IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001403

First-tier Tribunal No: HU/51909/2023
LH/06234/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 August 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BABAFEMI ADEBAYO DADA
(No anonymity order made)

Respondent

Representation:
For the Appellant: Mr A Tan, Senior Home Office Presenting Officer
For the Respondent: No appearance

Heard at Manchester Civil Justice Centre on 16 July 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Dada's appeal against the respondent's decision to refuse his human rights claim and to refuse to revoke a deportation order previously issued against him.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Dada as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Nigeria, born on 14 October 1974. He claims to have entered the UK clandestinely in January 2001. He was encountered by the police on 31

May 2001 and was detained and served with illegal entry papers. He claimed asylum the same day in the identity of Roland Kofi Alabi, a Sierra Leonean national. His claim was refused on 30 July 2001 and he lodged an appeal against that decision. The appeal was declared as abandoned on 21 November 2001 as the appellant absconded from custody on his way to the hearing centre. He then sought leave to enter the UK on 29 January 2003 using a counterfeit document and was refused entry and removed as an illegal entrant on 1 February 2003.

4. The appellant was then encountered in the UK on 10 November 2003 when attempting to avoid paying his fare at a railway station and was convicted and fined for the offence on 2 April 2004. He was next encountered on 30 June 2004 in possession of a counterfeit Dutch passport attempting to defraud a bank having, he claimed, entered the UK illegally earlier that month.

5. On 26 August 2004 the appellant was convicted of using a false instrument and forgery for which he was sentenced to six months' imprisonment. On 21 January 2005 he was convicted of knowingly making a false statement and obtaining property by deception for which he was sentenced to 18 months' imprisonment. As a result of his conviction he was informed of his liability to deportation on 17 February 2005 and on 28 April 2005 he was served with a notice of a decision to make a deportation order. He did not appeal against that decision and a deportation order was signed against him on 12 May 2005. The deportation order was enforced and the appellant was removed from the United Kingdom on 1 June 2005.

6. On 31 March 2011 the appellant applied to have his deportation order revoked. His application was refused on 28 September 2011. His appeal against that decision was dismissed on 9 February 2012 and permission to appeal against this decision was dismissed on 23 May 2012.

7. On 21 September 2021 the appellant applied once again to have his deportation order revoked. His application was refused on 11 January 2023 and it is his appeal against that decision which has given rise to these proceedings.

Application to revoke the deportation order

8. The appellant's earlier application of 31 March 2011, for revocation of the deportation order, was made in the name Debayo Femi Dada, and was on the basis that he was no longer a threat to the UK and that he wished to travel to the UK to see his son Enitan Dada, who was born on 9 August 2004 in the UK. In the letter of 28 September 2011 refusing his application the respondent had regard to the appellant's immigration history and his criminal offending and noted his use of multiple identities in order to circumvent immigration control. The respondent considered that continued exclusion was the appropriate course of action. In the absence of any evidence of his claimed relationship with a partner in the UK and the lack of any previous mention of a child in the UK, the respondent did not accept that the appellant had an established family life in the UK. The respondent considered the appellant's private life in the UK to be limited and concluded that his deportation would not be in breach of Article 8 and that there was no reason to revoke the deportation order previously made against him.

9. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Monro on 26 January 20212 and was dismissed in a decision promulgated on 9 February2012. I have not seen a full copy of that decision but I base my summary on the parts I am able to view. According to those parts of the decision, the appellant's partner Lisa Jane Bowden gave evidence at the hearing and referred to her son as being physically and emotionally disturbed and missing his father, the appellant. She

gave evidence about her two daughters from a previous relationship who were in foster care. She explained how she had met the appellant and started a relationship with him in early 2002 and how their relationship had resumed after his return to the UK following his removal in February 2003. She said that she had visited him in Nigeria in 2005 with their son. Ms Bowden's daughter and the appellant's brother also gave evidence before the Tribunal. There was evidence that the appellant had started a business in Nigeria supplying paper to corporate organisations. Judge Monro accepted that the appellant was the father of Enitan but had serious doubts as to his commitment to him and to Ms Bowden given the lack of reference to them in the questionnaire served on him after being notified of his liability to deportation. She referred to the appellant's evidence of an attempt to enter the UK in 2007 in another false name and to the discovery of his alias and the refusal of entry and she considered that the appellant was determined to stop at nothing to gain entry to the UK, including using his son to do so. Judge Monro considered that the interests of the community required that the appeal be dismissed and that there were no compassionate circumstances requiring revocation of the deportation order.

