IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004311

First-tier Tribunal No: HU/00623/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of December 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALAN AJANI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms H Gilmour, Senior Home Office Presenting Officer
For the Respondent: Mr M Mohzam, of Counsel instructed by Burton & Burton Solicitors

Heard at Field House on 20 November 2024

DECISION AND REASONS

Introduction

1. I will refer to the parties as they were before the First-tier Tribunal even though it is the Secretary of State who is the appellant before the Upper Tribunal. Therefore, Mr Ajani will be referred to as the appellant and the Secretary of State as the respondent.

2. The respondent appeals with the permission of the First-tier Tribunal against the decision of First-tier Tribunal Judge Chinweze ("the judge"), promulgated on 29 July 2024, allowing the appellant's appeal against the decision of the respondent dated 30 April 2019 refusing the appellant's human rights claim submissions and making a deportation order against him.

Background

3. The appellant was born in the UK in 1995 to Nigerian parents. On 16 August 2005, he was granted indefinite leave to remain as a dependant of his mother. The appellant's father was himself deported to Nigeria while the appellant was a small child. The appellant had applied for British citizenship on 31 March 2010 and 2 March 2016 but both those applications were refused due to his criminal history, which is extensive. His offending summarised in the decision of the First-tier Tribunal as follows.

4. On 26 September 2008, the appellant was convicted of robbery and sentenced to a six-month referral order. On 4 November 2009 and 10 March 2010, he was convicted of possession of cannabis and sentenced to a three-month referral order and a fine respectively. On 23 June 2010, the appellant was convicted of possessing a bladed article. He was sentenced to a twelve-month youth rehabilitation order with requirement to attend a knife awareness programme. On 26 August 2011, he was convicted of conspiring to possess Class A drugs with intent to supply. On 18 April 2012, the appellant was fined for travelling on the railway without paying a fare. On 20 September 2012, he was convicted of assaulting a constable and possessing a knife and sentenced to electronic tagging in a youth rehabilitation order. He was then sentenced to a youth rehabilitation order on 25 February 2013 for aggravated vehicle taking. On 16 March 2016, the appellant was convicted of resisting a constable. On 6 February 2017, he was convicted of the possession of cannabis. On 2 May 2017, he was convicted of driving otherwise than in accordance with a licence and on 12 October 2017 possessing cannabis. He received a non-custodial sentence for those offences. On 14 March 2018, the appellant was convicted for possessing counterfeit currency and an offensive weapon. He was sentenced to one year, one month and 25 days' imprisonment.

5. On 17 January 2022, the appellant was convicted of driving otherwise than in accordance with a licence, driving whilst uninsured, failing to stop after an accident and dangerous driving. He was sentenced to four months' imprisonment and disqualified from driving for twelve months. On 26 January 2022, he was convicted of being concerned in supplying Class A drugs, namely heroin and crack cocaine and on 20 May 2022 he was sentenced to 27 months' imprisonment. He was also made the subject of a five-year criminal behaviour order.

The decision of the First-tier Tribunal

6. In allowing his deportation appeal, the judge found that the appellant met Exception 1 under s.117C(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). That provides an exception to the public interest in the deportation of a criminal where:

   (a) the person has been lawfully resident in the United Kingdom for most of their life;

   (b) they are socially and culturally integrated in the United Kingdom; and

   (c) there would be very significant obstacles to their integration into the country to which he is proposed to be deported.

The respondent's appeal to the Upper Tribunal

7. The respondent applied to the First-tier Tribunal for permission to appeal the judge's decision to the Upper Tribunal.

8. The respondent relied on two grounds of appeal:

(a) Ground 1 argued that the judge made a material misdirection of law in assessing the appellant's social and cultural integration into the UK for the purposes of s.117C(4)(b) of the 2002 Act. It was argued that in finding that the appellant was socially and culturally integrated into the UK, the judge failed to have any regard to the appellant's extensive criminal record in the UK. The respondent relied upon the case of **Binbuga (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 551** at [58], to argue that the judge had failed to take into account that social and cultural integration in the UK connotes integration as a law abiding citizen.

(b) Ground 2 argued that the judge had failed to give adequate reasons for a finding on a material matter, in this case the very significant obstacles to integration under s.117C(4)(c) of the 2002 Act. In relation to the judge's assessment that the appellant would not be able to reestablish his life in Nigeria for a variety of reasons, including the lack of accommodation, finance and family support and knowledge of the Nigerian language, the respondent argued that the judge had failed to properly take into account that the appellant is a young man with no reported medical issues, that English is an official language of Nigeria and that there were no reasons given as to why he would not be able to find employment even if in an unskilled capacity.

9. However, First-tier Tribunal Judge Austin only granted permission on Ground 2, giving the following reasons:

> "The grounds assert that the Judge erred in making material misdirections in law. The second ground which argues that there is misdirection as to the application of S117(C) [sic] provides an arguable basis that the Decision was made on a potentially erroneous interpretation of the section".

