IN THE IMMIGRATION APPEAL TRIBUNAL

Decision no. DJ (Muslim - Christian Conflict - Medical Evidence) Nigeria CG [2002] UKIAT 03837
Appeal no. HR 44680-2001

Heard: 05.08.02
Typed: 06.08.02
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IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
and
Mrs ML Roe

Between:

David Alector JATTO,
appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Mr J Auburn (counsel instructed by Gill & Co) for the appellant
Mr J Morris for the respondent

This is an appeal from a decision of an adjudicator (Mrs AK Simpson), sitting at Runcorn on 14 March, dismissing a human rights appeal by a citizen of Nigeria, whose asylum appeal had already been dismissed by another adjudicator (Mr AJ Olson – and leave to appeal refused), from refusal to allow the appellant to remain in this country, following that decision, on 12 June 2001. Leave was given mainly on the basis that Mrs Simpson (to whom we shall refer as the adjudicator) had mistaken (from the rather misleadingly set out CIPU report) the date of a peace agreement between the appellant's Itsekiri tribe and the rival Ijaw, in the Delta State of south-east Nigeria.

2. The adjudicator thought this had been made on 25 June 2001: not surprizingly in those circumstances, she did not accept that the appellant would currently be at risk from the Ijaw anywhere. Unfortunately it had in fact been on the same date in 1999, and had had plenty of time to break down. There had been a further agreement between the Ijaw and the Itsekiri on 1 February 2000; but it is quite clear from the second report of Dr Margrit Nolte (a "country expert" from the

University of Birmingham Centre of West African Studies), dated 24 April 2002, and the attached material, that this agreement did not hold either. However, any case based on a regional conflict between tribes raises an obvious point on internal flight, which no-one so far has dealt with. It clearly came as no surprize to Mr Auburn when we raised it.

3. **Family life** Also in the grounds of appeal is an article 8 claim, based on the appellant's relationship with a British citizen called Soraya Abdo. That was not pursued before us, except to the extent that living together unmarried might cause them problems, amounting to "inhuman or degrading treatment" contrary to article 3 of the Human Rights Convention in any Muslim-majority area of Nigeria. As they both say in their statements that they intend to get married anyway, we do not see that as a real problem. Unfortunately the pregnancy noted in Dr Nolte's first report had ended in a miscarriage on 23 November 2001.

4. We shall briefly consider the position under article 8: though Mr Auburn expressly disclaimed any reliance on that, it may be relevant to the way he did rely on the appellant's domestic situation under article 3. Since Mrs Abdo has two children, 10 and 5, born here from her previous marriage, it may not be realistic to expect them all to go back to Nigeria with the appellant if he has to; but on the other hand, there is no reason why, following the decision of the Court of Appeal in **Amjad Mahmood [2000] INLR 1**, he should not then apply to rejoin them from there.

5. If any provisions of the Immigration Rules caused difficulty with that, then he would be entitled to rely on the Human Rights Convention in making his visa application, and on any appeal against refusal. So long as states respect the right to family life recognized by article 8, they are entitled to take proportionate measures to try to maintain an orderly system of immigration control. The real question before us is whether there is anything in this appellant's individual case such that it would amount to "inhuman or degrading treatment" to return him to Nigeria, despite his illegal entry to this country and the dismissal of his asylum claim.

6. **Mental state** The feature of the appellant's individual case which is also relied on in connexion with his claim that it would be "inhuman or degrading treatment" to send him back to Nigeria is his mental state. The evidence about this comes from three sources. It may be helpful to list them, in the context of his history in this country, which follows:

??. 03.99	arrives through Dover in boot of car
25.12.99	arrested by police (we are not concerned with why): claims asylum
09.03.00	seen by Dr J Joyce DTMH (not explained) (for solicitors: report 17.03)
09.06.00	seen again by Dr Joyce: report undated
till 06.00	detained under immigration powers at HMP Haslar: goes to London
03.07.00	seen by Dr CR Shawcross FRCPsych (for Home Office: report 10.07)
??.01.01	"dispersed" to Liverpool by Home Office
??.03.01	meets Mrs Abdo; they form association 06.01; she starts baby 08.01
14.11.01	seen by Dr JS Barrett MRCPsych (for solicitors: report 19.11)
??.01.02	moves in with Mrs Abdo

7. The adjudicator noted that Dr Nolte had said there were only two "torture counselling centres" in Nigeria, one in Port Harcourt, an overwhelmingly Ijaw town, and the other in Lagos, which she said might become a battleground between the Ijaw and other groups. As the adjudicator had taken the view that the appellant would not now be at risk from the Ijaw, even in Delta State, she saw no problem in his getting to either of those centres. However, she went on to say

In any event, the appellant is not currently receiving treatment and rarely uses medication. His return to Nigeria will not therefore interfere with his treatment.

