H-VB-V1

WO (Ogboni cult) Nigeria CG [2004] UKIAT 00277

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 7 September 2004
Date Signed: 23 September 2004
Date Determination Notified: 30 September 2004

Before:

Miss K Eshun – Vice President
Mr P R Lane – Vice President
Miss S S Ramsumair JP

Between

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the Appellant: Ms L Mensah, Counsel instructed by Messrs Jackson & Canter, Solicitors
For the Respondent: Mr J Morris, Senior Home Office Presenting Officer

1. The Appellant, a citizen of Nigeria, appeals with permission against the determination of an Adjudicator, Mr M T Sykes, sitting at Manchester, in which he dismissed on asylum and human rights grounds the Appellant's appeal against the decision of the Respondent to give directions for the Appellant's removal from the United Kingdom.

2. The Appellant, born in July 1969, had worked as a teacher of mathematics in Nigeria during the 1990's. He said that his father had been

a member of the Ogboni cult and had sworn an oath that the Appellant would himself become a member when the latter reached the age of 30. However, in 1981, the Appellant's father converted to Roman Catholism and renounced the Ogboni. Following this the father changed from being a member of the National Party of Nigeria to that of the United Party of Nigeria. The Ogboni regarded this change as a betrayal and began to intimidate the family. In 1982, the family home was said to have been burnt to the ground in an act of arson by someone whom the Appellant said was an Ogboni. However, before this man could be brought to trial he was killed during an armed robbery (statement, paragraph 12). Whist returning home from a political meeting in 1983, the Appellant's father was attacked and killed (paragraph 13). The Appellant said that his uncle, who was also involved in politics, was murdered in 1992 and that four men, who were Ogboni members of the NRC Party, were arrested but later released.

3. Following the loss of his job as a teacher in 1996, the Appellant was persuaded by the Chairman of Christians in Leadership to stand for election as a local councillor of Ward 10 in Benin. The Appellant was elected in 1998. In the following year, he was elected Speaker to the legislative arm of Oredo Local Government Council. Shortly after his election as Speaker, leaders of the PDP told the Appellant that they were Ogboni members and reminded him that his father had sworn that the Appellant would become a member when he was 30. Following the Appellant's negative response to the Ogboni, an intrigue began, as a result of which the Appellant was compelled to resign as Speaker, although he remained as a councillor. In October 2000, Ogboni members tried to break into his house but the Appellant and his family managed to escape. He reported the incident to the police. When the Appellant returned to the house he found that it had been ransacked and his car stolen. Whilst the Appellant was telling the Chairman of the councillors about this, a person called Osamede Adun came into the room and told the Appellant that he had "refused to take a clean bath and that these were consequences and that there was nothing I can do about it. He said if you couldn't beat them, you join them. At this, the chairman began to laugh" (statement, paragraph 31).

4. In early 2001 the Appellant was present at a building site when a group of men arrived wielding cutlasses, iron bars and knives. These men attacked the Appellant and the workmen who were present at the site. The Appellant was beaten unconscious and awoke in hospital a few days later. The police said that they would investigate the matter.

5. After this, the Appellant decided to visit London in order to attend a cultural festival. He then returned to Nigeria where, on his way to a ward meeting, a car followed him and shots were fired at the Appellant. The assailants beat his friend and his guard into unconsciousness and stole the car (paragraph 34).

6. The Appellant moved into his new house in October 2001 and bought a gun for protection. His political mentor was assassinated in November 2001. The Appellant joined a new party, the ANPP, and intended to contest the local elections in 2003 "and to reveal the Ogboni secrets" (determination, paragraph 14; statement, paragraphs 38 to 40). However, the Ogboni arranged for the police to deliver to the Appellant's house a document requiring him to attend the police station in connection with the possession of an illegal firearm. The Appellant was told by his lawyer that "if he was detained he would be killed as the Police Commissioner was an Ogboni". The Appellant therefore left his family and went to Lagos, whence he flew to the United Kingdom "under a false name" on 6 January 2003 (determination, paragraph 14).

7. The basis of the Appellant's claim is that he fears further persecution at the hands of the Ogboni, should he be returned. He "would be arrested on the police warrant, detained and killed whilst in custody" (determination, paragraph 15).

