Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/01398/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 16 January 2014	**On 20 January 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IZ
(ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondents: Ms White, instructed by Rashid & Co Solicitors

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 5 November 2013 of First-tier Tribunal Judge Robertson and Mr Sandall which allowed the respondent's appeal against deportation.

2. For the purposes of this determination, I refer to IZ as the appellant and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

3. Under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order for non-disclosure of the identity of the appellant in light of his disability in order to avoid the likelihood of serious harm to him arising from the contents of this determination.

Background

4. The background to this matter is that the appellant came to the UK at the age of 8 and has remained here ever since. He is profoundly deaf and he communicates in British Sign Language. He was granted indefinite leave to remain in 2004. He is now aged 22. On 22 November 2012 he was convicted of violent disorder and sentenced to 2 years imprisonment. The offence occurred in the context of a gang-related crime in which a young man was murdered. As a result of his offending, on 26 June 2013 the respondent issued the appellant with a notice that the automatic deportation provisions applied to him.

Appeal before the First-tier Tribunal

5. It was not disputed before the First-tier Tribunal that the appellant met the requirements of paragraph 399A (a) as he was under 25 and had spent over half of his life in the UK. It was not accepted that paragraph 399A (b) was met, however, as the respondent considered that the fact of living the first 8 years of his life in Nigeria and having relatives there, in particular three maternal uncles, meant that the appellant had family, social or cultural ties to Nigeria.

6. As regards the alternative Article 8 assessment, the respondent maintained that although very serious reasons are required to justify expulsion of a settled migrant who has spent the major part of his life in the host country, the public interest in deportation should weigh more given the seriousness of the offence and surrounding circumstances.

7. The First-tier Tribunal found that the appellant did not have family, social or cultural ties to Nigeria, that paragraph 399A (b) was met and that the appeal therefore fell to be allowed under the Immigration Rules.

8. The panel addressed the question of ties to Nigeria in some details at [38] to [41]. It was not disputed that he had not returned to the country other than for 2 weeks in 2005; [38], [41]. It was also found that the evidence as to family ties there had been played down and was not entirely reliable; [39], [40], [41]. It was found that he had three maternal uncles there as well as a maternal grandfather and his siblings; [41].

9. The First-tier Tribunal went on at [41] to refer to the case of Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC). The head note of that case states:

> "The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances."

and at [123], following similar wording, the Upper Tribunal added that:

> "If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless."

10. The First-tier Tribunal here found that the appellant had no continued or meaningful ties to Nigeria. He had come to the UK aged 8, not lived there for 13 years, had only been back for only 2 weeks on a visit and additionally could not have retained meaningful ties because of his disability.

11. In the alternative, the First-tier Tribunal went on to assess whether there were compelling reasons that might make deportation disproportionate and found that there were because of the appellant's very long residence during his formative years, difficulties in life as a result of his deafness which had, in part, led to his offending, ongoing lack of independent living for the same reason, his very active steps to avoid reoffending which included moving away from London to stay with a relative in Birmingham, low risk of re-offending and harm to the public and his lack of ties to Nigeria.

Error of Law

12. The main ground of appeal was that the First-tier Tribunal erred in finding paragraph 399A (b) of the Immigration Rules was met. It was submitted that the appellant should have been found to have sufficient ties where he had three maternal uncles in Nigeria and must have had some education there as he learned some sign language before coming to the UK. Although accepting that the ties had to be "meaningful" following the guidance in Ogundimu, Mr Mills maintained that where the appellant had relatives who could be expected to assist him on return and had experienced life and some education in Nigeria up until the age of 8, the First-tier Tribunal's reasoning on this matter was inadequate.

13. It appeared to me that the arguments made regarding the First-tier Tribunal's findings on ties to Nigeria amounted to a disagreement rather than founding a challenge on error of law. The Tribunal took into account at [41] that the evidence given on family members had been unreliable and found that the appellant did have relatives there. This did not oblige the panel to find that he had retained ties to Nigeria, however. It was

clearly open to the Tribunal to find that there were no real or meaningful ties to those relatives, there being nothing to indicate any ongoing contact, the long period of residence in the UK during which any ties the appellant to Nigeria had weakened, that being additionally so given his disability which prevented communication with any relatives there. I did not find that the reasoning of the panel was inadequate, that they had failed to address any material matters or relied on immaterial matters and did not find that their conclusion could be characterised as perverse.

14. I therefore found that the decision allowing the appeal under the requirements of paragraph 399A was sound and should stand.

15. Mr Mills did not seek to pursue the second substantive ground of appeal concerning the finding that appellant was at low risk of reoffending. He accepted that the First-tier Tribunal had good evidence on this at the hearing from the appellant's Probation Officer and their conclusion at [35] that the appellant's risk of reoffending and risk of serious harm to the public was low had been open to them.

16. There remained only a matter which arose at the hearing concerning the alternative "exceptional" Article 8 assessment. Mr Mills maintained that the grounds should be read as challenging both the decision under paragraph 399A and the alternative Article 8 decision. Ms White resisted that argument. Even if the respondent's case on this was accepted, any challenge to the alternative Article 8 assessment could only relate to the issues of ties to Nigeria and risk assessment. As indicated above, the First-tier Tribunal did not err in either regard so this matter did not appear to me to merit being taken any further.

Decision

17. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:  Date: 16 January 2014
Upper Tribunal Judge Pitt