



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001382

First-tier Tribunal No: PA/52667/2022
IA/06817/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3rd October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

E A A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin of Counsel, instructed by Shawstone Associates

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 4 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appeal of Mr EAA came before me for re-making on the sole issue of the application of the *HJ(Iran)* principle to the facts of his case – i.e. whether he would be at risk of persecution on return to Nigeria as a consequence of his IPOB involvement. The decision and reasons finding a material error of law in the decision of the First tier Tribunal Judge are appended. Given the narrow scope of the challenge to that decision, First tier Tribunal Judge Wyman’s findings have been preserved:
2. The Judge heard evidence from both the Appellant and from his witness, Chief Nwokoro as to the Appellant’s involvement with the IPOB. The Judge considered this aspect of the Appellant’s claim at [93]-[100] and made the following findings of fact:
 - (i) she accepted the Appellant is a member of IPOB in the United Kingdom [93];
 - (ii) she accepted that the evidence of Chief Nwokoro was that the Appellant’s role was Head of the UK Task Team on International Relations, which she described as “*a very grand title for the fact that Mr A has met his local MP*” and written letters, but had not been personally involved in any high-profile meetings with UK government officials [94];
 - (iii) She accepted that IPOB had been declared a terrorist organisation in 2017 by the Federal Court of Nigeria and the leader, Mr Kanu was removed from Kenya to Nigeria in June 2021 and appears to have been held in detention since then. She further noted that “*there have certainly been many incidents as reported of individuals in Nigeria being detained due to their political belief*” [95];
 - (iv) She found the Appellant’s role appears solely to have attended meetings no more than once a month on zoom [96] and therefore did not find that his *sur place* activities in the United Kingdom placed him at risk on return to Nigeria [97].
3. In setting aside the decision of the First tier Tribunal, other than the findings infected by error of law, I made the following findings:

“14. I find that the First tier Tribunal Judge materially erred, firstly in that despite recording that the Appellant also wrote letters this did not form part of her consideration of the risk to him on return. The Appellant has resided in the United Kingdom since 2011 but IPOB was only formed in 2012 so it would not have been possible for him to have joined or been active in the organisation when he was previously residing in Nigeria.”

15. The HJ (Iran) principle, as set out in the seminal Supreme Court judgment [2010] UKSC 31 by Lord Rodger at [82] is, in summary, applied to the facts of this case, whether having established a credible case that the applicant holds a political opinion or would be treated as holding that opinion on return to Nigeria, he would be subjected to persecution if he

expressed that opinion openly or whether, if he would not express that opinion openly, why that would be the case ie in order to avoid persecution or other reasons. The First tier Tribunal Judge neither explored this with the Appellant in evidence nor considered it in her analysis of the risk on return. Given that this could make a material difference to the outcome of the appeal this is a material error."

Hearing

4. At the resumed hearing, Ms Daykin handed up a letter from Darren Jones MP, the Appellant's former MP. I discussed with the parties the scope of the appeal and the preserved findings of fact, including the fact that the Appellant was found to be a member of IPOB(UK). I indicated that it would assist the Upper Tribunal to hear evidence about the Appellant's activities in the UK and whether there was monitoring of those activities by the Nigerian authorities or their agents.
5. The Appellant gave evidence and stated that he was living in temporary accommodation and was due to move later that day. When asked what his role actually involves in terms of his activities and duties, he stated that as the head of the team he worked with government officials, liaising with agencies, MPs and politicians trying to restore the independence of Biafra and secure the release of their leader from detention since he was arrested in Kenya. He has been in custody in Nigeria and they had been lobbying eg. Harriet Harman MP in Peckham and some charitable organisations. The Appellant stated that initially there were about 10 people in the team but it has now increased and it is going worldwide. Now the number is up to 15 and there are different teams in different zones.
6. When asked who organises the people in his team the Appellant stated that he is the head so he does that. He also organises zoom meetings and they met the Slough MP and also Darren Jones MP in Bristol. The Appellant stated with regard to the frequency of zoom meetings that these were held when necessary eg to discuss meeting with MP and that they post on their whatsapp platform.
7. The Appellant was asked what he would do if he were returned to Nigeria and whether he would continue with his political activities with IPOB and the Appellant responded that he started fighting when he was a youth aged 16 years old for the independence and freedom of his people. He said that he knew he would face a lot of attention and that he was very passionate. He said that he would do whatever it might take for Biafran independence and that what is bothering everyone now is the release of Kano; they have done campaigns and evangelism to find a way to release him and when he is released then the Appellants said that he would be happy. The Court in Nigeria has ordered his release because he has not done anything wrong but the federal government refuse to release him.
8. In cross-examination, the Appellant was asked about his immigration history and the fact that he arrived in the UK in 1998 and returned in 2007. He was asked how long he stayed in Nigeria and he said 4 years, during which time he was attacked and persecuted when he was campaigning for Goodluck Jonathan. The Appellant was asked whether he

