IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005182

First-tier Tribunal No: PA/66121/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 February 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M T N
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan Senior Presenting Officer
For the Respondent: Mr D Olawanle Solicitor of Del & Co Solicitors

Heard at Field House on 15 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent or any member of her family, likely to lead members of the public to identify the respondent or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

This is an appeal by the Secretary of State. For ease of reference, I refer to the parties in the remainder of this decision as they were before the First-tier Tribunal.

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Anonymity

1. The First-tier Tribunal Judge granted an anonymity order in this appeal and no party before me requested that it be set aside so I confirm the order above. In the circumstances, I have taken into account the starting point for consideration of anonymity orders is the principle of open justice and find that in this case because the appellant claims a risk of persecution on return to Nigeria the appellant's interests outweigh the principle of open justice and an anonymity order is appropriate.

Background

2. The respondent appeals with permission limited to Ground one against the decision of First-tier Tribunal Judge Rothwell ("the Judge") dated 2 October 2024 ("the Decision"), dismissing the appellant's appeal on protection grounds and allowing the appeal on human rights grounds.

3. The appellant a Nigerian national had appealed against the respondent's decision dated 13 December 2023, refusing her asylum and human rights claim.

4. The appellant's claim was based on her risk on return at the hands of her estranged husband who was a senior military officer in the Nigerian navy. The appellant claims she was the victim of severe domestic violence and she remains afraid of her husband. The respondent accepted the appellant is a victim of domestic violence.

The grounds of appeal

5. In summary the grounds seeking permission contend the Judge erred as follows:

> **Ground 1**: By making irrational findings. The grounds elaborate that it is irrational of the Judge to find that there would be very significant obstacles to the appellant's integration on the basis that she is in fear of her estranged husband when at [27] the Judge finds the appellant's claim to still be at risk from her estranged husband twenty years after their last contact to be unfounded resulting in the rejection of her asylum claim;
> **Ground 2:** This ground asserts the Judge reversed the burden of proof on the issue of whether financial support from a friend in the UK could continue in Nigeria and in failing to consider that it would be reasonable to presume that support would continue.

Permission to appeal

6. Permission to appeal was granted on Ground 1 only by First-tier Tribunal Judge Singer on 7 November 2024 in the followings terms:

> "2. Ground 1 is arguable. It is arguable that the Judge erred at paragraphs 30 and
> 34 by assessing the obstacles to reintegration from the Appellant's own, subjective perception of them. It is arguable that the Judge should have (i) had regard to her earlier finding that the subjective fear was not objectively well-founded, and (ii) asked herself whether there were any reasonable steps that could be taken in light of the objective evidence to avoid or mitigate the obstacles, before reaching a conclusion on whether the Appellant's subjective fear would impede reintegration: (see for example NC v SSHD [2023] EWCA Civ 1379 at [25-26]).

> 3. As to Ground 2, the Judge correctly directed herself at paragraph 17 as to the burden and standard of proof in relation to the Article 8 ECHR claim and it is not remotely arguable that she turned her back on this self-direction. The Judge was unarguably reasonably entitled to hold that she was not satisfied that the support would continue."

Rule 24 Response

7. Mr Olawanle relied on the rule 24 response which submits in summary the respondent's grounds amount to no more than a disagreement with the determination of the Judge.

The First Tier Tribunal Decision

8. The Judge at [21] finds the appellant falls within the 1951 Refugee Convention because she has suffered gender – based violence in the context of a male dominated society in Nigeria, referred to in the USSD report which states that spousal abuse is a cultural norm and further because of the senior position of the appellant's husband within the Nigerian Navy.

9. The Judge finds at [22] for the reasons given at [22] to [27] that the appellant's subjective fear of her estranged husband is not well founded. The Judge at [28] finds the appellant is not a refugee, she is not in need of humanitarian protection and the respondent would not be in breach of obligations under Article 3, if the appellant were to be returned to Nigeria.

