Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17071/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 October 2021	**On 19 November 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ORIYOMI AYOOLA ABAYOMI ADEGBITE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: None (the appellant represented himself as a litigant-in-person)
For the respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal C J Wooley (the judge) who, in a decision promulgated on 10 January 2020, dismissed the appellant's human rights appeal against the decision of the Secretary of State for the Home Department ("the respondent" or "SSHD") dated 30 September 2019 refusing the appellant's human rights claim, which was made on the basis of the private life he had established in the UK.

Background

2. The appellant is a national of Nigeria, born on 21 February 1993. He, his mother and his two other siblings arrived in the UK on 8 August 2010 with entry clearance as the partner and children of the appellant's father, a Nigerian national who at that time was lawfully resident as a Tier 1 Post Study Work Migrant. The whole family were granted further leave to remain.

3. In January 2014 the appellant's father was granted Indefinite Leave to Remain on the basis that he had lawfully resided in the UK for a continuous period of 10 years (under paragraph 276B of the Immigration Rules). The appellant, his mother and siblings made human rights applications for leave to remain on 20 December 2014, after their leave to remain expired on 16 December 2014. These were refused in November 2015. The appellant, his mother and his 2 siblings appealed the refusal of their human rights claims to the First-tier Tribunal.

4. In a decision promulgated on 17 May 2016 judge of the First-tier Tribunal Agnew dismissed the human rights appeals. Judge Agnew found, based on the evidence before him, that the family retained contacts in Nigeria. Judge Agnew found, given that the appellant's mother had lived in Nigeria until 2010 and that the appellant and his siblings were all born there, that "it would be truly remarkable if the family had no ties with Nigeria - social, cultural and family." Judge Agnew found that the appellant's family could return to live and work within the community in Nigeria where they had spent most of their lives. With respect to the appellant, judge Agnew found there was no evidence that the appellant could not study or work in Nigeria. The appellant had spent most of his life in Nigeria. Judge Agnew further noted that the appellant's family continued to have full access to the National Health Service and the education system in the UK. Judge Agnew found that the appellant and his family had resided in the UK when their immigration status was precarious. Judge Agnew found that the requirements of the Immigration Rules had not been met and that it would not constitute a disproportionate interference with Article 8 ECHR to refuse their human rights claims.

5. On 15 April 2019 the applicant made an application for leave to remain the basis of his private life rights. In refusing this human rights claim the respondent acknowledged the length of the appellant's residence but she was not satisfied that there would be 'very significant obstacles' to his integration in Nigeria, as required by paragraph 276ADE(1)(vi) of the Immigration Rules. Nor was the respondent satisfied that there were exceptional circumstances that would render the refusal of the human rights claim a disproportionate breach of Article 8. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act').

The decision of the First-tier Tribunal

6. At his appeal hearing before the First-tier Tribunal the appellant had instructed solicitors and was represented by counsel. The judge had before him a bundle of documents prepared on the appellant's behalf that included, amongst others, a witness statement from the appellant dated 26 November 2019, payslips and bank account statements relating to the appellant's father, various college and university certificates and awards, evidence of the appellant's previously lawful employment, letters relating to the appellant's involvement in a church, and various character references. The judge summarised the submissions made by the representatives.

7. At [21] the judge referred to the principles established in Devaseelan v SSHD [2002] UKIAT 00702 in respect of the earlier decision of Judge Agnew. The judge took judge Agnew's findings as his starting point whilst noting that the test under paragraph 276ADE(1)(vi) had been different in May 2016. The judge noted Judge Agnew's finding that the appellant and his family had ties in Nigeria that were of a social, cultural and family nature.

8. From [23] to [28] the judge considered whether the appellant met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules. The judge referred to the authority of SSHD v Kamara [2016] EWCA Civ 813 and noted that the idea of 'integration' called for a broad evaluative judgement as to whether the appellant would be enough of an insider in terms of understanding how life in Nigerian society was carried on and to be capable of participating in it. The judge noted that the appellant was now 26 years of age and that he had arrived in the UK when he was 17 years old. The judge found that the appellant would have been immersed in the language and culture of Nigeria as he had completed the bulk of his schooling before he left. The judge found that the appellant did have knowledge of local Nigerian languages. The judge noted that the appellant had now completed his education having gained a degree in law from the University of the West of England.