was involved in any Biafran activities during that time, to which he replied that the IPOB had not come by that time. The Appellant was asked about whether he conducted any activities and he said that the Biafran war was 1967-1970 and there was nothing in between until Kano introduced IPOB in 2020, a date which the Appellant corrected to 2012 and that he had got involved in 2018. The Appellant was asked, given that he felt strongly about independence and had been in the front line, why it took him 6 years to get involved. The Appellant responded that he had come back to the UK by then and that when he was in Bristol there was nothing and he started IPOB in Bristol in 2018 and was the IPOB Co-ordinator when he was studying at the University of the West of England and that IPOB is in different parts of the UK. The Appellant agreed that when he was in Nigeria he was active with the former President.

9. The Appellant was asked about his previous applications and appeals and confirmed that he had made an application based on his family life in 2013 and had subsequently claimed asylum on 17 November 2014 on the basis of his support for the former President, Goodluck Jonathan. When asked why he did not raise his involvement with IPOB in his previous applications he said that he was focusing on a family matter regarding his son who is now 18. He then relocated from Bristol to Slough in 2021. The Appellant confirmed that he plans zoom meetings and that all members can access the meetings and that others could also access them. The Appellant denied supporting violence or that IPOB supported violence. When asked why the Nigerian authorities would be interested in him the Appellant stated that they are a threat to federal government. Mr Tufan then asked the Appellant whether he knew Chief Nwokoro personally and he said they worked together, he knows him and the Chief attended the first Tribunal hearing. The Appellant was asked to clarify why the Chief called him Mazi and he explained that this means Mr.
10. In response to my questions, the Appellant explained that when he was 16 he was not attached to a particular party although he later campaigned for Goodluck Jonathan, but he was involved in a militia grassroots campaigning/Boys Brigade. At that time he was still young and it was during the Biafran war when you discover where the enemies are and then report to the military.
11. In response to questions about the IPOB zoom meetings, the Appellant clarified that 15 people attend and that he knows them all. He stated that sometimes people block their names and not show their pictures and so may be trying to hack the meeting and they will block that person. The Appellant stated that the last zoom meeting had taken place on 2 August 2023 and that the last IPOB demonstration had concerned the release of Kano their leader, however, he did not attend the last protest as he was not feeling well and had a problem with his health. Some colour photographs were handed up all taken on 16 April 2023 in Glasgow, Leeds, Nottingham and St Pauls London and the Appellant claimed to be the photographer at these but later retracted this given they were all taken on the same date. The Appellant then amended his evidence that the last zoom meeting was on 28th August 2023.
12. There was no re-examination by Ms Daykin. Chief IkeChukwu Nice Nwokoro, the IPOB UK National Coordinator was then called to give

evidence and confirmed his address, occupation and role within IPOB. The witness was asked what Mazi means and he said that it means Mr in the Igbo language. The witness confirmed that the Appellant is currently serving as international relations and diplomacy head of IPOB. When asked what does that mean and what the Appellant does in that role, the witness stated that part of their mission was to engage the international community, including the UK community and their international relations and community team is charged with responsibility of contacting government officials and NGOs to explain to them what the restoration mission is about and correct narration about what is going on in Biafra land, as well as supporting their requests for a referendum, so it was a very important team. The witness stated that the Appellant has on two occasions interacted with MPs including Harriet Harman MP for Peckham.