8. In paragraph 9 of his statement, the Appellant says "the Ogboni are a secret society in Nigeria. They worship Satan and believe in the use of charms. Its members are drawn from the affluent and influential. They perform rituals, which include human sacrifice. When a member of the society is initiated he drinks human blood and swears an oath."

9. Having heard the Appellant give evidence, the Adjudicator did "not accept the core of it – that he has been persecuted by members of the Ogboni cult or that he would be at risk from them on his return" (determination, paragraph 17).

10. Ms Mensah (who also appeared before the Adjudicator) criticises the Adjudicator's credibility findings on the basis that the Adjudicator has relied excessively upon findings of implausibilities. She referred the Tribunal to the determination of the Tribunal in ***Ibrahim Ali [2002] UKIAT 07001***, in which it is stated that "in cross-cultural matters it is inherently dangerous to place too much weight on plausibility. One's judgment on plausibility is bound to be coloured or influenced by one's own values and environment. What may be plausible for a person in a western environment may be completely implausible for someone in a non-western environment. In determining whether an assertion or claim is credible or otherwise, Adjudicators must take great care in not allowing their perceptions and values to influence that judgment" (paragraph 3).

11. The second basis upon which the Appellant seeks to challenge the Adjudicator's findings is that the Adjudicator was wrong to find (as he did at

paragraph 17 of the determination) that the Appellant's account was not "supported by the objective material."

12. These two matters are to some extent interrelated but it is appropriate to examine first the objective situation regarding the Ogboni.

13. The Adjudicator dealt with this matter in considerable detail at paragraphs 28 to 30 of the determination. At paragraph 28, the Adjudicator set out the passages in the Home Office CIPU Report on Nigeria, in the version that was before him. These passages are now to be found at paragraphs 6.20 to 6.123 of the April 2004 Report:-

> "**6.120** There are many cults in Nigeria. Probably the best known is the Ogboni. The Ogboni are a secret society of the Yoruba tribe, and it is therefore hard to obtain reliable information about them. As a secret society it has been banned in Nigeria, and its power curtailed. However this ban is hard to enforce, and it is still active and alleged to be involved in satanic practices.
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> **6.121** The title Ogboni is only conferred on the elders, i.e. senior members of the society. These are usually men but women, usually six in number, were traditionally included to represent the interests of women in the community. Membership of the society is usually, but not always, passed through patrilineal descent.
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> **6.122** The Ogboni traditionally played a significant role in Yoruba religion and society, and were involved in the installation of new Kings. Historically an Ogboni could be said to have combined the powers of a local magistrate, with those of a member of the local government and a religious leader.
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> **6.123** The Ogboni engaged in animal sacrifice. There is no firm evidence to suggest that they engaged in human sacrifice. However, in the event that a King abused his power they could compel him to commit suicide. They could also impose sanctions against other members of the community if they believed that these were justified. The Ogboni are reputed to threaten its members with death should they break their oath of secrecy regarding its rituals and beliefs. It is still regarded as being a powerful organisation throughout Nigeria."

14. At paragraph 29 of his determination, the Adjudicator considered certain material submitted by the Appellant. An extract from "*The Nemesis*

of Power – Agho Obaseki and Benin Politics 1897-1956" makes it clear that the Ogboni were extremely powerful up to the end of the 1940's but were then dislodged from power by the Reform Benin Community. The Adjudicator quotes the author of this document as stating that "No doubt…the liquidation of Ogbonisim in Benin was one of its [i.e. the RBC's] primary objectives and raison d'etre." The report entitled "*Benin and the Midwest Referendum*" reported "waves of violence against the Ogboni leaders in 1951 resulting in the breaking of the Ogboni infrastructure in rural areas and the subsequent fall from power of its leader" (paragraph 29(b)).

