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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/32816/2015

THE IMMIGRATION ACTS

Heard at Field House
On 4 July 2017

Decision & Reasons Promulgated
On 12 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

MR M N K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Fielden, Counsel
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria who appealed against the decision to refuse his human rights claim. His appeal against that refusal was dismissed by Judge of the First-tier Tribunal D A Pears ("the FTTJ"|) in a decision promulgated on 27 October 2016.

2. No anonymity direction was made in the First-tier Tribunal but, given my references to the appellant's own and his family's circumstances, I make such a direction now.

3. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 2 May 2017 as follows:

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> "1. It is arguable that the Judge has attached insufficient weight to the findings of fact set out at paragraph 67 of the decision, in that it was accepted that the Appellant's time living in Nigeria had been limited and was many years ago.
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> 2. Given the periods of time spent away from Nigeria and the age of the Appellant at the relevant junctures, it is arguable that the Judge has not applied the full and correct construction in relation to "integration" in evaluating the relevant factors. It is arguable that the Judge has not set out a sufficient analysis as to the capacity of the Appellant to participate in and operate on a day-to-day basis in Nigeria.
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> 3. Whilst the Judge has made findings in relation to the Appellant's family members in Nigeria, it is arguable that these findings have not been juxtaposed with the question of the Appellant's capacity to integrate given the period of absence from Nigeria.
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> 4. At paragraph 67 the Judge has stated that there is no evidence showing problems of employment for young men such as the Appellant in Nigeria. It is arguable that in this context the Judge has set out an insufficient analysis of the factors appertaining to the Appellant in contradistinction to the general position.
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> 5. Whilst the Judge at paragraph 66 has stated that some of the details of the case were not accepted, the fundamental findings in relation to credibility remain intact for the purposes of carrying out a more extensive analysis in relation to the concept of integration."

4. Thus the appeal came before me today.

5. Miss Fielden, for the appellant, relied on her written and oral submissions; she also adopted the reasons for the grant of permission to appeal. She relied on the guidance in **Hesham Ali (Iraq) v SSHD [2016] UKSC 60**, particularly paragraphs 115 and 82-84. Miss Fielden submitted that the FTTJ's analysis of proportionality was inadequate in that insufficient account had been taken of the appellant's prolonged absence from Nigeria and his departure from that country at the age of 7. As a result the analysis was materially flawed. Furthermore, the appellant's stay in the UK since 2003 had been tolerated by the respondent. The appellant's "extreme absence" from Nigeria since childhood had not been taken appropriately into account in assessing the consequences for him on return and the impact on his ability to integrate. Although the appellant could not satisfy the requirements inn paragraph 276ADE(1)(v), he had spent more than half his life in the UK and this was a powerful factor to be taken into consideration. Miss Fielden accepted there had been no requirement for the FTTJ to consider the appeal outside paragraph 276ADE(1)(vi) of the Rules.

6. For the respondent, Mr Bramble noted that the FTTJ had started his findings and conclusions by recognising that the appellant had spent more than half his life in the UK. It could not be said that the FTTJ had not been aware of the appellant's history. This was a thorough decision and the quality of the evaluation could not be faulted, he submitted. The FTTJ had been entitled to have concerns about the credibility of the appellant's evidence, particularly with regard to family and a family home in Nigeria.

7. In reply, Miss Fielden conceded that the appellant did not challenge the FTTJ's adverse credibility findings or the findings of fact, only the evaluation with regard to the appellant's ability to integrate on return.

Discussion

8. The FTTJ carefully noted the appellant's evidence. He identified concerns about the credibility of that evidence. Those concerns are not challenged before me. Indeed the findings of fact are not challenged at all, as Miss Fielden made clear.

9. The FTTJ set out at length the appellant's immigration history. He recorded that the appellant had lived more than half his life in the UK (paragraphs 2, 58 and 66).

10. The FTTJ found the appellant had family in Nigeria and that he had contact with that family (paragraph 63). He found the appellant had connections through family with places in Nigeria other than Wukari and his father had accommodation in Nigeria after he retired until at least as recently as 2013 (paragraph 64). The FTTJ accepted the appellant had lived more than half his life in the UK, had significant members of his family in the UK, has friends here and was educated here. He recognised the appellant identified closely with the UK.

