Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10003/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34
On 30th November 2020

Decision & Reasons Promulgated
On 08th December 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

OLAJIDE [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Directions were issued by the Upper Tribunal on 12 August 2020 indicating the provisional view, in light of the need to take precautions against the spread of Covid-19 and the overriding objective, that this case was suitable to determine whether there was an error of law in the First-tier Tribunal's decision and if so, whether that decision should be set aside, without a hearing.

2. In written submissions filed on 24 August 2020, the Appellant objected to the provisional view that the error of law issues can be determined without a hearing and submitted that an oral hearing is required. The reasons given for this are that an oral hearing is important to enable the Judge to hear oral arguments in the case and reference is made to case law that procedural fairness can require an oral hearing. The Appellant has not however referred to any of the circumstances of this appeal as to why an oral hearing is required as a matter of fairness, nor have any particular

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matters been highlighted upon which oral argument would be helpful or necessary. In any event, the Appellant did, in accordance with the directions, make detailed written submissions as to the substance of the appeal.

3. The Respondent filed written submissions on 26 August 2020 deal with substantive matters raised in the appeal and there was no objection to the consideration of the error of law matters without a hearing.

4. Having regard to the Pilot Practice Direction issued by the Senior President of the Tribunals on 19 March 2020 and the decision of Fordham J in The Joint Council for the Welfare of Immigrants v President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103 (Admin), including the benefits of an oral hearing and requirements of procedural fairness, I have decided that this is a case in which it is suitable for the issues of whether the First-tier Tribunal's decision materially erred in law and if so, whether the decision should be set aside, to be determined on the papers on the basis of the written submissions made. This is in light of the unprecedented circumstances surrounding Covid-19 and the need to take precautions to prevent the spread of the disease; is in accordance with the overriding objective for the Upper Tribunal to deal with cases fairly and justly in rule 2(1), (2) and (4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and in circumstances where on the facts; the grounds of appeal relied upon, expanded in the written submissions on behalf of the Appellant and responded to in writing by the Respondent are clear and comprehensive. This decision has therefore been made under rule 34 to avoid any further delay to the determination of the issues.

5. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Howard promulgated on 29 November 2019, in which the Appellant's appeal against the decision to refuse his human rights claim dated 23 May 2019 was dismissed.

6. The Appellant is a national of Nigeria, born on 27 April 1971, who last entered the United Kingdom with entry clearance as a visitor valid from 21 October 2009 to 21 October 2011. On 30 April 2012 he made an application for an EEA Residence card which was refused on 29 September 2012, following which the Appellant was appeal rights exhausted on 1 August 2013. On 9 October 2015, the Appellant made an application for leave to remain on the basis of private and family life, which was refused on 26 January 2016 with an out of country right of appeal.

7. The Appellant's most recent application for leave to remain was made on 28 November 2018, the refusal of which on 23 May 2019 is the subject of this appeal. That application was on the basis of the Appellant's marriage to a British citizen and that there would be insurmountable obstacles to their family life continuing in Nigeria, due to his wife's medical conditions, employment and homeownership in the United Kingdom.

8. The Respondent refused the application on the basis that whilst it was accepted that the Appellant was in a genuine subsisting relationship with his wife, it was not

accepted that there would be insurmountable obstacles to family life continuing in Nigeria. In particular, the Appellant's wife's ties in the United Kingdom and relocation to Nigeria may involve a degree of hardship or inconvenience but would not be insurmountable. The Appellant and his wife would be able to support themselves in Nigeria and obtain employment there and medical treatment is available to the Appellant's wife. The Appellant did not meet any of the requirements for a grant of leave to remain on the basis of private life under paragraph 276ADE of the Immigration Rules and there were no exceptional circumstances to warrant a grant of leave to remain on any other basis.