10. Judge Austin did not give any reasons as to why they believed that Ground 1 was not arguable. It might be said that was the stronger of the two grounds. But, importantly for the purposes of her appeal before me, the respondent did not renew her application for permission to appeal on Ground 1 to the Upper Tribunal.

11. Ms Gilmour, on behalf of the respondent, sought to argue that Judge Austin's grant did not restrict the Upper Tribunal's ability to revisit all of the judge's findings made under s.117C, but I am satisfied that is not the case. The respondent's two grounds of appeal made a clear delineation between the cultural integration (Ground 1) and very significant obstacles (Ground 2) requirements. It is expressly stated in Judge Austin's decision that permission had only been granted on the second of the two grounds. There was no (out-of-time) oral renewal application made before me, and in the circumstances, I was satisfied that in the light Judge Austin's decision, the appeal before me was concerned only with Ground 2 and the judge's assessment of very significant obstacles to the appellant's ability to integrate on removal to Nigeria.

Findings – Error of Law

12. Ms Gilmour argued that in finding there would be very significant obstacles to the appellant establishing his private life in Nigeria, the judge had given no reasons why the appellant would not be capable of working in Nigeria given that he is a young man and in good health. These were, she said, significant factors that should have formed part of the assessment of the very significant obstacles consideration. In reply, Mr Mohzam, for the appellant, said that if you looked at the decision, the judge properly directed himself in terms of the caselaw on very significant obstacles and that the judge gave clear reasons as to why he believed the appellant would be unable to reestablish his private life in Nigeria. That included the fact that the appellant had never lived in that country, he had no ties there, he had no support network and that he was unfamiliar with the local languages. Mr Mohzam also submitted that it would be inappropriate for the Upper Tribunal to overturn the decision of the First-tier Tribunal merely because it would have reached a different conclusion. The judge had taken into account all the factors of the case and he had given sufficient reasons, he argued. Mr Mohzam also said that the decision was not irrational and therefore there was no error of law. In reply, Ms Gilmour said it was not the respondent's case that the judge had made an irrational finding but that his findings were insufficiently reasoned and there had accordingly been a misdirection of law.

13. On careful consideration of the arguments before me, I find that the reasons given by the judge at [34] to [41] for finding that there would be very significant obstacles to integration were adequately reasoned and were rationally open to him based on the available evidence. While it is correct that English is an official language in Nigeria and that the judge erred in finding that the appellant did not speak any of the local languages, I am not satisfied that that in itself was a material error given the judge's other reasons for finding that the appellant would be unable to reintegrate into that country. The judge's reasons included that the appellant had no extended family in Nigeria apart from his elderly grandmother, and that he was estranged from his father. The judge also found that given the age of the appellant's grandmother, her limited accommodation and care requirements, he did not accept that she would be able to assist the appellant materially or culturally on return. The judge therefore found that the appellant would have no support network, accommodation or job to turn to. He also found that the appellant's mother and partner in the UK would only be able to provide him with limited financial support. The judge said at [39] that he did not accept the fact that the appellant was brought up by his mother who is Nigerian meant that he understands the culture of Nigeria. In doing so, the judge had regard to the Court of Appeal's decision in the case of **CI (Nigeria) v SSHD [2019] EWCA Civ 2027** at [86] that it was not for a decision-maker to assume knowledge of home culture based simply on family connections to the UK. In making that finding, the judge took into account that the appellant had never once visited Nigeria and would not be enough of an "insider": see [38].

14. The judge found that cumulatively the appellant's lack of accommodation, finances, family support and familiarity with Nigerian culture amounted to very significant obstacles to him being able to integrate into Nigerian society. The judge said at [40] that he accepted the terms very significant have been defined to connote an elevated threshold and that the test is not satisfied by mere inconvenience or upheaval. In doing so, he had reference to the case of **Parveen v SSHD [2018] EWCA Civ 932** at [9]. However, he found for the reasons that he had given that he was satisfied that the obstacles the appellant would face to his integration can be characterised as very significant.

15. I bear in mind the respondent's criticisms of the judge's findings, including that no express reference is made to the appellant's good state of health or general ability to work. However, I am not satisfied that these amount to sufficient reasons to find that the judge made a material error of law given the reasons the judge gave in his decision.

16. I remind myself that appellate courts should not rush to find misdirections of law simply because they might have reached a different conclusion on the facts or expressed themselves differently: see **AH (Sudan) v SSHD [2007] UKHL 49** at [30].

17. In conclusion, while finely balanced, I am satisfied that the judge did provide adequate reasons for reaching his decision under s.117C(4)(c), even if his findings were not the same findings that every Tribunal judge would have reached. For that reason, I dismiss the respondent's appeal.

Notice of Decision

There is no material error of law in Judge Chinweze's decision.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20th November 2024