



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: VA/04109/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**Promulgated**

**On 13 August 2015**

**On 16 September 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**ENTRY CLEARANCE OFFICER - ABUJA**

Appellant

**and**

**SIKIRU OLADIPUPO SALAU**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Freer) allowing the respondent's appeal against a decision taken on 16 June 2014 to refuse entry clearance as a visitor.

## **Introduction**

3. The respondent is a retired civil servant and widower born in 1940. He applied on 24 February 2014 to visit his adult daughter (“the sponsor”) in the UK.
4. The appellant accepted that the sponsor was financing the trip and that the respondent had previously spent 25 months in previous visits to the UK. He had not explained why he stayed longer than planned or how he met his commitments in Nigeria while he was away. He had not submitted any personal documentation to show his circumstances in Nigeria. The appellant was not satisfied that the respondent was a genuine visitor who intended to leave the UK on completion of his proposed visit.
5. The decision was reviewed by an entry clearance manager on 23 September 2014 who considered that the refusal did not appear to breach Article 8. There appeared to be no barrier to the respondent’s relatives visiting him in Nigeria or elsewhere.

## **The Appeal**

6. The respondent appealed to the First-tier Tribunal and the sponsor attended an oral hearing at Taylor House on 10 April 2015. He was not represented. The First-tier Tribunal found that the sponsor was a credible witness. The respondent was a retired civil servant whose evidence should be treated in the same way as that of the sponsor. The respondent was widowed 18 years ago and had not remarried. In numerous visits since 1997 he had never sought to overstay or settle in the UK. The respondent and sponsor had adequate financial resources. The respondent had repeatedly helped with looking after his grandchildren in the UK.
7. It was not readily possible for the sponsor and her family to visit Nigeria together due to schooling, work and cost. The sponsor works in a busy acute care NHS trust and is contracted to work unsocial hours. The respondent was fully retired and financially independent – he had no need to hire a locum or ask family or a friend to manage his business affairs. The decision was disproportionate and irrational – preventing meeting with children and grandchildren, limiting chances of visits to other countries and ignoring the rights of the British citizen relatives.

## **The Appeal to the Upper Tribunal**

8. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent had family life with his adult children in the UK; there was no dependency or daily contact. The judge found that the respondent will have limited opportunities to travel in the future due to health issues and the sponsors will therefore have to visit Nigeria in the future. The proportionality findings were inadequate.

9. Permission to appeal was granted by First-tier Tribunal Judge Coates on 25 June 2015 on the basis that it was arguable that the proportionality assessment was inadequate and did not explain why refusal of a visit visa which only allows the parties to be together temporarily was a disproportionate interference with human rights.
10. Thus, the appeal came before me

### **Discussion**

11. Mr Nath submitted that the judge produced very short conclusions and findings. There were no reasons to find dependency and family life. Paragraph 56 of the decision is just factors but with no analysis. There is nothing in the findings about the public interest or Dube (ss 117A-117D) [2015] UKUT 00090 (IAC). The appellant says that there was no evidence of personal or financial circumstances. The decision should be remade and the appeal should be dismissed.
12. I find that the thrust of the judge's findings was that the respondent is a reliable man of good character with a sound immigration history and a loving family in the UK. There was no intention to settle or overstay in the UK. I find that the judge's analysis of the evidence is sound and the conclusions of fact reached were properly open.
13. I have considered SSHD v SS (Congo) and others [2015] EWCA Civ 387. At paragraph 44, the proper approach is to see if an applicant satisfies the conditions laid down in the Immigration Rules and to assess the force of the public interest which will be relevant to the balancing exercise. Unknown to Mr Nath, there is correspondence in the file from the respondent's solicitors confirming that the respondent has been granted entry clearance to the UK. In those circumstances there can be no public interest in maintaining affective immigration control in this case. The issue has been conceded by the appellant.
14. I do not find it necessary to further analyse the precise reasons given by the judge. I find that the conclusion that the appellant's decision amounted to disproportionate interference with the Article rights of the respondent and UK family members was properly open to the judge. Any errors of law along the way are clearly not material to the outcome of the appeal. The appellant's appeal against the decision of the First-tier Tribunal cannot succeed.

### **Decision**

15. Consequently, I dismiss the appellant's appeal and the decision of the First-Tier Tribunal stands. There is no material error of law.

Signed



Date 14 September 2015

Judge Archer  
Deputy Judge of the Upper Tribunal