



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003648

First-tier Tribunal No: HU/50728/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

**THERESA YEWANDE ADENUGA
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong of Counsel, instructed by David Benson Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 20 October 2023

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First Tier Tribunal Judge Buckwell signed on 14 July 2023 dismissing on human rights grounds an appeal against a decision dated 4 January 2023 refusing leave to remain in the UK.
2. The Appellant is a citizen of Nigeria born on 15 May 1968.
3. A summary of the Appellant's immigration history is set out in the cover sheet to the Respondent's bundle before the First-tier Tribunal in these terms:

“Immigration History

- *It is noted that the appellant entered the United Kingdom (UK) on 27 December 2007 with entry clearance as a visitor valid until 5 March 2008.*

- *On 23 February 2012 the appellant submitted a Spouse of a Settled Person application, this was refused with No Right of Appeal on 4 January 2013.*

- *On 26 October 2015 the appellant applied for leave to remain on the basis of her family and private life. This application was refused on 05 January 2016. The appellant duly appealed this decision on 19 January 2016. The First Tier hearing dismissed the appellant’s appeal on 20 April 2017. Permission to appeal to the Upper Tribunal was refused by the First-Tier Tribunal on 25 May 2017 and by the Upper Tribunal directly on 10 July 2017. The appellant’s appeal rights were deemed exhausted with effect from 10 July 2017.*

- *On 28 July 2017 the appellant submitted An Outside the Rules application, this was considered and rejected under paragraph 353 of the Immigration Rules with No Right of Appeal on 26 July 2018.*

- *On 04 January 2019 the appellant submitted An Outside the Rules application. This application was refused on 26 June 2019 with an In Country Right of Appeal. The appellant duly appealed this decision on 09 July 2019. The First Tier hearing dismissed the appellant’s appeal on 12 September 2019. The appellant’s appeal rights were deemed exhausted with effect from 27 September 2019.*

- *On 29 December 2021 the appellant submitted An Outside the Rules application.”*

4. It may be seen that the Appellant has had two previous unsuccessful appeals in relation to her status in the UK. The First-tier Tribunal Decisions in those appeals were included in the Respondent’s bundle at annexes J and K.

5. The decision of First-tier Tribunal Judge Mozolowski in HU/01963/2016 (promulgated on 20 April 2017) is revealing as to the circumstances of the Appellant’s first entry to the UK in a way that is not quite covered by the Respondent’s summary quoted above. See paragraphs 9 and 22:

“9. According to the Appellant, she accepts that she made a visit visa application to the United Kingdom on 1 February 2007 which was refused. The Appellant then obtained an Irish visit visa a few months later which was a "Schengen" visa lasting three months. The Appellant maintains even now that she believed the Schengen visa also applied to the United Kingdom so she travelled to the Republic of Ireland in late December 2007, stayed a day or so, travelled to Belfast

and then took a flight to London where she entered on either the 22 or 27 December 2007."

"22. I do not find much of the Appellant's account to be credible. Her immigration history is poor and the Appellant's claim that she thought a Schengen visa was the same as a British visa is to my mind disingenuous. She had just been turned down for a British visa. She therefore was aware of what was involved in entering the United Kingdom. She applied for an Irish visa and she herself admitted that she had little intention of seeing round Ireland. I consider that she simply applied for a Schengen visa on the basis that she would get it more easily than she would a British visa but her intention all along was to come to the United Kingdom. I therefore find that when she entered the United Kingdom, the Appellant knew that she was illegal from the very outset."

6. The Appellant's most recent application of 29 December 2021 (made over two years since her appeal rights were last exhausted) essentially relied, again, on her relationship with Mr Samuel Adenuga (d.o.b. 20 July 1962), ('the Sponsor'), a British citizen to whom she was married on 23 March 2012 having begun a relationship in August 2009. On her application form she set out a case in this way:

"I have been living in the United Kingdom for 14 years and have established my family and private life here with my husband. We are currently trying for a baby and we are at the advanced stage of this process. My husband's family and cultural network is such a network that disapproves of women that struggle to give birth. I will be subjected to unprecedented levels of harassment, bullying and disapproval which may lead to torture and persecution of my physical and mental person by his family, social and cultural network. It may even lead to my death if I don't keep myself away from these people. I have been with my husband since 2009. The same year, we had our church wedding. I have received several threats to my life from my husband's family as well as unrelenting curses and verbal abuses. The only protection I have got is the fact that I am living in the UK and they have no physical access to me and my husband. My husband is an established employee of the Royal Mail and British."