10.In the appellant's subsequent application to revoke the deportation order against him, made on 21 September 2021, he stated that he had gone on to build a respectable life for himself in Nigeria and had built up a flourishing business and had been married for the past eight years and had two children, aged six and three years of age. He stated that it was unfair on his son Enitan if he did not make an effort to be reunited with him and foster a better relationship with him, particularly as he (Enitan) and his mother were unable to visit Nigeria as his mother suffered from COPD (chronic obstructive pulmonary disease). The appellant referred to their relationship having been sustained via telephone and video calls. Further evidence was provided in support of the claim that Enitan's mother was undergoing investigation for cancer and unable to look after their son by herself, and a subsequent letter referred to her having had a stroke. The appellant provided evidence of his business and his family in Nigeria, and evidence of Enitan's mother's medical issues.

11.In the decision of 11 January 2023 refusing that application, the respondent noted that the main reason for the appellant's request to have his deportation order revoked was that he wanted to support his son emotionally as his son bore the responsibility of caring for his mother who suffered from COPD and who had recently experienced a stroke. The respondent noted, however, that the appellant had not provided evidence to support his claim of the continued relationship with his son, such as letters, emails or WhatsApp messages and that he had provided limited evidence of his support for his son over an extended period of time. The respondent considered that the appellant had provided no independent evidence that his presence in the UK would materially impact on the well-being of his son, given that any visit would be limited in duration. With regard to the appellant's criminal offending history the respondent noted that, whilst the appellant had provided a certificate indicating that he had had no further convictions in Nigeria, his two younger children were born in USA on 9 May 2015 and 22 November 2017 which was a period between births of two years and six months and it was not known whether he was living in the USA during that period and whether he was there lawfully or acquired any further convictions there. The respondent was not satisfied that the appellant was only intending to visit the UK and considered that he could achieve his purpose without coming to the UK and by his son visiting him instead. The respondent was accordingly not satisfied that there were sufficiently compelling compassionate circumstances to outweigh the public interest or merit revocation of the deportation order and concluded that the decision not to revoke the deportation order was not in breach of Article 8.

Appeal in the First-tier Tribunal

12.The appellant's appeal against that decision was heard on 15 December 2023 in the First-tier Tribunal by Judge Hollings-Tennant and was allowed in a decision promulgated on 21 December 2023. The appellant was legally represented at the hearing. Judge Hollings-Tennant heard oral evidence from the appellant's former partner, now known as Lisa Cooper, and their son Enitan. The judge noted that the appellant was asserting that there had been significant material changes in his personal circumstances since the appeal before Judge Monro, as he was now settled in Nigeria as a successful businessman with a wife and two young children there. The judge considered that the relevant question in the appeal was whether those factors amounted to cogent evidence to depart from Judge Monro's earlier finding that the deportation order should be maintained. Judge Hollings-Tennant accepted it was more likely than not that the appellant had established a life in Nigeria with his wife and children and ran a business there and he considered that the fact that the appellant had re-integrated into life in Nigeria amounted to a material change in circumstances since the deportation order was made. He considered that the private and family life exceptions to deportation in section 117C(4) and (5) of the NIAA 2002 were not met but that the appellant had an established family life in the UK such that Article 8(1) was engaged and he went on to consider proportionality under Article 8. The judge noted that the appellant's criminal offending was over 18 years ago and considered that, whilst the reasons why he was deported were still of relevance in the context of any proportionality assessment, the strength of the public interest in maintaining the deportation order had reduced given the passage of time, as envisaged in paragraph 391A. The judge accepted that the appellant's son Enitan had been diagnosed with ADHD and accepted, further, that he provided some degree of care for his mother and that they had a close bond. The judge accepted that if he were to travel to Nigeria on his own he would be anxious about his mother, which would be likely to exacerbate any anxiety arising in terms of the practicalities of travel, and he therefore accepted that there would be practical difficulties with Enitan travelling to Nigeria to see his father, albeit not insurmountable. The judge concluded that the refusal to revoke the deportation order would be disproportionate and in breach of Article 8.

13.The respondent sought permission to appeal the decision on two grounds: firstly, that the judge had made a material misdirection of law in his approach to Devaseelan [2002] UKIAT 702; and secondly, that the judge had failed to give adequate reasons for his findings on the Article 8 proportionality assessment. Permission was granted by the First-tier Tribunal.

Hearing and Submissions in the Upper Tribunal

14.The matter then came before me on 16 July 2024, by which time the appellant's solicitors had advised the Tribunal that they were not instructed for the hearing. There was therefore no appearance at the hearing on behalf of the appellant. The appellant was, of course, outside the UK in Nigeria. In the absence of an adjournment request there was no reason not to proceed with the appeal and accordingly I heard submissions from Mr Tan for the respondent.

