Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23895/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 April 2018	**On 20 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MR TAIWO AKA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Aminu, solicitor, of Aminu Aminu Solicitors
For the Respondent: Ms A Holms, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Robinson promulgated on 26 April 2017. This is the resumed hearing of the appeal, it having been adjourned on the last occasion because the appellant was not present nor was his then legal representative. Mr Aminu has now come on the record for the appellant.

2. The appellant's immigration history was summarised in the First-tier Tribunal decision at paragraph 2. Mr Aminu confirmed to me that he accepts the accuracy of that summary so for convenience I adopt it:

> "He entered the United Kingdom on 19 December 2000 and claimed asylum at port. The application was refused on 26 April 2001. He lodged an appeal against the refusal. The appeal was dismissed. On 2 September 2002 he submitted an application for an EEA Residence Card. The application was refused on 21 September 2002. He appealed against the decision. The decision was subsequently withdrawn and on 13 January 2004 he was issued with a Residence Card valid until 21 September 2007. On 23 August 2007 he made a further application for an EEA Residence Card which was refused on 30 January 2008. He lodged an appeal against the decision but withdrew his appeal on 31 March 2008. On 12 November 2009 he made an application for human rights (leave outside the Rules). On 9 December 2005 he applied for leave to remain as a student migrant. This application was refused with no right of appeal on 9 November 2010. On 4 August 2011 the Home Office agreed to reconsider this decision. He was issued with an IS.75 and IS.76 on 27 January 2015. He has subsequently provided additional grounds for consideration".

3. The decision in the First-tier Tribunal was to dismiss the appeal.

4. The grounds of appeal comprised three paragraphs, each said to amount to a material error of law. In the first paragraph it was said that because the appellant had filed his application for human rights leave outside the Immigration Rules on 12 November 2009 and a decision to refuse it was made on 9 November 2010, then the Secretary of State in reconsidering the matter should have done so under the Immigration Rules prevalent before 9 July 2012 when paragraph 276ADE became effective. Paragraph 2 expands upon this stating that because the application was made prior to 9 July 2012 the judge should have considered whether or not the decision was proportionate taking into account the case of **Razgar [2004] UKHL 27** and the five-questions therein outlined. It is suggested that the judge erred in not applying that step by step approach. Then, in the third paragraph, the contention is made that the judge did not deal appropriately with the medical evidence.

5. The grant of permission to appeal is dated 8 April 2017. Paragraph 4 reads:

> "The judge looked at the case through the Rules post-dating 2012 and under Article 8 somewhat briefly. It is arguable that the wrong law was applied if this was a case where the extant application pre-dated a change in the law. It is arguable that given the lengthy time spent in the United Kingdom more perhaps needed to be considered under Article 8."

6. A very full Rule 24 response was served by the Secretary of State on 22 November 2017. That made reference to the decision of the Court of Appeal in **Singh v Secretary of State for the Home Department [2015] EWCA Civ 74** and in particular the effect of new Rules coming into existence, summarised at paragraph 56. The pre-existing Rule only obtained in respect to decisions taken in the two month window lasting from 9 July until 6 September 2012. This decision fell outside that window and therefore the correct law was applied.

7. Mr Aminu fairly accepts the propositions set out in **Singh** and does not pursue criticisms of the judge for applying the post-2012 law. His submissions were more narrowly focused. He takes two substantive points. First, he says the judge failed to carry out an adequate proportionality assessment; and secondly, that the he gave no adequate weight to delay on the part of the Secretary of State from the time when she indicated that she would reconsider the appellant's application to the time when a decision was made. That delay, Mr Aminu reminds me, was from 4 August 2011 until 27 January 2015. Mr Aminu did not pursue in oral argument the third matter in the grounds of appeal, namely a possible misinterpretation by the judge of such as the medical evidence as may have been before him.

8. I have given detailed scrutiny to the totality of this decision. It is a painstaking and focused decision which recites the immigration history, the evidence heard during the course of the hearing, and a discussion of the law to be applied. In particular, there is very detailed consideration given by the judge at paragraph 17 and following of the medical conditions which have affected and continue to affect the appellant and of the availability or otherwise of treatment in Nigeria were the appellant to be returned.

9. Mr Aminu's main argument is in relation to paragraph 22 which he says is flawed. It reads:

> "I have considered the appellant's Article 8 situation through the prism of the Immigration Rules and Section 117B of the 2002 Act. The public interest in this case is strong. The appellant has no meaningful ties here and has not provided any evidence from extended family members or friends. His attempts to regularise his stay in the past have been considered and dealt with on their individual merits. The appellant lived in Nigeria for more than 45 years before coming to the United Kingdom. I do not accept that he has lost touch with every family member and friend during the period he has resided in the UK. Even if he has, it is apparent that he is familiar with the language, culture and customs with his country of origin".

10. And at paragraph 23:

> "I find his claim for leave on human rights grounds based on his private life in the United Kingdom was properly refused under the Immigration Rules. He built up a private life during a long period of unlawful residence in the United Kingdom. He has not shown that there would be serious obstacles to his returning to Nigeria. He is not at risk from the state or state agents. He has not been threatened with harm. He has treatable medical conditions which are diagnosed and for which treatment is available in Nigeria and he has relevant skills which would enable him to support himself there in the same way as he has supported himself in the United Kingdom. I find that the Secretary of State's decision is lawful proportionate and in the public interest and I therefore dismiss the appeal under Article 8 of the ECHR".

11. I cannot find nothing in the decision to give support to either of the criticisms made by Mr Aminu. The judge's treatment of the proportionality exercise is full, complete and balanced. It is further clear that the judge has had in mind the fact that there was a delay in the Secretary of State dealing with the reconsideration. The fact that some time elapsed while the matter was under the Secretary of State's consideration is not dispositive of the matter in the way which Mr Aminu suggests. It is but one part of the factual matrix which the judge took into account.

12. It is not the function of the Upper Tribunal to re-visit decisions which have been made by a First-tier Tribunal. Rather it is to assess whether there is any error of law sufficient to require the decision to be set aside. I can find no error of law in this decision, whether as contended by Mr Aminu or otherwise. On the contrary, the decision demonstrates the proper exercise of judicial discretion based upon legitimate findings, all of which are clearly and adequately expressed.

13. For all of these reasons this appeal must be dismissed.

Notice of decision

Appeal dismissed and decision of First-tier Tribunal affirmed.

Signed *Mark Hill* Date 20 April 2018

Deputy Upper Tribunal Judge Hill QC