13. With regard to meetings the witness stated that they are closed. He said that the Appellant is also a member of the UK team and also attends the team leadership meetings online and in person when they come. He clarified that the purpose of team leadership meetings was to discuss their Biafra restoration mission and plan their missions. When asked if the Appellant was responsible for establishing a zone in UK, the witness agreed that prior to his nomination and appointment to the diplomatic team he was the zonal co-ordinator for Bristol and was responsible for that branch and also worked closely with Darren Jones MP.
14. The witness was asked whether the organisation holds or attends protests in the UK and he confirmed that they do eg. regarding the extraordinary rendition of their leader from Kenya to Nigeria and that he still remains in detention in Nigeria, despite being acquitted in October 2022 and they have continued to hold peaceful rallies. He said that the Appellant was integral to the planning of events. The witness stated that the last protest/rally took place on May 30th in Edinburgh Scotland, which is Biafran Remembrance Day, a very symbolic day because Biafra was declared a Republic in 1967 and this marks the day the genocide against Biafrans was started. The witness stated that they had a meeting in Swindon in July and last Saturday they had the Biafran education awareness day in London.
15. With regard to the Appellant's attendance at the 30 May rally, the witness said that the Appellant had taken part in the planning but could not attend due to health problems and also having difficulties with accommodation. The witness said that the Appellant did not attend the last physical meeting in Swindon in July and sent his deputy; that every zone and team sent in delegates. The witness stated that there were 13 on the Appellant's team, chosen from different areas of the country and that every region has one representative. In terms of the leadership meetings the witness stated that the UK cabinet has 11 teams nationally who send one representative, there are 15 people in the UK cabinet and the Chief's assistant so 27 in all.
16. In cross-examination, the witness said that he had known the Appellant since 2018 and that IPOB was established in 2012. When asked if he had ever asked the Appellant why he did not join until 2018, he said that he did not join himself until 2017/2018 and that reasons could vary from individual to individual but he had not asked the Appellant. The witness

said that it is not when you join that matters because every Biafran from birth is IPOB, but when you decide to recognise that. He said that he has been a very close student of history but he wanted to study it critically and observe before making a conscious decision to identify and join as a member. The witness said that he was born shortly after the genocide/war ended but the Appellant was born before so he can remember more vividly and identified with this and made the decision to form the Bristol family in 2018.

17. The witness was asked whether after the end of the Biafran war until 2012 whether there were any other active organisation and said they were not active but the Movement for the Sovereign State of Biafra was formed in the late 1990's and this gave rise to IPOB. This is because that organisation fizzled out on its own as their people realised it was compromised and no longer carried the spirit of the people and formed IPOB and that it has remained consistent despite all trials and tribulations. It is present in more than 108 countries of the world, with membership running into millions.
18. The witness was asked if the Appellant ever told him he was involved with MSSB and he said that he had not discussed this with the Appellant, but he could have been because some people belong to other groups who were naturally positioning themselves for a better society and future for Biafrans.
19. I asked for clarity with regard to the photographs taken on 16 April 2023, which were put to the witness, who stated that it was one of the national programmes which is the idea of the Appellant's team, both with regard to operations at MPs' offices and appealing to the conscience of spiritual leaders. So the week after Easter, IPOB went to four reputable cathedrals with different members representing them and they wrote to the Pope, the Archbishop of Canterbury and handed these letters over on that day and received contact with his Lordship the Archbishop of Canterbury who he strongly believes is now sympathetic to our cause. The witness said he was very much aware of these programmes. When asked for confirmation that the delegates attended all the cathedrals on the same day and the same hour the witness said that some hours were slightly different and varied from 9.30 to 12.30 but they were present on the same day. The witness said that he attended the cathedral in Nottingham but does not know if the Appellant attended on the day but he was very active in the plan.
20. In his submissions, Mr Tufan accepted that the Appellant has certainly been involved with IPOB, but the issue is whether he is holding genuinely held views and whether he is really a person who believes in the views held by IPOB or is opportunistic and this is relevant because on return to Nigeria he would not be promoting these views.
21. Mr Tufan drew attention to the fact that the Appellant made an asylum application previously and Judge Baker dismissed that application in 2016, which was based on a fear of Boko Haram: page 132 of RB refers. The Appellant was found not be credible previously before the Tribunal.