15.Mr Tan relied on the grounds. With regard to the first ground, he submitted that Judge Hollings-Tennant failed to take Judge Monro's decision as his starting point in accordance with the principles in Devaseelan because he had failed to take account of Judge Monro's reference at [47] of her decision to the appellant's failed attempt at entry clearance in a false identity in 2007 and because he only had part of Judge Monro's decision before him, the even-numbered pages having been omitted. As for the second ground, Mr Tan submitted that the judge had erred by failing to incorporate his previous finding, that the unduly harsh test was not met, into his

proportionality assessment. Further, it was not clear why the fact of the appellant having maintained his relationship with his son was a factor weighing in his favour.

Analysis

16.I am not persuaded by the Secretary of State's grounds of appeal. Judge Hollings-Tennant's decision is a detailed and comprehensive one, which takes full and careful account of all the evidence in the context of the relevant immigration rules and statutory provisions and which applies the relevant tests.

17.Ground one challenges the judge's approach to Devaseelan and asserts that he failed properly to consider the previous decision of Judge Monro. However Judge Hollings-Tennant specifically directed himself on the principles in Devaseelan, at [19] of his decision, and there can be no doubt, from his various references to Judge Monro's decision, at [20] and [21], [26] and [27], and [33], that he took her decision as his starting point in accordance with those principles. Whilst the respondent's bundle before Judge Hollings-Tennant appears to have only contained the odd numbers of Judge Monro's decision, it is not clear that he was not provided a full copy at the hearing itself. In any event, as Mr Tan accepted, the matter was not raised by the respondent previously in the grounds or otherwise and neither is there any suggestion that the judge overlooked relevant findings made by Judge Monro in the missing pages, particularly as the relevant parts of the decision were quoted extensively in the 11 January 2023 refusal decision.

18.As for the assertion in the grounds that Judge Hollings-Tennant failed to give weight to the appellant's 2007 failed attempt to apply for entry clearance, I find no reason to conclude that that did not form part of his overall consideration. Even if it was not specifically referred to by Judge Hollings-Tennant, it was certainly alluded to at [20] of his decision, where he referred to Judge Monro's findings at [56] of her decision in which the incident was mentioned. Plainly that formed the starting point for Judge Hollings-Tennant's findings. The suggestion that he did not take account of the matter, and did not have sufficient regard to the adverse findings made by Judge Monro in that regard, is one which has no merit. Furthermore it is the case that the weight to be given to the appellant's previous immigration history, and to Judge Monro's findings on the matter, was a matter for Judge Hollings-Tennant. It was a matter which undoubtedly was fully and properly addressed by him and for which he provided clear and cogent reasoning. In the circumstances I do not find that ground one is made out.

19.As for the second ground, that, in my view, amounts to little more than an attempt by the respondent to re-argue her position and an expression of disagreement with the judge's decision on the matter of the appellant's relationship with his son. Judge Hollings-Tennant was fully aware of the limitations of the case made by the appellant about the impact of deportation and his absence from the UK on his son, as he made clear at [31]. However he was perfectly entitled to consider that relationship as part of his proportionality assessment to the extent that he did. He gave cogent reasons, at [33] and [34], for finding that family life did exist between the appellant and his son, again recognising the limitations of the evidence and the nature and extent of that family. He went on at [39] to [44] to provide clear and cogent reasons for according the weight that he did to the matter.

20.It is also relevant to note that the appellant's relationship with his son was only one of a number of factors which the judge took into account when assessing proportionality and considering the 'very compelling circumstances' test and that his conclusions were based on a cumulation of those various factors. The judge had regard in particular at [21] to [23] to the passage of time since the deportation order

was made and since the appellant's immigration offending, and to his behaviour since that time, on the basis of the evidence available to him. He considered the weight that he was able to give to those matters in the context of the relevant immigration rules, as well as the implications of those considerations on the public interest in maintaining the deportation order. He assessed other relevant changes in the appellant's circumstances, noting at [24] and [25] the lack of any explicit challenge by the respondent to the appellant's claim in regard to his establishment of a successful business and a family life in Nigeria and having regard at [26] to the extent of his integration in Nigeria. At [46] the judge made clear where he believed the balance to lay in terms of the public interest and he gave cogent reasons for his findings in that regard.

21.Of relevance too is the fact that the judge observed at [47] that the decision he had to make was not a decision about the appellant's entitlement to entry to the UK, since that was a decision to be made by the respondent at a later date when relevant, but was simply a decision on whether the appellant should be put in a position where he was able to make such an application. It seems to me that he was perfectly entitled to reach the conclusion that he did in that regard on the evidence available to him and that the conclusion he reached was fully and properly reasoned. Should the respondent have evidence to support further concerns about the appellant's entry to the UK, that would form part of a separate decision and separate proceedings in response to an application for entry clearance. That was the point being made by the judge at [14] and [47].

22.For all these reasons I do not find that the grounds identify any material error of law in the judge's decision. Accordingly I dismiss the Secretary of State's appeal and I uphold the judge's decision.

Notice of Decision

23.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to allow the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 July 2024