IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004728

First-tier Tribunal No: PA/56080/2022
LP/01637/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 January 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

POE (NIGERIA)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Nnamani, instructed by JDS Solicitors
For the Respondent: Mr Melvin, Senior Presenting Officer

Heard at Field House on 12 January 2024

Order Regarding Anonymity

Anonymity was ordered by the First-tier Tribunal.
No application was made to discharge that order and it remains in force.

DECISION AND REASONS

1. The appellant appeals with the permission of First-tier Tribunal Judge Galloway against the decision of First-tier Tribunal Judge K Swinnerton ("the judge"). By his decision of 5 October 2023, the judge dismissed the appellant's appeal against the respondent's refusal of his claim for international protection.

Background

2. The appellant entered the United Kingdom lawfully, on 6 November 2021. He held entry clearance as a visitor to attend the COP26 conference. His leave to enter in that capacity expired on 18 April 2022. He claimed asylum six months later, on 4 September 2022. He stated that he was sought by the Nigerian authorities on account of his role as a Public Relations Officer ("PRO") in the Indigenous People of Biafra ("IPOB") and that he feared persecution at their hands.

3. The respondent interviewed the appellant and concluded that she did not believe his account. The appellant appealed to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

4. The judge heard oral evidence from the appellant and from a witness who occupied a senior role in the IPOB in the UK and confirmed that the appellant's activities had continued in this country. The judge heard a submission from the Presenting Officer and from Ms Nnamani before reserving his decision.

5. In his reserved decision, the judge did not accept the account given by the appellant about his political activities in Nigeria or any difficulties which had arisen therefrom. He had 'difficulty' with the suggestion that the Nigerian authorities had detained the appellant's pregnant wife for six months only to release her shortly before she gave birth. He noted that there was not said to have been any interest shown after her release: [19]. He considered that the appellant's account of his role in the IPOB in Nigeria was vague and lacking in detail and he attached little weight to a letter which purported to confirm that role: [21]. He did not accept that the appellant was a member of the IPOB, or the PRO to that organisation, in Nigeria: [23].

6. The judge noted that the appellant also relied on *sur place* activity undertaken for the IPOB in the UK. The judge accepted that the appellant had attended some protests in the UK but he did not accept that his attendance at any such protests had brought the appellant to the attention of the Nigerian authorities. His purpose in attending those protests had been to bolster his asylum claim and he was not 'a genuine member of the IPOB in the UK.'

The Appeal to the Upper Tribunal

7. The appellant's grounds of appeal submit that the judge erred in law in failing to give adequate reasons for rejecting the appellant's account of events in Nigeria and that he failed to consider material matters in relation to the sur place activity and the risk arising therefrom. Judge Galloway considered both grounds to be arguable.

8. The Secretary of State did not file a response to the grounds of appeal under rule 24 but Mr Melvin did file a helpful skeleton argument in which he invited the Upper Tribunal to uphold the decision of the judge.

9. I heard submissions from Ms Nnamani and Mr Melvin before reserving my decision on the appeal. I will not rehearse those submissions but will consider them in my analysis of the grounds of appeal.

Analysis

10. Paragraph 19 of the judge's decision is in the following terms:

> I have difficulty in accepting that the authorities would detain the Appellant's pregnant wife in a police station for six months and then release her when she was near to the point of giving birth. When asked in the asylum interview (at question 135), whether the authorities had approached the Appellant's wife again (since release) searching for the Appellant, he answered: "No they have not, they have spies around, so if the person they are targeting surfaces they would know". I do not find the Appellant's account of the detention of his wife and the subsequent lack of any visit of the authorities to his family home to be plausible and I do not believe it. I find that the Appellant's wife was not detained as claimed and nor do I find that the Appellant's home was visited by the authorities as claimed. I did not find that Appellant's evidence at the hearing to be credible in this respect.

11. I accept Ms Nnamani's overarching submission in relation to this paragraph, which is that the judge failed to consider the plausibility of the appellant's account through the spectacles provided by the country information: Y v SSHD [2006] EWCA Civ 1223 refers. The background material showed that the IPOB is a proscribed organisation in Nigeria and that its members and their family members have been targeted by the authorities. That was the prism though which the appellant's account was to be considered but the only reference by the judge to the country information before him was in his record of Ms Nnamani's submissions. It is not clear that the judge would have reached the same conclusion if he had demonstrably taken account of the country information about the treatment of the IPOB.