7. I pause to note that the Appellant had raised an assertion that she was undergoing IVF treatment in both of her previous appeals. In the event, the only piece of evidence presented in the current proceedings in this regard appears to be a letter dated 3 October 2018 from an Assisted Conception Unit written further to a GP referral: the letter informed the Appellant that the policy was *"that we only treat women up to 45 with their own eggs and up to 49 with donor eggs... because of the declining success rate after the age of 40"*, and invited telephone contact if further information were required about egg donation (Respondent's bundle G1). At the date of this letter the Appellant had passed her 50th birthday. This letter pre-dates the

hearing in the Appellant's second appeal on 20 August 2019 (ref HU/11798/2019) before First-tier Tribunal Judge Kainth.

8. Notwithstanding the assertion in the application form, the Appellant did not seemingly place any particular reliance upon fertility treatment in the appeal before Judge Buckwell: although she makes passing reference in her witness statement to "*trying for [a] child*" (paragraph 8) there is no detail of any treatment, and the issue is not raised in the Skeleton Argument. Be that as it may, Judge Buckwell dealt with this issue at paragraph 29 of his 'Decision & Reasons', noting both the Appellant's age and that Judge Mozolowski had found that facilities for fertility treatment were available in Nigeria. There is no specific challenge to this aspect of the First-tier Tribunal's analysis pursued before me. I offer comment here because in the circumstances, and in the absence of any further evidence, it is entirely unclear on what basis the Appellant asserted in her application form - that contained a declaration of truth - that she and the Sponsor were in the "*advanced stage*" of any process.
9. The Appellant's application of 29 December 2021 was refused on 4 January 2023 for reasons set out in a 'reasons for refusal' letter ('RFRL') of that date.
10. In the RFRL the application was first considered with reference to Appendix FM of the Immigration Rules. It was accepted that the application did not fall for refusal on grounds of 'suitability', and that the Appellant met the 'eligibility relationship' requirement; however, it was not accepted that she met the 'eligibility immigration status' requirement. Consideration was also given to paragraph EX.1., but it was determined the Appellant did not meet the requirements. Having concluded that the Appellant did not satisfy the specific 'partner' requirements of the Immigration Rules, the decision-maker went on to consider 'exceptional circumstances'.
11. In this latter context the RFRL encompassed an evaluation of the Appellant's mental health (further to a psychiatric report dated 10 November 2021), and the Appellant's claim that she would face hostility as a childless wife of the Sponsor. (It is to be noted that the psychiatric report of Dr Dhumad, reproduced at Annex H of the Respondent's bundle, is actually dated 5 January 2022, but is based on a consultation that took place on 10 November 2021.) It was noted that the Appellant's representatives had been contacted on 12 June 2019 and 30 August 2022 inviting the making of a protection claim, but that this was not taken up by the Appellant; the Respondent also referred to Nigeria having a "*functioning police force and the State is able and willing to afford protection*". The Respondent decided that there were no exceptional circumstances, or any compelling or compassionate reasons such as to require a grant of leave, and that the Appellant's removal would be proportionate.

12. Consideration was also given to the Appellant's private life both within and outside the Rules. Again the Respondent determined such matters against the Appellant.
13. The Appellant appealed to the IAC.
14. The Appellant's appeal was dismissed for reasons set out in the Decision of Judge Buckwell.
15. The Appellant applied for permission to appeal to the Upper Tribunal which was granted on 29 August 2023 by First-tier Tribunal Judge Chowdhury.
16. The Respondent has not filed a Rule 24 response. However it was confirmed by Ms McKenzie that the Respondent resisted the Appellant's challenge to the Decision of the First-tier Tribunal.

