IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004811

First-tier Tribunal Nos: HU/50753/2023
LH/01035/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE B KEITH

Between

OLANREWAJU LAWAL BOLAJI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Obalobuk, Counsel
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 13 December 2023

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Wilsher heard on 12 September 2023. In that decision First-tier Tribunal Judge Wilsher examined the appellant's application under Article 8 and EX.1. to stay in the United Kingdom.

2. The appellant is a national of Nigeria who entered the UK on 11 September 2004 as a student. His leave expired on 31 December 2006. Then on 13 December 2023 he applied for leave on the basis of being a partner of Feyimeki Patience Okeowo who has indefinite leave to remain. That was refused on 17 January 2023. The appellant appealed on human rights grounds to the First-tier Tribunal.

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3. At the First-tier Tribunal the appellant was represented and he applied for an adjournment. It is not entirely clear on what basis he applied for an adjournment. He says it was to provide further medical evidence but that is disputed. In any event, the hearing proceeded on the material that was before the First-tier Tribunal Judge.

4. The matters in issue before the First-tier Tribunal Judge were firstly whether the appellant met the partner test of the Rules. The judge found that he was in a genuine and subsisting relationship as the partner of Ms Okeowo. The second issue that the Secretary of State took issue with was the appellant's suitability. At paragraph 5 the judge said:

> "As regards suitability, the burden is on the respondent. The refusal stated that the appellant had applied twice for an EEA residence card in 2008 and 2010 in the name of Bright Raymond (or variations of this). The respondent bundle contained the decisions in those applications and various enforcement documents relating to that person. At some point, for reasons which are unclear, the appellant was deemed to have used the Bright Raymond alias. At the hearing, Mr Khan served a further document from the Bright Raymond file with a photograph that he claimed was the appellant. The appellant denied that he had ever used an alias. I have reviewed this evidence and I find the photograph is not one that I can conclude is the appellant on the balance of probabilities. It was of poor quality, of uncertain age and the appellant has extensive facial hair making a comparison with the photograph unreliable. There is no evidential basis to conclude that any fraudulent statements have been made by the appellant in the past and so the suitability ground is not made out".

The judge, having found those two aspects in the appellant's favour, then went on to analyse paragraph EX.1. of the Immigration Rules.

5. I should note that permission was sought in relation to two grounds. The first was in relation to what was said to be an error by the First-tier Tribunal Judge in relation to whether the appellant came within EX.1., that was refused by First-tier Tribunal Judge Curtis on 1 November 2023. Ground 2 of the appeal to this Tribunal was granted permission, that ground was in relation to the Article 8 proportionality assessment.

6. Before me today Mr Obalobuk renews ground 1 of the permission to appeal. The procedural history is slightly convoluted in that up until today the appellant was unrepresented. The Tribunal has prepared a bundle which has been supplied under the new protocol to the appellant with all the documentary evidence in it and I am grateful that Mr Obalobuk was able to attend today to make submissions on behalf of the appellant but be as that may, there was no formal application to renew the first ground of appeal. Mr Obalobuk has made that application before me today.

7. In my judgment I refuse the application to renew on ground 1 of the appeal. There has been no application made in writing in advance of the hearing, the Secretary of State is not on notice of that renewal and there has been no attempt to argue that. However, even if I was wrong about that I have looked at the provisions of EX.1.(a) and EX.1.(b). The appellant says that he comes within both EX.1.(a) and EX.1.(b). In relation to EX.1.(a) he says that he has a genuine and subsisting parental relationship with a child, his child is said to be 13 years old.

However, before me today he has explained that the last attempted contact he had with his daughter was in 2012 when he made two attempts to contact her, it seems through some sort of court process.

8. The submissions made before me today in relation to EX.1.(a) are that he would intend to renew that relationship with his daughter if he were given settled immigration status. That as may well be but there is no evidence before me today that he has a genuine and subsisting parental relationship with a child who he has not spoken to for at least eleven years, if not significantly longer. Therefore even if I was wrong not to allow the renewal on that ground I would not find that he came within EX.1.(a). I do not find that he comes within EX.1.(b) either. I would refuse the application to renew on that ground. He of course does have a genuine and subsisting relationship with a partner which is the sub-Section (b) test but in my judgment there are no insurmountable obstacles to family life with him continuing his relationship outside of the UK.

9. The appellant prays in aid further medical evidence which I shall come to in the next section of my judgment, essentially summarising that he uses a catheter and is under investigation for glaucoma, and that his partner has mental health issues which are depression with psychotic episodes. The medical evidence has been given to me today. There is no formal 15A application, however in my judgment it is in the interests of justice to admit that evidence for me to gain a full picture of the case today. I therefore admit the medical evidence and have examined it. It shows in relation to the partner that she does have depression and has previously had psychotic episodes. However, it also shows that she is able to hold down a job and her condition has been stable since 2017 for some six years. There is no evidence before me that any of that medical evidence would provide an insurmountable obstacle to the appellant returning to Nigeria. Neither would their age which is 55 and 62, that is not an insurmountable obstacle, nor is the obstacle that they have been away from Nigeria for a significant period of time. I therefore refuse the application to renew ground 1 of the appeal and in the event if I were wrong, I would not find that they came within either EX.1.(a) or EX.1.(b) of the Immigration Rules.

10. I then turn to ground 2 which is the ground upon which this appellant has been granted permission. The First-tier Tribunal Judge deals with the matters relatively shortly. The complaint is essentially that the balancing exercise is not spelt out in any great detail. As Mr Lindsay points out brevity is a bonus in these cases, it does not require a balancing exercise in which a table is written out in every case. He submits that even if the balancing exercise were written out it would not materially change matters. Firstly, the appellant has been here for nineteen years. In a balancing exercise that does not provide him with any significant positive aspects because most of that has been as an overstayer. He does not meet the twenty year Rule and therefore little weight can be given to his private life whilst he has been an overstayer in the United Kingdom. As I have said, there are no significant obstacles to his reintegration in Nigeria and no evidence to that. The other factors in favour of the appellant are that he has a partner who has indefinite leave to remain in the United Kingdom and she has some mental health issues and medical issues. However, in my judgment those medical issues, whilst difficult for the appellant and his partner, are not unusual. There is no evidence before me that those fairly common medical complaints of depression and urinary problems could not be treated in Nigeria and they are not such that they provide any real weight to his Article 8 argument. On the side of the Secretary of State the appellant has been here nineteen years as an

overstayer and the Secretary of State has a public interest in maintaining immigration controls which the appellant has flouted. The First-tier Tribunal Judge is right when he says at paragraph 8 in conclusion:

> "Finally, outside the Rules, I must consider whether Article 8 ECHR grounds justify him being allowed to stay. I find there are no such grounds. He can return and apply for a visa to rejoin his partner in the UK. The public interest is set out in the Rules and there are no good reasons to depart from this".

In my judgment that is a succinct and accurate determination of Article 8 which is in this case based on very little evidence that has been provided by the appellant.

11. In all the circumstances, having considered the additional medical evidence and the evidence provided for in the bundle, the appeal is dismissed.

Ben Keith

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 December 2023