**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: DA/02587/2013

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 22 January 2015** | **On 9 February 2015** |
| **Oral judgment** | |

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**DAVIDSON TAYLOR**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr O Ngwuocha, instructed by Carl Martin Solicitors
For the Respondent: Mr M Shilliday, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of Mr Davidson Taylor. He was born on 8 July 1972 and he appeals against a decision of the respondent dated 9 December 2013 refusing to revoke a deportation order signed against him on 12 June 2008. He first entered the UK on 6 September 2003 on a forged Nigerian passport.

2. On 1 November 2007 he was convicted of possession of a false instrument and sentenced to twelve months' imprisonment and on 10 December 2007 he was served with a liability to deport letter. He responded to that stating that he wished to claim asylum. His asylum application was considered and refused.

3. On 17 April 2008 he was served with a notice of decision to make a deportation order but did not appeal that decision and the order was signed on 12 June 2008 and served on 19 June 2008. His application for revocation of the deportation order was considered and refused by the respondent. The appeal against that decision was heard on 22 September 2014 and in a determination promulgated on 1 October 2014 First-tier Tribunal Judge Robin Callender Smith dismissed the appeal under the Immigration Rules and dismissed the appeal on human rights grounds. In reaching that decision the judge considered the reasons given by the Secretary of State in the Reasons for Refusal Letter.

4. Permission to appeal that determination of the First-tier Tribunal was sought, the primary submission being that the judge had inadequately considered the interference with the right to family life of the appellant's settled partner, and that the judge should have taken into account consideration of the appellant's partner's own right to family life. She had been diagnosed with schizophrenia and depended upon him for daily care and support. Specific reference was made to what was asserted to be detailed medical evidence dealing with the issues of actual diagnosis, the high risk of self-harm and the role of the appellant in relation to her care. It was asserted that the judge had not referred to all the medical evidence. It was also asserted that the judge had not applied the legal test of proportionality in relation to the appellant's partner, namely whether it would be reasonable to expect her in her current physical and mental state to relocate with the appellant.

5. Permission was granted, the judge granting permission saying that it was arguable that the judge had neglected the medical evidence and that it was conceivable that consideration of that evidence might have led to the conclusion that Exception 2 in Section 117C(5) of Nationality, Immigration and Asylum Act 2002 was satisfied and thus the public interest did not require the appellant's deportation. Exception 2 applies where the appellant has a genuine and subsisting relationship with a qualifying partner and the effect of C's deportation on the partner would be unduly harsh.

6. The First-tier Tribunal made a finding in paragraph 43:

> "43. He has a recent relationship established with his partner who has mental health problems. The reality is that she receives monthly visits from the community health team to check on her taking her medication and – while she might wish the appellant to remain in the UK to assist her and remind her about her

> medication – that is something that the community health team will address as a situation in his absence."

The First-tier go on to say at paragraph 44:

> "I do not find that the effect of the appellant's deportation to Nigeria would produce an effect on his partner that would be unduly harsh given the background community health support identified immediately above."

7. The first point to make is that permission to appeal was not sought on the grounds that that paragraph, paragraph 44, was incorrect or in error. Permission was sought on the basis that the judge had not applied the legal test of proportionality to whether it would be reasonable to expect her in her current physical and mental state to relocate with the appellant. Paragraph 117C(5) requires consideration of the effect of the appellant's deportation and whether that would be unduly harsh. There has been no challenge to that in the grounds of application and it is therefore a little difficult to see on what basis the First-tier Judge who granted permission could say that it was conceivable that exception 2 would have been met.

8. Nevertheless I heard submissions from the appellant's representative and was directed to various letters and a plan in connection with her medical care. The appellant is not mentioned by name but it appears to have been accepted by the judge that he is in a relationship with Ms Ormerod who has some quite serious health problems and requires intervention from the health service to attempt to keep control of that. The First-tier Tribunal Judge correctly summarised that the reality of her treatment was that she was receiving monthly visits from the Community Health Team to check on her taking her medication. Mr Ngwuocha referred to a letter of 27 December 2013 in that at a time of crisis in her mental health she would have to rely on the appellant. According to that letter she had been referred to the crisis team and that she had been very verbally threatening and refused to allow the team into her flat. It also says, "we initially spoke to her partner who has had a lot of concerns about her over the last few weeks. She hasn't been taking her prescribed medication. As a consequence her mental health has obviously deteriorated". It is a little difficult to see from that, that the partner is actually playing an active role in her care and treatment. If he had had concerns about her over the last few weeks he appears to have done nothing about it; he had not been able to ensure that she took her prescribed medication. In summary therefore there is no other reference to the appellant in the medical documentation other than that he seems to be present at various visits and that the mental heath team are aware of his presence. I have not been directed to any documentary evidence or any other evidence that indicates what the appellant does for this lady and why his absence would cause her particular problems. It is therefore correct that the assessment by the judge in paragraph 43 that the reality is that she receives monthly visits is in fact what actually happens.

9. So far as an interference with her rights is concerned clearly she may well be upset, it may well cause a crisis, it could have any type of effect on her. The mental health team will be aware of the risks to her health and on the deportation of Mr Taylor appropriate steps can be expected to be taken by the NHS Mental Health Teams that are looking after her.

10. The failure to challenge the finding that the effect on the partner would not be unduly harsh in the grounds is a matter that was referred to in submissions by Mr Ngwuocha to the extent that he said that the partner was emotionally dependent on the appellant and that this was a matter that should have been taken into account. Although I specifically asked to be directed to evidence to that effect, I was not directed to anything.

11. In terms of whether the appellant can relocate to Nigeria, it is correct that the judge does not deal with that. However there appears to be no evidence to say she cannot. There does not appear to be any evidence in connection with lack of availability of mental health treatment in Nigeria or if the appellant is in fact providing a high level of care why he would not be able to continue to do that in Nigeria.

12. Although the First-tier Tribunal Judge determination does not in terms work its way through Section 117 and in particular does not work through Section 117B and 117C of the 2002 Act, and to that extent there is an error of law in the determination, even if the judge had gone through that process it is inconceivable on the basis of the information that was before the judge and to which my attention has been drawn that the outcome would have been any different at all. In those circumstances therefore I find that there is no error of law such as to merit the setting aside of the decision to be re-made.

Conclusion

There is no error of law such that the decision is set aside to be remade. The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed Date 9th February 2015

Upper Tribunal Judge Coker