9. Judge Howard dismissed the appeal in a decision promulgated on 29 November 2019 on all grounds. There was no dispute that the Appellant was in a genuine and subsisting relationship with his wife and the main issue in the appeal was whether the Appellant would face insurmountable obstacles to his family life continuing outside of the United Kingdom for the purposes of paragraph EX.1 of Appendix FM to the Immigration Rules. The key findings on this for the purposes of the onward appeal are as follows:

> *"16. [The Appellant's wife] has significant health issues. She set these out in her witness statement … The medical evidence submitted speaks of some of these as well as a number of other minor ailments. That evidence in the main takes the form of her medical records. There has been no attempt by her representatives to summarise it or extract the more pertinent material. I have considered it all, but my understanding of the more technical medical language is limited and I interpret it as a layman.*
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> *17. It is the respondent's case that notwithstanding state of her health there is medical treatment and support available in Nigeria which will not be comparable to that she receives in the UK, but this quantitative difference does not amount to an insurmountable obstacle to her husband returning to Nigeria as she has a choice whether to join him and if she chooses to join him to avail herself of the services available there.*
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> *18. The nature and requirements of the more significant conditions not being in dispute I first consider what it is that I can reasonably find is available by way of health care in Nigeria. There is material available to both the appellant and the respondent much of it is contained within the appellant's bundle. The most recent report submitted by the appellant is dated 7 March 2019. That report speaks to a deteriorating quality of health care in Nigeria. However, careful consideration of that report makes it clear that it is the poor and the vulnerable who are disproportionately affected by the paucity of services in Nigeria.*
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> *19. Given [the Appellants wife's] assertion that she earns in excess of £72,000 a year it cannot be said that the appellant and his partner are poor or vulnerable. I also note that she is an IT Training Consultant and skills such as these will be as valuable Nigeria as they are in the UK.*
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> *20. The evidence before me does not support the conclusion that the obstacles that would be faced by [the Appellant's wife] and thus the appellant on return to*

> *Nigeria are in any sense insurmountable. The facilities exist in Nigeria, that much is clear and there are the resources to access them.*
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> *21. The appellant also cites the general levels of criminality in Nigeria and the absence of family members. However given his age, his good health and the fact that he has worked in Nigeria in the past are all indicators, together with the resources available from his partner that he will in no sense be vulnerable or destitute in Nigeria."*

10. The First-tier Tribunal goes on to undertake a separate assessment under Article 8 of the European Convention on Human Rights, taking into account the Appellant's circumstances and the factors in section 117B of the Nationality, Immigration and Asylum Act 2002 when assessing the proportionality of the Respondent's decision, and found overall that the Appellant's removal would not be a disproportionate interference with his right to respect for private and family life.

The appeal

11. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal materially erred in law in failing to give adequate consideration to the medical reports relied upon by the Appellant in relation to his wife, specifically no express consideration was given to the reports dated 12 July and 19 August 2019, the latter of which advised the Appellant's wife not to leave the country as it would not be in her best medical interests or welfare to do so. The Appellant asserts that the First-tier Tribunal's reference in paragraph 16 of the decision to limited understanding of technical medical language, interpreted as a layman, suggest that inadequate consideration has been placed on the medical evidence. Secondly, that the First-tier Tribunal has failed to give adequate consideration to the written evidence of the Appellant's wife outlining her current medical treatment.

12. With the grounds of appeal, the Appellant submitted a further copy of the two medical reports highlighted, as well as a further written statement from the Appellant's wife responding to the decision of the First-tier Tribunal, but without being incorporated within or even referred to as part of the grounds of appeal. It is not clear on what basis this statement was attached to the grounds of appeal, there is no application to adduce the statement as further evidence at this stage and in the circumstances I have not read this as forming any part of the grounds of appeal. In any event, the contents of this statement largely amount to disagreement with the decision under challenge, questioning the findings paragraph by paragraph and suggesting that the findings made were contrary to the evidence before the Tribunal.