9. In respect of a submission made on behalf of the appellant that he had no extended family or property in Nigeria, the judge noted that Judge Agnew had already rejected the submission that there were no family or social ties. The judge did not accept that in the relatively short time that the appellant had been away from Nigeria he had not retained some family and social ties in that country. The judge noted that the appellant remained a Nigerian citizen, that he had a law degree from the UK, and that there was no evidence that he would be unable to work in Nigeria to support himself, irrespective of any remittances from the UK. The judge found that, in any event, there was no evidence that the appellant's father would be unable to send him money in Nigeria, at least in the short term until the appellant found his feet.

10. The judge noted that the appellant had no health concerns, that there was no suggestion that he would be discriminated against because of his race or gender, and that he would be able to participate successfully in Nigerian society.

11. The judge then identified relevant case law in respect of assessments under Article 8 as a freestanding right, and he went through the Razgar [2004] UKHL 27 criteria. At [32] the judge found that, even though he was no longer a child, the appellant enjoyed a family life relationship with his family as he lived with them and, as he was not allowed to work, he was being maintained by his father. Having satisfied himself that the respondent's decision interfered with the appellant's Article 8 rights, and that the decision was in accordance with the law, the judge considered whether the interference constituted a disproportionate interference with the relevant Article 8 relationships.

12. Having set out the relevant legal test and relevant legal authorities, the judge listed, at [37], various factors that acted both for and against the appellant's case. These included the fact that the appellant's immigration status had been precarious from the moment he arrived in the UK, and that since the expiry of his leave on 16 December 2014 he had been in the UK solely awaiting decisions on his various applications and subsequent appeals. The judge found that the appellant had a good knowledge of English, and that he had never been dependent on state funds and was therefore regarded as being financially independent, both of which were considered neutral factors. The judge noted that the appellant's private life had been established when his status was precarious and that s.117B(5) of the 2002 Act required that little weight be placed on his private life. The judge found that there were no significant obstacles to the appellant's integration in Nigeria, and that the appellant represented "a significant economic burden on the UK in terms of the provision of housing and healthcare and (potentially) further education."

13. The judge then noted that the appellant had established a family and private life in the UK, and that he wished to remain in the UK. The judge noted however that Article 8 did not give one the right to choose one's country of residence over another and that the appellant's immigration status had always been precarious. The judge noted that the appellant's family life had been established when he had leave to remain in the UK, but that he was now 26 years old and that although he still lived with his family there were no significant obstacles to his integration in Nigeria where he could be expected to sustain himself. The judge noted that since 2015 the appellant, his mother and younger brother had no leave to remain and that his sister was studying in Cyprus. The judge noted that judge Agnew found the family could reasonably be expected to return to Nigeria and, in the circumstances, the judge found that little weight should be attached to the family life the appellant had established in the UK.

14. The judge noted that the appellant had performed a socially useful role in his contribution to the church and through an internship with the Somerset & Avon Police, but the judge was not satisfied that these positive contributions were very significant in the sense understood in UE (Nigeria) [2010] EWCA Civ 975. The judge noted a submission that the appellant's law degree would expire as a practical foundation for any Legal Practice Course (LPC) in 2020 and that removing the appellant would therefore be disproportionate. The judge found however that there was no evidence that the appellant intended to complete an LPC course in the UK, or that he could not equally well use his UK law degree as the foundation for a Nigerian qualification. The judge noted the decision of the Supreme Court in Patel [2013] UKSC 72 which indicated that Article 8 was not a general dispensing power and that Article 8 was concerned with private or family life, not education as such, and that the opportunity for a promising student to complete his course in the UK was not in itself a right protected under Article 8.

15. The judge found that "very little of substance" had been added to the proportionality factors since the decision in 2016. The judge found that he should continue to follow the findings of judge Agnew. The importance of legitimate immigration control outweighed the rights of the appellant and that applying the balance sheet approach, whilst the appellant may face some difficulties turn to Nigeria, the judge found that the refusal of the appellant's human rights claim did not breach Article 8.

16. The judge concluded that the respondent's decision did not disproportionately interfere with Article 8 and the appeal was dismissed.