11. The FTTJ noted the appellant's "time living in Nigeria has been limited and was many years ago". This statement is wholly consistent with the evidence that the appellant lived in Nigeria between the ages of 7 and 10 (paragraph 24) and that he did not then return to live there. The FTTJ took into account the appellant had then "only been back to Nigeria for three weeks at the end of 2002 and beginning of 2003 when his grandfather was dying".

12. The submission that the FTTJ has failed to take into account the length of time the appellant has lived in the UK and his age when he last lived in Nigeria is wholly unsustainable given the number of references to these facts and the context in which they have been referenced. The FTTJ has set out a careful history of the appellant's background, immigration history and the countries in which he has lived at each stage of his life. These findings are not challenged by the appellant before me and it is clear to the reader that they were taken into account in the assessment as to whether the appellant had demonstrated that there were very significant obstacles to his integration into Nigeria on return (as required by paragraph 276ADE(1)((vi)).

13. Furthermore, the FTTJ has made a positive finding at paragraph 64 that the appellant has relatives in Nigeria and connections through family with places other than Wukari. These are findings taken into account by the FTTJ in his assessment of the nature of the obstacles to his integration on return. It is implicit that the presence of family members in Nigeria would be of assistance in supporting the appellant in his efforts to re-integrate notwithstanding the length of time he has lived outside Nigeria. The FTTJ, in taking those into account, reminds himself of the limited period the appellant has lived in Nigeria (paragraph 67). He notes the appellant's evidence about getting a job in Nigeria. The burden of proving he fulfils the criteria in paragraph 276ADE(1)(vi) is on the appellant. There is no challenge before me to the finding of the FTTJ that "there is no evidence showing problems of employment for young men such as him in Nigeria. He is supported financially by his family in the UK and I am unclear why there could not be assistance from his family if he had to live in Nigeria". This is a finding which was open to the FTTJ and is unchallenged. It is part of the FTTJ's analysis of the claimed obstacles to reintegration, and justifiably so.

14. I have been referred to the principles in paragraphs 115 and 82-84 of **Hesham Ali**. I am satisfied that the FTTJ took a holistic approach to the issue of whether the appellant had demonstrated he fulfilled the criteria in paragraph 276ADE(1)(vi). He addressed all issues of relevance to the application of that paragraph. There is no suggestion he did not consider all the evidence or that his findings of fact, including adverse credibility findings, were not sustainable. The issue for the appellant is the analysis of the evidence. However, this is a

detailed and careful examination of the evidence. The FTTJ's decision that the appellant had not demonstrated there were very significant obstacles to his integration on return is sustainable on the facts as found. The decision is well-reasoned. The FTTJ has been careful to take into account the appellant's residence history, his age at each stage of that history and his very limited residence in Nigeria. He has found against the appellant as regards the existence of family members and property in Nigeria and this finding has, not unreasonably, tainted the assertions of the appellant as regards the obstacles to integration on return.

15. For the avoidance of doubt, I do not accept the submission for the appellant that the respondent has tolerated the presence of the appellant in the UK. This is not an issue of relevance to consideration of whether the appellant fulfils the criteria in Paragraph 276ADE(1)(vi). In any event, this is not a case where the appellant has sought expeditiously to rectify his lack of immigration status. His visit visa expired in June 2003 and it was not until 2013 that he applied for leave to remain. The appellant had effectively gone under the radar in the interim. Irrespective of the impact of his minority at the time, it cannot be said that the respondent tolerated his unlawful presence here.

16. In summary, whilst it was open to the FTTJ to come to a different finding as regards the ability of the appellant to integrate on return, his finding on the issue was open to him and sustainable on the evidence. The FTTJ has given full and detailed reasons for his decision. As Lord Hoffmann said in **Piglowska v Piglowski [1999] 1 WLR 1360, 1372**, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He went on to say that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself".

17. I am satisfied that the FTTJ applied the correct legal test to the issue of whether the appellant had demonstrated he fulfilled the criteria in paragraph 276ADE(1)(vi).

18. For these reasons, there is no error of law in the decision and it must stand.

Decision

19. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

20. I do not set aside the decision.

21. This appeal is dismissed.

Signed ***A M Black*** Date 10 July 2017
Deputy Upper Tribunal Judge A M Black

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed ***A M Black*** Date 10 July 2017
Deputy Upper Tribunal Judge A M Black