



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07338/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 6 December 2019

Decision & Reasons

Promulgated

On 16 December 2019

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**OA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by Broudie Jackson Canter

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

This is the appellant's appeal against a decision of First-tier Tribunal Judge Brookfield promulgated on 17 September 2019 dismissing his appeal against the decision of the Secretary of State dated 18 July 2019 to refuse his protection claim made on 16 June 2015 on the basis of being the victim of

trafficking from Nigeria to the UK and being at risk from the Black Axe cult, of which he was a former member.

First-tier Tribunal Judge Grant-Hutchison granted permission to appeal on 29 October 2019.

For the reasons I set out below, I find there was an error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and remade.

In granting permission, Judge Grant-Hutchison considered it arguable that the judge erred by making inconsistent findings as to the effect of fear of black magic; made no findings on the claim that the appellant had reported his trafficker to the police; finding it not credible that the appellant would be pursued to repay a debt to his trafficker; making no clear findings on whether the appellant was involved in the murder of the governor's son; failing to consider the medical evidence as to the appellant's mental health; and failing to attach any weight to the evidence of Mrs Higiro that the appellant would not be able to live independently, being the accepted victim of trafficking and in receipt of counselling for that reason.

The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor unless the exercise is irrational. Nor is it an error of law for the judge to fail to deal with every factual issue of argument, provided that all relevant material has been considered and taken into account. Disagreement with the judge's factual conclusions and the appraisal of the evidence or the assessment of credibility or the evaluation of risk does not give rise to an error *per se*, nor is it necessary to consider every possible alternative inference consistent with the truthfulness. However, if a point of evidence of significance has been ignored or misunderstood, that may be a failure to take into account a material consideration.

With regard to the issue of the appellant's mental health only am I satisfied that there is an error of law. In relation to the other grounds, I am not satisfied that they disclose any material error of law, because it was open to the judge on the evidence to conclude that there was an inconsistency between the claimed fear of harm from his trafficker and yet he continued to meet with him voluntarily in the UK so that the judge found no credible fear on return to Nigeria. That finding is adequately reasoned and, in my view, the grounds in this regard are no more than disagreement.

At paragraph 10 of the decision the judge had explained that she had taken into account all the evidence before reaching any of her findings. The appellant claimed to have reported his trafficker to the police in Manchester, which was argued to be an indication of his fear. Whether he had or had not reported the matter to the police in Manchester was contested at the hearing. However, the claimed reporting seems to me to be inconsistent with the very argument that was advanced as to why he continued to meet with the person - because he feared that black magic would be used against him. The grounds

complain that no finding was made either way. In effect, the dispute was left unresolved, neither favouring nor adverse to the appellant's credibility. However, in comparison to the other findings, I am not satisfied that this is at all material because the judge also found that there would be a sufficiency of protection in returning to Nigeria. In the circumstances, that issue was not material to the outcome of the appeal.

Neither do I consider that there was a mistake of fact or inconsistent findings at paragraph 10(iv) of the decision, as claimed in the grounds. On the lack of evidence, the judge was entitled to conclude that the appellant had failed to discharge the lower standard of proof to demonstrate that his trafficker, a man referred to as James, was part of a syndicate in Nigeria that pursued the appellant with paying the alleged debt he incurred in bringing him to the UK.

It is also correct that the judge made no finding one way or the other as to whether the appellant was involved in the murder of the governor's son but at paragraph 10(vi) of the decision, and elsewhere, the judge gave reasons why, even if he was involved, he would not in fact be at any real risk of harm on return to Nigeria for that reason. In particular, the judge indicated that she considered that the risk arose from a video recording which, if it exists, that she doubted would be disclosed but even if it were to be disclosed, the judge considered it would be apparent from the video that the appellant was coerced. Again, given the other findings in the decision, including that of the reasonableness of relocation elsewhere, given that Nigeria has a vast population and a huge landmass, the lack of finding on that issue is not, in my view, material because the judge considered the appellant's case on the basis of his claim taken at the highest on that issue.

However, it is clear that despite the matters set out above that the judge does not address the mental health issues that were raised, in respect of which the witness gave evidence before the Tribunal. Whilst the fact of the witness is mentioned in the decision, there is no reference to the evidence of that witness within the findings or reasons and the fact that she gave evidence was barely mentioned. The evidence is, I accept, relevant to whether the appellant would be able to function independently on return to Nigeria and therefore is relevant to the question of return or indeed relocation within Nigeria. Before me, both Mr Tan and Mr Greer agreed that that amounts to an error of law and that it is relevant and material so that the decision itself is in error of law.

When a decision of the First-tier Tribunal has been set aside, Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions or it must be remade by the Upper Tribunal. The scheme of the Tribunals, Courts and Enforcement Act 2007 does not assign the function of primary fact-finding to the Upper Tribunal. I have given anxious consideration as to whether this is a case that could be retained in the Upper Tribunal, given that I have found no error of law in relation to the grounds other than that in relation to the mental health. However, I consider it would be very difficult to deal with the case without reconsidering all matters and on that basis, the best venue for that is the First-tier Tribunal. In all the circumstances and indeed at the invitation and request

of both parties, I relist this appeal for a fresh hearing in the First-tier Tribunal on the basis that it falls within the Senior President's practice statement at paragraph 7.2, the effect of the error has been to deprive the appellant of a fair hearing and the nature or extent of any judicial fact-finding which is necessary for the decision to be remade is such that it is appropriate to remit this case to the First-tier Tribunal to determine the appeal afresh.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that it should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



Signed
Upper Tribunal Judge Pickup

Dated

11 December 2019

Consequential Directions

1. The appeal is remitted to the First-tier Tribunal sitting at Manchester.
2. The estimated length of hearing is three hours.
3. No interpreter will be required. The appellant and one witness will give evidence.
4. The First-tier Tribunal may give such further alternative directions as deemed appropriate.

To the Respondent
Fee Award

I make no fee award because the outcome of the appeal remains to be decided.



Signed
Upper Tribunal Judge Pickup

Dated

11 December 2019