IAC-AH-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11609/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 20 February 2020	**On 09 March 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR HENRY IHEANYICHUKWU EBOH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr A Swain, counsel instructed by Londonium Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Trevaskis, promulgated on 18 September 2019. Permission to appeal was granted by First-tier Tribunal Judge Grant on 2 January 2020.

Anonymity

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2. No direction has been made previously, and there is no reason for one now.

Background

3. The respondent arrived in the United Kingdom on 16 September 2008 with leave to enter as a student. He was granted further leave to remain as a student until 28 February 2011 and as a Tier 1 post-study worker until 11 February 2013. The respondent was granted further leave to remain as a Tier 2 skilled worker until 14 May 2016. He made three in-time applications for further leave to remain under Tier 2 which were refused on 1 April 2016, 7 May 2016 and 29 November 2016. The last decision attracted only an out of country appeal as the claim was said to be clearly unfounded and the certificate was not challenged. The respondent's lawful leave endured for 8 years and 2 months. The respondent made further submissions on 19 December 2017 which were rejected. Lastly, on 21 January 2019 he applied for indefinite leave to remain, claiming 10 years' continuous long residence.

4. The Secretary of State refused the application for indefinite leave to remain in a letter dated 21 June 2019 which explained that the respondent's lawful leave expired on 20 April 2016 and that he had accrued only 7 years and 6 months continuous leave. The respondent's family life with his partner and three children then aged 5, 3 and 1 was considered, however they were not qualifying family members under the Rules and there were no exceptional circumstances. It was considered that the respondent would be able to re-integrate into life in Nigeria.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, it was conceded that the respondent could not meet the long residence requirements of the Immigration Rules nor those in Appendix FM. Nonetheless, the judge concluded that the respondent would face very significant obstacles to re-integration in Nigeria for reasons which included the risk that his daughter would be subjected to FGM and that the respondent was expressing suicidal thoughts. In the alternative, the judge found that the best interests of the children were to remain with their parents in the United Kingdom and that the respondent qualified for leave on private life grounds. The appeal was allowed under Article 8 ECHR.

The grounds of appeal

6. The grounds of appeal argued that the judge erred in his finding that there were very significant obstacles to the respondent's reintegration. It was said that there was a lack of exceptional features, a dearth of reasoning and a lack of evidence to support the findings regarding FGM and the respondent's mental health.

7. Permission to appeal was granted on the basis sought.

The hearing

8. Mr Tufan make the following points, succinctly. At [45] the judge made a series of findings which were mere assertions. There was inadequate analysis of the facts. For instance, he asked me to note that there was an education system in Nigeria, at least in urban centres. Mr Tufan made no response to my query as to whether the respondent's representative at the hearing had challenged any of the matters subsequently relied upon by the judge. He concluded by saying that the judge's findings could not be sustained.

9. Mr Swain relied upon his skeleton argument dated 19 February 2020, as well as his previous skeleton argument and the 307-page bundle of supporting evidence, both of which were before the First-tier Tribunal. He argued that this appeal concerned the Secretary of State not liking a decision which was open to the judge to make. It suffices to say that he took me to the evidence which related to each of the factors taken into consideration by the judge in reaching his conclusion that there were very significant obstacles to the integration of the respondent, his wife and three children, in Nigeria. He further argued that the judge did not misdirect himself as to the law and that he took account of the case law and the public interest considerations.

10. In response, Mr Tufan argued that there had been a complete dearth of reasoning and that it was possible that another judge might come to a differing conclusion.

11. At the end of the hearing, I stated that while the judge's reasons were briefly expressed, there appeared to have been no challenge to the substantial evidence advanced and as such those reasons were adequate. I upheld the decision of the First-tier Tribunal in its entirety. My reasons are given below.

Decision on error of law

12. In *VV (grounds of appeal) Lithuania* [2016] UKUT 00053 (IAC), the following guidance was given regarding reasons challenges:

> "*(1) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law.*"

13. It was not the Secretary of State's case that the First-tier Tribunal failed to deal with any particular matter or that the judge's reasons lacked clarity.

On the contrary, Mr Tufan argued that the judge had made a series of assertions unsupported by evidence.

