IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003060

First-tier Tribunal No:
HU/57562/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th October 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OLANREWAJU SAMSON AYODELE
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: In person

Heard at Field House on 25 September 2023

DECISION AND REASONS

Introduction

1. The parties are identified in this decision as they were before the First-tier Tribunal. Mr Ayodele is the 'appellant' and the Secretary of State is the 'respondent'.

2. The respondent appeals against a decision of Judge of the First-tier Tribunal Rea ('the Judge') allowing the appellant's appeal on human rights

(article 8 ECHR) grounds. The Judge's decision was sent to the parties on 3 March 2023.

Brief Facts

3. The appellant is a national of Nigeria and presently aged twenty-three. He entered the United Kingdom as a visitor with his mother and two siblings on 15 December 2009, three days before he turned ten. He enjoyed leave to enter until 25 February 2010 and subsequently overstayed. Whilst in the United Kingdom he attended primary and secondary school.

4. He applied for leave to remain on 23 September 2012. The respondent refused the application by a decision dated 7 November 2013. A further application for leave to remain was refused by the respondent on 15 May 2014. A subsequent appeal was struck out by the First-tier Tribunal on 30 June 2014.

5. Close family members secured leave to remain in 2019 as the appellant's siblings had resided in this country for over seven years. The appellant, who by this time was an adult, was not dependent upon these applications.

6. The appellant submitted a human rights application dated 15 March 2021 relying upon paragraph 276ADE(1)(v) of the Immigration Rules (as then in force). At the date of application, he was aged twenty-one years and three months and had resided in the United Kingdom for eleven years and four months.

7. The respondent refused the application by a decision dated 16 November 2021, relying upon Sections S-LTR.1.5 and 1.6 of Appendix FM which are concerned with suitability. The decision detailed, *inter alia*:

> 'We note you have declared in your application that you were convicted of crimes in 2016 and 2018. However, we note that from 2015 to present day you are known to the police as a persistent offender with arrests, cautions and convictions for drugs offences, violence, robbery, criminal damage and knife crimes. We therefore consider your application should be refused on grounds of Suitability under S-LTR.1.5 and S-LTR.1.6.'

8. The respondent concluded that the appellant was unable to meet the requirements of paragraph 276ADE(1)(i) of the Rules.

9. Additionally, the respondent detailed:

> 'You are aged between 18 and under 25 years and have lived in the UK for 10 years and 9 months (sic). It is accepted you have spent at least half your life living continuously in the UK. You meet the requirements of paragraph 276ADE(1)(v) of the Immigration Rules.

> In order to meet the requirements of paragraph 276ADE(1)(vi), an applicant must show that they are aged 18 or above and that there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK.
>
> It is not accepted that there would be very significant obstacles to your integration into Nigeria, if you were required to leave the UK because you have spent your formative years in Nigeria, you speak the language and it is therefore accepted that you will have retained knowledge of the life, language and culture, and would not face significant obstacles to re-integrating into life in Nigeria once more. Consequently, you fail to meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.'

10. The respondent also refused to grant the appellant leave on article 8 grounds outside of the Immigration Rules.

Convictions

11. The appellant has eleven convictions as a youth consequent to five separate appearances before various Youth Courts. The offences consist of possession with intention to supply a class A drug, battery, criminal damage, possession of a bladed article and theft. The Youth Courts primarily addressed these convictions by various Youth Rehabilitation Orders.

12. As at the date of the First-tier Tribunal hearing the appellant had twelve convictions as an adult. Six convictions relate to the possession of a class B drug (cannabis), one concerned perverting the course of justice, another the failure to comply with the requirement of a community order, and four relate to driving offences. These offences were addressed either by community orders or fines.

Decision of the First-tier Tribunal

13. The appeal came before the Judge sitting at Taylor House on 24 February 2023. It was conducted by CVP.

14. The Judge observed, *inter alia*:

> '4. There are no details provided of the circumstances of the Appellant's offending save for a printout of his criminal record showing dates and offences and associated disposals. Contrary to what appears in the refusal letter there is no record of a conviction for robbery. The most serious offence disclosed by the record is one of committing an act with intent to pervert the course of justice which was dealt with at Woolwich Crown Court for which the Appellant was sentenced to a community order with rehabilitation activity for 25 days and curfew requirement for 4 months. There is no evidence provided of the Judge's sentencing remarks on this or any other occasion. Other offences included in the record are in connection with drugs, possession of a knife and battery. There is also included in the evidence a police printout of

operational information which indicates gang involvement. This document was last updated on 9.7.17.