Challenge

17. I make the following observations in respect of the Decision of the First-tier Tribunal:
 - (i) There was no appearance on behalf of the Respondent.
 - (ii) The Judge identified the issues as being "*whether the Appellant met the requirements of the Immigration Rules*" (paragraph 8) and "*whether a requirement that the appellant should return to Nigeria would... be unlawful*" on human rights grounds (paragraph 9).
 - (iii) In this latter context the Judge acknowledged the case to be based on "*The relationship... to her husband, the time... spent in this country and the concerns set out in the application form as to circumstances she would face upon return to Nigeria*" (paragraph 9).
 - (iv) The Judge noted that in her oral evidence the Appellant confirmed that she suffered from depression as identified in the psychiatric report of 5 January 2022, but she had not since that report sought assistance from her GP because she did not wish to be put on medication (paragraph 11).
 - (v) The Appellant's counsel recognised the significance of the two previous determinations and acknowledged the relevance of the guidance in **Devaseelan* [2002] UKIAT 702** (paragraph 21).
 - (vi) Further to this, counsel emphasised a deterioration in mental health (as per the psychiatric report) (paragraph 22). In this context it was said that issues were raised including access to facilities in Nigeria (paragraph 23). Otherwise with regard to any risk of harm in Nigeria, the oral submission appears to have been limited to the risk of kidnap of the Appellant's husband (paragraph 23), although it was also argued that it was likely that the Sponsor would not return to

Nigeria resulting in separation of the couple (paragraph 24). This also raised questions as to how the Appellant would cope on her own including facing destitution and that *“Societal issues would apply”* (paragraph 24).

(vii) The Judge, having noted the Respondent’s reliance on the previous appeal decisions, and having referenced aspects of those decisions (paragraphs 26 and 27), identified counsel’s submission *“that there had been a variation in the circumstances”*, identifying in particular the mental health of the Appellant (paragraph 28), and that *“The appellant also contended that she has a certain fear on return to Nigeria”* (paragraph 30).

(viii) The Judge concluded that such matters did not constitute *“additional evidence which would justify a departure from the previous judicial decisions”* (paragraph 31). He went on to refer to the findings in the Appellant’s first appeal (paragraph 32), adding *“I do not find that further factors raised by the Appellant justify any alternative decision by this Tribunal”* (paragraph 33).

(ix) The Judge stated his conclusion: *“The Immigration Rules are not met and the decision with respect to the most recent application was proportionate. The public interest in that regard is not outweighed”* (paragraph 33).

18. In challenging the decision of the First-tier Tribunal, the Appellant in substance raises three grounds of appeal (albeit in some respects with a degree of overlap):

(i) The Judge failed to make a finding in respect of the applicability of paragraph EX.1.(b) of Appendix FM (Grounds of Appeal at paragraphs 8-9).

(ii) The Judge failed to make a proper Article 8 assessment (paragraphs 10-19).

(iii) The Judge took an unduly restrictive approach to the guidance in **Devaseelan**, in particular in failing to consider *“medical records and country expert report”* and associated arguments (paragraphs 20-25). (For the avoidance of any doubt, the ‘medical records’ before the First-tier Tribunal amounted to no more than the psychiatric report of 5 January 2022. The ‘country expert report’ was a report by Professor M I Aguilar dated 30 May 2023.)

19. With one caveat, I do not accept there to be any merit in Ground (i).

20. Paragraph EX.1.(b) was expressly considered and found not to apply in the Appellant’s first appeal (paragraph 28). Similarly so in the second appeal (paragraphs 26-27). In the instant appeal the Judge both stated that there was no justification to depart from the previous decisions, and in terms stated that the Immigration Rules were not met (see at

paragraphs 32 and 33). In the circumstances, in my judgement this is adequate reasoning: the reader is left in no doubt that the Judge was adopting the findings and reasons in the earlier appeals because he was not persuaded that there was anything new or different that justified an alternative outcome.

21. Necessarily this observation carries the caveat that if there is merit in Ground (iii) the Judge's reliance on the earlier evaluations is contaminated by such error.
22. Much the same observation, with the same caveat, applies in respect of Ground (ii).
23. Inevitably this moves the focus to Ground (iii).
24. In substance it is the Appellant's case that the medical evidence by way of the psychiatric report of 5 January 2022, and country information by way of the expert report of 30 May 2023, were such as to justify moving away from the 'starting point' of the previous appeal decisions. Ground (iii) pleads that the Judge failed to engage with this evidence and the submissions based on it.