8. This was the position when the adjudicator sat to hear the case on 14 March 2002, nearly four months after Dr Barrett had concluded in his report (pp 107-8) that it would be best if the appellant could talk "…to a skilled counsellor, rather than just a sympathetic listener, as this would be likely to speed the resolution of his symptoms." He went on to praise the appellant's GP's drugs régime: apart from paroxetine in the day, and phenergan (well-known to parents of small children) at night, he was getting another drug to help him stop smoking: as he was still getting through twenty cigarettes a day, Dr Barrett thought he might as well be taken off that. So far as the current position is concerned, there is no further medical evidence before us, except for an undated note from the appellant's GP, referring him for "support counselling", which Mr Auburn told us is taking place. The note says, under 'Current Psychological Treatment/Medication', "none"

9. Dr Joyce has no formal psychiatric qualifications: his only specialist qualification appears to be 'DTMH'. Mr Auburn was unable to tell us what that was, but we think it may be the Diploma in Tropical Medicine and Health. Neither side relied on his reports to any extent, and we do not find them of any particular assistance at this distance in time. Dr Shawcross concluded in July 2000:

He has only been out of Haslar for a few days and I take note of the fact that he has already made contact with the lady from Croydon, with whom he had previously [evidently meaning before his arrest] *been in a relationship. At interview with me today he describes symptoms consistent with a mild depressive disorder and he also described to me some intrusive symptoms that are characteristic of a post traumatic disorder. I am of course only relating information told to me and do not know its veracity. …Prior to his arrest in December 1999, although some of these symptoms may have been present, to a less severe extent, they did not prevent him from leading a reasonable life on the evidence available to me.*

10. This was Dr Barrett's prognosis in November 2001:

I think that were he to remain [sic] *the UK* [the appellant's] *prognosis would be fair. On the other hand Nigeria, the scene of what were in all probability very traumatic events, would be a location highly likely to worsen his Post-Traumatic Stress Disorder and which might well lead to the addition of a depressive disorder with all the attendant risks of suicide and death by self-neglect this entails. It should be noted that it is likely that Nigeria would contain no social support for* [the appellant] *and that he would lose the social support of his girlfriend, as well as their child losing contact with its father.*

11. As the use of the neuter pronoun may indicate, this was in fact the unborn child which Mrs Abdo sadly lost a few days later. Dr Barrett could not of course be expected to foresee that; but as well as commenting on his own area of expertise, he did venture to look into the future in Nigeria. He does not suggest that he himself has had any overseas experience: what he says on the point (p 104) is that he has assessed over 150 overseas patients through translators [*obviously meaning what on this side of the Atlantic are called interpreters*] and has experience and knowledge of mental health care and the experience of mental illness in a wide variety of countries. He does not say how he got it, except for talking to his patients here.

12. Let us set out a few facts about Nigeria, taken from the CIPU report. They will also of course be relevant to the internal flight point. It is a federation of 36 states and the Federal Capital Territory of Abuja. While the last census showed 88.5 million people, the current estimate is over 120 million. As well as being the most populous state in Africa, it is one of the largest: the 'Times Atlas of the World' shows its area as just under 1 million km² (United Kingdom just under ¼ million km²). Dr Barrett's rather airy description of Nigeria as "a location" suggests that, even if he is aware of those facts, he has not taken them into account in any meaningful way in his prognostications about the consequences of the appellant's return there.