5. I note that the most recent entry on the Appellant's criminal record is an appearance at South East London Magistrates Court on 28/01/19 in respect of an offence of failure to comply with the requirements of a community order on 8/12/18. It appears therefore from his record that the Appellant's offending began with an offence of possession of a class A drug with intent to supply on 19/10/15 when he was 15 years and 10 months old and ended when he was almost 19 years old.There is no evidence provided of any court appearance or arrest for the past four years.

6. I further note that at no time has the Appellant been made the subject of a custodial order. I can infer from this the level of seriousness of the Appellant's offending. It is the Appellant's case, confirmed by him and his parents in oral evidence, that his offending was the result of the malign influence of others. I consider that the level of sentencing imposed and the absence of more recent convictions is consistent with this claim.'

15. When considering the respondent's conclusion as to suitability under the Immigration Rules the Judge noted that the appellant had accumulated a significant number of convictions for criminal offences over a relatively short period of time. Though it was observed that the offences were committed whilst the appellant was a 'relatively young person' and that the sentences imposed suggested that they were 'at the lower end of seriousness', the Judge concluded that the respondent was justified in refusing the application on this ground. This disposed of the appellant's appeal under the Immigration Rules, and the Judge then proceeded to consider the appeal on article 8 grounds outside of the Rules.

16. Turning to the question as to the proportionality of the proposed interference in respect of the appellant's private life rights the Judge noted that the appellant had been present in the United Kingdom from an early age. Most of his time in this country was spent with precarious immigration status, and so the Judge concluded that little weight could be given to any private life established. However, the Judge properly observed that 'little weight' did not mean that no weight can be given and he took account of the fact that the appellant had spent some thirteen years in this country which he considered to be a 'period of very significant personal development from child to adult'.

17. At [10] of the decision the Judge noted the appellant's record of offending but observed that he had kept out of trouble during the previous four years.

18. In allowing the appeal the Judge concluded:

'12. The Appellant claims that there would be very significant obstacles to his integration into Nigeria. In this regard I find that there is little evidence that the Appellant has any experience of

living independently of his immediate family; that he would have no friends or family to assist him in establishing himself in Nigeria and that he is not familiar with the culture of that country having lived most of his life in the UK. Mr Aslam [the Home Office Presenting Officer] suggested that if he returns to Nigeria the Appellant will necessarily be free of the negative influences which led to his offending, but I consider that as a young man on his own in an unfamiliar country the Appellant is at least as likely to come under malign influences there as here.

13. I do not consider that it is realistic to expect the Appellant's parents and siblings to relocate to Nigeria in order to assist him. I further consider that any assistance they could afford him in the form of day-to-day advice or the transfer of funds for his upkeep is likely to be limited. Although the Appellant is a fit young man who should be able to work and support himself, I nevertheless find that he would have very significant difficulty integrating into Nigeria.

14. I also have regard to the rights of the Appellant's parents and siblings to enjoy private and family life with him. I do not consider that family ties can adequately be maintained by modern means of communication and visits.

15. Having regard to all the circumstances I find that the compelling public interest in favour of the maintenance of immigration control is outweighed by the Appellant's circumstances and that refusal of leave to remain amounts to a disproportionate interference with the Appellant's right to a private life under Article 8 of the ECHR.'

Grounds of Appeal

19. It is appropriate to detail in full the grant of permission to appeal by Judge of the First-tier Tribunal Nightingale, dated 26 July 2023:

'1. Permission is sought to appeal, in time, the decision of First Tier Tribunal Judge Rea, dated 3rd March 2023, allowing a human rights appeal.

2. The grounds of appeal state that the Judge erred in finding the appellant had not committed criminal offences for four years when, in fact, he had been convicted of a drug offence in May 2021. The remainder of the grounds appear to argue that the Judge's decision is against of (sic) the weight of the evidence and lacking reason.