The challenge to the judge's decision

17. The written grounds of appeal sent to the Upper Tribunal were drafted by the appellant himself without the assistance of legal representation. The written grounds are quite diffuse and describe the impact on his family of having to make various applications. The written grounds noted that the appellant's father was diagnosed with Bell's palsy in 2018, and that he (the appellant) had always lived with his family. The refusal of his application had caused great strain and had been very stressful. The appellant had lived in the UK for almost 10 years and requested that his case be looked at on compassionate grounds. The appellant was an upstanding man with great potential. The First-tier Tribunal ignored the appellant's concerns about being sent back to Nigeria and the fact that he had no friends or family in that country. The First-tier Tribunal had also overlooked the fact that the appellant had been financially dependent on his father for more than 5 years and that he was depressed and mentally tired.

18. Upper Tribunal Judge Kamara granted permission to appeal.

> "The appellant, now aged 27, arrived in the UK aged about 17 and was granted leave to enter as a Tier 1 dependent. His leave lapsed when his father ceased to be a Tier 1 migrant and was granted ILR on long residence grounds. The appellant remains dependent upon his father who own the family home and works. It is therefore arguable that the judge erred in stating that the appellant represented a significant economic burden on the country in terms of the provision of housing and healthcare, despite there being, arguably, no evidence that he had any health issues or required housing. It is further arguable that the judge erred in referring to the appellant wishing to complete his university education, notwithstanding evidence that he had completed his law degree in 2015. Permission is granted on all grounds.
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> The appellant is underrepresented. Consideration of the judge's decision reveals the following Robinson obvious point. (R v IAT ex parte Anthny Pillai Francis Robinson [1997] EWCA Civ 2089). That point being that it is arguable that the totality of the family relationships was not considered by the judge as opposed to looking at the appellant's position in isolation, ZB (Pakistan) [2009] EWCA Civ 834 considered. It is relevant to note that the appellant's father has recently been diagnosed with Bell's palsy and the appellant's evidence included reference to the support he provides to his father."

19. At the start of the hearing the appellant provided an unreported decision of Deputy Upper Tribunal Judge Chapman, promulgated on 6 July 2017. The appellant claimed this unreported decision had been provided to the First-tier Tribunal by Mr O James, the barrister representing him at the time. The unreported decision concerned an appeal by the SSHD in respect of a national of Zimbabwe whose appeal had been allowed by the First-tier Tribunal under paragraph 276ADE(1)(vi).

20. In his oral submissions the appellant submitted that the judge failed to apply a holistic assessment to his appeal and that the obstacles to his reintegration in Nigeria were considered in isolation and not on a cumulative basis. The appellant had a law degree which he would not be able to use in Nigeria as it would take him another 2 or 3 years of him studying in Nigeria to qualify as a lawyer. The appellant claimed that some statistics had been provided by Mr James to the judge respect of the high rate of unemployment in area. I could locate no background evidence relating to unemployment statistics in Nigeria in the Tribunal file. Mr Tufan was unable to locate any such evidence, and the appellant did not have any documentary evidence with him and was unable to identify either the document that was given to the judge pr the nature of the statistics.

21. The appellant accepted that none of the limited medical evidence that was before the First-tier Tribunal indicated that his father's Bell's palsy was caused by stress, and that the only reference to it was a single GP document. The appellant submitted that the judge assumed that his father was financially capable of supporting him but there was no consideration by the judge of his father's expenses. The

appellant confirmed that he had never been a burden on social housing. The appellant claimed that there would be further financial strain on his family if he were removed, and he could not see how he was a threat to the British economy. He noted that he had previously worked in the UK.

22. Mr Tufan submitted that the judge's findings were unassailable. The appellant was a bright man with a law degree who, according to judge Agnew, would have connections in Nigeria who could help him on his return. The appellant was capable of undertaking work in Nigeria and there was no statistical evidence available suggests the contrary. The judge's reference to the appellant being a burden on the country terms of the provision of housing was a 'glitch' but this could not swing matters in the appellant's favour when one had regard to the decision as a whole.

23. I indicated that I would reserve my decision.

Discussion

24. I find, as noted by Judge Kamala when granting permission to appeal, that the judge took into account an irrelevant consideration when undertaking his proportionality assessment. Contrary to the judge's assertion at [37(v)], there was no evidence that either the appellant or his family members had ever been provided with social housing in the UK. He has not therefore been a significant economic burden on the country in terms of the provision of housing.

