



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16682/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 May 2017

Decision & Reasons Promulgated
On 16 May 2017

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

PATRICK SOLA OZEGBE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel, instructed by Imperium Group
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria aged 45. He was granted entry clearance as a visitor for a period 15 March 2005 until 15 September 2005. He remained unlawfully thereafter. On 25 October 2010 he applied for asylum. This was refused on 14 September 2012. Further representations were rejected in December 2012. On 18 February 2015 the appellant made an application for leave to remain on the basis of family and private life. This was refused on 17 April 2015. In a determination sent on July 2016, First-tier Tribunal (FtT) Judge Maxwell dismissed his appeal. The appellant challenged this dismissal. In a decision dated 10 March 2017 Deputy Upper Tribunal Judge (DUTJ) Davey found that Judge Maxwell had erred in law and set aside his decision. DUTJ Davey identified the error of law as being the failure of the

judge to address the appellant's claimed fear of ill-treatment on return to Nigeria when assessing proportionality. My task is therefore to re-make the decision.

2. At the outset of the hearing Ms Barnfield requested an adjournment on the basis that the appellant needed more time to submit evidence relating to his fear of ill-treatment on return to Nigeria. I refused that application.
3. Both the appellant and his representatives were sent a copy of DUTJ Davey's decision and in that decision he made express Directions that any further evidence be served no later than 10 days before the resumed hearing and that the parties were to notify the Tribunal if any other evidence was to be relied upon. Ms Benfield submitted that the appellant did nothing in response because his representatives told him he did not need to do anything and that I should not blame him for their shortcomings. However, his representatives had not provided any statement explaining why they did nothing and I am not prepared to accept that the appellant had good reason to make no response to DUTJ's Directions.
4. Both representatives submitted that the only issue before me concerned the Article 8 issue of proportionality. They both made reference to the wording of ss.82 - 85 of the NIAA 2002. I am inclined to agree with their submissions in that the appellant did not make a protection claim and as regards the human rights claim, he did not identify fear of ill-treatment on return to Nigeria as part of that claim and so would have needed the consent of the respondent to raise a new matter in the form of a separate Article 3 ground of appeal. Nonetheless I shall make observations of the appellant's Article 3 circumstances at the end of my decision.
5. Ms Benfield accepted that the appellant cannot succeed on Article 8 grounds unless able to persuade me that his return to Nigeria would place him at real risk of serious harm.
6. The appellant gave evidence. He said he had not appealed the refusal of his asylum claim because he was told by someone from the Law Society to apply again, although he had in fact collected a number of relevant background notes about Nigeria and the Urhobo Programme Union (UPU). He had not challenged the 2012 rejection of his further representations because he was depressed and had accommodation problems.
7. The appellant confirmed that his witness statement dated 11 July 2016 was true and correct. He had explained in that witness statement that after his university education he went for National Youth Service in Odion where he became involved in a community project. This involvement led him in turn to become involved in the activities of the UPU which was a social cultural pressure group that was supposed to advocate for the welfare of the people of the Urhobo land. He soon learnt that there was a militant group involved in the UPU who were acting for self-gain for example through stealing oil, and when he made known his criticism of them they turned on him. In August 2004 he was subjected to an attack which he believed was sponsored or carried out by those persons and he then decided to flee Nigeria.