10. In relation to Article 8, at [29] the Judge finds the appellant had been in the United Kingdom for over fifteen years when she made her application on 26 November 2020. The Judge finds at [30] that the appellant will not reintegrated into life in Nigeria as inter alia she remains afraid that her estranged husband will find her and kill her. The Judge finds that there are very significant obstacle to her integration for the numerous reasons given at [30] to [34]. At [35] the Judge finds the appellant would be destitute on return to Nigeria with no means of support. The Judge allows the appeal as she find the appellant meets the requirements of paragraph 276ADE(1)(vi) on the basis that there would be very significant obstacles to the appellant's integration in Nigeria and in line with TZ (Pakistan) v SSHD [2018)]EWCA Civ 1109, there is no public interest in returning the appellant to Nigeria.

Upper Tribunal hearing

11. The appeal came before me on 15 January 2025 for a face to face hearing. The parties were represented as indicated above.

12. Mr Tufan confirmed at the outset of the hearing that there was no application from the respondent to renew permission in respect of Ground 2.

13. In relation to Ground 1, Mr Tufan relied on the application for permission and submitted that the Judge had made discrepant findings on the asylum ground and on the human rights ground. Mr Tufan relied on the Court of Appeal decision in NC v SSHD [2023] EWCA Civ 1379 in particular paragraphs 25-26, in support of the proposition that a subjective fear cannot be relied upon as amounting to a very significant obstacle.

14. Mr Tufan also referred to paragraph 26 of Sales LJ judgement in Mwesezi v SSHD [2018] EWCA Civ 1104 which he submitted puts into perspective the "very significant obstacles to integration" test set out in paragraph 276ADE(1)(vi). Mr Tufan acknowledged that although Mwesezi is a deportation case the term "very significant obstacles to integration" is the same in both the deportation and the human rights context.

15. Mr Olawanle responded stating that the Judge applied the test set out in Kamara v SSHD [2016] EWCA Civ 813 and considered a range of factors set out at [30] to [35] to reach a broad evaluative judgement on whether there would be very significant obstacles to the appellant's integration.

16. Mr Olawanle submitted the case of Mwesezi was a deportation case and was not relevant in an Article 8 claim with no deportation element as s.117C of the Nationality Immigration and Asylum Act 2002 provides the deportation of foreign criminals is in the public interest and the more serious the offence committed the greater the public interest in deportation whereas public interest considerations in Article 8 cases is not the same as in deportation cases.

17. In relation to the Judge's analysis, Mr Olawanle submitted that the Judge in undertaking a broad evaluative assessment took into account the appellant's fear of her husband as well as many other factors such as the fact that she had been in the UK for almost 20 years , she had no source of support in Nigeria, she had not worked in Nigeria since 1988, she had no home in Nigeria and would experience abject penury on return. Mr Olawanle submitted that the Judge having considered these factors in the round concluded there would be very significant obstacles to the appellant's integration on return to Nigeria.

18. At the end of the hearing, I announced my decision dismissing the respondent's application and upholding the Judge's decision. I now give my reasons.

The test for very significant obstacles

19. At the date of the Decision the relevant provisions were those set out under Paragraph 276ADE(1) (vi) of the Immigration Rules which so far as is relevant provide as follows:

> "276ADE(1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of the application, the applicant:
>
> …
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

20. As stated in Kamara v SSHD [2016] EWCA Civ 813:

> "The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a

reasonable time a variety of human relationships to give substance to the individual's private or family life."

21. More recently Whipple LJ in NC v SSHD [2023] EWCA Civ 1379) having examined the authorities including Kamara, Parveen v SSHD [2018] EWCA Civ 932 and Lal v SSHD [2019] EWCA Civ 1925 gave the following guidance:

> "25. It is not in doubt, based on these authorities, that (i) the decision-maker (or tribunal on appeal) must reach a broad evaluative judgment on the paragraph 276ADE(1)(vi) question (see *Kamara* at [14]), (ii) that judgment must focus on the obstacles to integration and their significance to the appellant (see *Parveen* at [9]) and (iii) the test is not subjective, in the sense of being limited to the appellant's own perception of the obstacles to reintegration, but extends to all aspects of the appellant's likely situation on return including objective evidence, and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles (see *Lal* at [36]-[37]).
> 26. I would add this. The test posed by paragraph 276ADE(1)(vi) is a practical one. Regard must be had to the likely consequences of the obstacles to reintegration which are identified. In a case like this, where the only obstacle identified is the appellant's genuine but unfounded fear, particular care must be taken to assess the ways in which and the extent to which that subjective fear will or might impede re-integration. It cannot simply be assumed that it will. The likely reality for the appellant on resuming her life in her home country must be considered, given her subjective fear, and the availability of support and any other mitigation must be weighed. It is against that background that the judgment on whether the obstacles to reintegration will be very significant must be reached."

