



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006723

First-tier Tribunal No:
PA/51178/2021
IA/05199/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10 September 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**IJ
(ANONYMITY DIRECTION MADE)**

and

Secretary of State for the Home Department

Appellant

Respondent

REPRESENTATION

For the Appellant: Mr N Uddin, instructed by Samuel Louis Solicitors
For the Respondent: Mr N Parvar, Senior Home Office Presenting Officer

Heard at Field House on 9 September 2024

DECISION AND REASONS

As the underlying appeal arises from a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

1. The appellant is a national of Nigeria. Her appeal against the respondent's decision of 17 November 2020 to refuse her claim for international protection was dismissed by First-tier Tribunal ("FtT") Judge Abebrese ("the judge") for reasons set out in a decision dated 16 August 2022.
2. The appellant's claim was summarised at paragraph [4] of the decision:

"The appellant claims asylum on the basis of her membership of the Indigenous people of Biafra otherwise known as IBOP and thus she fears that she will face persecution/death if she were to return to Nigeria. The appellant is also a member of the Igbo who are known supporters for the independence of the Biafra people."
3. The judge set out his findings and conclusions at paragraphs [11] to [18] of the decision. The judge found that the appellant is not a credible witness but said at paragraph [14] of the decision that the appellant's decision to join IPOB was a last attempt to remain in the UK, and at paragraph [15], that the appellant joined for immigration purposes only as a measure to remain in the UK. Although not set out in clear terms, on one reading, that appears to be a finding that the appellant is a member of IPOB. Nevertheless the judge went on find that the appellant does not have a genuine fear of persecution or face any risk on return to Nigeria on the basis of her membership of IPOB. The judge dismissed the appeal.
4. The unduly lengthy grounds of appeal lack focus and at paragraph [7] refer to a passage in the decision of the FtT that does not feature in the decision of Judge Abebrese. In any event, the appellant, in summary, claims the judge failed to make any clear finding as to the appellant's membership of IPOB, which was proscribed a terrorist organisation in 2017 by the Nigerian government. The judge implicitly accepted the appellant is a member of IPOB, and even if that membership was opportunistic, the judge failed to consider whether those activities may nonetheless have brought or may bring the appellant's activities to the attention of the Authorities. Furthermore the judge failed to consider the activities the appellant may wish to pursue on return and how she will be perceived on return to Nigeria, in accordance with the test set out in *HJ (Iran) v SSHD* [2011] AC 596.
5. Permission to appeal was granted on all grounds by Judge Cox on 19 October 2022. Judge Cox said:

"It is arguable that the judge's findings and reasoning are unclear. If, as asserted in the grounds of appeal (see para 14), that the Home Office Policy Guidance Note etc shows that anyone associated with IPOB is at risk, the judge arguably erred in law in failing to make a finding as to whether the Nigerian authorities may associate the Appellant with IPOB."
6. The respondent has filed a Rule 24 response. Neither party provided me with a copy of the respondent's Guidance Note which is referred to in paragraph [14] of the Grounds of Appeal and which the appellant claims is objective evidence that anyone associated with IPOB is at risk on return to Nigeria.

7. In any event, Mr Parvar accepted, quite properly in my judgement, that even if one proceeds upon the premise that the judge made a finding that the appellant is a member of IPOB, but that is an opportunistic attempt to bolster an otherwise weak claim, it is difficult to discern from the decision whether the judge had in mind or correctly applied the test set out in *Hj (Iran)* in the assessment of the risk upon return. He accepts the judge did not consider how the appellant will conduct herself on return and how the Nigerian authorities may react to what she does or has done in the United Kingdom.
8. Although it may otherwise have been open to the judge to find that the appellant's membership of IPOB is entirely opportunistic and does not represent any genuinely held political opinion, I accept the judge failed to make clear findings as to the appellant's membership of IPOB and the risk upon return, applying the test set out in *Hj (Iran)* such that the decision of the FtT must be set aside.
9. As to disposal, I have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, I have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). The appellant should have a proper opportunity to have all aspects of her claim considered by the FtT. Given that the decision on the appeal needs to be taken afresh and given the nature of the error into which the FtT fell, I have concluded that the just and proper course is to remit the appeal to the FtT for rehearing with no findings preserved.

NOTICE OF DECISION

10. The decision of First-tier Tribunal Judge Abebrese is set aside with no findings preserved.
11. The parties will be informed of a further hearing before the First-tier Tribunal in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 September 2024