Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: LP/00073/2021
[PA/50148/2020]

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 6 January 2022	**On 2 March 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ELU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Dieu instructed by Fountain Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. This is the decision of the Upper Tribunal remaking the decision in this appeal following my earlier error of law decision sent on 15 October 2021 setting aside the FTT's decision dismissing the appellant's appeal on asylum grounds and under Arts 2 and 3 of the ECHR.

Background

3. The appellant is a citizen of Nigeria who was born on 24 July 1974. He arrived in the United Kingdom in May 2018. He claimed asylum on 25 May 2019. The basis of his claim was that he feared persecution because of actual or imputed political opinion because he had come to the adverse attention of an official in the Ebonyi State Government, Dr Kenneth Ugbala. He claimed that, as a result of being attacked and beaten by a group from the Ebonyi State Neighbourhood Watch (for which Dr Ugbala had responsibility), Dr Ugbala had threatened him that he would be arrested if he pursued the arrest of the individuals concerned. The appellant claimed that the threat had been made in a telephone conversation in the course of negotiations to settle the dispute between the appellant and the authorities.

4. On 6 March 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-Tier Tribunal

5. The appellant appealed to the First-tier Tribunal. Before the FTT, the appellant not only relied upon a fear from Dr Ugbala (and that the appellant would be arrested on return to Nigeria), but also he claimed to fear serious harm or death because both his father in 2005 and his brother in 2017 had been killed.

6. In its determination, the First-tier Tribunal (Judges Murray and Lloyd-Lawrie) dismissed the appellant's appeal on all grounds.

7. First, the FTT accepted that the appellant's father and brother had been killed but did not accept that there was any real risk to the appellant on return from the perpetrators of these killings which were unknown to the appellant.

8. Secondly, the FTT rejected the appellant's claim that he was also at risk from his uncle whom the appellant suspected was having an affair with his wife.

9. Thirdly, the FTT accepted that the appellant had been targeted by a group from the Ebonyi State Neighbourhood Watch in 2018 but that the appellant had exaggerated the circumstances of that attack and he had not been targeted. In effect, it was a random attack and the FTT did not accept that there was any real risk as a consequence of that attack being repeated.

10. Finally, in relation to the risk arising from Dr Ugbala, the FTT did not accept that there was a real risk from Dr Ugbala, based upon telephone conversations with Dr Ugbala which the FTT accepted occurred, on return to Nigeria.

The Appeal to the Upper Tribunal

11. The appellant appealed to the Upper Tribunal with permission granted by the Upper Tribunal (UTJ Blundell) granted on 13 May 2021. The principal ground of appeal was that the FTT had made inconsistent findings as to whether or not a settlement of the dispute between the appellant and Dr Ugbala had taken place. A further ground of appeal was that the FTT had failed to consider whether there was a real risk of the appellant being subject to arbitrary arrest (and therefore persecution) for political reasons if he did not reach a settlement with Dr Ugbala. The FTT had failed to consider that risk if the appellant did not reach a settlement but continued to pursue his claim or, if he chose not to pursue his claim, that he did so for fear of persecution or ill-treatment and his international protection claim was established on the basis of HJ (Iran) v SSHD [2010] UKSC 31.

12. In my decision sent on 15 October 2021, I rejected the principal ground of appeal on the basis that it was not established that there were inconsistent findings in the FTT's decision (see para 16 of my decision). I accepted, however, that the HJ (Iran) point had not been considered by the FTT. That was a material error of law.

13. On that basis, the decision of the First-tier Tribunal was set aside with findings, untouched by the error of law, preserved in the FTT's decision in particular in paras 25 and 27 – 29.

14. The outstanding issue, therefore, on which the decision was to be remade was that, accepting what Dr Ugbala said to the appellant in two telephone conversations, whether that created a real risk of persecution for a Convention reason on return, in part applying HJ (Iran).

The Resumed Hearing

15. The resumed hearing to remake the decision was listed on 6 January 2022. The appellant was represented by Mr Dieu and the respondent by Mr Bates. The appellant attended the hearing and gave oral evidence.

