



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001151

FtT No: HU/03303/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

GREGORY IRHULE OSUNDE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher, Counsel, instructed by Paul John & Co Solicitors
For the Respondent: Mr N Wain, Senior Presenting Officer

Heard at Field House on 29 June 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Davey (“the Judge”), promulgated on 25 January 2022, following a hearing on 12 January 2021 (the significant delay in promulgation was not down to the Judge, who in fact signed his decision off on 20 January 2021). By that decision, the Judge dismissed the

Appellant's appeal against the Respondent's refusal of his human rights claim.

2. The Appellant is a national of Nigeria who apparently left that country in 2000 and went to live in Italy. He came to the United Kingdom at the end of December 2008 as a dependant of his wife (who was then a student). He was granted a number of extensions in that category. In 2014 his wife was refused further leave on the basis of an allegation that she had practised deception. She found redress against that allegation through the appellate system; ultimately succeeding in the Upper Tribunal which, by a decision of Deputy Upper Tribunal Judge Bagral promulgated in 2018, found that there had been no deception, that the Appellant's wife had suffered what was in effect a historical injustice, and that her removal would be disproportionate. The Appellant's wife was duly granted discretionary leave to remain and, as I understand the position, she continues to have limited leave to remain to date.

The Judge's decision

3. The core of the Appellant's case before the Judge was that:
 - (a) as with his wife, he too had suffered a historical injustice in that but for the erroneous allegation of deception made against her, he would have subsequently been able to obtain settlement in this country; and
 - (b) his lengthy period outside of Nigeria meant that it would be disproportionate for him to be removed to that country.
4. In a relatively brief decision, the Judge concluded that in all the circumstances the Respondent's refusal of the human rights claim was lawful and that it would not be disproportionate to remove the Appellant to Nigeria.

The grounds of appeal

5. In his grounds of appeal, the Appellant emphasised the claimed historical injustice (described at several points as being a “historic” injustice) and that the circumstances of the case should have led the Judge to allow the appeal.
6. Permission was granted by the First-tier Tribunal.

The hearing

7. At the hearing, Ms Fisher accepted that her grounds had not made reference to Judge Bagral’s decision, particularly [24], in which that Judge had expressly considered the Appellant’s circumstances in relation to the historical injustice done to his wife. Ms Fisher emphasised long delays in these proceedings, submitted that the Judge had failed to give “appropriate weight” to the historical injustice, and that it had been “unfair” for the Judge to have concluded that the place of residence for the couple was not a matter of choice. Ms Fisher informed me that the Appellant’s wife was now a qualified mental health nurse. This had occurred in November 2022 and she was currently working in that capacity.
8. Mr Wain submitted that the Judge had considered all relevant factors and the conclusion was one which had been open to him.
9. At the end of the hearing I reserved my decision.

Conclusions

10. After careful consideration, I conclude that the Judge did not materially err in law.

11. In respect of the historical injustice issue - which formed the centrepiece of the Appellant's case - the Judge was plainly entitled to have regard to Judge Bagral's decision in 2018. As mentioned earlier, she had expressly considered the impact of the erroneous allegation of deception not simply on the Appellant's wife but on him as well. [24] of her decision reads as follows:

"24. Fourth, it has not been shown that the 2014 refusal prevented and thereby prejudiced the Appellant's husband. The application was refused early in the month on 3 November 2014. On the evidence he gave to the First-tier Tribunal his leave expired in November 2014. There is insufficient evidence that his leave had expired by the date of refusal. If it expired after that date, there is insufficient evidence that he made a request to have his passport returned or made any effort to obtain a new one or, explain why his Italian identity card could not have been used to make an application".

12. Those conclusions formed a relevant consideration for the Judge, but were not decisive: AA (Somalia) v SSHD [2007] EWCA Civ 1040, at [29]. At [11] of his decision the Judge made it clear that he had not been shown any additional evidence which in any way undermined the conclusions of Judge Bagral. The grounds of appeal do nothing to undermine that position. Therefore, it is clear enough that the Judge in fact considered the Appellant's case in light of all the materials before him.

13. In summary, the Judge did consider the historical injustice issue as it related to the Appellant. The Judge was entitled to rely on the conclusions by Judge Bagral and those conclusions had the effect that the 2014 allegation did not carry any significant weight in the Appellant's Article 8 claim.

14. As to other matters, the Judge took account of the precarious status of both the Appellant and his wife at all material times. He was clearly aware of the length of time the Appellant had spent out of Nigeria and in the United Kingdom. On the evidence before him, he was entitled

to conclude that there were no compelling or exceptional circumstances rendering removal disproportionate. He was entitled to take account of the fact that a couple does not have an open choice as to where they reside. At that time the Appellant's wife was still a student and there were no particularly strong reasons which would have prevented her from returning with the Appellant to live in Nigeria.

15. The grounds of appeal are not made out and the Appellant's appeal to the Upper Tribunal is dismissed.

Postscript

16. I record here what appears to be the undisputed fact that the Appellant's wife is now a qualified mental health nurse and is working in what one might think would be a specialised and important role within the NHS. In addition, and through no fault of the Appellant's, there have been significant delays in these proceedings. As mentioned earlier, the Judge's decision was not promulgated for approximately a year after it was signed off. Subsequently, there elapsed another year between the grant of permission and the hearing before me. It is of course a matter for the Appellant and his representatives, but it would potentially be open to him to consider putting forward further representations to the Respondent as to his current circumstances.

Anonymity

17. There is no basis for making an anonymity direction in this case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision stands.

The appeal to the Upper Tribunal is dismissed.

Appeal Number: UI-2022-001151
First-tier Tribunal Number: HU/03303/2020

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 13 July 2023