22. With regard to the evidence from the Chief there were other groups prior to IPOB who supported Biafran independence. The Appellant went back to Nigeria and claimed to be supporting the ex-President but there is no mention of him joining a previous Biafran independence organisation and he only seems to have joined when his asylum appeal was dismissed.
23. The Appellant's involvement is at a very low level; he arranges zoom meetings and he said there were 15 members but the Chief said 13 members although not much turns on this as previously he said there were 10 members. Mr Tufan submitted that there is no way the Nigerian authorities would know about this nor would they be interested in someone like the Appellant.
24. For those reasons Mr Tufan submitted that as the Appellant did not hold genuinely held beliefs; that he would tell the truth and would not be at risk of persecution: [82] of *Hj Iran* (op cit) refers. He further submitted that the Nigerian authorities would not be interested in people outside a Church.
25. In her submissions, Ms Daykin drew attention to the objective evidence and the expert's view that the Appellant's activities in the UK would bring him to the attention of the authorities and he would be at risk as a result. She submitted that the Respondent's CPIN "*Separatist groups in the South East, March 2022*" provides quite a lot of detailed and useful information. Section 9 of CPIN deals with IPOB and plainly violence and unlawful killings take place in a bid to quash the IPOB movement. They have been described as terrorists since 2017 and forces deployed to deal with them. At 9.1.5 local and international human rights' organisations noted the violent persecution of social actors and civilians and notably there does not appear to be a baseline level of activity that would bring suspicion or ill-treatment; simply being a sympathiser is enough to attract attention. At 9.1.6. there is an order to fish out and resolutely deal with any IPOB member found in the community. 9.1.10 noted that security services are not to be constrained by human rights considerations. Ms Daykin submitted that the Nigerian authorities consider IPOB as a threat to national security and even possession of IPOB materials can lead to arrest. The UN Special Rapporteur for extrajudicial executions refers to arbitrary killings of IPOB at 9.3.3. 9.3.8 is an example of the level of security interest and likely consequences eg. the authorities stormed a school where members of IPOB attended a meeting and there was violent clashes and deaths. It has been widely reported the group's leader has been moved from neighbouring countries back to Nigeria and remains in detention. Overall Ms Daykin submitted that the picture in summary is that everyone and certainly members will attract very significant attention by the authorities in an effort to quash the movement altogether.
26. With regard to the Appellant he has been involved for quite a few years and has given a significant dedication of time and energy and this is reflected by his status within the organisation. Ms Daykin submitted that he is not opportunistic. He is in a leadership role and is strategic in his thinking and co-ordinating people across the UK and meeting with political figures in the UK to obtain support. She did not understand the Respondent to be doubting the activities but rather his motivation, in which case *Danian* [1999] EWCA Civ 3000 applies. Ms Daykin submitted that there is a risk that may emanate from activities already conducted,

which is a mixed bag of closed and public activities and the Nigerian authorities may contend IPOB are terrorists. She submitted that it is more than likely the Appellant's role in the UK is known to the authorities. But even if it was not this is an individual who is plainly a credible threat and this would lead to considerable risk.

27. Ms Daykin submitted that it had not been put to the witness whether he believes the Appellant to be credible but certainly he very eloquently described the Appellant's involvement and the chronology does not necessarily have any bearing on the motivation for involvement. She submitted that there is nothing like IPOB: it has really galvanised everyone involved in the Biafran movement.
28. Ms Daykin drew attention to page 110 of the stitched bundle/AB 74 which comprise photographs of the Appellant with the Slough MP and also the letter from Darren Jones MP. She submitted that this all consolidates the idea that this is not just an individual involved on the fringes but a political movement and he is a committed individual and genuinely committed in this way to this movement and would continue on his return to Nigeria notwithstanding the risks.
29. I reserved my decision, which I now give with my reasons.

