



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

Appeal Number: HU/20756/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 November 2019**

**Decision & Reasons  
Promulgated  
On 14 January 2020**

**Before**

**THE HONOURABLE LORD HUGH MATTHEWS  
(sitting as a judge of the Upper Tribunal)  
UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EMMANUEL KANU  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Home Office Presenting Officer  
For the Respondent: Ms Camila Besso of Counsel, Paragon Law

**DECISION AND REASONS**

1. We see no need for and do not make an anonymity order. An order was made by the First-tier Tribunal. We doubt that it was necessary. We have set aside the Decision and Reasons and have ordered the First-tier Tribunal to hear the appeal again. It may be that there will be evidence and/or findings that justify anonymity and the need for an anonymity order will have to be reconsidered.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant",

against the decision of the Secretary of State refusing him leave to remain on human rights grounds on 26 September 2018 following his being made the subject of a deportation order. The short point is that the claimant is a citizen of Nigeria who has a long history of offending in the United Kingdom.

3. The First-tier Tribunal, we are satisfied, clearly misdirected itself; it did not apply the contemporary tests and mangled tests that are a mixture of pre 2014 tests and current tests. That is a poor start and is not redeemed by anything that followed.
4. In broad terms we can see how the appeal *could*, conceivably, be allowed. We are not, in saying this, doing anything to encourage the claimant to think that he has a strong case but if Section 117C of the Nationality, Immigration and Asylum Act 2002 is applied properly the appellant can succeed if he can establish Exception 1 or Exception 2 or very compelling circumstances over and above Exceptions 1 and 2.
5. Exception 2 relates to his having a genuine and subsisting relationship with a qualifying partner or parental relationship and the effects of removal being unduly harsh. It may be difficult for the claimant to establish any of those things but he said things which *could*, possibly, support such a conclusion and no clear, and certainly no reasoned, findings have been made about them.
6. Exception 1 might be more promising for the claimant but that too has been dealt with unsatisfactorily. It is, I think, accepted that the claimant has been lawfully resident in the United Kingdom for most of his life but that only helps him under Exception 1 if he can also show he is socially and culturally integrated into the United Kingdom and there would be very significant obstacles to his integration into life in Nigeria.
7. The claim that he is socially and culturally integrated again may be very hard to sustain because of his long history of offending but he has had a period of being without offences since 2017 and there is evidence that he has had some legitimate work as well as engaging in criminal activities. There may be points to be made and they may have been made but any findings on them have not been explained in the decision in a way that is satisfactory.
8. In order to succeed it would still be necessary for the claimant to show very significant obstacles to integration into life in Nigeria. He might be able to do that. He has indicated that he has significant health problems with his physical health because his spleen has been removed. That it makes him more susceptible to infection and particularly malaria but we find nothing in the decision that indicates just how serious the increased risk might be or what if anything the claimant can do about it. There is also an indication that he has mental health problems and suffers from post-traumatic stress disorder. It is not beyond all possibility that this is a real problem but if it is it has not been explained in the Decision and Reasons in a way which begins to justify the conclusion that has been reached.
9. It is because of these lurking concerns that we set aside the decision and direct that the appeal be reheard in the First-tier Tribunal. It may be that there are good points to be made but if they have been made they have not been reflected in the decision.

10. Ms Besso is to be commended for her tenacity but she is struggling to defend a decision that is completely inadequate.

Notice of Decision

11. For these reasons we set aside the decision of the First-tier Tribunal and direct that the appeal be determined again in the First-tier.



Signed

Jonathan Perkins

Judge of the Upper Tribunal

Dated 13 January 2020  
(extempore judgement given at  
hearing)