Psychiatric report

25. The Appellant relied upon a psychiatric report dated 5 January 2022 prepared by Dr S Dhumad. Dr Dhumad opined that the Appellant's presentation was consistent with a diagnosis of Recurrent Depressive Disorder, and a current Moderate Depressive Episode, with panic attacks. She characterised the Appellant as being "*mentally unstable and hopeless*". It was her opinion that "*the risk of suicide will be significant in the context of deportation*". Moreover it was opined that the Appellant "*is very likely to suffer serious deterioration in her mental health if she were to be returned to Nigeria*".
26. It is clear that this report was relied upon in seeking to persuade the First-tier Tribunal to take a different approach from the earlier appeals: see paragraph 28 –

"[Counsel], entirely understandably, sought to persuade me that there had been a variation in the circumstances of the appellant in relation to those circumstances previously asserted before both Judges Mozolowski and Kainth, who had both considered appeals by the appellant. The mental health of the appellant, and a stated deterioration, had been asserted in that respect."

27. The Judge dealt with the submission in this manner:

"28. ... Whilst I accept that the report indicates that the appellant continues to be depressed and suffers degrees of panic when thinking of her possible return to Nigeria, I do not find that such further evidence gives good reason to depart from the overall views

expressed by Judge Mozolowski and thereafter confirmed by Judge Kainth as the basis for his decision in 2019.

29. ... it is understandable that the appellant has depressive episodes and that she does not want to return to Nigeria without her husband. Such matters were also considered by Judge Mozolowski and her approach was subsequently confirmed by Judge Kainth. I do not find that such circumstances have altered. ..."

28. However, as Ms Yong pointed out, Judge Mozolowski in the Appellant's first appeal was not presented with any evidence or submissions relating to mental health problems. As such, Judge Kainth did not confirm – and could not have confirmed – Judge Mozolowski's approach in this regard. It is also apparent that Judge Kainth was not presented with any evidence or submissions in respect of any mental health diagnosis.
29. The Judge's approach was founded on a fundamental misconception of fact amounting to an error of law. The Judge wrongly conceived that an argument in respect of mental health had previously been advanced, and as such the medical evidence now presented did not represent any sort of change of circumstance.
30. Whilst, in my judgement, there remains a substantial issue as to whether or not the medical evidence now produced would justify a different outcome from the earlier appeals, it is not possible to say that such evidence was immaterial to a proper consideration of the Appellant's case. Accordingly I accept that the error of law was material.

Country expert report

31. The Appellant filed a 'country information' report dated 30 May 2023 prepared by Professor Aguilar (Appellant's First-tier bundle, pages 172-193).
32. It is to be acknowledged that there is no specific engagement with the country expert report discernible in the Decision of the First-tier Tribunal.
33. To understand the relevance of the report, and to determine whether not engaging with it amounts to a material error of law, it is appropriate to have regard to the following.
 - (i) In the Appellant's first appeal, beyond the disruption to family/private life established in the UK (including IVF treatment), any difficulties in respect of returning to Nigeria were presented as being essentially a lack of familiarity (especially on the part of the Sponsor), and limited economic opportunity: see paragraphs 13-14.
 - (ii) In the Appellant's second appeal no different matters were advanced in this regard. The purported new matter was that the Appellant was undergoing fertility treatment – but the Judge noted

that this had also featured in the earlier appeal: see paragraphs 20-23.

(iii) In the Appellant's application, as quoted at paragraph 6 above, the Appellant stated, amongst other things:

"...My husband's family and cultural network is such a network that disapproves of women that struggle to give birth. I will be subjected to unprecedented levels of harassment, bullying and disapproval which may lead to torture and persecution of my physical and mental person by his family, social and cultural network. It may even lead to my death if I don't keep myself away from these people. ... I have received several threats to my life from my husband's family as well as unrelenting curses and verbal abuses."

(iv) In the Appellant's witness statement signed on 23 May 2023 she states at paragraph 8:

"...I want to stay in the UK with my husband because sending me to Nigeria will put my life at risk. This is because the culture of Nigeria takes a dim view of women who could not bear children for their husbands to the extent that they will be put through serious level of abuse, violence and threat of violence and sometimes death. My husband comes from a royal family, and it is taboo for wives in that royal family not to bear children for their husbands. As a result, I have suffered abuse and received threats from his family."

(v) It is not apparent from the Judge's summary of the oral evidence (paragraphs 10-20) that the Appellant was asked any specific questions supplementary to her witness statement about societal hostility to her as a childless woman. Her evidence went no further than claiming that she and the Sponsor had been disowned by his family because of not having children, referencing some verbal abuse from her mother-in-law during a visit which, in context, must have been some years previously, and a vague reference to her mother-in-law having "*sent an unpleasant letter to an individual here*" (paragraph 13). It seems to me potentially significant that in the context of being asked about the possibility of internal relocation the Appellant made no reference to societal hostility in consequence of being childless, referring instead to general issues of security and danger with regard to kidnapping and killings (paragraph 16).

