



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

Appeal Number: PA/14275/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2019**

**Decision & Reasons Promulgated
On 27 November 2019**

Before

**MR JUSTICE NICOL
UPPER TRIBUNAL JUDGE PLIMMER**

Between

**C A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bond, Counsel

For the Respondent: Ms Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We have made an anonymity direction because this decision refers to the Appellant's asylum claim and the circumstances of two minor children.
2. The Appellant, a citizen of Nigeria, has appealed against a decision of First-tier Tribunal ('FtT') Judge G D Davison sent on 25 July 2019, dismissing her appeal on asylum grounds.

Background

3. The Appellant's asylum claim can be summarised as follows: she and her children have sustained egregious violence over an extended period of time, at the hands of her husband; she has made many complaints but did not believe that she would be able to secure protection in Nigeria; she therefore fled with two of her children, A (born in 2007) and B (born in 2013), with the assistance of an agent.
4. The Respondent refused the asylum claim for detailed reasons set out in a 37-page letter dated 13 December 2018. The Respondent simply did not accept the credibility of the Appellant's account of serious and sustained domestic violence in Nigeria.
5. The Appellant appealed against this decision to the FtT, which heard her appeal on 24 June 2019.

Appeal proceedings

6. The FtT heard evidence from the Appellant and made adverse credibility findings. The FtT did not accept that the Appellant provided a credible account for a variety of reasons including, inter alia: inconsistencies, inherent implausibility of aspects of the account, some documents relied upon were forged and some evidence was obtained cynically to bolster the asylum claim.
7. The Appellant applied for permission to appeal to the Upper Tribunal ('UT') relying upon six grounds of appeal. Each ground attacked aspects of the FtT's adverse credibility findings.
8. Permission to appeal was granted by FtT Judge Landes in a decision dated 29 August 2019. She made comprehensive observations regarding the arguability of grounds 4(i) and (ii), and ground 6, but considered that the other grounds had less force. Nonetheless, permission was granted on all grounds. It is convenient to summarise the points made in grounds 4 and 6 at this point.
9. Ground 4 submits that the FtT made adverse credibility findings on matters, that were never put to the Appellant, including inter alia: (i) the Appellant failed to take steps to secure the safety and custody of the children she had left behind in Nigeria and who were still living with their father; (ii) the Appellant had cynically obtained a handwritten letter from A and a letter written by the Headteacher of B's infant school detailing the violence he claimed to have witnessed in Nigeria; (iii) a text message from the travel agent the Appellant had used in relation to her travel to the UK in which the agent had asked if the Appellant had been given any benefits in the UK.

10. Ground 6 submits that the FtT failed to make any clear finding on the evidence from the Nigerian Human Rights Commission ('the Commission') in support of the Appellant's claim that she made a complaint to it in March 2018 (prior to her departure from Nigeria in April 2018), in connection with the domestic violence she said she had suffered.
11. The Respondent submitted a Rule 24 notice dated 29 September 2019. This briefly addressed each ground of appeal, with the exception of ground 4.

Hearing

12. Ms Bond relied upon all six grounds of appeal, albeit she acknowledged that her stronger grounds of appeal were those identified in the decision granting permission to appeal.
13. Ms Jones relied upon the Rule 24 notice. During the course of her submissions she made reference to the Judge Davison's typed Record of Proceedings ('the RoP'). We were told that this had been provided by the Tribunal to the Respondent as an attachment to the Appellant's grounds of appeal. We have checked the file. No application for the RoP has ever been made to the Tribunal, and it appears to have been disclosed in error. As the RoP was disclosed to the Respondent, we made arrangements for a copy to be provided to Ms Bond, who was then able to take instructions on it. The RoP was relevant to ground 4. Although Ms Jones initially submitted that the grounds of appeal were not made out, she realistically acknowledged that, having considered the RoP, the Respondent did not dispute that the matters set out at (i) and (ii) of ground 4 (see above) were not put to the Appellant during the course of the FtT hearing. Ms Jones also candidly accepted that fairness required those matters to be put and for that reason ground 4 was made out. She however invited us to consider whether this was a material error in the light of the FtT's many other adverse credibility findings. When we pointed out that the FtT clearly based its rejection of the appellant's credibility on a cumulative assessment of the various adverse credibility points (see [21] of Judge Davison's decision), Ms Jones agreed and indicated that she could offer no further argument on the issue.
14. We reserved our decision and now give our reasons in writing.