15. Having noted in the Appellant's documentation a report about the death of a young man at the hands of a secret College cult and a report of an individual who successfully claimed asylum in Canada as a result of that person's refusal to participate in Ogboni ritual practices, the Adjudicator concluded at paragraph 30 of the determination that, whilst the Ogboni are regarded as being a "powerful organisation throughout Nigeria", this was "a long way from corroborating the Appellant's assertions of their pervasive and violent influence on political life and their power over the security forces". The Adjudicator drew a distinction between the fear of a son to take up family membership immediately after the death of a father (a matter to which the Tribunal will itself return) and contrasted this with the account being given by the Appellant, which was that the Appellant's father had promised that the Appellant would join the cult when the Appellant reached the age of 30. The Adjudicator also drew a distinction between "rival student cults" and the Ogboni. Reviewing the evidence as a whole the Adjudicator concluded that the Ogboni "have not had real political power in Nigeria for the last 50 years of so" (paragraph 30).

16. At paragraph 18, the Adjudicator had noted that the newspaper report placed before him regarding the fire at the family home of the Appellant made no mention of the Ogboni. There was also no report at all regarding the death of the father. Having made his findings regarding the limited influence of the Ogboni, the Adjudicator returned at paragraph 31 of the determination to the absence of any newspaper or other media reports that linked the Ogboni to the attacks on the Appellant himself, his father, his uncle and his political mentor. The Adjudicator noted that the Appellant sought to explain this absence of evidence by asserting that the Edo State Governor was an Ogboni and a PDP member "and that newspaper articles must be vetted by an editor appointed by the State Governor. He also told me that no newspaper would dare print anything about the Ogboni but both these assertions are contrary to the objective evidence about press freedom in Nigeria". The Adjudicator noted in particular that the CIPU Report (at paragraph 6.3 of the version that was before him) referred to Nigeria's "long tradition of a vibrant and independently minded press. The Constitution provides for freedom of

speech and of the press, and the government generally respected these rights."

17. Having reviewed the objective materials before us, the Tribunal concludes that the Adjudicator reached entirely correct conclusions concerning the scope and power of the Ogboni cult in Nigeria. As he found, and as paragraph 6.120 of the latest CIPU Report makes clear, the Ogboni are "a secret society of the Yoruba tribe". One of the sources cited for that conclusion in the CIPU Report is a letter of March 1998 from Dr B. Akintunde Oyetade of the School of Oriental and African Studies, University of London. Dr Oyetade is, in fact, the author of a report on the Ogboni Society prepared on behalf of the Appellant in connection with these Tribunal proceedings (pages 100-106 of the Appellant's bundle). There is nothing in that report that can be cited as authority for the proposition that the Ogboni have any significant (or, indeed any) membership drawn from tribes other then the Yoruba. Furthermore paragraph 6.124 of the April 2004 CIPU Report contains the statement that "the Ogboni is believed to be a purely Yoruba cult, but there are a number of Yoruba sub-tribes who also may be involved". The source cited for this proposition, which in any event is little more than a reiteration of the point that emerges from paragraph 6.120, is "*The Yoruba Ogboni cult in Oyo*" by Peter Morton Williams.

18. The fact that the Ogboni cult is confined to the Yoruba immediately places a significant limit upon its power to influence people and events in Nigeria. As paragraph 6.44 of the CIPU Report makes plain, there are "over 250 ethnic groups with different languages and dialects in Nigeria, which accounts for its cultural diversity. In descending order the Muslim Hausa Fulani centred on the north, the Yoruba centred on the south west, and the predominately Christian Ibo (or Igbo) centred on the south east are the largest ethnic groups. Yet no single tribe encompasses a majority of the population". The US State Department Report on Human Rights Practices in Nigeria states that "There is no federal policy of discrimination against any of Nigeria's ethnic groups and legislation is designed not to favour one group over another. This is largely respected provided that a group does not pursue secessionist demands. An alleged dominance in the military and government is occasionally levelled at Hausa-Fulanis, with the converse claim that other ethnic groups are discriminated against".

19. This Tribunal accordingly finds itself in agreement with the conclusions of the Tribunal chaired by Mr Freeman in ***Akinremi (00/TH/01318)***, which, in a determination notified in September 2000, found that the power of the Ogboni "has been curtailed. They are an exclusively Yoruba cult: even if the Appellant was afraid some of her local police were members, it must have been clear that no non-Yoruba officer would be."

