



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

Appeal Number: UI-2022-001902
IA/11697/2021

THE IMMIGRATION ACTS

**Heard at Bradford
On 14 September 2022**

**Decision & Reasons Promulgated
On 21 October 2022**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

OSASUMWEN IYAMU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Danial, SK Lloyd Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 8 February 2022, in which it dismissed his appeal on human rights grounds.

Background

2. The appellant is a citizen of Nigeria. He arrived in the United Kingdom ('UK') on 28 September 2018 as a student, with leave expiring on 4 February 2020.

3. After the expiry of his leave to remain, the appellant met his wife in October 2020 and they married on 9 August 2021. In an application dated 28 January 2021, the appellant made an application to remain in the UK on the basis of his relationship. This was refused by the respondent on the basis that as an overstayer, the appellant did not meet the suitability requirements and there would be no serious hardship in family life continuing in Nigeria. It is that decision that was appealed to the FTT.

FTT decision

4. The FTT's decision is carefully drafted and comprehensive. The FTT made it clear that all the relevant evidence was considered including all the documents in the appellant's bundles. This included a country expert report prepared by Professor Omyobodi (a Professor of Sociology and Anthropology at the University of Benin). The FTT summarised the relevant evidence including the witness statements and the oral evidence provided by the appellant, his wife and his brother.
5. The FTT considered the available evidence before reaching robust adverse findings of fact. The FTT considered the appellant's credibility to be poor, and rejected much of the evidence offered by the other witnesses on the key issues in dispute, in particular:
 - (i) The FTT did not accept that the appellant made any effort to regularise his stay in the light of the expiry of his visa and the pandemic.
 - (ii) The FTT noted that the relationship did not commence until nine months after the appellant's visa expiry yet he did not tell his wife about his immigration status until after they were married in August 2021.
 - (iii) The FTT did not accept the evidence emanating from the appellant, his brother or Professor Omoyobi, that the appellant's father would cause the appellant difficulties in either his home area or upon internal relocation, on the basis that he had married outside of his tribe and culture.
 - (iv) Contrary to the claims made by the appellant and his wife, the FTT found they would be able to return to the appellant's home area or internally relocate without any significant problem or hardship.
 - (v) The FTT did not accept that the wife's family connections in the UK, medical conditions and circumstances were such that it would be unreasonable or harsh for them to enjoy family life in Nigeria.
 - (vi) The FTT regarded the appellant's private life as slight even considering his brother lived in the UK (albeit hundreds of miles from the appellant).

6. The FTT then concluded that public interest very heavily outweighed the family life with his wife such that it was reasonable and proportionate to expect the appellant to leave the UK.

Appeal to the Upper Tribunal ('UT')

7. The FTT's decision was challenged in grounds of appeal prepared by the appellant's solicitors. These relied upon five grounds of appeal.
8. Permission to appeal was granted by FTT Judge Carolyn Scott in a decision dated 26 April 2022. She regarded all the grounds to be arguable but restricted her observations to the arguable failure on the part of the FTT to deal with the respondent's guidance *Coronavirus: advise for visa applicants and temporary UK residents*, regarding 'exceptional assurance', dated 24 March 2020 ('the guidance').
9. At the hearing before me Mr Danial relied upon the grounds of appeal. I only needed to hear from the respondent in relation to the ground of appeal raising the guidance. Mr Diwnycz confirmed that there was no trace of any application or decision relevant to the guidance on the respondent's digital system.
10. After hearing from both representatives, I reserved my decision.

Error of law discussion

11. I propose to deal with each of the grounds of appeal in turn.

Ground 1 - consistent evidence not taken into account

12. As I have already observed, the FTT considered the evidence provided by all the witnesses. The FTT was clearly aware of the consistency between the appellant's and his brother's evidence, as corroborated by Professor Omoyobi. The FTT was entitled to reject that evidence for the reasons provided. Ground 1 submits that the FTT was not entitled to disregard this evidence but as Mr Danial conceded during the course of his oral submissions, it did no such thing - the FTT considered the evidence but did not accept it.
13. The submission that the FTT rejected evidence on the basis that it was self-serving fails to acknowledge that the clear reason offered by the FTT for rejecting the brother's evidence regarding the appellant's fears in relation to their father at [23]: the brother was not in contact with the father and was unable to say what father's current position was.

