion that there is a sufficiency of protection referring to paragraphs of the CPIN relied upon before the Judge in support of the claim that there was no or insufficient sufficiency of protection. The Judges conclusions were arrived at considering the CPIN as a whole rather than isolated paragraphs. A reading of the document shows that as a general proposition there is a sufficiency of protection available from the authorities in Nigeria. In any event, is the primary finding is that the appellant had not established she faced a real risk in her home area and so the issue sufficiency of protection would not arise. If it did, however, it has not been made out the Judges conclusions on this point are outside the range of those reasonably open to the Judge on the evidence.
28. The appellant also claims the Judge failed to consider whether it is reasonable or unduly harsh for the appellant to relocate as a 64-year-old illiterate woman with existing health conditions and no family support, but the Judge did not accept the appellant was as incapable as had been alleged, does not find the appellant needs to relocate as she could return to her home area, and that she has support in any event with her brother.
29. The appellant asserts the Judge erred in failing to make any findings upon the daughter's evidence regarding the reasons why the appellant would be targeted on return and evidence of the home being attacked in Nigeria, but such claim is without merit. The Judge was not required to set out each and every aspect of the evidence. The Judge clearly considered the evidence with the required degree of anxious scrutiny, both documentary and oral. The Judge identifies concerns arising from the consideration of that evidence including not accepting what was being claimed by the appellant and her daughter. The Judge did not accept the core claim relied upon by the appellant was credible. Adequate reasons are given for why the appellant will not be targeted on return and in relation to the home being attacked in Nigeria. It is not made out the Judge failed to consider the corroborative value of the appellant's daughters' evidence but clearly did not accept that that was sufficient to discharge the required burden for the reasons set out in the determination.
30. Whilst the appellant disagrees with the findings of the Judge and the outcome of the appeal and would clearly prefer a more favourable outcome to enable her to remain in the United Kingdom, the weight to be given to the evidence was a matter for the Judge. It is not made out the findings made are outside the range of those available to the Judge on the evidence. Accordingly no legal error material to the decision has been made out. I must therefore dismiss the appeal.

Notice of Decision

31. No legal error material to the decision of the First-tier Tribunal has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023