Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20680/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
By Remote Hearing	
On 30 September 2020	**On 13 October 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MOHAMMED JAMIU ABIODUN THANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Fazli, Counsel instructed by Supreme Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties and neither party expressed any concern with the process.

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, born in 1970. He entered the UK in 2002 and, after making an unsuccessful asylum application, remained in the UK thereafter without leave. He is appealing against the decision of Judge of the First-tier Tribunal Buttar ("the judge") promulgated on 28 April 2020 refusing his human rights claim.

2. The appellant's case before the First-tier Tribunal, in summary, was that removal to Nigeria would be contrary to article 8 ECHR because of the private life he has developed in the UK over the last 18 years, the length of time he has been outside of Nigeria (approximately 24 years, as he spent 6 years in Saudi Arabia), his relationship with family in the UK (in particular, his nephews and siblings, who are British citizens), and the difficulties he would face in Nigeria (primarily arising because of his father's politically motivated murder and the adverse interest he would face from the authorities).

3. The judge firstly assessed whether the appellant satisfied Paragraph 276ADE(1)(vi) of the Immigration Rules on the basis of there being very significant obstacles to his integration in Nigeria. The judge found that the appellant would be able to integrate in Nigeria, and would not face very significant obstacles doing so, for a range of reasons. These were:

   a. he has extended family in Nigeria;

   b. he would receive support from his sisters in the UK;

   c. he is not taking any medication or accessing treatment in the UK, and is not suffering from a mental health condition, that would prevent integration in Nigeria;

   d. he was born and lived in Nigeria until 22 years old;

   e. he has managed to live in and adapt to life in both the UK and Saudi Arabia, where he lived for 6 years prior to coming to the UK, and there is no reason why he could not adapt to new circumstances again;

   f. he could study in Nigeria, whilst supported by family, and eventually find work; and

   g. the authorities in Nigeria do not have any adverse, or ongoing, interested in him.

4. The judge then considered whether the appeal should be allowed "outside the immigration rules". The judge, at paragraph 38, considered the appellant's relationship with his family. After describing the appellant's relationship with his nephews, the judge stated:

> "I find that this does not go beyond the emotional ties that exist between uncles and nephews so that his removal to Nigeria would be a disproportionate interference with their right to a family life. Even if I am wrong about this, this family life was established at a time when his immigration status was precarious throughout the UK."

The Grounds of Appeal

5. The grounds are divided into three sections.

6. The first section concerns the judge's finding that there would not be very significant obstacles to integration in Nigeria. It is argued that the only reasonable conclusion open to the judge, based on the evidence about the appellant's connection to the UK, the length of time he has been outside of Nigeria, his genuine fear of persecution, and the lack of accommodation available to him in Nigeria, was to find that there were very significant obstacles to integration.

7. It is also argued that the judge erred by not giving weight to what the appellant would be forced to leave behind in the UK. It is asserted that the judge should have followed a Scottish Judicial Review: *Petition of MC for Judicial Review, dated 1 September 2014* [2016] CSOH 7, where it was stated that Paragraph 276ADE(1)(vi) is as much concerned with an appellant's private life in and ties to the UK as the circumstances that will be faced in the country of return.

8. The second section of the grounds of appeal concerns article 8 outside the Immigration Rules. It is argued that the judge erred because family life was made out, given the dependency between the appellant and his family. Further, it is argued that on any rational view the appellant's removal would lead to unjustifiably harsh consequences for him and his family.

9. The third section of the grounds concerns section 117B of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). It is argued that the appellant satisfied section 117B(3) because he has been accommodated by his sisters and therefore has not been a burden on the state; speaks good English; and has a private life that is of such weight that, in accordance with *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58, should be given more than little weight under 117B(5).

Grant of Permission

10. Permission to appeal was granted by the First-tier Tribunal. In the grant of permission it is stated that the judge did not give any reasons at paragraph 35 (iii) for finding that the appellant did not meet the Immigration Rules; or explain the extent to which he did not meet them. It is also stated that at paragraph 38 the judge arguably erred by stating that the appellant's family life with his mother and siblings was established when his immigration status was precarious, when it was established many years previously in Nigeria.

Analysis

11. Before addressing the arguments in the grounds of appeal, I will briefly address the two additional points raised in the decision granting permission.

12. In the grant of permission it is asserted that the judge arguably erred by not giving reasons for her conclusion at paragraph 35(iii) that the Immigration Rules were not satisfied. This is plainly not correct because, having identified that the relevant issue under the Immigration Rules was whether there were very significant obstacles to integration in Nigeria (pursuant to Paragraph 276ADE(1)(vi)), the judge proceeded to consider in detail whether there were very significant obstacles to integration in Nigeria. The reasons are not given in paragraph 35(iii) of the decision, but they are given in paragraphs 23 - 28.