20. It is a central feature of the Appellant's claim that the Ogboni were able to launch with impunity a series of direct, physical attacks upon him, his father, uncle, political associate, employees, home and other property, and that the final straw came when he apprehended that the Ogboni were intent upon having him taken into custody and murdered. If these were truly the sorts of activities in which the Ogboni are engaged in Nigeria, it frankly beggars belief that there would not be, amongst the objective documentary evidence, some express acknowledgement of the fact. Yet there is none. As she had before the Adjudicator, Ms Mensah sought before the Tribunal to counter this difficulty in her client's case by pointing to the provisions of the CIPU Report which identify the prevalence of politically motivated crimes, including murders of political opponents, and the various abuses committed by the police, including arbitrary arrest and detention. The Adjudicator, at paragraphs 33 and 34 of the determination, acknowledged these problems in Nigeria society. But, as paragraph 35 makes clear, he refused to accept that these problems compelled him to conclude that it was reasonably likely that the Ogboni lay behind the Appellant's account of his difficulties. Those difficulties were, rather, the result of "an ordinary burglary" (paragraph 23) and the tumultuous and often violent nature of Nigerian politics. They had nothing to do with a campaign of persecution by the Ogboni against the Appellant, as a result of his failure to join the cult.

21. The Tribunal finds that the Adjudicator was entitled as a matter of law to his conclusions on the evidence before him in this regard. If any political violence in Nigeria has an Ogboni element, the objective materials would say so. Given the restricted ambit of the cult and the virile nature of the Nigerian press, silence on the issue cannot be ascribed to fear. Furthermore, the expert report now before the Tribunal lends support to the Adjudicator's findings. At paragraph 11 of that report, Dr Oyetade states that "If your client's father was a member of the Ogboni society it is possible that the father may have given his son's name to the society as the name of the person to take over his position after his death. This is believed to be the practice in the society." That, however, was manifestly *not* what the Appellant was claiming. As we have already noted, the Appellant said that his father had sworn that the Appellant would become a member when the Appellant reached the age of 30. The father himself died in the early 1980's. Thus, not only does the Appellant's claim run counter to what the expert says is believed to be the practice in the Ogboni society, it can now be seen even more clearly to be no more then a device designed to inject into the history of the Appellant's local government career a spurious Ogboni element.

22. In paragraph 11 of his report Dr Oyetade continues as follows:

> "If the person whose name is submitted refuses to take up the position because they hold a different religious view, the person will have problems with the members of the society. I have no evidence to confirm that the person who refuses to take up the position reserved for him by his late father will be sacrificed. What is common knowledge, however, is that they may suffer unfortunate circumstances, misfortunes and sudden or premature death. This may be the cultural background against which your client is exercising fear about returning to Nigeria. This would appear to be very much so if according to your client certain members of the society have actually confronted him and told him that if he refused to join them, he would be killed."

23. Nowhere in the report does Dr Oyetade state that the Ogboni are known or even suspected ever to have actually taken the step of murdering people who refuse to join them. On the contrary, at paragraph 14, in seeking to specify "the nature of the problems your client may encounter," Dr Oyetade merely states that these "may include mysterious illness, which would force him to submit himself to their wish. He may become emotionally unstable until he agrees to consult a diviner, who in turn may in the end tell him to go and fulfil the pledge made on his behalf by his father." The point being made by Dr Oyetade is plain. The claim which the Ogboni may be perceived as making is that through some form of witchcraft, they will attempt to induce a "mysterious illness" in the victim or to occasion him some other misfortune. But that, however, is categorically *not* what the Appellant claims to have experienced or to fear.

24. In ***Omoruyi [2000] EWCA Civ 258*** the Court of Appeal had before it a case involving an alleged fear of the Ogboni cult. Simon Brown L J noted that the Appellant in that case "described the Ogboni variously as a 'secret cult…associated with idol worshipping to the extent of drinking blood' 'a mafia organisation involved in criminal acts' and a 'devil cult' and he spoke of their carrying out 'rituals', namely 'the sacrificing of animals to a graven image [and the] worshipping of idols.'" Ms Mensah sought to derive from ***Omoruyi*** support for the proposition that the Ogboni are, indeed, capable of direct physical violence against their opponents. However, later in his judgment, Simon Brown L J makes it plain that "the Secretary of State rejects the claim that the Ogboni are associated with sinister killings". But since the Court was in that case concerned solely with the question of whether the alleged fear, even if credible, was one based on religion, the learned Lord Justice was able to state that "for the purposes of this appeal, however, we must assume that the Appellant is right both in his description of the cult's violent reprisals and his assertion that the police and other state authorities are unwilling to act against them." ***Omoruyi*** is, thus, in no sense to be

regarded as authority for the proposition that the Ogboni cult behaves in the way claimed by the present Appellant.