13. The written submissions made on behalf of the Appellant on 24 August 2020 continue to rely on the grounds of appeal as originally drafted, with some additional submissions and response to a matter raised in the grant of permission that it was not entirely clear that the specific medical documents highlighted were before the First Tribunal at the date of hearing. It is submitted that the first letter was sent to the First-tier Tribunal with the second bundle of evidence on 17 August 2019 and the second letter was handed into the Tribunal on the day of the hearing. Attached to

the written submissions are a letter from the Appellant's solicitors and written statements from the Appellant and his wife confirming the same. The reliance on these additional materials was not accompanied by an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, but in any event are not necessary as I am satisfied that these documents were available to the First-tier Tribunal at the date of hearing, being included on the file and with an appropriate date stamp showing receipt.

14. The written submissions on behalf of the Respondent opposed the appeal on both grounds. In relation to the first ground it is submitted that the First-tier Tribunal expressly stated in paragraph 16 of the decision that all of the medical evidence has been considered and specific reference is made to the conditions which are covered in the letters dated 12 July and 19 August 2019. The first letter only confirms that the Appellant's wife is due to have a scan. The second letter is an opinion that it would not be in the Appellants wife's best interest to move to Nigeria because she would need physiotherapy after surgery, however there is no consideration at all whether post-operative physiotherapy is available or not in Nigeria.

15. The Respondent submits that the fact that the First-tier Tribunal Judge stated that he is not a medical expert, does not give any indication of an inadequate consideration of medical evidence and the burden is on the Appellant to provide coherent evidence for the Tribunal to assess.

16. In any event the Respondent submits that the matters in the first ground of challenge could have had no material outcome on the appeal because the Appellant has not challenged the findings that medical treatment is available and accessible to the Appellant's wife in Nigeria given the availability of healthcare and financial resources available and there is no challenge to the overall finding under Article 8 that the decision would not amount to a disproportionate interference with the right to respect for private and family life.

17. In relation to the second ground of appeal, the Respondent submits that the Appellant has not identified which specific parts of the written statement are said not to have been considered and the decision makes express reference to all of the evidence having been considered, with express identification of the Appellant's wife's medical conditions and treatment. In any event, it is trite that the First-tier Tribunal is not required to refer to the detail of each and every piece of evidence in the decision. The Respondent reiterates that there are overall clear unchallenged findings as to the availability of medical treatment in Nigeria such that the Appellant could not establish that there were insurmountable obstacles to family life continuing in any event.

Findings and reasons

18. The first ground of appeal concerns the First-tier Tribunal's consideration of the medical evidence in relation to the Appellant's wife and specifically whether two letters were taken into account. The First-tier Tribunal's decision expressly sets out at paragraph 11 that all of the material submitted by the Appellant in support of the

appeal has been considered and in paragraph 16 there is further express confirmation that all of the medical evidence has been considered. There is nothing in the statement of the Judge in paragraph 16 that his understanding of the medical records is that of a layman to suggest that he has not, contrary to the express statement to the opposite, taken that evidence into account. Nor does that statement in any way imply that the Judge has not understood the evidence that was before him for the purposes of making findings on this appeal. Where there is no dispute as to the Appellant's medical conditions, which have been listed in the decision (albeit not replicated by me in the quotation above as there is no need for all of the Appellant's wife's medical conditions to be repeated in this decision), it is impossible to conclude that these have not been taken into account.

19. The medical evidence relating to the Appellant's wife that was before the First-tier Tribunal was relatively extensive, in excess of 150 pages, comprising of GP printouts, appointment letters, referral documentation and a limited number giving an opinion on specific conditions. There was no comprehensive medical report covering all matters or providing an overview, or a composite list of current treatment or treatment required in the foreseeable future. As above I am satisfied that the two specific letters, dated 12 July and 19 August 2019 formed part of this evidence that was before the First-tier Tribunal.