16. Mr Dieu accepted that the principal issue to decide was whether the appellant was at risk of persecution or serious harm in the light of the conversations he had with Dr Ugbala.

17. Following the appellant's oral evidence, I heard oral submissions from Mr Dieu and Mr Bates.

The Preserved Findings

18. A number of factual findings made by the FTT are preserved and are now accepted.

19. First, the FTT's finding that the appellant had not established that he is at real risk of persecution or serious harm as a result of his father and brother being killed in 2005 and 2007 respectively is preserved.

20. Secondly, the finding that the appellant is not at real risk of serious harm from his uncle is also preserved.

21. Thirdly, the FTT's finding is preserved that the assault upon the appellant by Ebonyi State Neighbourhood Watch in 2018, which it is accepted occurred, was random and not targeted at the appellant. There is no real risk of that attack being repeated on return to Nigeria.

22. Fourthly, it is accepted that as a result of that attack the appellant pursued a complaint with the state authorities in Ebonyi State concerning the attack by the Ebonyi State Neighbourhood Watch. He did so by reporting the matter to the police in the state and also the state's security services, to whom he sent recordings of two conversations that took place between the appellant and Dr Ugbala during the course of negotiations for a financial settlement. During the course of that second conversation, Dr Ugbala said this:

> "I want you to hear that I have gotten everything you boasted about in this case. I have heard everything, that I decided to be gentle with you does not mean that I am a fool. And you don't have powers again to go and arrest any neighbourhood watch, *if you go to arrest them, I will equally arrest you*. Do you hear me, I don't know what the hell people think, the boys are on the street everyday working for your own good." (my emphasis)

The Appellant's Case

23. Mr Dieu put to the appellant's case in a number of ways based upon the evidence, including the appellant's oral evidence which he invited me to accept.

24. Mr Dieu submitted that the appellant was at risk of being killed or arrested as a result of what Dr Ugbala said. He relied upon the appellant's oral evidence that he feared that Dr Ugbala meant that he (the appellant) would be killed if he pursued his complaint in Nigeria.

25. Further, based upon the appellant's oral evidence, Mr Dieu submitted that the appellant was at real risk, in any event, because the appellant's conduct had "challenged" Dr Ugbala.

26. Mr Dieu submitted that there was a real risk of the appellant being killed or, at least, subject to arbitrary arrest which was in itself persecution. Mr Dieu submitted that the appellant was entitled to pursue his complaint (or a settlement of it) and, if he did not so because in order to avoid persecution, he was at risk because of his imputed political applying HJ (Iran).

27. Mr Dieu did not accept, as was contended by the respondent through Mr Bates at the hearing, that the appellant could internally relocate to a different state (in fact his home state of Rivers) safely and reasonably. Relying upon the appellant's evidence, Mr Dieu submitted that Dr Ugbala would be able to reach the appellant in his home state through unofficial channels and subject him to arbitrary arrest because, as the appellant stated in his evidence, appointed officials work together and Dr Ugbala could reach the appellant if he wished.

28. Mr Dieu referred me to para 5.3.3 of the ***CPIN***, Nigeria Actors of Persecution (March 2019) which refers to use of lethal and excessive force, and arbitrary arrests and extrajudicial killings by the police, army and other security services in Nigeria.

29. On that basis, Mr Dieu invited me to allow the appeal on asylum grounds.

The Respondent's Case

30. On behalf of the respondent, Mr Bates submitted that the appellant had failed to establish, based upon the telephone conversation with Dr Ugbala, that there was a real risk of him being killed or subject to arbitrary arrest. At its highest, any risk only arose if the Ebonyi State Neighbourhood Watch group were arrested. Mr Bates submitted that there was no on-going risk of that four years after the events. The appellant had not pursued any claim since coming to the UK and the appellant had failed to establish that he wanted to pursue this matter now and that Dr Ugbala have any reason to carry out any threat. Mr Bates submitted that looking at what Dr Ugbala said, in a conversation when he had no knowledge that it was being recorded, he said something in the heat of the moment but, if he had meant that the appellant would be killed rather than arrested, he would have said so. The limited threat made in the course of the telephone conversation by Dr Ugbala did not create a real risk to the appellant.

