Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/08341/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 September 2018	**On 1 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

MR ABDULWASIU ADEYEMI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi, Counsel
For the Respondent: Mr I Jarvis, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Geraint Jones QC who in a determination promulgated on 19 February 2018 dismissed the appellant's appeal against the respondent's refusal on 4 March 2016 to refuse him leave to remain on human rights grounds.

2. The appellant is a citizen of Nigeria born on 26 February 1982. He first entered the UK on 13 September 2001 on a valid visit visa valid until 13 December 2001. He made a further application on 13 February 2002 for leave to remain as a visitor. That leave was granted until 1 July 2002

notwithstanding that he had made an application whilst an illegal overstayer.

3. The appellant must have left the UK at some time, because on 2 March 2004 he made an application in Lagos for leave to enter the UK as a visitor. He was granted a visa valid until 2 September 2004. The judge says that by the appellant's own admission he has been here illegally since 3 September 2004. On 15 April 2010 he applied for leave to remain in the UK on the basis of human rights. The application was refused and it carried no right of appeal. On 10 June 2011 the appellant made a further application for leave to remain again based on human rights. The application was rejected. Further similar applications made by the appellant were rejected.

4. On 14 July 2015 the appellant failed to report to immigration officials as he was required to do. On 15 September 2015 he was detained pending removal to Nigeria. On 24 September 2015 the appellant submitted further representations which were rejected by the respondent. On 29 September 2015 he lodged an application for judicial review which was refused on 5 November 2015.

5. On 19 November 2015 the appellant made a further application for leave to remain in the UK outside the Immigration Rules. On 20 November 2015 he was granted bail and released from detention.

6. The November 2015 application was determined on 4 March 2016 when the appellant's application was refused. It is from that refusal that the appellant brought his appeal.

7. Mr Pipi who appeared below on behalf of the appellant stated that evidence relating to the appellant's mental health was relevant to his claim to have protected private life in the UK, whether under paragraph 276ADE(vi) and/or Article 8 ECHR.

8. The judge noted at paragraph 14 that the appellant attended the appeal hearing but did not give evidence notwithstanding that his appeal bundle contained a witness statement from him, dated 5 February 2018. The witness statement contained one paragraph which said that his aunt's witness statement was accurate and he wanted to adopt it as his own.

9. The judge heard evidence from the appellant's aunt, Mrs Oyefesobi, who adopted the content of her witness statement dated 5 February 2018 as her evidence-in-chief, with one correction being made in paragraph 7 so that the date "2011" was replaced by the date "2001". The judge noted that the thrust of her evidence was that the appellant suffers from mental health problems and that he was currently receiving psychotherapy treatment. She said the appellant had lived with her since 2001 and she has supported him. She claimed that he has nobody in Nigeria, with whom he could reside or have family contact.

10. The appellant's aunt said that she is a psychiatric nurse, currently working on a supply basis. She said she provides both financially, morally and professionally for the appellant. In oral evidence she said that she is the appellant's cousin on his maternal side of the family.

11. The appellant's aunt/cousin claimed that the appellant does nothing in the UK and cannot work. When cross-examined she said that the appellant is not registered with a general practitioner but did consult an undisclosed general practitioner in connection with his mental health about one month ago. She claimed that the appellant is presently on medication prescribed by a general practitioner being "hannopradol", 5mg, once daily. The judge said that when the cousin/aunt was asked whether the appellant was taking any medication she delayed answering and then gave her answer very hesitantly, as if she was considering what she should say in answer to the question.

12. The next witness to give evidence was Mr Oboho, who described himself as a "Consultant Practitioner and Forensic Psychologist". He was not aware of any pharmacological therapy provided to the appellant and had not heard of "hannoprodol".

13. The judge said that when the appellant's aunt/cousin was asked why the appellant had failed to provide any general practitioner's records, she said that it was because he was not presently under any general practitioner. She went on to say that the appellant received psychotherapy treatment from Mr Oboho but was extremely hesitant and vague about the number of sessions of psychotherapy that the appellant has undertaken, with what regularity he undertakes any such therapy and how much such sessions cost. The judge said it was surprising that she should be unaware of the cost of such sessions given that she claimed that she was the one who provided the money to pay for them.