Decision and reasons

30. The preserved finding of fact by the First tier Tribunal Judge is that the Appellant is a member of IPOB in the UK. The Respondent also expressly accepted that the Appellant is involved with IPOB and I accept that he has taken part in a number of activities in his role as international relations and diplomacy head of IPOB. The issue to be determined is whether the Appellant would continue with his activities with IPOB if he were to be returned to Nigeria and if not, why not?
31. In light of the oral evidence from the Appellant and his witness, Chief Nwokoro, as to his activities on behalf of IPOB and I accept that the Appellant is a genuine supporter of IPOB and has been actively involved with the organisation since 2018, so for the last 5 years. I note that this postdates his previous appeal hearings determined on 5 September 2014 and 26 August 2016 and so he cannot reasonably be expected to have raised his IPOB involvement at that time. Whilst I note Mr Tufan's submission that the Appellant was previously found not to be credible before the Tribunal and there were some minor inconsistencies in his account before the Upper Tribunal eg as to whether or not he took all the photographs during the protests in front of the various Cathedrals on 16 April 2023, I do not find that these go to the heart of his claim or detract from the other evidence that he is an IPOB activist.
32. The country expert report of Dr Inge Amundsen dated 14.11.22 provides at AB 13-15 that:

"IPOB came to prominence at the centre of the latest wave of Igbo nationalism following the arrival in office of Nigeria's President Muhammadu Buhari. The tone of the new president towards the people of

the southeast was perceived as at best dismissive, and at times hostile (UK Home Office 2020).

In recent years, IPOB has gained significant media attention as it has become a frequent target of political crackdowns by the Nigerian government. In 2017, the Federal High Court in Abuja labelled the IPOB as a terrorist organisation (Premium Times 2017). The IPOB has fought against this proscription, and sought to reverse the court decision, but their attempts have been unsuccessful. IPOB is still declared as a 'terrorist organisation' under Nigeria's Terrorism Act.

Accusations of terrorism are partly based on the fact that IPOB has established a para-military wing, the Eastern Security Network (ESN), in Nigeria. This is a non- state regional force, a militia, with the stated goal of combatting Fulani raiders in the areas of the former Eastern Region and "to protect IPOB against Nigerian security forces".

Despite many news reports and claims made by the Nigerian military and security forces that the ESN have been attacking and killing soldiers (see for instance The Guardian 2021b), the IPOB spokesman claims that "neither IPOB nor its security outfit, Eastern Security Network" have been involved in any attack on security personnel and that "IPOB, since inception, has remained a peaceful movement with the sole mandate of restoring Biafra" (cited in Punch 2021)...

For instance, in September 2020, IPOB announced that they were joining Oduduwa Republic agitators, their "brethren" (IPOB's exact word), to declare a sit-at-home protest in October (The Cable 2020), and in June 2021 the IPOB formed an alliance with the Oduduwa Volunteer Force, OVF, according to the Media and Publicity Secretary of IPOB. They have allegedly been doing training exercises together, in order to "protect the Southeast and Southwest from marauding killer herders" (Daily Post 2021; Biafra News 2021). According to Roots TV,

A recognition of Biafra as a sovereign state, or any acceptance of a referendum on Biafran sovereignty (one of the secessionists' demands), will never be accepted by the Nigerian federal government because Biafra covers the Niger Delta, the main oil- producing area of Nigeria, and the government will never give up that income. This is the background for the severe government suppression of IPOB and other Biafra secessionist groups.

The leader of IPOB, Mazi Nnamdi Kanu, was arrested in Kenya in June 2021 and extradited to Nigeria where he is currently held in custody awaiting trial, facing a terrorism charge (Premium Times 2021b; Vanguard 2022)."

33. Dr Amundsen opines with regard to the Appellant, as follows at AB 17-19:

"This political opinion and activity will put Mr A at high risk if returned to Nigeria. There is a pattern and practice of Nigerian government persecution of pro-separatist organisations and activists in Nigeria (see section Igbo, Biafra and IPOB above). In particular, the Oduduwa and IPOB groups are deemed terrorist organisations, and their organisations,

activists, and activities are systematically persecuted as separatism constitutes one of the biggest threats to Nigerian unity and the Nigerian federal government.

At the same time, IPOB draws much of its support (including financial support) from the Igbo expatriate community abroad, in particular in the UK and the USA. IPOB claims to have local branches ('missions' and Facebook groups) in more than 50 countries around the world.

Given that the IPOB organisation is banned in Nigeria as a 'terrorist organisation', the current government is most probably considering it important to identify members of this group living abroad. At the same time, the United Kingdom government is considering granting asylum to persecuted members of IPOB, much to the dislike of the Nigerian government.