31. Mr Bates pointed out that there were a number of adverse findings preserved as a result of the First-tier Tribunal's decision and the appellant's present case was the final strand of his claim which was being embellished.

32. Secondly, Mr Bates submitted that the appellant could internally relocate to his own state where he had family. Dr Ugbala was an appointed official in a different state and there was no evidence that he had any influence at the federal level or in other states. Mr Bates pointed out that the appellant accepted, in his evidence, that two different parties were in control of Ebonyi State and the appellant's home state of Rivers.

33. Mr Bates invited me to dismiss the appellant's appeal.

The Law

34. The burden of proof is upon the appellant to establish, on the lower standard applicable in international protection claims, that there is a real risk or a reasonable likelihood that on return to Nigeria he would be subject to persecution for a Convention reason (namely his actual or imputed political opinion) or of serious harm or death contrary to Arts 3 and 2 of the ECHR respectively.

35. In relation to internal relocation, the appellant must establish that *either* (1) he would be at real risk of serious harm in the place of proposed internal relocation; *or* (2) if not, it would be unreasonable (or unduly harsh) for him to live in the place of internal relocation. The latter issue requires an holistic assessment of all the circumstances facing the appellant in the place of internal relocation (see Januzi v SSHD [2006] UKHL 5 and AH (Sudan) v SSHD [2008] UKHL 49). The essential points are helpfully summarised by the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 at [61].

Findings

36. I have taken into account all the evidence to which I was referred including the appellant's oral evidence at the hearing. I also bear in mind the preserved facts which I have set out above.

37. In his evidence, the appellant explained that he would be at risk from Dr Ugbala on return to Nigeria because, in his words "I am a challenge". The appellant explained that this was because he had recorded the conversations with Dr Ugbala and had forwarded them to a government lawyer and the security services. The appellant explained in his examination-in-chief that he had forwarded the conversations to the commissioner of police and the director of the State Security Service in Ebonyi State.

38. In addition, the appellant maintained that as a result of what Dr Ugbala had said, he feared not only that he would be arbitrarily arrested if he pursued his complaint against the group who had attacked him but also that he would be killed.

39. When asked why Dr Ugbala had only spoken of him being arrested, the appellant responded that he had seen scenes of dead bodies on the television and it was not known who had killed them.

40. In his evidence, the appellant also referred to the fact that his landlord had informed him in 2019, since he had been in the UK, that his flat had been robbed. There were three different flats in his building but only his flat had been attacked. He accepted, however, that he did not know who had done this and he only knew about it because of a phone call from his landlord.

41. The appellant was asked how Dr Ugbala could harm the appellant if he were to return to his home state, Rivers. He accepted that the party in power in his own state was the BDP whilst in the Ebonyi State it was the

APC. Nevertheless, the appellant maintained that Dr Ugbala was in a position where he interacted with politicians in other states. He said that appointed officials, such as Dr Ugbala, work together across states.

42. The conversation between Dr Ugbala and the appellant that took place during the course of the settlement dispute is accepted. I have set out the substance of what was said by Dr Ugbala above, namely that if the appellant "go to arrest" the Neighbourhood Watch group then Dr Ugbala "will equally arrest" the appellant.

43. I have no reason to doubt that the appellant genuinely fears retribution by Dr Ugbala if he returns to Nigeria and either pursues his complaint or does not reach a settlement. However, I am not satisfied, even on the lower standard of proof applicable in an international protection claim, that there is an objective, real risk or reasonable likelihood that the appellant will suffer serious harm or be killed on the basis that he says he fears Dr Ugbala.