Error of Law Decision

22. The focus of this appeal is on the findings made by the Judge on the issue of whether there would be very significant obstacles to the appellant's integration on return to Nigeria.

23. The Judge having found the appellant's fear of her ex- husband was not well found rejected the appellant's asylum and humanitarian protection claim and proceeded to consider the Article 8 claim by reference to 276ADE(1)(vi).

24. It is clear from the Decision that the Judge was fully aware of the legal test of "very significant obstacles to integration" under paragraph 276ADE(1)(vi).

25. Both parties accepted that the test under paragraph 276ADE(1)(vi) requires a broad evaluative assessment of whether the appellant, if returned, would face very significant obstacles to integration. Mr Tufan relied on NC and was of the view that the test is objective and the appellant's subjective fear of harm is not relevant.

26. Mr Olawanle on the other hand was of the view that the Judge had undertaken a broad evaluative assessment by taking into account the impact on the appellant of her subjective fear as well as the lack of any family connections, the lack of support, the length of time she had been away from Nigeria.

27. I agree with Mr Olawanle that the Judge in this case did not simply base the finding of very significant obstacles on the appellant's subjective fear alone. The Judge identified an obstacle to integration in the form of the appellant's subjective fear as the Judge states at [30]

> "…The appellant has been accepted as being a victim of domestic violence. I accept that she remains very afraid of her husband who was a senior military officer in the Nigerian navy. She remains afraid that he will kill her as he told her that she was a "living corpse" and he wanted to eliminate her. She believes that her estranged husband has the power to have her arrested and detained. She stated that on two occasions when she tried to leave her estranged husband, he was able to find her and bring her back. She is afraid to reintegrate for fear that her husband will be able to locate her."

28. The Judge then proceeded at [31] to consider the other factors such as:

    a. the appellant has no contact with anyone in Nigeria since her eldest daughter passed away in 2020,
    b. her other children live in South Africa and she has no contact with them,
    c. her connections to Nigeria given that she had left Nigeria almost 20 years ago.

29. The Judge accepts the appellant, "…has no family members or friends in Nigeria who will be able to assist her on return and this is because she has deliberately distanced herself because of the fear of her estranged husband."

30. The Judge finds at [32] that there is no evidence the appellant's friend in the UK would be able to support her in Nigeria. The Judge takes into account the appellant's age at the date of application was 57 and that she had not lived in Nigeria for almost nineteen and a half years [33].

31. The Judge at [34] takes into account, the appellant had attended secretarial college in Lagos and her estranged husband had forced her to stop work in Nigeria in 1988 and she has worked in the UK as a carer. The Judge finds that given the appellants age and length of time she has been away even if it were logistically possible for her to obtain work she is unlikely to be able to work due to the fear of her estranged husband being able to locate her.

32. It is evident from the above, that the Judge focussed on the likely reality of the appellant's day to day life if returned Nigeria and the impact of the appellant's subjective fear on the range of factors identified.

33. The Judge having considered all the factors concludes at [35] that " the appellant would be destitute on return to Nigeria, with no means of support, which given the trauma she has suffered, leads me to accept that there are "very significant obstacles" to her reintegration".

34. I find that the Judge reached a broad evaluative judgment focusing on the obstacles to integration and their significance to the appellant taking into account the reality of the situation the appellant is likely to face on return to Nigeria.

35. For the reasons given, I conclude that the grounds of challenge do not disclose a material error of law on the part of the Judge. The respondent's challenge fails.

<u>Notice of Decision</u>

The decision of the First-tier Tribunal contains no material error of law and accordingly stands

N Haria
Deputy Upper Tribunal Judge Haria
Immigration and Asylum Chamber

4 February 2025