(vi) The Sponsor's witness statement signed on 23 May 2023 does not refer to the Appellant being at risk from anybody on the basis of being childless: nor does it refer to any threats from the Sponsor's family at all. There is however a reference to the general security situation in Nigeria: the sponsor has heard of bombings and killings and does not think that that is an environment to which he would wish to relocate

(paragraph 10). The Sponsor seemingly added nothing further in this regard at the hearing: see Decision at paragraphs 19-20.

(vii) The Appellant's Skeleton Argument of 31 May 2023 argues, at paragraph 16 that not having had children places both the Appellant and the Sponsor at risk:

"It is further submitted that the mere reason that the A and the husband has not had children places them at a risk on their return to Nigeria. In particular, the A is likely to be subject to witchcraft. At paragraph 37 of the country expert report, Prof Mario cites:

'Thus, a woman who cannot bear children is perceived as somebody who has been cursed by the spirits and is rejected by others. She becomes a dangerous person because she is considered a witch, somebody who would age without children and will not have descendants. The understanding of witchcraft is central here, understanding that suggest that witches are dangerous for a community because they stay on their own, without bearing children and because such existence curse others and cause illness and death to others. I am arguing here that the fact that the Appellant has no children would put her life at risk in Nigeria, first in the region where she comes from and for traditionalists throughout Nigeria.'"

(I pause to observe that contrary to the submission, the paragraph quoted from Professor Aguilar's report does not identify any risk to a childless man. Nor does the report suggest that the Appellant will be 'subject to witchcraft' rather than being 'considered a witch'.)

(viii) Counsel's submissions on behalf of the Appellant at the hearing included "*adopt[ing] the terms of the skeleton argument*" (Decision at paragraph 21). However, beyond this there does not appear to have been any more specific reference to the report of Professor Aguilar, or any further articulation of risk as a childless woman: the only further reference to risk is in respect of a claimed risk to the Sponsor of kidnap (paragraph 23). Otherwise the submissions in respect of the situation in Nigeria seemingly related to access to medical facilities, welfare, and the availability of housing.

34. From the foregoing it is apparent that there is substance to Ms Yong's criticism of the Judge's statement at paragraph 30 that, in respect of "*a certain fear on return*" the Appellant had "*expressed similar concerns in the past*". It is not identifiable that the sort of concerns expressed in the application form of 29 December 2021, paragraph 8 of the Appellant's witness statement of 23 May 2023, and articulated at paragraph 16 of the Skeleton Argument had previously been raised.

35. Further, I acknowledge in principal that where a concern about conditions on return that might inform a protection claim are raised in the context of an Article 8 appeal, such matters cannot be disregarded simply on the basis that no protection claim has been made.
36. I note that the Judge recognised that part of the Appellant's case was "*the concerns set out in her application form as to circumstances she would face upon return to Nigeria*" (paragraph 9).
37. The Judge purportedly addressed those concerns at paragraph 30:
- "The appellant also contended that she has a certain fear on return to Nigeria. However, the appellant has not made any application seeking protection in this country. She expressed similar concerns in the past and of course the option to make a protection claim rested with the appellant. Hitherto no such claim has been made. She has been professionally represented."*
38. As noted above, it is inaccurate to state that the Appellant expressed similar concerns in the past. As regards the Judge's accurate observation that the Appellant had not made a claim for protection – it is unclear how this was factored into his reasoning. For example, it is unclear whether the Judge considered this of significance as a matter of principle such that he should not have regard to the claimed facts upon which such a claim might be based; or whether, perhaps, the Judge considered the failure to make a protection claim undermined the Appellant's credibility in respect of such matters.
39. In this latter context I acknowledge that the materials in the appeal potentially give scope for some significant reservation as to whether the Appellant genuinely holds a fear of societal hostility on the basis that she is a childless woman. Such a fear appears only ever to have been articulated by the Appellant in written documents prepared on her behalf – the application form, and her appeal witness statement. Given the opportunity to speak for herself at the hearing, she did not express such fears directly, or otherwise 'come up to proof' as to the nature and frequency of any threats. Nor had she articulated any such fears during the course of the earlier appeals. Her husband, the Sponsor, did not offer any evidence by way of either his witness statement or his oral testimony of any threats from his family, or anyone else, to the Appellant because she was childless; nor did he otherwise provide any contextual corroborative support for the notion that the Appellant had such a fear.
40. Further, if it exists at all, it is not suggested in Professor Aguilar's report that hostility towards childless women is a new or recent phenomenon in Nigeria. Yet such a phenomenon, now relied upon, was not brought to the attention of either of the previous Tribunals. It follows, in accordance with the **Devaseelan** guidelines, that it is a matter that requires to be treated with circumspection.