44. First, Dr Ugbala, in the course of a telephone conversation which he did not know was being recorded, went no further than saying that if the appellant had the group in the Neighbourhood Watch arrested then he would also have the appellant arrested. If Dr Ugbala had wanted to threaten the appellant with being killed, perhaps the ultimate threat to deter the appellant from pursuing his complaint or claim, there is no reason why Dr Ugbala would not have said that in a conversation which, for all intents and purposes, he thought was a private conversation with the appellant. The fact that he made no reference to that leads me to conclude that no such threat was implicit in what Dr Ugbala actually said.

45. Secondly, in any event, it is clear that there were negotiations continuing between the appellant (and his own lawyer) and the authorities. There are two conversations documented between the appellant and Dr Ugbala on the telephone in relation to that. Clearly, Dr Ugbala is seeking to dissuade the appellant from pursuing his complaint and claim further. The second conversation has the tone of a person in power seeking to bring to bear influence upon the appellant to desist in his claim. In the course of such conversations, individuals can, no doubt, speak 'in the heat of the moment'. Hollow threats can easily be made in such circumstances. In my judgment, the appellant has not established that it is reasonably likely that Dr Ugbala made the threat to have the appellant arrested other than as a hollow threat made in the 'heat of the moment'.

46. I note that in the second conversation with Dr Ugbala saying "I do not want to know again, I can't call you again because you were well-recorded, I don't want to speak of this matter again. That matter is …". Although the end of the sentence is either not recorded or was left unsaid, the context leads me to conclude that the sense of what Dr Ugbala was saying is that the "matter is [concluded or ended]". In my judgment, the context of the conversation leads me to conclude that Dr Ugbala was seeking to shut down the matter but was not, in reality, making any threat to arrest

(arbitrary or otherwise) or implicitly to kill the appellant if he did not settle his claim and pursue the matter.

47. Thirdly, as the First-tier Tribunal noted, since the appellant came to the United Kingdom the appellant has, apart from one telephone call made to his solicitor in Nigeria, made no further attempt to engage with any settlement process or pursue it. Given that the appellant is in the UK, this cannot be, in my judgment, in order to avoid any harm that he might fear from Dr Ugbala in Nigeria. When the appellant was asked in evidence concerning the settlement process, he said that he had asked for 600,000 naira but Dr Ugbala was only prepared to settle for 50,000 naira. He was asked why he did not just take the 50,000 naira and he said that the threat came after that offer had been made and his lawyer had advised him to stay inside and not go out. He said that he could not go back and take the settlement offer because even if he did, Dr Ugbala saw him as a challenge". His safety could not be guaranteed.

48. The issue of whether the appellant is at risk, in effect, come what may because Dr Ugbala sees him as a "challenge", is a point which was only raised by the appellant at the resumed evidential hearing before me. It did not form any part of the appellant's case before the First-tier Tribunal and was not raised in any of the grounds of appeal. In my judgment, there is no objective basis for the appellant's perception, even if he genuinely believes that to be the case. The evidence does not establish, in my judgment, that there is a reasonable likelihood that Dr Ugbala has any continuing interest in the appellant, or would have any continuing interest in the appellant, on his return to Nigeria, simply on the basis that Dr Ugbala holds the view that the appellant should be punished because of his "challenge" to Dr Ugbala.

49. Further, I am not satisfied that the appellant has any genuine intention of pursuing a settlement claim on return. He has not shown any real sign of doing so since in the UK and now four years have elapsed.

50. As regards the appellant's evidence concerning a robbery that took place in his flat in 2019, the evidence does not establish that there is a reasonable likelihood that this has any connection to the events upon which the appellant now rellies. The appellant knows no more about the break in to his flat other than as one of three his alone was robbed and he is unaware of who the perpetrators were. In my view, the evidence establishes no more than this was a random, and unconnected, burglary or break in to his flat.

51. Consequently, basing the claim upon the conversation with Dr Ugbala or, any suggestion that Dr Ugbala will adversely respond to the appellant as a result of a "perceived challenge" to him, I am not satisfied that there is a real risk to the appellant of persecution, serious harm or that he will be killed.

