



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10456/2015

THE IMMIGRATION ACTS

Heard at Field House
On 4th May 2018

Decision & Reasons Promulgated
On 30th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR TAOHEED BABATUNDE DOSUMU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel instructed by G Singh Solicitors
For the Respondent: Miss A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria whose date of birth is recorded as 10th July 1988. He appealed the decision of the Secretary of State of 20th November 2015 refusing him leave to remain in the United Kingdom. His appeal was heard by Judge of the First-tier Tribunal Cockrill sitting at Taylor House on 11th July 2017. The appeal was heard on human rights grounds including consideration of paragraph 276ADE(1)(vi) but was dismissed on all grounds.

2. Not content with that decision, by Notice dated 7th August 2017 the appellant made application for permission to appeal to the Upper Tribunal. On 27th February 2018 Judge Hollingworth granted permission. In granting permission Judge Hollingworth found it arguable that there was insufficient analysis and findings in relation to the strength of the relationships between the appellant and those witnesses, called on his behalf at the hearing, in deciding the degree of weight to be attached to the appellant's private life and though the judge had referred to the period of time spent by the appellant in the United Kingdom, he having arrived in 2005, it was said to be arguable that the carrying out of the proportionality exercise given the length of time that the appellant had been in the United Kingdom required a greater degree of analysis than that demonstrated at the hearing.
3. The background to the case is set out by Judge Cockrill. As I have already observed the appellant arrived in the United Kingdom in June 2005; that was a finding made by Judge Cockrill which is not challenged. He, that is to say the appellant, received a custodial sentence in 2008 in respect of an attempt to convert £2,000 into Euros with the use of a false Nigerian passport. There is a history of unsuccessful applications for leave to remain in the United Kingdom: the judge refers to five successive unsuccessful applications from 11th February 2011 until there was an unsuccessful appeal with respect to the last of those applications in September 2014.
4. Insofar as the appellant sought to rely on his private life he had contended for a relationship with a Nigerian national, Ms Ojo, who had leave to remain in the United Kingdom until 3rd March 2016 (at the time of the refusal letter). The hurdle which the appellant had to meet, having regard to paragraph 276ADE, was that he would have to show, the burden being upon him, "very significant obstacles to integration into the country to which he would have to go if required to leave the United Kingdom"; the candidate country being in this case Nigeria.
5. At the hearing in the First-tier, the appellant gave evidence and called a number of witnesses, including a Mr Akindele, whom the appellant described before Judge Cockrill as a "father figure". It was the appellant's case that he no longer had family ties in Nigeria and that his family now consisted of Ms Ojo, his fiancée, his uncle, aunt and cousins.
6. As to the relationship with Ms Ojo it was his case that that had begun about five or six years prior to the hearing in the First-tier Tribunal. She had arrived in the United Kingdom in 2004. He was not working. Evidence was received, as I have said, from a number of witnesses including Ms Ojo. Her evidence was that her leave had been extended to 2019. Her family were, she said, in the United Kingdom.
7. Mr Akindele gave evidence. He is a German national and confirmed that he had been supporting the appellant since his, the appellant's, arrival in the United Kingdom.
8. Ms Adebayo gave evidence. She is the aunt of the appellant and gave evidence to the effect that the appellant had no family in Nigeria. She was not in contact with the appellant's father.

9. Ms Dosumu gave evidence. She is an aunt of the appellant.
10. Evidence was then received from a Mrs Oni, a British national, who spoke of the appellant's good character, and finally a Mr Sogeyinbo, a friend of the appellant for over ten years spoke highly of the appellant's patience and honesty and how he was a valuable member of the community.
11. Judge Cockrill, found as a fact, on the basis of all of the evidence that he heard, that the appellant arrived when he said he had done so and that he accepted that the Appellant had studied in the United Kingdom. He accepted that, to some extent, the appellant was a victim, having arrived in the United Kingdom when he was a minor.
12. Having regard to those factors to which weight should be given, Judge Cockrill noted the length of time that the appellant had been in the United Kingdom, but he came to the view that as a young man who was fit and able with A levels, he should be able to integrate himself perfectly satisfactorily into Nigerian society. He concluded that the appellant did not meet the test under 276ADE(1)(vi). The judge then went on to consider the issue of proportionality outside of the Rules.
13. It is clear to me that, in making findings, at paragraph 29, Judge Cockrill did have regard to the totality of the evidence as given before him. The judge found that the appellant did not have family life "as such" in the United Kingdom. "He has got family members but none of those relationships goes beyond anything that can be described as "normal, emotional bonds". That finding was clearly based on the evidence which Judge Cockrill heard. He went on to note that there was a "steady girlfriend who is [his] fiancée". The judge also took that into account and gave weight to it. The judge noted that there would be a difference for the appellant in living in Nigeria, but then went through the *Razgar* tests and found that the public interest outweighed the individual factors prayed in aid by the appellant.
14. Mr Collins submitted that there was no sufficient full assessment of the problems which would face the appellant were he required to return to Nigeria. The appellant has had no contact with his father since he was 7, and there were no sufficient findings with respect to that aspect of the case against a background in which the appellant had contended that he had no family ties in Nigeria. Mr Collins reminded me of the guidance in the case of **AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230** and the need for findings in respect of all the witnesses called. The observations of the judge, it was submitted at paragraph 27, about whether or not the appellant is a "fit and able" young man who should be in a position to integrate was an error of law because the proper test was about insurmountable obstacles and I was then reminded of the guidance in the case of **Agyarko [2017] UKSC 11**.
15. After some analysis in respect of the meaning of insurmountable obstacles and precariousness, at paragraph 57 in the case of **Agyarko** Lord Reed who gave the leading judgment said as follows:-

