IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004779
First-tier Tribunal:
HU/00683/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 May 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

BINTA ALUESHIMA MUSTAPHA-WAYA
aka BINTA ADAMU
aka BUNMI COKER
aka BINTA ALUESHIMA WAYA-SOSANYA
(ANONYMITY ORDER SET ASIDE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Michael Olosegun Sosanya, Sponsor
For the Respondent: Mr K Ojo, Senior Presenting Officer

Heard at Field House on 24 May 2024

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of the First-tier Tribunal dismissing her human rights (article 8 ECHR) appeal against a decision of the respondent not to revoke a deportation order dated 5 October 2022. The decision of Judge of the First-tier Tribunal Boyes ('the Judge') was sent to the parties on 5 September 2023.

Anonymity Order

2. We observe that the Judge issued an anonymity order, though no reasons were given as to its necessity. It is unclear to us as to whether the Judge was ever asked to make an order.

3. Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 contains a power to make an order prohibiting the publication of information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified.

4. The requirement that justice should be administered openly and in public is a fundamental tenet of the domestic justice system. It is inextricably linked to freedom of the press and so any order as to anonymity must be necessary and reasoned: *R (Yalland) v. Secretary of State for Exiting the European Union* [2017] EWHC 629 (Admin). The public enjoys a common law right to know about tribunal proceedings and such right is also protected by article 10 ECHR.

5. We note the observation of Elisabeth Laing LJ in *Secretary of State for the Home Department v. Starkey* [2021] EWCA Civ 421, at [97]-[98], made in the context of deportation proceedings, that defendants in criminal proceedings are usually not anonymised. Both the First-tier Tribunal and this Tribunal are to be mindful of such fact. The appellant in this matter was an adult when sentenced for the index offence. We consider that she has already been subject to the open justice principle in respect of her criminal convictions, which are a matter of public record and so considered to be known by the local community. Consequently, she will not suffer a disproportionate interference with her protected article 8 rights by being named.

6. We are satisfied that there is no requirement in this decision to name the appellant's two minor children.

7. We set aside the anonymity order made by the First-tier Tribunal on 5 September 2023.

Relevant Facts

8. The appellant is a national of Nigeria and presently aged 42. In December 2004 she was granted entry clearance as a family visitor in the name of 'Binta Adamu'. She subsequently entered the country. Her leave to enter expired on 10 June 2005 and she overstayed.

9. She was arrested in May 2010 when seeking to leave the United Kingdom by a flight to attend her own wedding in Nigeria. She was in possession of a false passport in the name of 'Bunmi Coker'.

10. On 10 May 2010 she was sentenced by HHJ McDowall at Isleworth Crown Court to twelve months' imprisonment having pleaded guilty to 'possess false/ improperly obtained/ another's identity document' under section 25 of the Identity Cards Act 2006.

11. The respondent signed a deportation order on 15 October 2010, which was enforced on 17 November 2010.

12. The appellant married Michael Olusegun Sosanya, a British citizen, in Lagos on 9 February 2012. They have two children who are British citizens. One is aged ten, the other will soon be two years old. The appellant has a third child from an earlier relationship who is aged twenty.

13. An application to revoke a deportation order, dated 19 November 2020, was served upon the respondent. Reliance was placed upon the appellant's marriage and the elder of her two British citizen children, the younger one not having been born at this time. Reference was made to section 55 of the Borders, Citizenship and Immigration Act 2009.

14. The respondent refused the application by a decision dated 5 October 2022.

15. The appeal came before the Judge sitting in Newport on 4 September 2023. Mr Sosanya attended the hearing. The Judge dismissed the appeal by a decision sent to the parties the following day.

16. The appellant appealed the decision by means of a twenty-five-page document. Judge of the First-tier Tribunal Dainty granted permission to appeal by a decision dated 11 October 2023.

Discussion

17. Mr Ojo confirmed the respondent's position that the Judge's decision was subject to material error of law consequent to inadequate reasoning. We consider such acceptance to be properly made.

18. The Judge's reasoning runs over three pages from paragraph 13 of his decision. Elements of the reasoning appear to have been lifted from the decision letter, for example the 'reasoning' at paragraph 13T is also cited at paragraph 54 of the respondent's decision:

> 'Your client states she has not committed any further offences and has provided documentation from the Nigerian police in support of her claim.'