12. As I suggested to Ms Nnamani at the hearing, it might be thought that [19] of the judge's decision expresses his conclusion that the Nigerian authorities had acted inconsistently by, on the one hand, detaining the appellant's pregnant wife for months but then, on the other hand, showing no interest in the family thereafter. If that is the correct interpretation of the judge's [19], it gives rise to a further problem. As Ms Nnamani submitted, the judge was wrong to suggest that the appellant's account was that no further interest had been shown in the family. On the contrary, the appellant had stated in his interview that his brother had been detained after his wife's release, and his brother had died in detention. Whilst the judge recorded that evidence at [7] of his decision, he failed to take it into account in his subsequent analysis. Mr Melvin submitted orally that this was a new point which was not raised in the grounds but I do not consider that to be the case; Ms Nnamani's complaint in ground one is that the judge's analysis in [19] is inadequate when set against the evidence in the case.

13. Ms Nnamani's criticism of the judge's analysis of the appellant's account of his role in the IPOB in Nigeria is also made out. The judge noted that the respondent had stated that the appellant's account was vague and lacking in detail. At [21], he said 'I agree and so find'. There was, he found, 'little detailed information about the specific role that he claims to have undertaken as the PRO whilst in Nigeria'. The difficulty with that finding is that it was submitted by Ms Nnamani that the appellant had actually given plenty of information about his activities for the IPOB in Nigeria. She took the judge to the relevant sections of the interview in support of that submission, particularly from question 203 onwards.

14. The judge was obviously not obliged to accept that submission, but he was required to engage with it. That did not necessarily require him to consider the relevant answers seriatim and to explain why in each respect he considered them to be vague or lacking in detail but there was here a dispute about the level of detail provided and something more was required by way of reasoning than what appears at [21]. The adequacy of reasoning is obviously to be gauged by assessing whether it permits the unsuccessful party or an appellate tribunal to understand the result. The reasoning at [21] does not satisfy that test; I cannot understand from the judge's reasons why he considered the answers at interview to be insufficiently detailed. The reasons given amount to little more than an acceptance of the respondent's submission in this regard.

15. The judge's consideration of the appellant's sur place activity was also legally insufficient because it failed to demonstrate any consideration of the background material. The judge accepted that the appellant had undertaken activities on behalf of the IPOB in the United Kingdom but he did not consider in light of the evidence before him whether the appellant would be likely to face ill treatment on return to Nigeria as a result.

16. There was some evidence before the judge that people of Biafran ethnicity had been stopped and subjected to questioning on return to Nigeria. The background material clearly reflected the attempts by the Nigerian authorities to monitor and disrupt the activities of the IPOB. An article from Amnesty International which was before the judge and was written three months before the hearing reflected that group's criticism of the Nigerian state for the treatment of those suspected of IPOB activities. This evidence was relevant for the purpose of evaluating whether the appellant would be at risk on account of his IPOB activities in the UK even if those activities were merely a device for securing asylum in the UK. The judge failed to take that evidence into account in concluding that the appellant's sur place activity would not place him at risk on return. The analysis of the sur place claim required by YB (Eritrea) v SSHD [2008] EWCA Civ 360 was deficient as a result.

17. Mr Melvin submitted orally and in writing that the judge's decision was not irrational or perverse and that he had reached findings on the evidence which he was entitled to reach; he was not required to deal with every piece of evidence or submission. I appreciate that it was for the judge to find the facts and that restraint is required from an appellate tribunal before concluding that a judge who heard the evidence has erred in his evaluation of that evidence. I have reminded myself of what was said by Lewison LJ in Fage v Chobani [2014] EWCA Civ 5; [2014] FSR 29 and Volpi v Volpi [2022] EWCA Civ 464; [2022] 4 WLR 48 in this regard, and I have also taken account of what was said by Baroness Hale in SSHD v AH (Sudan) [2007] UKHL 49; [2008] 1 AC 678. Ultimately, however, I have come to the clear conclusion that the signal feature of the decision under appeal is the absence of any analysis of the background material, whether in relation to the original or the sur place claim. The judge's failure to consider that material before reaching his findings on the plausibility of the appellant's account and the risk arising from his sur place activity mean that the decision cannot stand.

18. Mr Melvin also submitted that a more recent CPIN shed a different light on the treatment of IPOB members and Biafrans. I have considered both documents and I accept Mr Melvin's submission in that regard. Whether one considers the older or the newer CPIN, however, the background material still paints a fairly bleak

picture of the treatment of these groups, and it cannot realistically be said that any error on the part of the judge was rendered immaterial by the more recent CPIN. If, as the appellant claims, he is actively sought by the authorities, who have already detained his wife and killed his brother, he is arguably at risk on return to Nigeria. As such, I find that the errors into which the judge fell were material to the outcome and I set aside the judge's decision.

19. The appellant's claim must be assessed afresh. In the circumstances, I accept Ms Nnamani's submission that the proper course is to remit the appeal to the FtT to be heard de novo by a judge other than Judge K Swinnerton.

Notice of Decision

The decision of the First-tier Tribunal was erroneous in law and is set aside in full. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge K Swinnerton.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 January 2024