20. The first letter confirms that the Appellant's wife awaits a scan before deciding what treatment would be appropriate for fibroids and the second letter again confirms investigative tests, including a scan, are to be undertaken with a view to keyhole surgery being offered. The author of that letter, a Consultant Gynaecologist concluded as follows:

> *"I found her to have co-morbidities and do not advise that her leaving the country to join her husband [Olajide] (if not permitted to reside in the UK) would be in her best medical interest or her welfare. This is because following surgery, physiotherapy is also required as well as family support is essential to cope with day-to-day recovery plan. Further systematic medical review has highlighted other co-morbidities that are being investigated by other medical specialities, which are not under my jurisdiction.*
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> *From a medical point of view, I would like to emphasise that relocating to another country at such a critical stage medical evaluation would not be advisable. This decision has the potential of resulting in having an unnecessary pressure effect on a person's physical and mental well-being."*

21. The first letter contains nothing significant of substance in relation to the Appellant's wife's health and it is of note that the second letter deals with only one condition without identifying the co-morbidities relied upon the final conclusion; lacks detail as to what physiotherapy is required or for how long after surgery; lacks detail as to the recovery period from surgery or whether such surgery is expected to resolve the condition; fails to consider at all whether such treatment would be available to the Appellant's wife in Nigeria and does not specify any specific adverse consequences to the Appellant's wife's mental physical health of such treatment was not available.

In these circumstances, there is a lack of adequate reasoning for the conclusion and as such it inevitably carries significantly less weight.

22. Even if, contrary to my primary finding that there is nothing to suggest that the First-tier Tribunal did not fully take into account all of the medical evidence, including these two letters, there is nothing in the substance of those documents which could add to the findings made expressly by the First-tier Tribunal as to the Appellant's medical conditions (the specific condition covered in this correspondence being expressly referred to and accepted in paragraph 16) and that medical treatment may be required for it The First-tier Tribunal notes that there is no dispute as to this. The lack of any express reference to this particular correspondence is therefore wholly immaterial.

23. Further, even if, contrary to these findings, the First-tier Tribunal had not expressly considered this particular evidence, it would be wholly immaterial to the outcome of the appeal in circumstances where there was no evidence before the First-tier Tribunal that physiotherapy was not available or accessible to the Appellant's wife in Nigeria and in the absence of any challenge to the findings in paragraphs 17 to 19 of the decision that healthcare would be available to the Appellant's wife in Nigeria. In circumstances where healthcare is available, there can be no suggestion that the Appellant's wife's health conditions, individually, or cumulatively with the other matters relied upon (upon which clear findings were also made which are unchallenged in the grounds of appeal) could meet the high threshold of insurmountable obstacles to family life continuing outside of the United Kingdom.

24. For these reasons there is no error of law on the first ground of appeal, first it is not made out and secondly, in any event, it could not be material to the outcome of the appeal.

25. The second ground of appeal concerns the First-tier Tribunal's assessment of the Appellant's wife's written statement. That statement expresses her opinion that there would be insurmountable obstacles to her relocating with the Appellant to Nigeria, with specific reliance placed on her undergoing medical assessment and investigation for a number of issues, which are listed in the statement. She states that the health service in Nigeria is poor and less than desirable, with low standards a lack of proper equipment and often fake drugs such that she would feel in danger accessing the health system there. The Appellant's wife also suffered skin damage on visits to Nigeria in 1995 and 2011 albeit there is no evidence available about this. Other matters are also raised in relation to the economic and security situation in Nigeria and the Appellant's wife's family in the United Kingdom.

26. The Appellant has not identified any part of his this evidence which has not been taken into account by the First-tier Tribunal, nor importantly are any matters identified which could have even arguably had a material outcome on this appeal. The second ground of challenge to a significant extent overlaps with the first ground of challenge, given the focus of the evidence was again on the Appellant's wife's medical conditions. It adds nothing of substance and amounts only to a bare

assertion of an error by the First-tier Tribunal, which is not made out. There is simply no basis in the decision of the First-tier Tribunal to even suggest that this evidence has not been fully taken into account and as such there is no error of law on this second ground either.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed *G Jackson* Date 30th November 2020

Upper Tribunal Judge Jackson