41. But, crucially, if there is a credibility issue here it is a matter that should have been the subject of reasoned consideration and findings by the First-tier Tribunal.
42. On balance I am persuaded that the Judge erred in not addressing a submission and evidence relied upon by the Appellant.
43. I discussed at some length with the representatives whether any error in this regard was material. Irrespective of any issue over the credibility of the Appellant in raising this matter, 'materiality' essentially turned on whether any weight could be accorded to the expert opinion of Professor Aguilar on this point.
44. Curiously, the instructions given to the expert (set out at paragraph 12 of his report), did not invite an opinion on the risk to the Appellant as a childless woman. Be that as it may, Professor Aguilar noting (at paragraph 18) the contents of the Appellant's witness statement went on to offer an opinion in any event (paragraph 36 *et seq.*).
45. The sources cited as having informed the expert's opinion are essentially academic works and/or articles dating back to the 1970s. In particular reference is first made to a seminal work by Sir E. E. Evans-Pritchard (see footnote 7), before there is a discussion on different theories on thought patterns with references dating back to 1926 (footnote 14). Much of this seems to be concerned with an attempt to understand the thought patterns of different cultures - a 'tension of understanding' - and consideration of rationality in belief systems: it has little obvious direct relevance to the issue at hand, and has the flavour of paragraphs borrowed from an already written article or thesis. There is reference to literature discussing and comparing different schools of thought. Thus, the more recent articles do not obviously contain any new field research but discuss the theories of earlier writers: e.g. see footnote 20. No doubt this is of interest to scholars of cultural history.
46. However, what is missing is any article or other reference to recent field research on the phenomenon. More particularly the expert does not identify a single recent example of such behaviour. For example, when the expert moves away from the academic discussion to assert, at paragraph 47, that "*Accusations of witchcraft and poisoning are endemic in Nigeria*", and speaks as to the consequences of such accusations, he cites by way of example a collection of works published in 1963. He then returns to musings on the meaning of witchcraft and methodologies of interpretation and understanding.
47. There is then a leap, in my judgement without any apparent reason such that it may be understood, to a conclusion in these terms:

"... the Appellant's life will be at risk because of her being a childless woman, a social condition associated with witchcraft accusations, and perceived as a characteristic of witches. In those terms, it is my

conclusion that the Appellant's life is at risk if she returns to Nigeria." (paragraph 52).

48. Moreover, in respect of paragraph 37 (cited in the Appellant's Skeleton Argument), I can identify no reference in any of the discussion on witchcraft to a source document that supports the notion that women unable to bear children are perceived as cursed, are rejected, or become dangerous because they are considered witches. If such a phenomenon exists, there is no attempt to provide or reference any evidence, or offer any opinion as to the current prevalence in the region of origin, or of the current prevalence of so-called 'traditionalists' throughout Nigeria.
49. Although I note that Professor Aguilar expressly acknowledges that he is "*arguing here that the fact that the Appellant has no children puts her life at risk in Nigeria*", he has not provided any contemporary evidential foundation for such an opinion, and has otherwise not explained the basis for such an opinion cogently.
50. Indeed the failure to articulate any adequate reason for his opinion in this regard, and the failure to identify any evidential foundation for his opinion in this regard, significantly undermines the reliability of Professor Aguilar's report in all respects because it raises doubts as to methodology.
51. Without more, I reject the notion that there is generally at large in the sophisticated and modern cities of Nigeria (there being no evidence that the Appellant, with or without the Sponsor, could not afford to relocate to such a place), a perception that childless women are witches, and more particularly that in consequence childless women are generally at risk of persecutory treatment or death, or that otherwise there would thereby be insurmountable obstacles to establishing family life in Nigeria, or that there would thereby be very significant obstacles to the Appellant integrating into Nigeria were she to leave the UK.
52. In such circumstances I am not persuaded that the First-tier Tribunal Judge's error in not engaging with the submission in respect of the claimed risks to the Appellant as a childless woman was material. Even if the Appellant has a genuine subjective fear in this regard - about which for the reasons identified above there must at the very least be some considerable doubt - she did not provide before the First-tier Tribunal an evidential foundation to justify such a concern.
53. In so far as Professor Aguilar's report addressed concerns about access to medical facilities, welfare, and housing I note the following.
 - (i) The Appellant does not make use of available medical facilities in the UK: notwithstanding the diagnosis and recommendations for treatment set out in the psychiatric report, the Appellant has not sought any support or intervention through her GP or otherwise, stating that she does not wish to take medication. In such circumstances it is not apparent what medical facility she might wish to avail herself of in the event that she were in Nigeria.