Ground 2 - failure to apply the guidance

14. I invited Mr Danial to take me to the evidence available to the FTT concerning any application or decision under the guidance. He accepted that the evidence was very limited and there was no documentary evidence in support of the appellant's claim that he benefitted from 'exceptional assurance'. In particular, Mr Danial accepted there was no documentary evidence to support the appellant having ever received confirmation that he was granted 'exceptional assurance'. Mr Diwnycz confirmed that the respondent's system had been checked and there was nothing to indicate that such an application from the appellant had ever been made or determined.
15. The evidence available to the FTT on this issue was inconsistent and difficult to follow. In his human rights application form dated 28 January 2021 the appellant stated that he had 'exceptional assurance', yet his witness statement before the FTT only confirms that he applied for it, not that it was granted. His solicitors' letter dated 7 June 2021 makes no reference to having made an application for or having been granted 'exceptional assurance' at all. Rather it is said that "*his leave expired during the pandemic, whereupon he contacted the Home Office for an extension of his leave during lockdown*". By 13 December 2021 he was saying something different: he applied for 'exceptional assurance' and was informed he could remain lawfully during the outbreak of the pandemic. That sits uncomfortably with what the appellant is recorded to have said to the FTT at [12]: "*between his visa expiring and lockdown commencing he was trying to communicate with the respondent*".
16. In these circumstances, the FTT was entitled to make the finding it did at [20]. The FTT properly observed that there was an absence of cogent evidence of the appellant seeking to regularise his stay. Contrary to the assertions in the grounds of appeal, the FTT's findings on this issue were made in the full knowledge of and having directed itself to the guidance - see [18].
17. In any event, there also seems to be no clear and cogent evidence before the FTT that the appellant was in fact unable to leave the UK to return to Nigeria in the period before the commencement of lockdown, when he knew his visa was either about to expire or had done so (January 2020 to 22 March 2020). I invited Mr Danial to take me to such evidence before the FTT but he was unable to do so.

Ground 3 - unreasonable determination of credibility

18. The appellant in reality has done no more than disagree with the FTT's credibility assessment and evaluation of the facts but its decision does not contain an error of law - see the summary of the well-established judicial caution and restraint that must be applied when considering whether to set aside such an evaluation at [72] of HA (Iraq) v SSHD [2022] UKSC 22 (20 July 2022).

19. There is no reason to make any assumption that the FtT failed to take into account all the appellant's claimed circumstances. Just because a relevant point was not expressly mentioned, does not mean that it has not been taken into account. In addition, judicial restraint should be exercised when the reasons that a Tribunal gives for its decision are being examined. It should not be assumed too readily that the Tribunal misdirected itself just because not every step in its reasoning was fully set out within it.

Ground 4 - Professor Omoyobi's country expert report

20. Mr Danial submitted that the FTT did not address the expert report. This sits uncomfortably with the detailed summary of that report at [17]. The FTT stated at [23] that it attached little weight to the evidence of dangers emanating from the appellant's father in the expert report on the basis that there was no attempt to corroborate the claim that the father has influence as a chief. Ground 4 makes no meaningful attempt to explain why this is erroneous in law other than describing the FTT as "unreasonable".

Ground 5 - proportionality

21. The submissions based upon Chikwamba v SSHD [2008] UKHL 40 seek to reargue the appellant's case in a manner that is not reflected in the appellant's skeleton argument before the FTT.
22. In any event, the FTT was entitled to regard the public interest in favour of removing the appellant as strong: he flagrantly breached immigration controls by making no effort to leave the UK prior to the expiry of his leave and the commencement of lockdown; he remained in the UK as an unlawful overstayer; he did not tell his wife about his immigration status until after their marriage. The FTT also found that family life could continue in Nigeria without the requisite degree of harshness. This ground of appeal continues to merely disagree with that factual evaluation.

Conclusion

23. It therefore follows that none of the grounds of appeal have been made out and I do not find there to be a material error of law in the decision of the FTT.

Anonymity

24. I do not accept that anonymity of the appellant is appropriate. The discussion of personal information relevant to the appellant's wife is not a reason to dispense with open justice, without more. I have in this decision, in any event, sought to minimise references to the wife's circumstances. The appellant's claim that he is at risk from his

father has not been made as part of any international protection claim and in any event has been found to not be well-founded.

Decision

25. The FTT's decision does not contain a material error of law and is not set aside.

Signed: *UTJ Melanie Plimmer*
2022
Upper Tribunal Judge Plimmer

Date: 14 September