



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-002958

First-tier Tribunal Nos: PA/53732/2023  
LP/00631/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 4<sup>th</sup> November 2024**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**OM  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Walsh, Counsel, Rodman Pearce Solicitors Ltd

For the Respondent: Mr T Melvin, Senior Presenting Officer

**Heard at Field House on 9 September 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and* any member of her family, 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 her family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Dineen dated 14 May 2024 dismissing her protection and human rights appeal against a decision by the Secretary of State dated 2 April 2024.

**Background**

2. The appellant is a national of Nigeria. She came to the United Kingdom as a student in September 2015. On 9 June 2021 she claimed asylum. It is accepted by the respondent that the appellant is a victim of domestic violence and that she is a member of a “particular social group”. The appellant asserts that her ex-husband is a chieftain and has wide power and influence which would enable him to locate her anywhere in Nigeria. Further, there is no sufficiency of protection and internal relocation is not open to her. The Secretary of State’s position is that the appellant’s account is not credible. There is freedom of movement in Nigeria and the appellant could live away from her former husband who would not be able to locate her. Further, sufficiency of protection is afforded by the Nigerian authorities to people at risk of criminally adverse attention from others.

### **The Judge’s Decision**

3. The appellant and her daughter gave oral evidence. The judge found that the respondent did not undermine the appellant’s account. The judge found that the appellant would not be at risk of domestic violence should she return to Nigeria and come into the proximity of her ex-husband because he left his children to be collected by her in his absence and has departed the United Kingdom with no further contact with her. The judge found that this behaviour was consistent with the appellant’s ex-husband “washing his hands” off the appellant and their three children. The judge then went on to consider the situation in the alternative and found that the appellant’s husband would not have the inclination or resources to track her down to another part of Nigeria because he only has importance in his local community. The judge also found that, albeit imperfect, there is a functioning system of policing and justice in Nigeria and there is no evidence that the appellant would be denied protection. Finally he found that internal relocation was open to the appellant because she would be able to support herself in another part of Nigeria.

### **Grounds of appeal**

4. The grounds of appeal were drafted by Mr Walsh, Counsel who appeared before me in the error of law hearing.
5. The grounds are drafted as follows:
6. The Tribunal has erred in failing to give any appropriate weight to the evidence of the past ill-treatment which can be a powerful indication of what occurs in the future. The Tribunal has further erred in having no proper regard for the high status of the appellant’s ex-husband. The judge fails to have regard for the intensity of the harm visited on the appellant by her ex-husband.
7. The judge fails to have any proper regard for the appellant’s vulnerabilities as a single woman with two children. The judge failed to give any consideration to the report from the country expert who concluded that there was a risk of her suffering discrimination and hardship.
8. The finding that the ex-husband may have influence as a result of his wealth and status as a chief of the tribe should have led the Tribunal to the finding that the appellant faces a risk from her ex-husband at a local level. The difficulties that the appellant would face as a single woman are factors which require determination in the context of internal flight.

## Response

9. The respondent provided a Rule 24 response opposing the appeal.
10. Both representatives made submissions which are recorded in the Record of Proceedings.

## Grounds

11. On first reading Mr Walsh's first ground appears to be a quarrel with the weight that the judge gives to various factors as the grounds are worded in the language of "appropriate weight". Manifestly the question of weight is a matter for the judge and unless a judge makes findings of fact which are unsupported by a view of the evidence or irrational or inadequately reasoned there will be no error of law in relation to those findings. Mr Melvin submitted in the Rule 24 response and oral submissions that the judge was aware of the allegations of mistreatment, took them into account and found that the treatment had occurred on four occasions. He submitted that the judge at [39] gave clear reasons for concluding that there is no real risk of further domestic violence in future even if the appellant should return to Nigeria and come into proximity to her ex-husband because of her ex-husband's behaviour towards the appellant when they were both in the United Kingdom. It is said that the Tribunal was entitled to reach this finding on the evidence. The grounds identify no legal error and amount to a mere disagreement.
12. I asked Mr Walsh at the outset of the hearing to clarify which legal error he stated that the judge had made when he made the finding at [39] and where this was pleaded in the grounds. Mr Walsh stated that the error identified in the grounds is that the judge had failed to take into consideration material evidence and had the judge taken that evidence into account he may well have come to a different conclusion about the risk of further domestic violence.
13. He also clarified that he was asserting there was a misdirection in law because when assessing the risk of future ill-treatment the judge should have had regard to previous ill-treatment. In summary, Mr Walsh's submission was that the material evidence that the judge failed to take into account was the seriousness, intensity, duration and persistence of the previous ill-treatment which was substantial.
14. The grounds are not particularly helpfully drafted and I have had regard to Latayan v Secretary of State for the Home Department [2020] EWCA Civ 191. This is authority for the fact that a Tribunal should be slow to intervene in finding an error of law in a judge's factual findings and this is also authority for the need for procedural rigour. Appellants should not be entitled to raise completely new grounds of appeal at a hearing. Nevertheless, I am satisfied that Mr Walsh was in fact seeking to refresh his arguments as set out in the grounds so as to present them in the most persuasive way rather than raising a new ground of appeal.
15. In summary, his grounds amount to an assertion that had the judge taken into account material evidence, the judge may well have formed a different view of the appellant's husband's motivation to harm her in the future.
16. The judge's approach to the appellant's experience of domestic violence is at paragraph 36 and 37 which state as follows:

- “36. She states that she fears domestic violence at his hands should she return to Nigeria.
37. She claims that this has happened on four previous occasions. The respondent has not called any evidence to rebut what the appellant says about those incidents, and it may be difficult to do so. However, the respondent has not, by cross examination, as I find, undermined the appellant’s somewhat bare accounts of those incidents. I find that, on the lower standard, the incidents have been proved”.
17. Mr Walsh’s submission is that the intensity, duration and persistence of this ill-treatment was substantial and has not been properly taken into account by the judge who refers to domestic violence on four occasions. He took me to the appellant’s statement submitted in support of her asylum claim as well as the statement submitted in support of the appeal.
18. On 13 September 2021 the appellant submitted a 54 paragraph statement in support of her asylum claim which set out the domestic abuse that she was subjected to by her husband. This included not only physical abuse but mental and emotional abuse amounting to coercive control over twenty years or so. The appellant describes how she was forced into an arranged marriage against her will. Physical violence started three days after she was married and continued throughout the marriage. The appellant’s husband would frequently threaten her, use abusive language towards her and control her by not allowing her to work, threatening to cut her off money and prevent her from seeing her children. In 2016 he attempted to strangle the appellant, he then chased her down stairs, tried to strangle her again in front of his children and ripped her clothes off her resulting in bruises on her neck and legs. A similar occurrence happened in 2017. Her husband would constantly ridicule her and comment on her appearance.. There were controlling and abusive incidents over a long period of time,. He also exposed the youngest daughter to pornography and beat the children. This evidence was reiterated in the appeal statement.
19. The appellant’s daughter also gave evidence that her father often mistreated her and her siblings and would beat them. He would be very aggressive and caused her mother to suffer both mentally and physically. She also recounted that she and her siblings had suffered both mental and physical abuse from her father.
20. As Mr Walsh states this is egregious ill-treatment over a long period including psychological punishment as well as physical from the beginning of the marriage until 2022. There was also supporting evidence from a witness and also a letter from the appellant’s tutor confirming that the appellant had disclosed domestic violence in 2016 and as a result had become more withdrawn and isolated, she had lost weight and appeared stressed, she disclosed to her lecturers that her husband had threatened to kill her and made it clear that she would be killed or harmed if she returned.
21. Mr Walsh’s submission is that the judge failed to take this evidence into account. The judge’s finding that the appellant had been the victim of domestic violence on four previous occasions manifestly failed to factor in the extent, persistence and duration of the domestic violence which included psychological violence.

22. I am in agreement with Mr Walsh's submission that the judge's finding at [37] that the appellant underwent "four incidents" of domestic violence and that the appellant gave "bare accounts" of these incidents is unsustainable in light of the detailed evidence provided by the appellant and her witness.

23. Mr Walsh struggled to remember the precise legal provisions, however I infer that he was referring to s31 of the Nationality and Borders Act 2022 which states:

**Article 1(A)(2): persecution**

(1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as "actors of persecution")—

(a) the State,

(b) any party or organisation controlling the State or a substantial part of the territory of the State, or

(c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution.

(2) For the purposes of that Article, the persecution must be—

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or

(b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).