14. Mr Oboho adopted his two reports, respectively dated 12 November 2015 and 20 July 2017 as his evidence-in-chief. He said the appellant undertakes "talking therapy". When he was questioned about the regime of such therapy he said that the appellant has not attended any sessions over the last six months, but only three sessions over the last twelve months or thereabouts. Mr Oboho said the sessions are designed to examine the appellant's disposition and discuss with him issues relating to it. Mr Oboho went on to say that his reports do not deal with any issue relating to the appellant's mental capacity for the purposes of the Mental Capacity Act 2005.

15. The thrust of Mr Oboho's report from November 2015 was that, at the time, the appellant was experiencing "psychological difficulties" because of the threat of imminent deportation. He was of the opinion that the ongoing threat to the appellant, of having to leave the United Kingdom, would cause him moderate/severe somatic symptoms, depression and "possibly" a mild post-traumatic stress disorder. He also described it as giving rise to a kind of separation anxiety due to the appellant's attachment to the country in which he had chosen to remain illegally since

2004. He expressed the opinion that the appellant risked becoming mentally ill if he could not remain attached to the UK "due to his vulnerability".

16. Mr Oboho also indicated that he was uncertain about the extent to which, if any, any kind of psychotherapy treatment would be available to the appellant in Nigeria. His follow-up report of 20 July 2017 stated that the appellant's condition remained much the same, but it might be improved if he attended psychotherapy sessions which it seems, he has not done.

17. The judge did not consider Mrs Oyefesobi to be a candid or reliable witness. He said when she gave evidence she was very plainly concerned that she should say only things that might assist the appellant. She was not confidently or quickly able to identify what, if any, medication the appellant presently takes and identified a drug which she claimed was called "hannoprodol" which the judge was satisfied did not exist. The judge said she even seemed very uncertain about the dose of any such medication, but finally alighted upon 5mg once daily. The judge said Mrs Oyefesobi was less than candid when dealing with the extent to which, if any, the appellant undertakes psychotherapy sessions, quite plainly because she did not want to disclose that the appellant had not attended any sessions throughout the last six month period.

18. The judge made findings of fact at paragraph 25. He held that the appellant does not suffer from any diagnosed mental health disorder. The psychological problems that the appellant might have experienced are directly related to his anxiety about being required to depart the UK. The judge said that was understandable given the lengths that he has gone to in an attempt to prevent that happening. The judge found that although the appellant might possibly benefit from psychotherapy sessions, he has chosen not to attend any during the immediately preceding six-month period and has chosen to attend only three sessions throughout the last twelve month period. That demonstrates a complete lack of commitment to any such therapy, and in his judgment, undermines the claim that the appellant suffers from any particular psychological deficit which is unrelated to his anxiety about having to leave the UK. The appellant has chosen to remain illegally in this country since 2004. He has resided with his aunt/cousin who has been complicit in his decision to remain illegally in this country and has aided and abetted him therein. The judge placed no weight upon the one-line witness statement provided by the appellant. He placed no reliance upon the aunt/cousin's assertion that the appellant has no relatives in Nigeria. Given the paucity of the evidence the judge made no further finding in connection therewith, suffice to say that the appellant himself has not proved that he does not have any family network in Nigeria.

19. The judge then turned to consider paragraph 276ADE(vi) Immigration Rules. The judge said he had to consider whether the appellant has established that it is more probable than not that there would be very significant obstacles to his integration into life in Nigeria. The judge declined to find that the appellant would be faced with "very significant

obstacles" to his integration in Nigeria because there was simply no evidence which would justify such a finding being made. The judge said at 26 that the appellant has chosen to give no evidence and his witness statement was worthless. His aunt/cousin was not a sufficiently candid, reliable or credible witness and therefore he was not prepared to place any significant weight upon her claims about the appellant's lack of family in Nigeria. The judge held that the mere fact that somebody has been absent from his native country for thirteen years does not, of itself, prove that he would face very significant obstacles to reintegration upon return to that country.

20. The judge held that the appellant has put forward no special or unusual circumstances which would justify a consideration of human rights under Article 8, when he has failed under paragraph 276ADE.