3. In an otherwise sustainably reasoned decision, in which the evidence placed before the Judge was in some disarray (paragraph 4 refers), it is arguable that the Judge made an error of fact by concluding that the appellant had not been convicted of an offence in the four years prior to the appeal hearing. The Judge stated that there was no evidence provided of any court appearance or arrest for the past four years. It is arguable that

> the Judge may have come to a different decision had the Tribunal been directed to evidence of the 2021 conviction.
>
> 4. The remaining grounds I find to be no more than a disagreement with the Judge's findings; findings which were otherwise open to the Judge on the evidence before the Tribunal. Permission is granted but limited to the matter outlined above.'

Discussion

20. The appellant attended the hearing before the Upper Tribunal with his mother and he confirmed that he understood both the role of the Tribunal at the error of law stage and the narrow basis of the respondent's appeal.

21. Ms Everett accepted that it was more likely than not that the First-tier Tribunal had before it a copy of a PNC print-out dated 3 May 2019 which explained why the Judge only considered the appellant's criminal convictions up to 28 January 2019.

22. Ms Everett provided an up-to-date PNC print-out which confirms that at the date of the Judge's decision the appellant had appeared before South East London Magistrates' Court on two further occasions. In September 2020 he pleaded guilty to possessing a class B drug, namely cannabis, and was sentenced to a twelve months' conditional discharge. On 11 May 2022 he pleaded guilty to five offences: one concerned with the possession of a class B drug, namely cannabis, and four concerned with road traffic offences, namely not driving in accordance with a licence, using a vehicle without an MOT certificate, using a vehicle whilst uninsured, and failure to stop a car. In total he was fined £200.

23. Ms Everett succinctly identified the respondent's case as being that the Judge erred in fact when concluding that the appellant had kept out of trouble for four years and so erred in law. Whilst the Judge relied upon the PNC print-out placed before the Tribunal, there was a clear error of fact as to the appellant not having been convicted in recent times.

24. Ms Everett accepted that the focus of the respondent's appeal was upon one paragraph of the Judge's decision, namely:

> '10. The Appellant's record of offending means that he cannot claim to be a person of unblemished good character. The evidence nevertheless suggests that he has kept out of trouble for the past four years. I find that there are reasonable grounds to indicate that he has, as he claims, turned over a new leaf. The Appellant's offending took place when he was a young person and did not attract severe sentencing. In these circumstances I find that I should attach some, but limited, weight to his history of offending.'

25. It was contended on behalf of the respondent that the error of fact at [10] impacted upon the consideration of public interest because the appellant

remains a persistent offender, as established by Chege ("is a persistent offender") [2016] UKUT 187 (IAC), [2016] Imm. A.R. 833.

26. It is clear on the face of the PNC print-out now provided to this Tribunal that the Judge erred in fact as to the last conviction of the appellant. It is clearly established that the last relevant convictions were on 11 May 2022 and not 28 January 2019. However, the question for this Tribunal is whether that error is material. The respondent's position is that the Judge erred in concluding that the appellant had turned over a new leaf, because he had been convicted of an offence some nine months before the hearing, and this infected the rest of the decision.

27. Upon careful consideration of [10], the following can be drawn: previously the Judge quite properly accepted that the appellant was a persistent offender, and then erred in fact when concluding that the last conviction had been some four years before. However, the Judge then proceeded to additionally rely upon the substance of the criminal penalties imposed, which were at the lower end of the sentencing scale. This finding is not challenged by the respondent and was reasonably open to the Judge. Thus, two reasons were given as to why some, but limited, weight was to be given to the history of offending and they stand independent of each other. When considering the nature of the offences in 2021 and 2022, and particularly when noting that the sentences were very much at the lower end of the scale, I am satisfied that if the Judge had been aware of the more recent convictions such fact would not have changed his finding that limited weight be given to the history of offending. The sentences imposed were consistent with those previously given.

28. I further observe that the respondent has not challenged the findings made by the Judge from [12] onwards. These findings were reasonably open to the Judge. Consequently, I am satisfied that though the Judge, through no fault of his own, erred in his finding as to the last date the appellant was convicted, such error was not material. When considering the reasoning in the round and noting the several reasons given as to why the appellant's removal from the United Kingdom would be disproportionate on private life grounds, the identified error cannot properly be identified as being material.

29. In the circumstances the respondent's appeal is dismissed.

Notice of Decision

30. The decision of the First-tier Tribunal sent to the parties on 3 March 2023 is not subject to material error of law.

31. The Secretary of State's appeal is dismissed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 September 2023