25. I am however ultimately satisfied that this error of law could not, on any rational view, have made a material difference to the judge's ultimate assessment. This is because the judge gave careful consideration to a large number of factors that significantly undermined the appellant's claim that his removal to Nigeria would constitute a disproportionate interference with Article 8. The judge was rationally entitled to attach weight to the appellant's age when he entered the UK (17 years and 5 months old) in concluding that he would still be familiar with the culture and way of life in Nigeria, including the relevant languages. No issue has been raised with the appellant's ability to speak the relevant languages. The judge was entitled to note that the appellant's immigration status had always been precarious, even when he was lawfully residing in this country. The judge was entitled to find that the appellant was a healthy young man who had obtained a law degree and that, regardless of whether the appellant's father was able to afford to send remittances to him, he would be capable of finding work in Nigeria. Although the appellant claimed that statistics relating to the unemployment rate in Nigeria were provided to the First-tier Tribunal there is no evidence of this on the Tribunal file or in the respondent's papers, and the appellant himself was unable to give any detail relating to these statistics.

26. The judge was additionally entitled to find that the positive contributions made by the appellant to society in the UK were not of the significance such as to reduce the public interest in the maintenance of effective immigration controls. The judge took into account the fact that the appellant was still living with his family, but he was entitled to note that the appellant was an adult, that there were no significant obstacles to his integration in Nigeria, and that, at that time, neither his mother nor his other siblings residing in the UK had lawful leave. there was nothing preventing the family as a whole returning to Nigeria.

27. The judge's Article 8 proportionality assessment must also be considered in light of the previous decision of Judge Agnew, who found that the appellant and his family were more likely than not to have retained social connections with Nigeria given their length of residence in that country. the judge properly approached the decision of Judge Agnew as his 'starting point' in accordance with Devaseelan v SSHD [2002] UKIAT 00702.

28. Nor am I persuaded that the judge materially erred in law when he referred, at [37], to little weight being attached to the appellant's "hopes for a University education in the UK." It is readily apparent from the decision, read as a whole, that the judge was aware that the appellant had already obtained a law degree in the UK (see, for example, [17] and [26]). At [25] the judge specifically notes that the appellant "… gained a degree in law from the University of the West of England." At [37] the judge again expressly acknowledged that the appellant had obtained a law degree, and noted the argument advanced on the appellant's behalf that it would be disproportionate to remove him as the law degree would expire as a practical foundation for any LPC course in 2020. The judge referred to the Supreme Court decision of Patel [2013] UKSC 72 in concluding that Article 8 did not protect a right to education, and he noted the absence of evidence that the appellant was intending to complete the LPC. This was a conclusion rationally open to the judge. The judge's references to the appellant's hopes for a university education in all likelihood relate to the argument in respect of the LPC and do not, in any event, undermine the sustainability of the judge's overall decision.

29. I am not persuaded that the judge unlawfully compartmentalised his assessment of the appellant's Article 8 claim. The decision, read as a whole, indicates that the judge approached the proportionality assessment in a holistic manner, setting out factors both supportive of the appellant's claim and those factor's undermining his claim [37]. I accept that the judge made no reference to the appellant's father having been diagnosed with Bell's palsy in December 2018. I am not however persuaded that any failure to refer to this medical condition could have made any material difference to the judge's ultimate conclusions based on the evidence that was actually before the First-

tier Tribunal. There was very limited evidence relating to his father's condition. The only medical document indicated that the appellant's father had a consultation at his GP surgery on 31 December 2018 because of Bell's (facial) palsy, and that he had been seen in an eye hospital and an Emergency Department a week previously. He reported feeling 80% better already and was advised on a good prognosis according to NHS choices. There was no subsequent evidence relating to the seriousness of the Bell's palsy, and, although the appellant claimed in his statement that support needed to be given to his father before it got worse, no details of the support needed were provided and there does not appear to have been any oral evidence given relating to his father's medical condition. I take judicial notice that Bell's palsy is a condition causing temporary weakness or lack of movement affecting one side of a person's face and that most people get better within 9 months.

30. I can detect no material error on a point of law in the judge's decision and I must consequently dismiss the appeal.

Notice of Decision

The making of the First-tier Tribunal's decision did not involve the making of an error on a point of law requiring it to be set aside.

The appeal is dismissed.

Signed D.Blum Date: 11 November 2021

Upper Tribunal Judge Blum