Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27181/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 October 2014	**On 8 January 2015**

Before

THE HONOURABLE MR JUSTICE DAVIS
UPPER TRIBUNAL JUDGE GILL

Between

MR KENNETH EHIZOGIE ENOBAKHARE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs B Asigo, R.O.C.K Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

Oral determination and reasons

1. This is the appeal by Kenneth Enobakhare with leave of Upper Tribunal Judge Chalkley against a determination of Judge of the First-tier Tribunal Kanagaratnam promulgated on 17 February 2014. In his determination, the Judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department refusing him leave to enter the United Kingdom as an adult dependant of his mother. The Secretary of State concluded that the appellant did not meet the requirements of paragraph 317 of the Immigration Rules.

2. In the appeal before the Judge, para 317 was argued and, albeit relatively briefly, the issue in relation to Article 8 rights. The appeal was dismissed on both grounds.

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3. The grounds seeking permission to appeal assert that the First-tier Tribunal Judge recorded evidence that the appellant at some point in his life had been married. It was asserted in the grounds seeking permission to appeal that that in fact was not so. The appellant had not at any point given such evidence. Upper Tribunal Judge Chalkley when granting permission granted permission simply on that ground alone but said this:

> "If the judge is mistaken and the appellant did not give oral evidence to the effect that he had at some stage been married, then that error of fact, if there was such an error, *may* be capable of amounting to an error of law."

4. The Upper Tribunal Judge who gave leave plainly had no idea from the information before him what the factual position was. The granting of leave plainly signalled that evidence would have to be placed before this Tribunal in order for this Tribunal properly to consider the grounds of appeal.

5. We obtained the Record of Proceedings kept by the First-tier Tribunal Judge in the course of which the First-tier Tribunal Judge set out the evidence of the appellant, recording, first, that he had adopted his witness statement and, second, that he had given various answers in cross-examination. In particular, it was noted quite early in cross-examination that the Home Office Presenting Officer asked the appellant why in his visa application, where he had said that he relied on his brother-in-law and uncle financially, he had not mentioned his mother (the reliance on mother was in essence the basis for his case). His answer as recorded by the First-tier Tribunal Judge was "because I had problems in marriage and they looked after me". At a later point in these notes of the evidence, the First-tier Tribunal Judge recorded that the appellant said that another person within his family was married, that being in the context of somebody whom he could not live with because her house was very full. That was the Record of Proceedings made by the First-tier Tribunal Judge and that is how it appears in the determination.

6. Had it been thought relevant to this appeal to establish as a fact that the findings set out in the determination were not in accordance with the evidence, the proper procedure would have been to file evidence to that effect. No such evidence has been filed. The representative of the appellant today has made assertions as to what happened in the First-tier Tribunal. We do not for one moment doubt the reliability and integrity of that representative. We have no evidence, however. The only evidence we have is the Record of Proceedings kept, as he was statutorily obliged to do, by the First-tier Tribunal Judge.

7. In those circumstances our first conclusion is that the factual basis upon which the appeal is mounted is simply not made out on the evidence. The Upper Tribunal Judge when granting leave pointed the way clearly as to what was needed for the appeal to get off the ground and nothing was done.

8. But it does not end there. The Immigration Rules relevant to this case required the appellant to establish that he was related to a person present and settled in the United Kingdom, and he was able to do that, namely his mother, and that he was the son of such a person living alone outside the United Kingdom in the most exceptional compassionate circumstances and mainly dependent financially on relatives settled in the United Kingdom. The fact or otherwise that at some point he had been married did not in any sense impinge on the finding of the First-tier Tribunal that the appellant failed very considerably to get within that part of the Immigration Rules. The Judge found that the circumstances simply did not evoke compassion of the most exceptional nature, applying the test, as he was required to do, in **Senanayake [2005] EWCA Civ 1530**. Therefore any error he made in terms of the previous marriage of the appellant was wholly immaterial to his finding in respect of the Immigration Rules.

9. In relation to the Article 8 claim, the First-tier Tribunal Judge said this (at[10]):

> "...In further considering the appellant's Article 8 rights on a standalone basis I find that he is an adult son who has had a limited family life with his mother given that he was married and lived in Nigeria. I have taken into consideration the medical infirmities of his mother but find that they are not life-threatening or debilitating and for these reasons find that any infringement on the relationship between this adult son and his mother by his removal would be legitimate and proportionate."

 The words "given that he was married" could be removed from that passage and this would not have any material effect on the outcome of the appellant's Article 8 claim. For a man in his position who had entered the United Kingdom as recently as he had done, the notion that there was family life which (irrespective of any marriage) would be infringed by his removal from the United Kingdom was in our view wholly unsustainable.

10. Criticism is made today, and we emphasise today, that the First-tier Tribunal Judge did not engage in the step-by-step approach required of him in the case of **R (on the application of Razgar) v SSHD (2004) UKHL 27**. That is not an issue that is raised anywhere in the grounds seeking permission to appeal. Even if the Judge had been required to engage in that exercise and had done so, we are perfectly satisfied that the decision would have been entirely the same.

11. There was no material error in this judge's determination. He dismissed the appeal of the appellant against the Secretary of State's decision. We dismiss his appeal against the determination of the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. The Appellant's appeal to the Upper Tribunal is therefore dismissed.

No anonymity direction is made.

Signed Date
Mr Justice Davis