8. In reply to questions from Ms Benfield the appellant said that he had learnt that the man who confirmed to him that these militants were behind the attack on him (Henry Odin) had died. He believed that both this man and his younger brother had been killed because they knew secrets about these members. He had learnt from a TV channel of other attacks carried out by those persons. Those persons knew that he (the appellant) also knows their secrets. Asked why those persons would still have an adverse interest in him over thirteen years later, the appellant said “they don’t give up” and the same people were still around. The appellant said that if he returned to Nigeria he would not be able to secure family support; those family members still living there were struggling in already overcrowded accommodation. Because he had been gone for thirteen years he had lost his connections with friends and he did not belong to any networks. Whilst he had undertaken several courses in the UK, he did not have job experience. He did not believe he could relocate to Lagos as it was not a big city and people knew each other. The UPU would be able to locate him. He could not obtain protection from the police, as they were not willing to provide realistic protection.
9. In cross-examination the appellant was asked why his witness statement did not address all the reasons set out by the respondent when refusing his asylum claim and representations. He was asked why he had not challenged the respondent’s information that he had travelled back to Nigeria. He said he had never travelled outside the UK since arriving; he believed and had said in his asylum interview the agent who arranged the travel was behind the visa application in his name. He was asked what his response was to the respondent’s position that he had failed to show adequate knowledge of the UPU. The appellant said that when he had given the name of its leader as “Esis Edward” he had meant Frederick Esi. He could not remember clearly. Asked to comment on the respondent’s refusal to accept that his ethnic origin was Urhobo he said that his lack of knowledge of the language used reflected the fact that he had not lived there until 2004. Asked why he had waited over five years to claim asylum the appellant said he had made an attempt to claim but was frustrated by the fact that the man he had approached to represent him had asked for £500 which he did not have. He came to the UK with £1,700 pounds and he did not work for three years. He never knew that there were sources of free legal representation. Asked again why the UPU members who he said had targeted him would still do so the appellant repeated that they did not give up. He was still without work. His sister’s husband and a church member gave him support.
10. In submissions Mr Tufan asked me to count against the appellant his failure before the hearing to address several key reasons given by the respondent for refusing his asylum claim, including his lack of knowledge of the UPU and the information that he had travelled back to Nigeria, plus his lengthy delay in claiming asylum. Even if the appellant’s account of crossing powerful UPU members was considered credible, they would surely be happy that he was out of the picture and would not pursue him elsewhere in Nigeria.
11. Ms Benfield submitted that I should accept the appellant’s explanation for not claiming asylum for five years. The appellant had provided a credible witness

statement and in his oral evidence had satisfactorily explained all the matters doubted by the respondent. The respondent had not substantiated her allegation that he had travelled back to Nigeria. The appellant had given a credible account of his involvement with the UPU and his educational background provided an explanation for why he had taken the view about UPU activities that he did. In terms of paragraph 276ADE, he had demonstrated very significant obstacles to his (re-)integration into Nigerian society. The fact that he had had a lengthy period without working and had no professional qualifications and had limited experience would make it exceedingly difficult to obtain employment in Nigeria. Whether considered under the Rules or outside the Rules, the appellant should be accepted as someone who met the requirements of paragraph 276ADE and who had also established compelling circumstances warranting a grant of leave to remain.

My Decision

12. In assessing the credibility of the appellant's account I have had regard to the entirety of the written evidence and the appellant's oral testimony before me. Although the claim he advances is one based on Article 8 I shall proceed on the basis that, since it raises an asylum-related claim, the appellant need only prove that aspect of his case to the lower standard of proof of reasonable degree of likelihood.
13. I do not find that the appellant has given a credible account of his adverse experience in Nigeria. Given his claim that he was an active member of the UPU for four years I do not accept that he could not give the correct name of the organisation's leader and did not know that the organisation had its own website. His account of why certain members of the UPU had targeted him for attacks has been consistently vague and lacking in detail. He said it was because he knows their secrets, but the only secrets he described, that they were pursuing their own interests and carrying out illegal activities such as the theft of oil, would have been well-known to the local community and he has been unable to provide satisfactory detail of being in a position to expose or embarrass these individuals. I also observe that despite stating that the man who attacked him was a student at his university, the appellant has never been able to state his name or explain why he took no steps to find out his name.
14. As regards the appellant's ethnicity, I count against him that he was unable to supply or state correctly significant information about his tribal calendar, the location in which his tribe is found and any of the names of the tribal kingdoms. Given that he was able to provide a reasonable account of accurate information about the number of kingdoms within Urhoboland I am prepared to accept that he had some ethnic connections with the Urhobo. However, the appellant has made no attempt to corroborate his account. Despite stating that the threat he feared from certain members of the UPU was confirmed to him by Henry Odini, no statement was forthcoming from this man or any evidence to show that the appellant had attempted to obtain such a statement. The appellant has claimed this was not possible because Odin is dead, but he has not produced any evidence to support this claim.

