Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06083/2017**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision promulgated**
On 6 March 2018	**On 3 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TAG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akhigbe of R & A Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge M A Khan, promulgated on the 14 September 2017, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant, a citizen of Nigeria, was born on 29 April 1975. The appellant entered the United Kingdom with leave valid to 20 March 2012. The appellant overstayed and the Judge records periods of absconding, handing himself in, failure to comply with conditions of release, and eventually on 10 March 2017

the appellant submitting a human rights article 8 ECHR application. On 22 March 2017 a further application for leave on the basis of family/private life was said to be void. On 10 April 2017 the human rights application was refused and certified and removal directions set. On 12 April 2017 the appellant was asked if he wished to claim asylum which he did on 24 April 2017. On 8 June 2017 the asylum claim was refused leading to the appeal before the Judge.

3. The Judge considered the evidence in both documentary and oral form before setting out findings of fact from [36] of the decision under challenge. The Judge found the appellants evidence in relation to the core claim of risk of persecution in Nigeria on account of his sexuality and evidence in relation to what had occurred to him in Nigeria was wholly inconsistent and "neither credible nor consistent".

4. At [46] the Judge finds that the appellant has simply made up the whole of his evidence in order to make out an asylum claim in the United Kingdom.

5. The Judge makes the following findings at [47 – 50] of the decision under challenge, which should read:

> 47. I find that on the lower standard of proof, the appellant has failed to establish that he has been persecuted in Nigeria in the past on the grounds of his sexuality or his political opinions or there is a real risk of persecution on his return to the country of his origin, Nigeria. I find on the evidence before me the United Kingdom will not be in breach of the Refugee Convention if the appellant is returned to Nigeria.
>
> 48. The appellant has produced a Psychiatric Report by Dr Teresa Wazniak. The report gives graphic details about the scarring on the appellant's body. I was taken through the report thoroughly by the appellant's legal representative. Dr Wazniak states that every scar is consistent with the appellant's explanation as to how they came about through the torture during his kidnapping. It is suggested at paragraph 9.15 and some others that "*asylum seekers and refugees with PTSD and expression are less able to retrieve specific memories of the personal past within a given time limit when prompted to do so*". It is said that the appellant's memory in this case may have been affected by the injuries he suffered. These injuries occurred in February 2007, there is no evidence that the appellant has been treated for any mental condition or any other condition since September 2007.
>
> 49. I accept Dr Wazniak's description of the scars on the appellant's body and that they may be consistent with the method of torture but I do not accept the appellant's explanation that they were caused by the Nigerian Military personnel and for the reason that he was a bisexual. At question 124, the appellant was asked how these military people knew about his sexuality, he said maybe through information but could not explain and said that he had no idea. The police letter written on 11/05/17 states that the appellant was kidnapped by the Niger Delta Boys. This appears to be some type of gang members of gangs can cause such injuries as found on the appellant's body.
>
> 50. I do not accept the appellants evidence that he is a bisexual male and that his torture resulted from/because of his sexuality. Further, I find that the appellant has added evidence and changed it in order to bolster his asylum claim. On the lower standard of proof, I find that the appellant has failed to establish his case on the basis of his bisexuality.

6. Clear sloppiness in the dictation and checking of the above paragraphs in the decision under challenge and typographical errors have been omitted and/or corrected for the sake of clarity in the version set out above.
7. The Judge went on to consider risk on return notwithstanding the appellants evidence having been totally discredited, but found the appellant would not face a real risk from the authorities or anywhere else in Nigeria and that he could safely return to his home state without facing a real risk of persecution.
8. Permission to appeal was initially refused by another judge of the First-tier Tribunal but renewed to the Upper Tribunal and granted in a decision dated 16 January 2017. The operative parts of the Upper Tribunal grant are in the following terms:

> 4. The decision is arguably unlawful as it is arguable that the complete report of Dr Wozniak, which was arguably found to be one to which weight should be given, was not factored into the credibility assessment but dealt with separately afterwards in an unlawful fashion.
>
> 5. Further it is arguable that even if the history the appellant gave was not believed that the First-tier Tribunal believed that the appellant was tortured by the Niger Delta Boys and erred by failing to decide whether this placed the appellant at real risk of serious harm on return to Nigeria, and thus whether he was entitled to refugee status or humanitarian protection, or alternatively failed to give reasons for a decision that the appellant was not entitled to either status on this basis.

9. The application is opposed by the Secretary State in the Rule 24 response dated 2 February 2018.

Submissions

10. On behalf of the appellant it was submitted that the evidence before the Judge was significant. It was conceded by the appellant's representative that the Judge looked at the medical report and considered the same with the required degree of anxious scrutiny but submitted that the report supported the account given by the appellant.
11. It was accepted on the appellant's behalf that the source of the evidence before the expert was that given by the appellant and that it is this evidence that appears as the core of the report.
12. It was accepted on the appellant's behalf that if one reads the decision it is possible to understand why the Judge came to the findings that he did.
13. It was submitted that the doctor did not expect the appellant to have a clear memory.
14. On behalf of the respondent Mr Bates submitted the grant of permission relates to an alleged compartmentalisation of the medical evidence which had not actually occurred.
15. It was submitted the Judge considered the medical evidence and it is not for the medical expert to decide whether the appellant's account is credible.
16. It was submitted that other evidence before the Judge undermined the appellant's claim regarding causation. It was submitted the appellant had left Nigeria three years before the report. Although the issue of PTSD is raised, Mr

Bates submitted there is no diagnosis the appellant is suffering from PTSD in the report. It was submitted the author of the report is not qualified to provide such a diagnosis and, although referring to the possibility of a report being obtained from an appropriately qualified medical practitioner, no such report was obtained.

17. Mr Bates submitted that in relation to the appellants cognitive functioning; the report states the appellant is fully cognitive and was able to cope with the four-hour interview with the author of the report. It was submitted the Judge was therefore properly able to assess the evidence given by the appellant and to take into account clear discrepancies.
18. In reply, Mr Akhigbe submitted the appellant had given an account of the incidents to the expert and at interview.
19. It is accepted on the appellant's behalf the medical evidence contained no diagnosis of PTSD.
20. It is submitted the medical report was obtained to corroborate the appellant's account.

Error of law

21. The report considered by the Judge is that of a General Physician (GP). It is right to say the report is based upon incidents of which the author was informed by the appellant. The author must therefore have accepted the credibility of the appellant's account.
22. The role of an expert is not to decide whether an account is credible. The Judge was entitled and required to undertake that assessment himself. The Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. That was conceded by the appellant's representative in the course of his submissions to the Upper Tribunal.
23. It has not been made out the Judge's conclusions in relation to lack of credibility in the appellant's account are in any way perverse, irrational, or contrary to the evidence. The expert confirmed the appellant is fully cognitive and was clearly able to cope with not only a long interview before the expert but also preparation of his witness statements and the evidence he gave before the First-tier Tribunal.
24. There is no diagnosis of PTSD.
25. Error of law only arises in the situation asserted by the appellant if it is established there has been an artificial separation between the medical evidence and the adverse credibility findings made, i.e. that the Judge arrived at such findings without considering all the available evidence. In this case no such artificial separation has been made out.
26. I find the findings both in relation to the lack of credibility in the appellants claim and the lack of a credible real risk on return are within the range of those reasonably available to the Judge on the evidence.
27. The Judge did not make a finding the appellant faces a real risk from the Niger Delta Boys and no legal error arises in relation to this aspect. The appellant fails

to establish any arguable basis for the Upper Tribunal interfering in this decision.

Decision

28. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

29. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 2 May 2018