A British-Nigerian political activist, Nnamdi Kanu is the director of London-based Radio Biafra, a broadcast outfit set up to propagate the demands of secessionists. [...]. The station broadcasts daily programmes in English and the Igbo language, including anti-Nigeria and pro-Biafra propaganda.

In my opinion, because of the importance of the matter (Nigerian national pride and security concerns) and the fact that a prominent IPOB leader is broadcasting anti- Nigeria propaganda from a London-based radio station, there is indeed reason to believe that IPOB activists and activities in the UK are being monitored by Nigerian authorities and agents, and that their activities are reported back to Nigeria. Thus, Mr A's political activism with IPOB in the UK constitutes an additional risk should he return to Nigeria.

Given that Mr A is "very passionate about the restoration of Biafra sovereignty via legitimate route, as envisioned by IPOB", and his membership in and high-level activism for the IPOB branch in the UK, this political opinion and activity will put Mr A at high risk if returned to Nigeria. There is a pattern and practice of Nigerian government persecution of pro-separatist organisations and activists in Nigeria, and there is reason to believe that IPOB activists in the UK are being monitored and could face persecution upon return to Nigeria."

34. A relevant consideration is whether the Nigerian authorities are aware of the Appellant's activities with IPOB in the UK. The Home Office CPIN with regard to separatist groups in the South East of Nigeria, published in March 2022 notes at 10.4 that regular protests by IPOB supporters take place in the UK. 10.5 provides *inter alia*:

"10.5.2 A Vanguard article from September 2016 reported on the alleged listing of a number of IPOB members in Nigeria and the diaspora as wanted by the Department of State Services (DSS) in Nigeria¹²⁹. The same allegations appeared in an article in the Nigerian news website Sun News online¹³⁰ however no further details regarding these allegations were found in the sources consulted (see Bibliography)."

35. I also take account of the fact that the leader of IPOB, Mazi Nnamdi Kanu is a dual British Nigerian who, until his arrest in Kenya and extradition to

Nigeria in June 2021 was broadcasting what the expert describes as ‘anti-Nigerian propaganda’ from a London based radio station. I consider that this would have attracted the attention of the Nigerian security services who, given that they consider IPOB to be a terrorist organisation, would have sought to identify IPOB members and supporters with the UK diaspora.

36. In these circumstances and in light of the evidence, applying the lower standard of proof, I find that there is a reasonable likelihood that the Appellant may have identified as an IPOB activist by the Nigerian security services. I further accept that the Appellant is passionate about Biafran freedom and independence and I accept his evidence that he has supported Biafran independence since the age of 16 and that he would do “whatever it might take for Biafran independence” on return to Nigeria that there is a reasonable likelihood that he would continue with his IPOB activities if returned to Nigeria. If he is unable to do so because IPOB is deemed a terrorist organisation and its members and supporters are subjected to persecution, I find that he would not participate only because he fears persecution, which would be well-founded.

Notice of Decision

37. The appeal is allowed on the basis that the Appellant has a well-founded fear of persecution on account of his imputed political opinion arising from his involvement with IPOB in the UK, his Igbo ethnicity and Biafran provenance.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

27 September 2023



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Decision & Reasons Issued:

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DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

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(ANONYMITY ORDER MADE)

Appellant

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THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn of Counsel, Shawstone Associates
For the Respondent: Ms A Ahmed, Home Office Presenting Officer