21. The judge said that if he was wrong in that regard, then it would be appropriate for him to undertake an Article 8 assessment. First, he found that the appellant, being an adult, has developed his private life in this country, but very substantially during his period of illegal stay in this country. Accordingly, as required by statute, he afforded it very little significance. Secondly, he found that the appellant's family life with his aunt/cousin was established to a very modest extent, in that he accepted that he resided with her and had a degree of financial dependence upon her. The appellant has been unable to work as he is here illegally, but there was no evidence before him to indicate that he would be unable successfully to enter the labour market in Nigeria and provide for himself. The judge made no findings about accommodation, employment or other facets of daily life in Nigeria for the appellant because no evidence was adduced relevant thereto.

22. The judge concluded that it could not and would not be disproportionate for the UK to require the appellant who has overstayed in the UK to depart. The UK is entitled to enforce firm and fair immigration control and that must be particularly so when directed at those who choose to flout and abuse the immigration laws of this country. Given that Mr Oboho attributes much of the appellant's anxiety to the prospect of having to leave the UK, then once that is over and done with the appellant will be better able to settle into a pattern of life in Nigeria where the supposed course of any supposed anxiety will no longer exist.

23. Mr Pipi relied on his grounds of appeal which he said are very detailed. He said central to the appellant's case are the two reports by Mr Oboho dated 12 November 2015 and 20 July 2017. In the 2017 report Mr Oboho said that his diagnosis in 2015 remains relevant, that is the appellant fits the classifications for personality disorder with dependent personality traits. Mr Oboho talks about the effects of removal to Nigeria of the appellant who has spent a significant part of his life in the United Kingdom. In Mr Oboho's opinion the appellant suffers with mental health problems of the types outlined at paragraph 4.2 (9 to 16). These seem to be sufficiently severe to warrant urgent attention. It was pertinent to note that he might have developed a pattern of relating to others in a retiring, listless, and

dejected manner. Enlisting the aid of close friends and focusing on short-term techniques might be useful in maximising compliance and achieving a measure of progress. It is likely that Mr Adeyemi's difficulties could be managed with either brief or extended therapeutic methods.

24. Mr Pipi said that at paragraph 30 the judge relied on the report and yet at 25 appears not to accept it. The judge should have made clear whether or not this report is accepted or not. The report would have an impact on Mr Adeyemi's ability to reintegrate into life in Nigeria. Mr Pipi questioned how the appellant was required to reintegrate in Nigeria when he has no family there. He said the appellant has been in the UK for 17 years and has poor mental health.

25. Mr Pipi said the rest of the grounds deal with how the judge approached credibility and formed the dim view of the appellant's credibility because the judge took the view that the appellant had chosen to give no evidence. Mr Pipi said the appellant did not give evidence deliberately. It was Mr Oboho's opinion that, given his current medical condition, he would be unable to give evidence. Mr Pipi questioned what weight the judge gave to the fact that due to the appellant's mental health he could not give oral evidence.

26. Mr Pipi submitted that the judge rejected the aunt/cousin's evidence because of her demeanour. The judge said she was hesitant, and vague. He said that was not a fair way to gauge credibility.

27. Mr Jarvis submitted that Mr Oboho, the author of the medical reports dated 2015 and 2017, gave oral evidence as did the appellant's aunt/cousin. The judge did not materially err in finding that the evidence of the aunt was hesitant and difficult to comprehend. He said the judge was not obliged to accept or reject the reports. The judge's findings on the medical reports at 25(ii) and paragraph 30 were nuanced. The reports said the appellant was anxious about being removed from the UK. That was at the core of the medical reports. Mr Jarvis said the judge had difficulties with the aunt/cousin's evidence. She is a psychiatric nurse and was not able to recall the medication the appellant was taking which the judge found does not exist. The aunt/cousin was hesitant in explaining what kind of therapy the appellant was having. In her witness statement she was speaking for the appellant for whom she says she has had direct care for seventeen years. She was unable to say with any immediacy what treatment the appellant was having. Mr Jarvis said the judge was doing his best with poor evidence.

28. Mr Jarvis said the judge made perfectly sound findings that the appellant has not made out that he has no family in Nigeria.

