Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28051/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 November 2015	**On 23 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

EZEKIEL KOBELO
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Dr A. I. Corban of Corban Solicitors
For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal ("FtT") Judge Goodrich, promulgated on 14 May 2014, to dismiss his appeal against the respondent's decision, made on 28 June 2013, to refuse him leave to remain either under Article 8 of the ECHR or on the basis of ancestry and remove him from the United Kingdom.

2. The appellant is a citizen of Tanzania born on 21 May 1975 who first entered the UK on 2 May 1999, at the age of 24, with entry clearance as a student. His leave expired

in April 2000. The appellant's immigration history was summarised by the FtT as follows:

> "His leave expired in April 2000. He has since made a number of applications all of which have been refused. ... It is, however, common ground that the appellant was served with IS 151 A in July 2005. His outstanding student appeals were refused in July 2007 and no further application was made until July 2010 when he submitted a claim on human rights grounds and by reference to ancestry. He had encountered immigration officials in May 2010 since which time he has complied with reporting requirements."

3. The appellant's case, in sum, was that he has spent over 13 years in the UK, during which time he has studied, worked and formed vital relationships. He has a fiancé with whom he has been in a relationship for many years (6 years at the date of the FtT hearing). His siblings reside in the UK and he has been an important part of his nephew's life. His brother was granted leave to remain after a successful application on the basis of UK ancestry and human rights. He does not have financial resources of his own to return to Tanzania.

4. The respondent's position, as set out in the refusal letter of 28 June 2013, is that:

   a. the appellant does not qualify to remain the UK on the basis of ancestry because he does not satisfy paragraph 86(vi) of the Immigration Rules which requires an applicant to hold a "valid UK entry clearance for entry in this category" and it would not be unreasonable to expect him to return to Tanzania to obtain the correct entry clearance should he wish to pursue this application.

   b. The appellant's claim to qualify for leave on the basis of continuous residence cannot succeed because in 2005 he was served with form IS 151A (notice to a person liable to removal) at which point the clock was effectively stopped.

   c. The appellant's Article 8 claim fails under both Appendix FM and paragraph 276ADE and the circumstances are not sufficiently exceptional to justify grant of leave outside the Rules.

<u>FtT decision and grounds of appeal</u>

5. The FtT heard oral evidence from the appellant and made the following findings of fact:

   A. The appellant and the woman he claims is his fiancé are not in a committed relationship.

   B. He has a brother, sister, nephew and niece in the UK with whom he is close and sees regularly. However, he does not live with them and they are not financially dependent on him, or vice versa.

   C. The appellant is not married and has no children.

   D. The appellant has a continued and meaningful connection to Tanzania and is in regular contact with his parents and sister who live there.

   E. He has adapted to life in the UK and considers it his home.

6. Having made the above described findings of fact, the FtT concluded that the appellant could not satisfy Appendix FM or paragraph 276ADE(vi) of the Immigration Rules. The FtT also considered Article 8 outside the rules and concluded that removal from the UK would not be disproportionate.

7. The grounds submit that the FtT erred in assessing proportionality under Article 8 ECHR by not taking account of relevant factors in favour of the appellant, in particular his age, duration in the UK, entitlement to apply for entry clearance on ancestry grounds and the success of his brother in a similar appeal. They also submit that the FtT failed to follow *Ogundimu [2013] UKUT 00060* in respect of paragraph 276ADE(vi) of the Immigration Rules by not taking a rounded approach to the issue of ties to the appellant's home country.

Findings in relation to Paragraph 276ADE(vi)

8. The wording of paragraph 276ADE(vi) relevant to this appeal, and which was applied by the FtT, is that which was in force between 9 July 2012 and 27 July 2014, which provides that the applicant:

> "... is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK"

9. At the error of law hearing, the focus of Dr Corban's argument, on behalf of the appellant, was that the FtT had erred in relation to paragraph 276ADE(vi) as it had not approached the concept of "no ties" in accordance with *Ogundimu*, which requires a rounded approach. In particular, he maintained that the FtT had failed to give sufficient weight to factors favouring the appellant such as his length of residence in the UK and had placed too much weight on the appellant's connection to his parents in Tanzania. For the reasons set out below I do not accept these arguments.

10. In *Bossadi* [2015] UKUT 00042, the Upper Tribunal recently considered the term "ties". The headnote to that case states that assessment of "ties"

> "... requires a rounded assessment as to whether a person's familial ties could result in support to him in the event of his return, an assessment taking into account both subjective and objective considerations and also consideration of what lies within the choice of a claimant to achieve".

11. There is also helpful clarification of the term "ties" in *Ogundimu* where at paragraph [125] the Upper Tribunal set out factors to take into consideration:

> "Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that

person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

12. Dr Corban submitted that the FtT did not follow the rounded approach to an assessment of ties advocated by *Ogundimu*, but that, in fact, is what the FtT has done. Having found that the appellant came to the UK as an adult (aged 24), that he has regular contact and a meaningful relationship with his parents and sister who live in Tanzania, and that he could return to the family home, it was undoubtedly open to the FtT to find that the appellant has "ties" to Tanzania and that he was, in consequence, unable to satisfy paragraph 276ADE(vi).

Findings in relation to Article 8

13. With respect to Article 8 of ECHR, Dr Corban submitted that the FtT's balancing exercise showed no indication of proper weight being given to the appellant's ancestry claim, length of residence and family ties to the UK and too much weight being given to his immigration status. For the reasons set out below I do not accept these arguments.

14. The FtT carried out an assessment following the well established approach set out in *Razgar* and, having found that the appellant had built up a private life in the UK over the previous 15 years the interference with which would engage Article 8, proceeded to consider the proportionality of his removal. In so doing, the FtT took into account that the appellant has spent many years in the UK, has ties in the UK, and that return to Tanzania would be difficult for him. It also took into account that he may well have a valid claim on the basis of ancestry that could be made from Tanzania, as well as the impact of his removal on his family in the UK, including his niece and nephew (who are both young children). The judge weighed against this the public interest in immigration control and concluded that the combined effect of the matters in the appellant's favour were not sufficient to tip the scales in his favour.

15. This is a case in which there are a number of factors weighing in favour of the appellant in an assessment under Article 8(2), not least the time he has spent in the UK, his connections in the UK, and likelihood that he would be able to make a successful application for entry clearance on the basis of ancestry. But weighing against him is that the private life he has built up in the UK was established whilst he was in the UK unlawfully and that there is a strong public interest in effective immigration control. As noted by the FtT at paragraph [49], despite the refusal of his student applications he chose to remain in the UK when he could have returned to Tanzania and made an application for entry clearance. Also relevant to the proportionality assessment is the FtT's finding that he has family connections in Tanzania and that there is no evidence he would have difficulty finding job opportunities there.

16. The FtT has adopted the proper approach to Article 8, taking into account, and weighing against each other, the relevant circumstances and it has reached a decision open to it. In particular, the FtT was entitled to attach significant weight to the

appellant's immigration history and the public interest in effective immigration control and no error of law arises from it doing so.

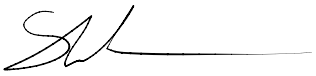
Decision

a. The appeal is dismissed.

b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

c. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 19 November 2015