14. The judge listed six factors which he accepted amounted, cumulatively, to very significant obstacles to integration. The core of the respondent's case was that his eldest child would be subjected to FGM. Contrary to what was argued on behalf of the Secretary of State there was evidence supporting this aspect of the claim before the First-tier Tribunal. That evidence consisted of a letter from the Government of Imo State referred to at [14] of the decision and which can be found in the material before the judge. The Secretary of State was represented by counsel at the hearing before the First-tier Tribunal and there is no indication that any issue was taken as to the authenticity of this document. The said letter confirmed that the respondent and his family have been banished from their village and community because they have not allowed their eldest daughter to be subject to FGM. An affidavit from the respondent's mother confirming this aspect of the claim, among others, was also enclosed in the bundle. The authenticity of that document was not challenged at the hearing. The issue of FGM was also considered by the independent social worker who prepared a detailed report, who concluded that this issue contributed to there being a high risk of significant emotional and physical harm to the eldest child.

15. The judge was criticised for characterising the respondent's mental health as an obstacle to integration, it being said that there was no evidence to support this. While there was no psychiatric report before the judge, there was other evidence available.

16. The respondent provided a comprehensive written statement in which he described himself as suffering from depression and the social worker records that he had thoughts of hanging himself at the prospect of returning to Nigeria. The respondent's mental state relates to his fears about the safety of his family in Nigeria, with reference to the risk of kidnapping. Evidence of the prevalence of kidnapping was before the judge in the form of several news articles. One article from the Guardian described kidnaps as increasingly rampant and occurring in various parts of Nigeria. It was open to the judge to decide what weight to accord to that evidence and once more, there was no submission on behalf of the Secretary of State that the judge should reject this evidence.

17. The judge took into consideration that the children were unable to speak Ibo and I accept that given their young ages, this was unlikely to present a long-term significant obstacle to reintegration by itself. Nonetheless this was just one of a series of reasons.

18. Mr Tufan submitted that education was available in Nigeria, in urban areas and therefore the judge was not entitled to take this issue into account. Nonetheless, the evidence before the judge indicated difficulty with children obtaining an education in their local area. A letter from the Community Government Council which was before the judge referred to

dilapidated schools, rampant strikes and children not going to school because of these circumstances. As for education more generally in Nigeria, the judge was referred to a BBC report of a Unicef campaign highlighting that Nigeria had the largest number of children in the world not being educated. At the time of the article, the figure was 10.5 million.

19. The respondent, in his witness statement explained how he and his wife were destitute and reliant on a loan from a friend, advanced with the expectation of repayment should the appeal succeed. This is relevant to another of the factors taken into consideration by the judge, that being that the respondent and his family would be homeless in Nigeria. Again, there was supporting evidence of this matter in the form of the affidavit from the respondent's mother. That affidavit explained that the respondent's unemployed brother, his wife and six children had taken over the family home in Nigeria, which was already occupied by the respondent's mother and that there would be no room in that accommodation for the respondent, his wife and three children. In his statement, the respondent described that accommodation as "*dilapidated*." The respondent's account that he would be likely to "*face difficulties*" in obtaining employment because of his age was found to be another obstacle to reintegration. The appellant was aged 47 at the time of the hearing. Evidence was before the judge of a series of graduate or professional vacancies in Nigeria which invited applicants aged either between 25-35 or 30-45.

20. The grounds contend that there was a lack of analysis or reference to *Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test)* [2017] UKUT 13 (IAC) That argument is unsustainable. The judge took into consideration *Treebhawon* at [35] of the decision and reasons and directed himself appropriately. There was no need for him to say more than he did or to elaborate on the meaning of very significant obstacles.

21. While the reasons were briefly expressed and another judge may have reached a different conclusion, the judge referred to all relevant authorities and demonstrated that he was aware of the strength of the public interest in removal [34].

22. In considering the proportionality of the respondent's decision, the judge had regard to the public interest considerations in section 117 of the 2002 Act.

23. At [54-55] the judge took into consideration that the appellant's presence in the United Kingdom was either precarious or unlawful and reiterated that the human rights appeal was allowed on the basis that the requirements of paragraph 276ADE(1)(vi) of the Rules were met. There was no error in the judge's application of the *Razgar* steps.

24. The grounds amount to disagreement that the judge detected very significant obstacles to integration and also argue that the judge found no

exceptional features in the appellant's situation. The task for the judge was as described by Underhill LJ in *Parveen* [2018] EWCA Civ 932 at [9]:

> *"It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant". "*

25. The First-tier Tribunal judge considered that the removal of this family in circumstances where they were banished from their home area and any potential family support unless they accepted that their eldest child would undergo FGM, combined with the troubling country conditions, their economic circumstances and the respondent's mental state amounted to very significant obstacles to integration. While this could be seen as a generous decision, it was one which was open to the judge on the evidence before him.

Decision

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

The decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed: Date: 28 February 2020
Upper Tribunal Judge Kamara