Heard in a hybrid hearing at Field House on 19 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on 14 January 1954. He arrived in the United Kingdom in 1998 with entry clearance as a Tier 4 student and was subsequently dependent on his wife's work permit but returned to Nigeria in 2007. The Appellant subsequently sought to return to the UK and was granted a Tier 4 visa valid from 28 September 2011 until 12 September 2013. On 28 January 2013 the Appellant sought and was subsequently granted twelve months' limited leave on the basis of family and private life grounds, due to the fact that he was seeking contact with his British citizen child.
2. On 17 December 2013 the Appellant applied for further leave to remain on the same basis but this application was refused on 28 January 2014 and his appeal against this decision was dismissed in a decision and reasons dated 9 September 2014. On 17 November 2014 the Appellant claimed asylum based on his membership of the People's Democratic Party in Nigeria. This application was refused in a decision dated 18 May 2015 and the Appellant's appeal against this decision was dismissed by First-tier Tribunal Judge Baker on 5 October 2016. The Appellant thereafter became appeal rights exhausted in December 2016.
3. On 6 September 2019 the Appellant made a fresh asylum and human rights application based on both perceived political opinion due to the fact that he claimed to have previously campaigned against President Bahari, who has now been returned to power in Nigeria and also due to his Christianity. He also sought to rely on his ongoing private life and relationship with his British citizen son and his extensive residence in the UK. The Appellant also subsequently raised his UK based membership of the IPOB, i.e. the Indigenous People of Biafra organisation. The Appellant provided evidence in support of his claim, including a psychiatric report dated 11 October 2022, a country expert report by Dr Amundsen dated 14 November 2022 and a letter from Chief Nwokoro, the national coordinator of IPOB dated 7 June 2022.
4. His appeal came before First-tier Tribunal Wyman for hearing on 14 March 2023. At the appeal hearing it was requested that the Appellant be treated as a vulnerable witness and his Article 8 claim based on his son was withdrawn. The judge made a number of findings including that the Appellant was not at risk of persecution due to his Christianity nor that the AM (Zimbabwe) threshold was reached in relation to the Appellant's medical condition at [87] to [92]. At [93] the judge accepted that the Appellant was a member of the IPOB and at [94] to [100] she found that he would not be at risk of persecution in Nigeria as a consequence. In a decision and reasons promulgated on 27 March 2023 she dismissed the appeal.
5. An application for permission to appeal was made in time on 29 March 2023. It was asserted that the judge had erred materially in law at [3] in failing to consider as a consequence of the Appellant's membership of the IPOB whether his beliefs are genuinely held and whether he would conceal his support because of the risk of harm, reference being made both to the judgment in HJ (Iran) [2010] UKSC and the Home Office CPIN at 9.3.2. It

was further asserted that the judge appears neither to have considered the further detail in the letter from the witness of June 2022 as to the Appellant's role and what that would mean on return to Nigeria if he were to continue his activity or whether he should conceal his current beliefs and activity in the UK to avoid harm.

6. Permission to appeal was granted by First-tier Tribunal Judge Aziz on 24 April 2013 in the following terms:

"4. It is arguable that the principles set out in HJ (Iran) [2010] UKSC 31 were not followed and that the Judge did not give proper consideration to whether the appellant would continue to engage with IPOB activities upon return to Nigeria, what the authorities likely response to this would be (given that IPOB is a prescribed terrorist organisation within Nigeria) and how this would impact upon the appellant's likely behaviour. The answers to these questions might engage the Refugee Convention in line with HJ (Iran) [2010] UKSC 31."

Hearing

7. At the hearing before the Upper Tribunal, Ms Cleghorn sought to expand the grounds of appeal to include a challenge to the judge's findings on Article 3 and the Appellant's medical conditions. Ms Ahmed opposed this application on the basis that there was nothing in writing and it was far too late. I refused to permit Ms Cleghorn to raise this new ground of appeal on the basis that it was not conducive to good administration and was too late.
8. In relation to the HJ (Iran) argument, Ms Cleghorn submitted that this was a straightforward error. Once it was accepted that the Appellant has genuine membership of the IPOB and because the IPOB are seen in Nigeria as terrorists, it was incumbent upon the judge following HJ (Iran) to consider whether the Appellant would be at risk on return for that reason and if not why not. Ms Cleghorn referred to [55] of HJ (Iran) and that the test was set out by the Supreme Court, which was very clear that it was not sufficient to find only how the Appellant would behave in the UK but to consider how he would act on return to Nigeria.
9. In response Ms Ahmed said although she opposed the appeal, she did note that I may consider that the point was Robinson obvious albeit was not argued before the First-tier Tribunal Judge.
10. In response Ms Cleghorn drew attention to [2] of the skeleton argument where the Appellant maintained he would be at risk on the basis of the factors set out including his Christianity and imputed political opinion coupled with his *sur place* activities in the UK. She submitted this clearly anticipated that the Appellant would continue his activities in Nigeria, even though no reference was made to HJ (Iran), the judgment was clearly enshrined in refugee law and that it could not be ignored.
11. I indicated that I found a material error on the part of the First-tier Tribunal Judge due to the failure by the First tier Tribunal Judge to consider the impact of the judgment in HJ (Iran) on the risk to the Appellant if returned to Nigeria. Ms Ahmed submitted in light of the judgment in AEB [2022] EWCA

Civ 1512 and Begum [2023] UKUT 00046 (IAC) that the appeal should be retained in the Upper Tribunal and remade simply on a narrow basis.