13. The assertion in the grant of permission that the judge arguably erred by stating, at paragraph 38, that the appellant's family life with his mother and siblings was established when his immigration status was precarious is equally lacking in merit because it is plain that relevant part of paragraph 38 is concerned with the appellant's relationship with his nephews, not his mother and siblings.

Paragraph 276ADE(1)(vi)

14. The meaning of "very significant obstacles" has been considered by the Court of Appeal in several recent decisions. These include *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813, *AS v Secretary of State for the Home Department* [2017] EWCA Civ 1284, *Parveen v The Secretary of State for the Home Department* [2018] EWCA Civ 932, and *SA (Afghanistan) v Secretary of State for the Home Department* [2019] EWCA Civ 53. It is these decisions that are the guiding – indeed, binding – authorities on the interpretation of "very significant obstacles", not a Judicial Review Decision in the Outer House, Court of Session that predates them, which is cited at length and relied upon in the grounds of appeal.

15. The Court of Appeal authorities are clear that the assessment of very significant obstacles is concerned with how a person will be able to participate in, and cope with, life in the country to which he is returned. The strength of his private life in the UK is relevant only to the extent that it sheds light on, or assists in understanding, the obstacles that will be faced in the country of return.

16. As explained by Sales LJ in *Kamara* at [14], a broad evaluative assessment of what the appellant will face in the country to which he is returned is required:

> "The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life."

17. Mr Fazli argued that the judge's evaluation of very significant obstacles was deficient because she did not consider what the appellant would leave behind in the UK, and in particular the close relationship with his family that would be disrupted. However, as is clear from *Kamara* and the other authorities cited above, the question for the judge under Paragraph 276ADE(1)(vi) was not whether, and the extent to which, there would be an interference with the appellant's family life in the UK, but rather the challenges he would face integrating in Nigeria. The fact that the appellant is very close to his nephews and sisters, for example, is relevant to the overall article 8 assessment, but not to the obstacles he will face integrating in Nigeria.

18. Mr Fazli also argued that the judge failed to undertake the broad evaluative assessment required by *Kamara*. I disagree. As can be seen from the summary above in paragraph 3, the judge had regard to all material considerations when assessing the question of whether there would be very significant obstacles to integration.

19. I also do not accept that that there is merit to the rationality challenge. Given that the appellant spent the first 22 years of his life in Nigeria, does not have a medical/mental health condition for which he receives treatment, will receive support from his sisters in the UK, and will not face any risk from the authorities, it was plainly open to the judge to conclude that there would not be very significant obstacles to integration in Nigeria.

20. Mr Fazli submitted that the judge erred because he stated that the appellant returned to Nigeria, after spending 6 years in Saudi Arabia, for 3 years, when in fact he returned for only 3 months. This argument is not raised in the grounds and an application to amend the grounds to include it was not made. In any event, it is immaterial to the question of whether there would be very significant obstacles to integration, as it does not change the fact that the appellant spent his first 22 years in Nigeria or that he has been able to adapt to living in more than one society, which indicates a capability to cope with challenges that may arise when reintegrating in Nigeria.

Article 8 outside the Rules and Section 117B of the 2002 Act

21. The judge had regard to, and considered the evidence concerning, all of the material considerations relevant to Article 8 ECHR, including in particular the appellant's relationship with his family and the length of time he has been in the UK (and outside of Nigeria); and the judge adequately explained why she reached the conclusion that the appellant's ties with his nephews did not go beyond the normal emotional ties between uncles and nephews. There is therefore no merit to Mr Fazli's argument that relevant information was not considered, or that the assessment of the appellant's relationship with his nephews was deficient.

22. Nor is there any merit to the contention that the judge's findings were irrational. The appellant has been in the UK for a long time (and outside of Nigeria for even longer). However, he has been in the UK unlawfully and therefore only little weight could be attached to his private life (section 117B(4) of the 2002 Act). Mr Fazli relied on *Rhuppiah,* where it was acknowledged that particularly strong features of a private life can justify a departure from the result indicated by section 117B(4) of the 2002 Act. However, he did not identify (and it is not discernible from the decision, or evidence before the First-tier Tribunal, that there was) evidence of particularly strong features of a private life in the UK in the sense contemplated in *Rhuppiah*.

23. The appellant relies on sections 117B(2) and (3) of the 2002 Act to support his case, but the judge took into consideration that the appellant speaks English (paragraph 36(i) of the decision) and that he would be able to find employment in the UK (paragraph 36(iii) of the decision). There is therefore no basis to the contention that these issues were not considered. Moreover, given that they are neutral factors (see *Rhuppiah at [57]),* there is clearly no basis to the argument that it was irrational to not give the appellant's English-language ability and potential financial independence greater weight in assessing the proportionality of his removal under Article 8. Based on the evidence before the First-tier Tribunal, it was clearly open to the judge to conclude that removal of the appellant would not breach article 8.

Notice of Decision

24. The appeal is dismissed. The decision of the First-tier Tribunal does not contain an error of law and stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan Dated: 7 October 2020