13. While we of course accept Dr Barrett's qualifications to pronounce on the appellant's mental state, as observed by him, we cannot take seriously what he says about the consequences of return to Nigeria in general. We are quite prepared to accept that return to the actual scene of the appellant's claimed experiences in the Delta State might be upsetting for him; but that is not the issue at present. This appellant, as noted by Dr Shawcross, has been able to lead a perfectly reasonable life here. He formed a previous relationship with a woman, strong enough to outlast several months in detention. His present one continues, and Mrs Abdo speaks highly in her statement of the emotional and practical support he gives her and her children.

14. This appellant is clearly a person of considerable inner strength and resourcefulness, despite the symptoms noted by Dr Barrett, and to an extent by Dr Shawcross. The facts behind the decision of the European Court of Human Rights in **Bensaid [2001] INLR 325** are very different. However, with the general approach of the European jurisprudence in mind, we do not think it could possibly be said that this appellant's psychological needs, currently being met by some "support counselling", without any psychiatric treatment or medication, would on their own make it "inhuman or degrading treatment" for Her Majesty's Government to return him to Nigeria.

15. **<u>Internal flight</u>** We shall now turn to the question of whether it would be unduly harsh (which we shall take as the test under the Human Rights, as under the Refugee Convention) to expect the appellant to return to some other part of Nigeria than the Delta State, where his experiences at the hands of the Ijaw took place. We shall of course bear in mind our view of his mental state in considering that. Mr Auburn began by relying on the adjudicator's acknowledgement (§ 24) that "ethno-religious violence" had occurred throughout Nigeria in 2001. As he

accepted, most of that has nothing to do with the Ijaw/Itsekiri conflict; for example, the periodically recurring trouble in the north between Muslims and Christians (which, as his name suggests, this appellant is). It is for the appellant to show that there is no part of Nigeria outside the Delta State where he would not either be at real risk from the Ijaw; or for some other reason it would be unduly harsh to expect him to go.

16. The background to the appellant's situation appears in his supplementary statement. At § 6 he says that, since he had to leave his uncle's house in Lagos, because the uncle complained that his presence put him at risk from the Ijaw, he has had no news of his family at all. We asked Mr Auburn what steps he had taken to trace them: on instructions, he told us the appellant had got in touch with the International Red Cross after his release from detention and "dispersal" to Liverpool. They had been unable to give him any information; but there is nothing from them to confirm that.

17. As we made clear, whether the appellant himself has had any news of his family or not, we are not prepared to accept that they are untraceable in Nigeria without confirmation from the International Red Cross, showing the details they had been given for their inquiries. This is a kind of evidence very often given in this field; and the possibility of getting it must have been obvious to specialist solicitors such as these.

18. Mr Auburn first addressed the possibility of the appellant going to **the north**. We have already dealt with his point about Mrs Abdo in that context. The main difficulty put forward is that the north is a Muslim-majority area, while the appellant is a Christian. The strength of this point is perhaps rather diluted by the appellant's claim at § 7 of his supplementary statement that Lagos would also be difficult for him to live in, because it is mixed Muslim and Christian. Since Muslims form about 50%, and Christians 40% of the population of Nigeria (see CIPU report § 5.23), it seems to us that there must be a number of points, no doubt including Lagos, where they may reasonably be expected, in the absence of evidence to the contrary, to live together in some kind of peace.

19. The evidence about the north comes first from the State Department report for 2001. At p 5/27 of the copy before us, details are given of the *Sharia* code punishments in force in 12 (out of the 36) states. These are well-known: they do not apply to Christians (see Human Rights Watch, August 2000, p 8/15), though Christians are said to be worried about them. Interestingly, the State Department say the Nigerian appellate courts have yet to decide whether they break the prohibitions on torture or "inhuman or degrading treatment", enshrined in that, as in most new Commonwealth constitutions. We do not see that they could pose any threat of that kind to this appellant.

20. The same is true of the prohibitions on mixed schools, public music and dancing, and the sale of alcohol, referred to further on in the State Department report. We are well aware that there is from time to time trouble between Muslims and Christians in the north, though we were not referred to any specific examples of it. There is nothing to suggest that it is more than local and periodic in nature, or prevents the existence of a sizeable Christian minority there. We see no reason

why it should be unduly harsh to expect the appellant to seek refuge in northern Nigeria, if that were necessary.