29. He said the challenge to the judge's finding at 29 that he afforded very little significance to the appellant's private life is not materially flawed because there is no legal difference between little significance or little weight.

30. In reply Mr Pipi submitted that the judge was not entitled to reach his conclusion that he has no family in Nigeria if I accept his objections to the judge's reasons for rejecting the cousin/aunt's evidence.

31. Having considered all the evidence and submissions made by the parties, I find that the judge did not err in law and give my reasons below.

32. I note that Mr Oboho said in his 2017 report that the appellant would be unable to give evidence in court because his mental condition identified in his report of 2015 had hardly changed. In the light of this evidence, I find that the judge erred in finding that the appellant chose not to give evidence. I find that this error is not material. The appellant had submitted a witness statement containing one paragraph in which he adopted his aunt/cousin's statement. In addition to her witness statement, the aunt/cousin gave oral evidence on his behalf. I find that the judge properly considered her evidence. I find that the judge's rejection of her evidence had nothing to do with her demeanour. The judge did not materially err in finding that her evidence was hesitant and vague and that she was very plainly concerned that she should say only things that might assist the appellant. In the light of this finding the judge did not err in rejecting her evidence that the appellant has no family in Nigeria and as a consequence would have difficulty reintegrating in to life in Nigeria.

33. I find that the judge was not obliged to accept or reject the two medical reports by Mr Oboho. I do not however find that this materially affected the judge's decision. The judge at paragraph 22 considered that the thrust of Mr Oboho's report from November 2015 was that at that time the appellant was experiencing "psychological difficulties" because of the threat of imminent deportation. Mr Oboho was of the opinion that the ongoing threat to the appellant of having to leave the United Kingdom, would cause him moderate/severe somatic symptoms, depression and possibly a mild post-traumatic stress disorder. In the light of this evidence, I find that the judge did not err in concluding that the appellant's psychological problems were directly related to his anxiety about being required to depart the UK.

34. Mr. Pipi submitted that in Mr. Oboho's opinion the appellant suffers with mental health problems that seem to be sufficiently severe to warrant urgent attention. Yet, I find, as noted by the judge, that although the appellant might possibly benefit from psychotherapy sessions he has chosen not to attend any during the immediately preceding six-month period and has chosen to attend only three such sessions throughout the last twelve-month period. He is not even registered with a GP. I find that the appellant has himself not given serious attention to his claimed mental health problems. I agree with the judge's finding that this demonstrates a complete lack of commitment to any such therapy and undermines the claim that the appellant suffers from any particular psychological deficit which is unrelated to his anxiety about having to leave the United Kingdom.

35. I also note that Mr Oboho was not aware of any pharmacological therapy provided to the appellant. In the light of the evidence that was before the judge I find that the judge did not err in finding at paragraph 30 that given that Mr Oboho attributes much of the appellant's anxiety to the prospect of having to leave the UK, that once that was over and done with the appellant would be better able to settle into a pattern of life in his native country where the supposed course of any supposed anxiety will no longer exist.

36. I reject the argument in the grounds that the judge erred in that he gave no reason why he concluded that the appellant has lived in the UK for thirteen years. Although the respondent alleged that the appellant made an application in Lagos on 2 March 2004, she failed to produce evidence of this upon which the judge could have rationally or reasonably concluded that the appellant was in Lagos in 2004. I find that as the appellant did not give evidence, there was no evidence from him to deny or confirm the respondent's assertions about his entry into the United Kingdom. In any event the fact is that the appellant has been in the United Kingdom for less than twenty years and therefore does not satisfy the residential requirement of the Immigration Rules.

37. The argument in the grounds that the judge applied a completely wrong consideration when he said that he afforded little significance to the appellant's private life does not amount to a material error of law. Whilst the statute, namely Section 117B(4) of the Nationality, Immigration and Asylum Act 2002, requires "little weight" to be given to private life established during unlawful stay, the judge's approach to the proportionality balancing exercise is not flawed for not using the right words. The fact is that since 2004 the appellant has been staying in the UK illegally.

38. In conclusion I find that the judge's decision does not disclose a material error of law. The judge's decision dismissing the appellant's appeal shall stand.

No anonymity direction is made.

Signed Date: 25 September 2018

Deputy Upper Tribunal Judge Eshun