19. Additionally, and accepted by Mr Ojo, the Judge's reasoning references many elements of the respondent's decision letter, but very little of the evidence presented by the appellant and her husband. An example of the paucity of reference is the bald assertion, without more, that Mr Sosanya can relocate to Nigeria should he choose to do so. There is no express engagement with his personal circumstances.

20. This is a matter where careful fact-finding and adequate reasoning is required. We conclude that the Judge's decision should be set aside in its entirety for lack of adequate reasoning and an attendant failure to adequately consider the appellant's case as advanced.

21. We consider it appropriate to address two further issues arising.

22. Judge Dainty granted permission, *inter alia*, on the ground that it was incumbent upon the Judge to direct himself to the relevant provisions, and case law, especially in view of the fact that the appellant was represented by her husband at the hearing, and not by legal representatives. There is no requirement that a decision expressly reference precedent. The First-tier Tribunal is an expert Tribunal charged with administering a complex area of law. It is probable that in understanding and applying the law in their specialised field the First-tier Tribunal will have got it right: *AH (Sudan) v. Secretary of State for the Home Department* [2007] UKHL 49; [2008] 1 AC 678, per Baroness Hale at [30].

23. Having read the decision, we conclude that the Judge had in mind the guidance provided by the Court of Appeal in *Secretary of State for the*

*Home Department v. ZP (India) [*2015] EWCA Civ 1197, [2016] Imm AR 308*; IT (Jamaica) v. Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240; and *EYF (Turkey) v. Secretary of State for the Home Department* [2019] EWCA Civ 592; [2019] Imm AR 1117. The correct test was applied.

24. However, the Judge failed to adequately engage with a relevant, and complex, element of the very compelling circumstances assessment before him, namely the position of the minor British children.

25. Whilst paragraph 391 of the Immigration Rules establishes a presumption against revocation within the ten-year period, it does not establish any presumption in favour of revocation after the passing of ten years. The question of revocation therefore remains one dependant on the circumstances of an individual case.

26. When considering an application to revoke a deportation order, section 117C is to be read in the context of the Immigration Rules, and so the undue harshness standard in section 117C of the 2002 Act means that the deportee must demonstrate that there are very compelling circumstances for revoking the deportation order: *IT (Jamaica)*, at [3]. This is consistent with ‘exceptional circumstances’ in paragraph 391 of the Rules being defined by reference to ‘compelling factors’.

27. In revocation appeals brought from outside of the United Kingdom, the approach established by section 117C of the 2002 Act continues to apply. The appellant remains ‘liable to deportation’ within the meaning of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 notwithstanding that deportation has already taken place.

28. Whilst we note that section 55 of the 2009 Act is in terms directed towards children in the United Kingdom, the respondent has accepted before the Supreme Court that "the same approach should be applied to the welfare of children elsewhere": *R (MM (Lebanon & Ors) v. Secretary of State for the Home Department* [2017] UKSC 10, [2017] 1 WLR 771, at [91]. In this matter, the minor children can relocate to the United Kingdom at any time, consequent to enjoying the right of abode. They reside with their mother because of their age, and agreement between the parents. Both the appellant and Mr Sosanya seek for the children to live in one family unit, with both of their parents. We consider that in assessing section 117C(5) of the 2002 Act and undue harshness the Judge failed to place into the assessment the benefits the children enjoy through their British citizenship: *ZH*

(Tanzania) v. Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 A.C. 166.

Resumed hearing

29. Mr Ojo requested that the matter be remitted to the First-tier Tribunal. Mr Sosanya did not object. We observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). As no findings of fact have been preserved, and we have no record of the oral evidence presented to the Judge, we consider it fair and just to remit this matter to the First-tier Tribunal.

30. It is unclear to us why this appeal was listed before the First-tier Tribunal in Newport. The sponsor lives in London. Consequently, we direct that the resumed hearing be transferred to the First-tier Tribunal sitting at Taylor House.

Decision

31. The decision of the First-tier Tribunal promulgated on 5 September 2023 involved the making of a material error of law. It is set aside in its entirety.

32. The decision will be remade by the First-tier Tribunal sitting at Taylor House, to be heard by any judge other than Judge Boyes.

33. The anonymity order issued by the First-tier Tribunal on 5 September 2023 is set aside.

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

24 May 2024