15. The appellant claims that shortly after arriving in the UK he attempted to claim asylum and had indeed collected together a body of material relating to the UPU and its activities, but was told by lawyers he had approached that he needed to pay £500 up front which he did not have. However, that was in 2007 and he made no mention of any subsequent attempts after 2007 to claim asylum until 2010. Indeed it was not until he was arrested and jailed in late 2010 (for working illegally and possessing a fake NI number and passport) that he applied for asylum. The fact that he was illegally working showed that his excuse for not claiming in 2007 in terms of penury could not have continued to apply for the next three years. In this connection I have regard to the fact that the appellant has a university education and was someone who cannot have failed to understand the need to make a genuine asylum claim promptly.
16. The appellant received a decision refusing his asylum claim in September 2012. In the reasons given for that decision the respondent had noted that UKBA visa records showed two applications made in his name in December 2005 and April 2006. The respondent also noted that this information had been put to him in his asylum interview and his response was that the agent used his details without his consent and he did not make the application. He repeated that explanation in his evidence before me. Given that the appellant's visa application made in December 2005 was recorded as being made in person and that it bore the appellant's photograph, I do not find it credible that the application was made without his consent. I find it reasonably likely that the appellant travelled back to Nigeria at least once in 2005/2006 and that his failure to give a satisfactory explanation casts further doubt on the credibility of his account in general.
17. In assessing the credibility of the appellant's account I also treat as a relevant factor that after eventually claiming asylum and receiving a refusal decision, he did not lodge an appeal against it. Moreover, even when he made further representations on 19 November 2012 (in which he raised new points, namely fear of persecution because of his religion and his private and family life) he again failed to adduce any evidence in support of his claims regarding the 2004 events. Even the evidence he claimed to have collected in 2007 demonstrating the existence of a militant wing of the UPU has never been forwarded to the respondent.
18. Even if I accepted the appellant's evidence regarding his adverse expenses in 2004 as credible, and even if I were persuaded he did not as a result have access to effective protection in Ibadan, I am not persuaded that he would be at risk from his claimed persecutors in other parts of Nigeria. In particular, I do not accept that he would be unsafe in Lagos. His own account has failed to establish that the UPU militants have any significant presence or influence in Lagos, nor has he been able to produce any COI evidence in support of the claim that such persons would be able to locate him in Lagos. I also agree with Mr Tufan that so long as the appellant did not return to his home area the UPU would have no motivation to seek him out for harm. In any event, there are many other cities or areas in Nigeria and the appellant has not demonstrated that the UPU has any presence in any of them save possibly Kaduna. The appellant's claim that the state authorities are systematically unable to protect

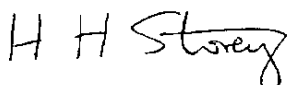
individuals against ill-treatment is not supported by the background evidence viewed as a whole.

19. In light of my negative findings on the appellant's claimed fear of ill-treatment on return to Nigeria, I am not persuaded that he was able to establish very significant obstacles to (re-)integration. Even if he cannot turn to family members for direct support, he will be returning to a country in which he still has family connections and where culture and traditions and language are familiar to him. Given his university education and the benefit of further courses taken in the UK, he will have far better prospects of obtaining employment than many ordinary Nigerians, notwithstanding lack of great job experience. It is not reasonably likely that he will face destitution. Indeed, given my negative findings in relation to his claimed fear of ill-treatment I see no reason to depart from the finding made by Judge Maxwell in particular that the appellant has shown himself to be an extremely resourceful person having obtained illegal employment in the UK and to have travelled around the UK without hindrance until he was apprehended and arrested for committing fraud. Further, given that on his own account he enjoys significant financial support in the UK amounting to £250 a month, I consider Judge Maxwell was also entitled to find that (despite claims to the contrary made by his two benefactors) they would continue to be able to help the appellant financially, at least for some time until he was able to re-establish himself.
20. I would observe that if I had found that the appellant could raise grounds of appeal reliant on Article 3 ECHR, I would have rejected them for the same reason as I have rejected his claim to fear ill-treatment in the context of his Article 8 claim.
21. For the above reasons I conclude that the appellant's appeal should be dismissed. He has failed to show that he meets the relevant requirements of the Immigration Rules and he has failed to establish that there are compelling circumstances such as to warrant a grant of leave outside the Rules. Among the many factors weighing against him, he has an appalling immigration history and the length of time he has spent in the UK has been accrued when his immigration status was precarious.
22. To conclude:
 - The FtT Judge (Maxwell) erred in law and his decision has been set aside by DUTJ Davey.
 - The decision I re-make is to dismiss the appellant's appeal.

No anonymity direction is made.

Signed

Date: 15 May 2017



Dr H H Storey
Judge of the Upper Tribunal