Error of law discussion

15. We begin by addressing what we consider to be the strongest ground of appeal: ground 4(ii). This refers to a letter dated 6 February 2019 from the Headteacher of B's infant school, that was available to the FtT in the Appellant's bundle at page 120. This states that "*on several occasions*", B disclosed to school staff "*extreme violence*" he witnessed and received in Nigeria. The letter particularises examples

of claims of violence on the part of his father toward the Appellant and B, as disclosed by B to school staff. B is said to be “*deeply traumatised*” and the letter ends with the following “*our school is providing [B] with a safe space in which to explore his emotions caused by complex trauma*”. This letter is recorded to have been copied to the Chair of Governors and Designated Safeguarding Leads.

16. The FtT refers to this evidence and a letter written by A particularising the violence he witnessed at [30] before saying this: “*I have considered this evidence carefully, but have not accepted the claims of domestic violence to be made out. I find this evidence has been obtained, somewhat cynically, to try and bolster / establish a claim for asylum.*” The school letter, emanating from the headteacher refers to multiple disclosures of violence from a young child, that has been treated very seriously by his school. This is apparently cogent and significant corroborating evidence of the Appellant’s claim. Ms Jones was entirely correct to concede that, as the FtT Judge had a clear concern that the letter from the Headteacher was obtained “*cynically*”, fairness demanded that the Appellant be given an opportunity to address such a serious allegation. Ms Jones was also correct to accept that the RoP makes it clear that at no point was this concern ever put to the Appellant. In all the circumstances, in failing to put this matter to the Appellant before making a serious adverse finding against her, the FtT has acted unfairly.
17. Although this is just one of many reasons given for not accepting the Appellant’s claim of domestic violence, we are satisfied that it played a material role in the FtT’s adverse credibility findings. When Judge Davison recorded at [21] that he did not find the Appellant’s claims to be credible, he made it clear that this was based on all the findings listed “*below*” and then said this:

“It was not one of these findings that drew me to this conclusion but rather having considered the cumulative weight of these adverse points.”
18. We are satisfied that there has been procedural unfairness. We do not consider that in these circumstances any of the adverse credibility findings can be preserved and the FtT’s decision must be set aside. The FtT approached credibility on a cumulative basis and it is therefore very difficult to disentangle the various adverse points.
19. Having reached that conclusion, we need not address the remaining grounds of appeal. For completeness, like the FtT Judge who granted permission to appeal we see very little force in any of the remaining grounds save for Ground 6. The evidence from the Commission was potentially corroborative evidence that the Appellant had a history of making formal complaints of violence against her husband, and had done so most recently in 2018. The FtT did not reject the evidence from the Commission (contrast this with other reports from Nigeria at

[36]) and accepted at [34] that it was possible that the Appellant made a complaint to it in 2014. Although the FtT noted the 2018 complaint at [28], it omitted to address this, and we accept that in doing so committed a further error of law.

Disposal

20. We have found that the FtT's findings are tainted by procedural unfairness. The findings of fact need to be remade completely. That is likely to involve a detailed fact-finding exercise, including cross-examination that is best done in the FtT, bearing in mind paragraph 7.2 of the relevant Practice Direction.

Decision

21. The FtT's decision contains a material error of law and it is set aside.
22. The appeal is remitted to the FtT where the decision will be remade *de novo* by a FtT Judge other than Judge G D Davison.

Direction regarding anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: *UTJ Plimmer*
2019
Upper Tribunal Judge Plimmer

Date: 21 November