(3) The persecution may, for example, take the form of—

(a) an act of physical or mental violence, including an act of sexual violence;

24. It is trite that persecution can also take the form of physical and mental violence which the judge does not appear to have factored in.

25. I agree with Mr Walsh that the judge then compounded this error by failing to factor in paragraph 339K of the immigration rules which states:

"The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

26. The judge's erroneous view of the evidence then feeds into the judge's finding that the appellant's husband has no hostile intent towards her and has "washed his hands" of the appellant and the three children.

27. At [39] the judge found that the appellant would not be at risk of repetition of incidents of divorce should she return to Nigeria and come into proximity of her ex-husband. I am satisfied that had the judge properly taken into account the seriousness of the domestic violence in accordance with the evidence and statute and assessed the future risk in the light of paragraph 339 he might have formed a different view about how the appellant's husband would react if he came into proximity with her. The judge accepted the appellant's evidence that her husband was a very wealthy man with local influence which was evidenced by the supporting newspapers articles. He is tied to her through his children and the family has not returned to Nigeria since 2022.
28. I am satisfied on this basis that there is an error in the approach of the judge to the extent of the level and seriousness of the harm, in that the judge failed to take into account material evidence, misdirected himself in relation to the test of persecution and to the risk of future harm.
29. Mr Melvin's second main submission was that even were there to be errors in the judge's approach, the judge had dismissed the appeal on the basis that in the alternative even accepting that the appellant was at risk in her local area there would be sufficiency of protection available to her and it would be reasonable for her to relocate elsewhere in Nigeria. Any errors would therefore be immaterial.
30. I am satisfied that At [40] the judge considers the alternative scenario. He says:

"If my above finding were to be incorrect, and if the appellant's now ex-husband has any hostile intent toward her, I am not satisfied that he would have the inclination or the resources to track her down in whatever part of Nigeria she might go to. While she has described him as being an important and powerful man, Dr Iwilade states in his expert report that while Mr Martin, as he is commonly known, has considerable importance in the community, that is on only a local basis".
31. Turning to internal relocation the judge found:

"The appellant is an educated and energetic person with experience as a trader who would, as I find, be able to support herself in any other part of Nigeria to which she might go".
32. Mr Walsh's submission is that when considering the issue of internal relocation the judge erred by failing to factor in the appellant's vulnerability as a victim of long term domestic violence.
33. I am in agreement that the judge failed to give any consideration to the appellant's vulnerability although I do take into account Mr Melvin's point that the appellant did not adduce any medical evidence of her vulnerability.
34. More importantly, Mr Walsh submits that the judge erred by failing to consider the expert evidence adduced in support of the appellant's case. This included evidence on the risks and discrimination to be faced by a single woman living in Nigeria. The report addressed the rise of gender-based violence, the difficulties obtaining protection from the police as well as the ability of the appellant's ex-husband to locate her elsewhere in Nigeria.
35. Mr Melvin's submission was that a judge does not need to deal with every piece of evidence. He stated that it is clear from the decision that the judge had in any event fully considered the evidence of the expert which is apparent from [23]

where the report is mentioned and [40] where the judge recognises that the expert has said that the appellant's husband has considerable importance in the community.

36. I disagree with Mr Melvin. I am satisfied that the judge has completely failed to deal with any of the expert evidence of the difficulties that the appellant would face as a single woman as outlined by the expert when considering the issue of relocation and I find that the judge's finding in this respect is flawed. I also find that he has not considered her vulnerability as the former victim of domestic violence.
37. I am of the view that the decision is vitiated by two errors of law, one in respect of the appellant's experience which led to a flawed assessment of whether her husband would be motivated to harm her on return, and secondly, a flawed approach to the issue of internal relocation. These errors are material to the outcome of the decision. I therefore set aside the decision in its entirety.

### **Disposal**

38. Both parties were in agreement that this appeal should be remitted to the First-tier Tribunal to be considered afresh. I am satisfied that in the circumstances of this appeal where new findings will need to be made it is appropriate to remit the appeal to the First-tier Tribunal and depart from the normal course of action.

### **Notice of Decision**

39. The making of the decision involved the making of an error of law.
40. The decision is set aside in its entirety with no findings reserved.
41. The appeal is remitted to be heard de novo in front of a judge other than First-tier Tribunal Judge Dineen.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 November 2024**