Decision and reasons

12. At [40]-[47] the First tier Tribunal Judge set out a summary of the Home Office CPIN: Separatist Groups in the South-East Nigeria – August 2022. This provides *inter alia* as follows:

“41. IPOB is described as a terrorist group by the Nigerian government and members of the group of its paramilitary wing (created in December 2020) have reportedly committed human rights violations in Nigeria. Although IPOB have advocated for peaceful change, they have also used rhetoric that they encourage violence. In recent years, IPOB appears to have become the most publicly dominant Biafran separatist group. Through its on-line platform, Radio Biafra, IPOB have increasingly used inflammatory rhetoric.

42. Security forces have arrested hundreds of IPOB supporters at different events particularly between 2015 and 2017. IPOB have claimed that security forces have used excessive force including killing and injuring hundreds of its supporters. They have also been clashes between IPOB and the authorities since 2018.

43. A number of senior IPOB members have also been arrested including the IPOB leader, Mr Kanu. He fled Nigeria whilst on bail in 2017. In June 2021, the Government announced he had been arrested in a third country and returned. He remains in custody in Nigeria.

44. If a person is able to demonstrate that because of their links with IPOB they are likely to face prosecution or punishment that is disproportionate to the crime committed, or face detention in degrading or inhuman conditions or torture, then such treatment is likely to amount to persecution.”

13. The Judge heard evidence from both the Appellant and from his witness, Chief Nwokoro as to the Appellant’s involvement with the IPOB. The Judge considered this aspect of the Appellant’s claim at [93]-[100] and made the following findings of fact:
- (i) she accepted the Appellant is a member of IPOB in the United Kingdom [93];
 - (ii) she accepted that the evidence of Chief Nwokoro was that the Appellant’s role was Head of the UK Task Team on International Relations, which she described as “a very grand title for the fact that Mr A has met his local MP” and written letters, but had not been personally involved in any high-profile meetings with UK government officials [94];
 - (iii) She accepted that IPOB had been declared a terrorist organisation in 2017 by the Federal Court of Nigeria and the leader, Mr Kanu was removed from Kenya to Nigeria in June 2021 and appears to have been held in detention since then. She further noted that “*there have certainly been many*

incidents as reported of individuals in Nigeria being detained due to their political belief” [95];

- (iv) She did not find that the Appellant falls into this category and that his role appears solely to have attended meetings no more than once a month on zoom [96] and therefore did not find that his *sur place* activities in the United Kingdom placed him at risk on return to Nigeria [97].
14. I find that the First tier Tribunal Judge materially erred, firstly in that despite recording that the Appellant also wrote letters this did not form part of her consideration of the risk to him on return. The Appellant has resided in the United Kingdom since 2011 but IPOB was only formed in 2012 so it would not have been possible for him to have joined or been active in the organisation when he was previously residing in Nigeria.
15. The HJ (Iran) principle, as set out in the seminal Supreme Court judgment [2010] UKSC 31 by Lord Rodger at [82] is, in summary, applied to the facts of this case, whether having established a credible case that the applicant holds a political opinion or would be treated as holding that opinion on return to Nigeria, he would be subjected to persecution if he expressed that opinion openly or whether, if he would not express that opinion openly, why that would be the case ie in order to avoid persecution or other reasons. The First tier Tribunal Judge neither explored this with the Appellant in evidence nor considered it in her analysis of the risk on return. Given that this could make a material difference to the outcome of the appeal this is a material error.

Notice of decision

16. I find a material error of law in the decision and reasons of First tier Tribunal Judge Wyman. Whilst her findings of fact are preserved, the appeal is adjourned for a resumed hearing before the Upper Tribunal solely on the application of the HJ(Iran) principle to the facts of his case.

DIRECTIONS

1. The appeal shall be listed for 1 hour.
2. Any evidence upon which the parties wish to rely should be submitted in accordance with rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 June 2023