21. The next part of the country discussed was **Abuja**, the federal capital. *Sharia* does not apply there, and the appellant was at university there from 1995-97 (see his original witness statement). His complaint at § 9 of his supplementary statement is that he has no connexions there now, and it is "heavily populated by Muslims". We are tempted to point out that the same now applies to considerable areas of this country. We have not been referred to any evidence of Muslim/Christian disorder in Abuja: no doubt the authorities at the federal seat of government would come down fairly hard on it if there were any signs of it. There is no evidence that it would be unduly harsh for the appellant to go to Abuja.

22. Then the discussion turned to **Lagos**. The suggestion about the Muslims in the appellant's supplementary statement, is borne out only by United Nations news reports of clashes lasting four days in February 2002 between Yorubas and 'Hausas' (apparently meaning northerners in general).It seems from the report of 5 February that these began in one district, and spread to several northern suburbs of the city, before being brought under "a semblance of control" by police and army patrols.

23. At this point we turn to the overview of Nigerian tribes at § 5.59 of the CIPU report. There are over 250 of them: in descending order, they are the Hausa/Fulani of the north, the Yoruba of the south-west, including Lagos, and the Ibo/Igbo of the south-east. Next, according to Dr Nolte (original report, p 5), come the Ijaw, with about 13 million people. She says (p 4) the Itsekiri number ½ million or less: their language is related to the eastern dialects of the Yoruba, who live in the states to the west of them, and amount to about 25 million people.

24. The evidence of Ijaw/Itsekiri difficulties in Lagos comes from Dr Nolte's report at pp 10-11. She says the Itsekiri there were identified with the Yoruba, and involved in riots in 1999 between them and the Ijaw. We have already mentioned the appellant's evidence that his uncle organized for him to leave Nigeria, since he took the view that his presence in his house in Lagos put the whole family at risk from the Ijaw. We were referred to further evidence in the Human Rights Watch report 2002 (p 2/6) about the vigilante activities of the "Bakassi Boys"; but those were said to be in the south-east, and there is nothing to relate them specifically to the Ijaw/Itsekiri conflict.

25. Mr Auburn suggested that the appellant would be at risk in Lagos, not only as an Itsekiri, but as the son of an Itsekiri chief. This is to say the least hard to reconcile with the appellant's evidence that all his family have gone missing: there is nothing to show, if that is right, how he would be identified in that great city as his father's son. However, for the reasons we have already given (see § 17), we do not accept that even his immediate family are untraceable.

26. Dr Nolte (report p 5) refers to the importance of the extended family, specifically amongst the Itsekiri. That is certainly in accordance with our understanding of family life in Africa generally: it would be a great mistake to regard it in terms of the Western nuclear model. She says "*Considering that, according to his*

evidence, [the appellant] *has no family he can contact in Nigeria, it will be extremely difficult for him to re-establish himself in Nigeria*". She scrupulously avoids making any comment of her own on the likelihood or otherwise of someone losing touch with *all* his relations in Nigeria.

27. We should be very surprized to hear that the appellant was entirely without even extended family contacts in Lagos. From one point of view that might make him more identifiable there; from another, it would certainly make it easier for him to re-establish himself. While there may be more possibilities of risk to the appellant from his origins in Lagos than anywhere else in Nigeria outside the Delta State, if only because there are clearly both Itsekiri and Ijaw communities living in the metropolis, we cannot see that it would be unduly harsh to expect him to return even to Lagos. There is nothing to suggest that his Ijaw foes from the Delta in 1997 would now have any interest in hunting him down in Lagos in 2002.

28. Those are the possibilities canvassed by Mr Auburn. It is quite plain from the background evidence we have already mentioned that they only cover a part of Nigeria. The appellant's own evidence from Dr Nolte for example shows that his Itsekiri tribe are strongly identified with the very much more numerous Yoruba. There are 25 million of them, and we cannot accept that it would be unduly harsh for this appellant to seek refuge somewhere amongst them. We do not see any reason why it should be contrary to Her Majesty's Government's obligations under the Human Rights Convention to return him to Nigeria. Despite the adjudicator's understandable mistake about the date of the peace agreement in the Delta State, and consequently about the continuing hostilities there, in our view she reached the right result.

Appeal dismissed

John Freeman (chairman)