Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09589/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 December 2020	**On 13 January 2020**

Before

UPPER TRIBUNAL JUDGE PITT

Between

HCN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Moffatt, Counsel, instructed by South West London Law Centre
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

This is an appeal against the decision issued on 25 February 2020 by First-tier Tribunal Judge Monson which refused the Article 8 ECHR appeal by the appellant against the respondent's decision to refuse his human rights claim made in the context of deportation.

The appellant is a national of Nigeria born in 1990. It is undisputed that he came to the UK in 1990 at the age of 9, without leave. He has had some periods of discretionary leave to remain since then but, for the purposes of these proceedings, it is agreed that he has not lived lawfully in the UK for more than half his life since coming here. His family life was difficult and, as a result of violence from his father, on 31 March 2006 the appellant left home and was taken into care.

The appellant first had contact with the police in 2008 when he was reprimanded by the Metropolitan Police on 5 January 2008 for an offence of ABH committed on 4 January 2008.

Further offences followed for which he received a community order and a caution. A more serious drugs offence followed in 2018 when, on 14 June 2018, he was sentenced to a total period of imprisonment of 39 months.

It was in response to that criminal conviction that the respondent commenced deportation proceedings, notifying the appellant on 13 July 2018 that Section 32(5) of the UK Borders Act 2007 placed the Secretary of State under a duty to make a deportation against him unless he met one or more of the specified exceptions set out in s.33 of the Act. In a decision dated 15 May 2019 the respondent informed the appellant that he was subject to a deportation order. She rejected his human rights claim brought on the basis of his relationship with a British national partner and British national child and found that he had not shown that there would be a disproportionate breach of Article 8 ECHR upon his deportation.

The appellant appealed that decision and, as before, First-tier Tribunal Monson dismissed the appeal on 25 February 2020. The First-tier Tribunal considered whether the appellant could show that he met the requirements of paragraph 117C(4) and (5) and paragraphs 399 and 399A of the Immigration Rules and went on to conclude that there were no very compelling circumstances as required by s.117C(6). The First-tier Tribunal Judge concluded that the appellant's deportation would not amount to unduly harsh consequences for his partner or his child and that there were no very compelling circumstances such that the public interest in the appellant's deportation could be outweighed. The provisions of paragraph 399A were addressed by the First-tier Tribunal in paragraphs 46 to 49. The decision deals with the appellant's relationship with his partner under paragraph 399(a) in paragraphs 50 to 75. The decision deals with paragraph 399(b) and the appellant's family life with his child in paragraphs 76 to 83. The very compelling circumstances and Article 8 ECHR proportionality assessment is conducted in paragraphs 84 to 90.

The grounds of appeal to the Upper Tribunal challenged all of the conclusions of the First-tier Tribunal. Further, in the skeleton argument for the appellant dated 7 December 2020, he applied for amended grounds to be admitted concerning the proper application of the ratio of HA (Iraq) v SSHD [2020] EWCA Civ 1176 to the decision, specifically as regards the approach taken to undue hardship for the partner and child and the role of the best interests of the child in the unduly harsh assessment and the very compelling circumstances assessment. Mr Walker did not object to the amended grounds being admitted where it was accepted that the shift in approach to the unduly harsh assessment and best interests of the child set out in HA (Iraq) should be applied to the appellant's case.

The appellant's grounds are well set out in the skeleton argument of Ms Moffatt dated 7 December 2020 and the Secretary of State conceded that there were material errors of law in the three key sections of the First-tier Tribunal decision. The First-tier Tribunal erred in paragraph 74 when considering the appellant's partner. He placed weight on there being "no official record of her self-harming" when there was, in the form of was a letter dated 16 October 2019 from a senior psychotherapist and psychologist working in the NHS which stated that:

> "She had engaged in self-harming behaviours in the past, although this was something she had managed to stop doing. However, she has recently been engaging in these behaviours again because of the distress she feels at the thought of her partner being deported. She has disclosed to me (and shown me) that she has been burning and cutting her arms; she is doing this several times a week."

It was accepted for the Secretary of State that the error in approach to this part of the evidence undermined the overall assessment of undue hardship for the appellant's partner and his child in the event of the appellant's deportation and also the conclusion in paragraphs 71 and 72 that the partner and child could accompany the appellant to Nigeria.

Further, the respondent also accepted that approach taken to the test of harshness for the child was incorrect where the judge appeared to find that this could not be met where the evidence, in his view, the evidence did not show that the child would be likely to go into care because of the mother's mental health difficulties in the event of the appellant's deportation.

The Secretary of State conceded that these errors showed that the very compelling circumstances assessment could not stand.

Further, Further, the Secretary of State accepted that the judge failed to apply the guidance on very significant obstacles to reintegration and the appellant's long residence including years as a child, both issues being addressed by the Court of Appeal in CI v SSHD [2019] EWCA Civ 2027; see for example, paragraph 86:

> "An inference that an immigrant who has no memory of his country of origin (having left it as an infant) must nevertheless have acquired some

knowledge of its culture and traditions through his upbringing might in some cases be a reasonable one to draw. But on the evidence before the Upper Tribunal there was no reasonable basis for drawing such an inference in this case. The judge referred to the fact that CI's mother was abusive towards him but considered that that fact 'does not demonstrate that he lacked familiarity with his mother's cultural way of life.' This appears wrongly to have put the onus on CI to prove that he was not familiar with Nigerian culture rather than requiring some factual basis for finding that he was. More importantly, it paid no regard to the evidence about the nature and extent of the delinquency of CI's mother as a parent. It is not only the evidence of her abusive treatment of her children but also the evidence of her severe neglect of them that is relevant in this context. As Dr Rachel Thomas, another psychologist who gave expert evidence, observed in her report, the information about CI's mother indicates that she was 'not the sort of responsible parent who will have spent the time to teach her children about their cultural origins.' There was, moreover, positive evidence to which the Upper Tribunal judge did not refer that CI and his siblings had indeed been brought up by their mother ignorant of Nigeria and its culture. CI's older sister explained the matter graphically when she wrote:

> 'Nigeria is as foreign to us as China. We don't know it and we don't know anyone there.'

The judge gave no reasons for rejecting this and other evidence to similar effect and I can see no reason to do so."

It was my conclusion that the Secretary of State's concessions were properly made and I therefore find that the decision of the First-tier Tribunal discloses error of law as regards the assessment under s.117C and paragraphs 399 and 399A and set aside the decision accordingly.

The parties at the hearing were in agreement that this remaking should take place in the First-tier Tribunal where all material aspects of the appeal must be re-decided.

Decision

The decision of the First-tier Tribunal discloses an error on a point of law such that it must be set aside to be remade de novo.

The remaking of the appeal will take place in the First-tier Tribunal.

Signed: S Pitt Date: 18 December 2020
Upper Tribunal Judge Pitt