52. It follows, therefore, that I find that the appellant has not established his international protection claim or claims under Arts 2 and 3 of the ECHR on return to Nigeria. He has failed to establish a real risk engaging the Refugee Convention or Arts 2 and 3 of the ECHR.

53. Further, I am not satisfied that the appellant would, as a consequence, seek to avoid any persecution by not pursuing a complaint or claim in order to avoid an arbitrary arrest such that he has failed to establish his claim on an HJ (Iran) basis.

54. In any event, I am satisfied that the appellant could safely and reasonably internally relocate within Nigeria if (but of which I am not satisfied) it were established that he would be at risk in Ebonyi State.

55. Rivers State, which is his home state, one of 36 states in Nigeria. The appellant accepted in his evidence that the two states are run by the opposing principal political parties in Nigeria. Dr Ugbala is not an elected politician but an appointed official in Ebonyi State. He is now the Secretary to the State Government. The appellant's evidence that Dr Ugbala, unofficially, through contacts in other states and the federal government would be able to pursue the appellant in Rivers State, was not supported by reference to any background material. I was referred to no background material to support links between states that might give Dr Ugbala the ability and means to visit harm upon the appellant if he were living in Rivers State.

56. Mr Dieu did refer me to para 5.3.3 of the March 2019 *CPIN*, but that goes no further than recognising that the Nigerian authorities may use excessive force, engage in arbitrary arrests and even committed extrajudicial killings but not that links or otherwise between states may produce a means by which Dr Ugbala, a state official, could influence what happens in a different state.

57. I note the passages at paras 5.2.1 – 5.2.4 (to which I was not directly referred) in the *CPIN* which documents corruption and bribery, particularly in the context of the police. However, it would be pure speculation to conclude that this supports, even on the standard of reasonable likelihood, the appellant's case that Dr Ugbala could, in effect, track the appellant down in Rivers State.

58. Accordingly, I do not accept that the appellant has established a real risk from Dr Ugbala in Rivers state if (contrary to my primary findings) the appellant would be at risk in Ebonyi State.

59. That then leaves the issue of whether it would be reasonable for the appellant to internally relocate. Mr Dieu did not make any submissions seeking to persuade me that internal relocation was not reasonable. He rested the appellant's case on risk in the place of relocation.

60. Rivers State is the appellant's home state. The appellant was a senior engineer with the National Environmental Standards Regulations Enforcement Agency in Nigeria. There is no reason to doubt that he is a resourceful individual who would be able to work and sustain himself in his home state. Although his father and younger brother have been killed, the appellant does not claim that he has no family in his home state. In his written statements, the appellant refers to a sister and also he has a wife and son.

61. I note that in the skeleton argument prepared for the First-tier hearing, the appellant's legal representative, in paras 37 – 38 when dealing with internal relocation, asserts that he would be unable to internally relocate because of the risk of persecution from Dr Ugbala, but in relation to whether it would be unreasonable or unduly harsh to expect him to internally relocate, only general statements about the correct approach in the light of the relevant case law are set out. No specific factors are identified to suggest that relocation would be unreasonable or unduly harsh.

62. In all the circumstances, I am not satisfied that it would be unreasonable or unduly harsh for the appellant to internally relocate to his home state, Rivers on return to Nigeria.

63. Consequently, for all the above reasons, I am not satisfied that the appellant has established his asylum claim, a claim to humanitarian protection or a claim under Arts 2 and 3 of the ECHR.

Decision

64. The decision of the First-tier Tribunal to dismiss the appellant's appeal was set aside by my decision sent on 15 October 2021.

65. I remake the decision dismissing the appellant's appeal on asylum grounds, humanitarian protection grounds and under Arts 2 and 3 of the ECHR. No reliance was placed upon Art 8 before the First-tier Tribunal or before the Upper Tribunal.

Signed

Andrew Grubb

Judge of the Upper Tribunal
7 February 2022