(ii) As regards welfare and accommodation, neither the Appellant nor the Sponsor provided significant evidence to the First-tier Tribunal as to their financial circumstances. Accordingly there was no meaningful evidence demonstrating that the Appellant would likely have to rely on welfare, or that the cost of accommodation could likely not be met. In the absence of such evidence, even if both the Appellant and the Sponsor were to return to Nigeria and neither were to find employment, there was no evidence that they did not have access to savings, and/or could not liquidate the Sponsor's home in Guildford such that they would be self-supporting. Alternatively, if the Appellant were to return alone, there was no evidence that the Sponsor could not continue to support her through his employment in the UK and/or through any savings.

54. As such there was no evidence that the general concerns about such matters as medical facilities, welfare, and housing expressed in the expert's report were of specific relevance to the Appellant's circumstances. In the absence of any supporting evidence that these might be issues for the Appellant were she to return to Nigeria, it cannot be said that there was a material error in overlooking such passages.

Conclusion on Error of Law

55. Drawing the above matters together I find that the First-tier Tribunal did err in law in the approach to the relevance of the psychiatric report. This was potentially relevant to the issues in the appeal, and in particular with regard to whether there was a basis to depart from the findings and conclusions in the earlier two appeals. I find no other material error of law. However, the error identified in respect of the psychiatric report is sufficient to require that the Decision of the First-tier Tribunal be set aside.

Remaking the Decision

56. The First-tier Tribunal, having found that the Appellant had "*not brought forward additional evidence which would justify departure from the previous judicial decisions*" (paragraph 31), in substance simply adopted and affirmed the earlier decisions. As such there was no contemporaneous consideration of the Appellant's and the Sponsor's circumstances. However, if – as I have found – the medical evidence provides a potential basis to depart from the earlier findings, it becomes necessary for there to be a reconsideration of the Appellant's and the Sponsor's circumstances in light of such evidence. This will require the hearing of evidence and fact-finding in the usual manner. It seems to me that the Appellant has not in the current proceedings had a full and proper hearing in this regard.
57. Accordingly, and not without some considerable hesitation, I have concluded that the appropriate forum for remaking the decision in the appeal is the First-tier Tribunal. Moreover, notwithstanding my observations in respect of the other aspect of the challenge under Grounds (iii), I do not consider it appropriate to limit the scope of the re-hearing.

58. However, in this latter regard the Appellant – and presumably the Respondent – will no doubt wish to take on board my observations as to the potential credibility issue in respect of the genuineness of any subjective fear arising from being a childless woman, and my observations in respect of the lack of cogency in the expert opinion on this issue. This may inform the extent to which reliance on this point is to be continued, and/or the extent to which any further evidence might be filed. Similarly, the Appellant may wish to consider the extent to which her failure to file any evidence as to her financial circumstances potentially limits the scope for pleading the likelihood of facing poverty and destitution if returned to Nigeria: in this context it might reasonably be expected that the Respondent will invite the next Judge to reject any such submission in the absence of detailed financial disclosure.
59. I do not propose to make any specific Directions in respect of any of these matters: it is likely that they will be covered by standard directions issued by the First-tier Tribunal in due course; alternatively the First-tier Tribunal can choose to issue specific Directions as it sees fit.

Notice of Decision

60. The decision of the First-tier Tribunal contained a material error of law and is set aside.
61. The decision in the appeal is to be remade by the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Buckwell, with all issues at large.
62. No anonymity order is sought or made.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

30 November 2023