Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/03831/2014**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 29th October, 2014	**On 3rd December 2014**
Signed 17th November, 2014	

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS A O
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: *Mr Diwnych, Home Office Presenting Officer*
For the Respondent: *Ms Faryl, of Counsel*

DECISION AND REASONS

1. In this appeal the appellant is the Secretary of State for the Home Department and to avoid confusion I shall refer to her as being "the claimant".

2. The respondent is a citizen of Nigeria who was born on 28th June, 1986.

3. She appealed to the First-tier Tribunal against a decision of the respondent, taken on 15th May, 2014 to remove her as an illegal entrant. Her appeal was based on her claim to be in need of international protection as a refugee, alternatively humanitarian protection and also on the basis that her removal would breach her rights under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

4. The respondent's appeal was heard by First-tier Tribunal Judge Holt at Manchester Piccadilly on 9th July, 2014. She purported to allow the respondent's asylum appeal, and the humanitarian protection appeal and the respondent's human rights appeal, based on her claim that her removal from the United Kingdom would breach her rights under Articles 2, 3 and 8 of the 1950 Convention.

5. The claimant challenged the decision asserting that the judge had failed to give adequate reasons for finding at paragraph 59 of her determination that the respondent would be unable to access shelters for victims of trafficking. The claimant had referred in her refusal letter to objective evidence suggesting that there were shelters available for victims of trafficking in Nigeria. The grounds also asserted that there was no reference in any of the material to any difficulty or lack of access for women with children and no evidence had been provided by the respondent's representatives to suggest that women with children would be unable to access shelters. As a result the First-tier Tribunal Judge had reversed the burden of proof in respect of the availability of shelters by what she said at paragraph 59.

6. Addressing me, Counsel suggested that paragraph 59 of the determination needed to be read in conjunction with paragraph 58. The judge was entitled to find that the respondent would not be able to access facilities on the basis of the fact that she has young children and no-one to return to in Nigeria. She was effectively relying on *PO (Nigeria) v Secretary of State for the Home Department* [2011] EWCA Civ 132 and in particular on paragraph 19, where the expert referred to suggested that there were funding problems resulting in no childcare facilities such as crèches or private facilities for nursing mothers, no medical facilities beyond first aid and the facility for hospital referrals in emergency, and no qualified mental health therapists in the shelters. The Immigration Judge recognised that on the facts of the appeal the respondent would not be accepted in the shelters and recognised that the appellant would be unable to support herself with young children due to her vulnerability and lack of family support on return to Nigeria.

7. For the claimant, Mr Diwnych pointed out that the Reasons for Refusal Letter does make reference to the availability of federal shelters which have childcare facilities and no evidence was adduced on behalf of the respondent to show that the respondent would not be accommodated in one of them. The judge reversed the burden of proof and failed to take account of the evidence relating to federal shelters. In that respect she had erred. She had further erred by going on to allow the appeal under Article 8. She had not given any consideration to the question of the Immigration Rules and it was simply inadequate for her to suggest that since she had allowed the appeal she did not need to consider the issue separately. Counsel pointed out that there was no finding in respect of EX.1. In the event that the refugee claim stands then any error she may have made in respect of Article 8 is not material. Counsel agreed that in the event that the asylum appeal failed then what the judge had said at paragraph 64 was a wholly inadequate basis for allowing the respondent's appeal outside the Immigration Rules on the basis of her Article 8 rights.

8. I reserved my decision.

9. Having read the judge's decision I have been unable to find any reference by her to any objective evidence dealing with the question of the availability of shelters suitable for the respondent's accommodation with her children. Whilst she does refer to the Reasons for Refusal Letter she makes no specific reference to paragraphs 60, 67 or 68 and it is paragraph 68 which refers to the Country of Origin Information Report on Nigeria of 14th June, 2013 which in turn makes reference to the British-Danish 2008 FFM Report dealing with the Federal Ministry of Women's

Affairs and Social Development shelter in Abuja for battered women and accompanying children which is said to be "modelled after the shelters of NGOs".

10. At paragraphs 58 and 59 the judge said this:

> "58. However, I find that the [respondent] would be in an extremely difficult and vulnerable situation should she return to Nigeria. She would be returning as an individual who has not lived there for ten years. She would go back with different vulnerabilities as a mother with three young children (including the new-born baby). Whilst it is probably correct that the [respondent] would be able to avoid a particular individual who has made threats to her previously, I am satisfied that the [respondent] would still be returning to circumstances of extreme vulnerability to exploitation. She has no family or social network to support her upon return to Nigeria. She has only known exploitation and servitude in Nigeria in the past and also at the hands of (some) Nigerian in the United Kingdom and I find that she would be at grave risk of falling back into similar situations of exploitation and servitude upon return.
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> 59. In contrast, the only evidence that the [claimant] could point to in order to support their contention that the [respondent] would not be at risk on return is the fact that they claim that there is a system of women's refuges in the main cities in Nigeria where the [respondent] could access help. However, there is no evidence that this particular [respondent] with two very young children and a soon-to-be-born baby would be accepted by any such women's refuge organisation. Further it is difficult to see how the [respondent] would be able to survive financially for the next few years given that she will not be able to leave her children in order to work without making them very vulnerable. This is because I find that she has no family members to look after them and I am not satisfied that she would have the ability to pay for safe and reliable childcare for three children while she worked, in addition to feeding and housing her family. Further, whilst the [claimant] has also provided two pages of photocopies from financial organisations in Nigeria who make small loans to people wishing to set up small businesses, I am not satisfied that this would be practicable or useful to this particular [respondent]. I find that the [respondent] would be a most unattractive client for a bank to lend money to given her circumstances."

11. I am satisfied that the judge did err in law by failing to refer to any credible background evidence that a trafficked woman with children would be unable to access refuge shelters on return to Nigeria. Counsel drew my attention to the Court of Appeal's decision in *PO (Trafficked Women) Nigeria CG* [2009] UKAIT 00046, but the claimant had of course relied upon objective evidence contained in the Country of Origin Information Report, suggesting that there is a federal shelter which accepts accompanying children and which is, apparently, "modelled after the shelters of NGOs".

12. Having found there to be an error of law in the judge's consideration of the respondent's asylum appeal it follows that this error also taints the judge's conclusions in respect of the respondent's humanitarian appeal. The judge's consideration of the appellant's Article 8 appeal outside the Immigration Rules is inadequate and fails to demonstrate that the judge has carried out a proper proportionality assessment.

13. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's practice statement, given the length of time the parties would have to wait for the matter to be relisted before me in Manchester and that it could, conversely, be heard relatively speedily by the First-tier Tribunal and in view of the overriding objective in forming the forward conduct of the appeal, I have decided that the appeal be remitted to the First-tier Tribunal for a hearing afresh before a First-tier Tribunal Judge other than Judge Holt.

14. Judge Holt refers at paragraph 53 to having had concerns about the appellant's credibility and not being satisfied that the appellant had told the truth. In fairness to the appellant I direct that the appeal should be heard afresh de novo. A Yoruba interpreter will be required and two hours should be allowed for the hearing of the appeal.

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/her 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.

Richard Chalkley

Upper Tribunal Judge Chalkley