25. It is now necessary to consider the various "implausibilities" identified by the Adjudicator in his determination. At paragraph 21, the Adjudicator found it unlikely that the Ogboni would have allowed the Appellant to win the local government election in December 1998, and to have become elected as Speaker in the following year, "before finding out what his attitude to them was. They would have approached him first and then withdrawn their support in the election if he had refused." The Tribunal does not consider that this finding can in any sense be said to have been "coloured or influenced" by the Adjudicator's "own values and environment" (to use the wording in ***Ibrahim Ali***). On the contrary, as will already have become apparent, the Adjudicator in the present case immersed himself thoroughly in the evidence relating to Nigeria in general and the Ogboni cult in particular. All that the Adjudicator was here doing – as he was entitled to do – was observe that the alleged reticence of the Ogboni members in their dealings with the Appellant at this stage was wholly inconsistent with their supposedly ruthless nature, as asserted in the remainder of the Appellant's account.

26. The same point arises in relation to paragraph 22 of the determination, in which the Adjudicator found it implausible that, after the Appellant had refused to join the Ogboni in 1999, nothing more happened to him until October 2000, when his house was broken into. The grounds of appeal assert that the Adjudicator was wrong to find that the only thing to link the Ogboni with the break-in was an "oblique remark" made during the conversation in the chairman's office. At paragraph 27 of the written statement, the Appellant had in fact stated that the masked men who attacked his home "were chanting songs, which I later found out were Ogboni tunes usually chanted when they were attacking, and shooting guns". This criticism, however, does not meet the point made by the Adjudicator, that nothing happened between 1999 and October 2000. Furthermore, it does not detract from the Adjudicator's finding that it was odd to say the least that someone who was a member of a ruthless criminal gang would not be more direct in his comments to the Appellant in the chairman's office.

27. Similarly, at paragraph 26 of the determination, the Adjudicator noted that there was a further peculiar delay on the part of the Ogboni in doing anything about the Appellant from September 2001 until December 2002. In the circumstances, the Adjudicator was entitled to that view. He was also plainly entitled to find that, if the Ogboni were seriously set on eliminating the Appellant, they would have done more than resort to the feeble device of leaving with the Appellant's wife a document requiring the Appellant to attend the police station for having an unlicensed firearm,

without even bothering to check whether the Appellant himself would be at home, so that the Appellant had time to escape.

28. In conclusion, the Adjudicator was entitled in law to his credibility findings. On the basis of those findings, there is no Ogboni element to the Appellant's case. If returned to Nigeria, the Appellant may well, as the Adjudicator concluded, have to face possible prosecution for having the unlicensed firearm. However, as the Adjudicator found at paragraph 37 of the determination, notwithstanding the undoubted shortcomings in judicial procedures in Nigeria, on the facts of this case there is no real risk of the Appellant facing persecution or Article 3 ill-treatment.

29. Permission was sought before the Tribunal to adduce in evidence a photograph of a man dressed in what was said to be ritual costume of an Ogboni. This photograph was said to be of the Appellant's father. No suggestion was made that this photograph could not have been obtained with reasonable diligence for use at the Adjudicator hearing. If it had been produced before the Adjudicator, it cannot possibly be said, in accordance with ***Ladd v Marshall*** principles, that it would probably have had an important influence on the result. Applying those principles, as most recently enunciated by the Tribunal in ***M A (Fresh evidence) Sri Lanka* [2004] UKIAT 00161*****,** the Tribunal did not permit the photograph to be admitted as evidence.

30. This appeal is dismissed.

P R LANE
VICE PRESIDENT

Approved for electronic promulgation