*"That approach (referring to the guidance in **Hesham Ali**) is also appropriate when a court or tribunal is considering whether a refusal of leave to remain is compatible with*

Article 8 in the context of precarious family life. Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and the Instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of immigration laws, only where there are 'insurmountable obstacles' or 'exceptional circumstances' as defined. It must also consider all factors relevant to the specific case in question, including, where relevant, the matters discussed in paragraphs 51-52 above. The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the Article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control."

16. In making reference to paragraphs 51 considered the distinction that might be made between a person unlawfully in the United Kingdom subject to deportation because of criminality contrasted with the person in the United Kingdom unlawfully but who would inevitably be granted leave to enter were they removed. Paragraph 52 made reference to the public interest was liable to diminish if there was protracted delay in the enforcement of immigration control.
17. Specifically, in relation to that latter point, Mr Collins invited me to have regard to the fact that the appellant had not been removed, but I observe that he had not been removed in large measure because he had making successive applications which required the Secretary of State to make a decision. I also observe that none of those applications were successful. In part therefore the Appellant relies, in part, on private life arising during a period of successive unmeritorious applications.
18. At paragraph 12 in the case of **VW (Sri Lanka) [2013] EWCA Civ 522** McCombe LJ said:-

"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."

19. In determining whether or not there is an error of law in this case I am invited to find that there was insufficient reasoning. However, I find, when reading this decision as a whole, that it is perfectly clear how the judge arrived at his decision. He was required to deal with the case as advanced before him. Private life considerations were raised under 276ADE(1)(vi). I note that at paragraph 22 Mr Tampuri, who appeared below, did not expand on the point save to raise it. I note also at paragraph 31 that Mr Tampuri was recorded as being "*candid enough to say that the law had never been on the appellant's side*". Be that as it may, has the judge (I ask rhetorically) given sufficient reasons as to why the appellant did not overcome the hurdle of the very

significant obstacles to the appellant's integration in [Nigeria] that he would have to meet were he required to leave the United Kingdom? In my judgment, notwithstanding the very able submissions made by Mr Collins, the judge, having regard to the totality of the evidence, noted that the appellant was a person who had qualifications that he could put to use in Nigeria, the country of his birth. Insofar as Mr Collins urged me to find that the appellant would be destitute were he returned to Nigeria, which was one of the submissions made, there was a finding from the judge at paragraph 30 that the appellant could be supported by his uncle in the United Kingdom were he to be returned to make application from Nigeria to return to the United Kingdom. The reasoning was brief, but the test is whether it was sufficient and adequate such that the judge arrived at findings that were open to him. In my judgement the judge passed that test. It is trite law to say, notwithstanding Mr Collins' submissions in relation to **AK (Turkey)**, the judge does not need to deal with each and every matter. The decisions of the First-tier Tribunal are often far too long. What is needed is sufficient for the reader to understand how it is that the person who has lost in the First-tier Tribunal did so. In my judgement it is clear how that decision was arrived at.

20. In considering the wider application of Article 8 ECHR, it is to be remembered that it does not give judges a general power to dispense with the immigration rules. The residual discretion, if discretion it is, is to examine whether there is some feature of the evidence, not catered for in the rules, that entitles the Judge to say that the private interest outweighs the public interest. Judge Cockerill, as was open to him, found that there was not. I remind myself that individuals do not have a right to choose where they enjoy their family life, and if the appellant and Ms Ojo wish to continue life together, then reading the decision of Judge Cockrill no sufficient impediment was advanced as to why they could not enjoy family life in the country of their birth, they having a common nationality.
21. For the avoidance of doubt, I do not accept that there were insufficient findings in relation to the quality of the relationships with the various people who gave evidence in support of the appellant. The judge found that those were the sorts of relationships that one might find as between adults, but the competing factors when undertaking the balancing exercise came down in favour of the state. That was a decision open to the appellant. The approach of the judge was perfectly rational.
22. There was a proper application of Section 117B and in my judgement the grounds point to no material error of law. In the circumstances the appeal is dismissed.
23. No anonymity direction is made.

Signed

Date: 25 May 2018

A handwritten signature in black ink, appearing to be 'AJM', written in a cursive style.

Deputy Upper Tribunal Judge Zucker