



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/20802/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Thursday 9 December 2021**

**Determination  
Promulgated  
On the 22 December 2021**

**Before**

**THE HONOURABLE MRS JUSTICE FARBEY  
(SITTING AS AN UPPER TRIBUNAL JUDGE)  
UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**IBRAHIM BABAJIDE ADEGBITE**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer  
For the Respondent: Mr P Georget, Counsel instructed by Springfield Solicitors

**DECISION AND REASONS**

**BACKGROUND**

1. The Secretary of State is the Appellant in the appeal to this Tribunal. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Beg promulgated on 16 March 2021 (“the Decision”). By

the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 20 November 2019 refusing his human rights claim. That decision was made in the context of deportation proceedings. The Appellant was last convicted on 11 April 2019 for possession of crack cocaine and possession of heroin and cannabis resin. He was sentenced to two terms of thirty months imprisonment and one of twelve months to run concurrently.

2. The Appellant is a national of Nigeria born in 1996. He claims to have come to the UK in 2001 but the Respondent can find no record of his entry. He applied for leave to remain in April 2010. That was refused but, on 10 November 2014, the Appellant and his siblings were granted discretionary leave to remain until 10 November 2014. The Appellant's leave was extended to 24 January 2018. He has since overstayed. He has two previous convictions in 2017 for resisting or obstructing a constable and for theft. He was fined on both occasions.
3. The Appellant's human rights claim is focussed on his length of residence in the UK and the obstacles to his integration in Nigeria. The Appellant was ejected from the family home at the age of sixteen. He was addicted to drugs. Prior to the 2019 conviction, he had been living on the streets, assisted by various charities, since the age of sixteen. As we will come to, the Judge sentencing him in 2019 stated that the Appellant "was ripe for drug dealers to use".
4. As a "medium offender", in order to succeed in his appeal, the Appellant has to meet one of two exceptions under paragraphs 399 and 399A of the Immigration Rules which are broadly replicated in section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117C"). For ease, we refer to Section 117C since that is the legislative provision to which Judge Beg was bound to have regard. Even if the Appellant could not meet either of the two exceptions (which broadly encompass family and private life), he can still succeed if he is able to show that there are "very compelling circumstances over and above" those two exceptions (Section 117C (6)). Although Section 117C (6) on its face applies only to those sentenced to more than four years (since such persons cannot take advantage of the exceptions), the Court of Appeal, in NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 ("NA (Pakistan)") at [25] to [27] of its judgment held that the "fall back protection" applies equally to medium offenders who cannot meet the exceptions.
5. It is accepted that the Appellant cannot meet either of the two exceptions. He has a partner but no children. Judge Beg found that, even if the relationship constituted family life, deportation of the Appellant would not have unduly harsh consequences for his partner. In relation to private life, the Appellant has not lived in the UK lawfully for half his life. As we will come to, there is no express finding whether the Appellant is socially and culturally integrated in the UK or whether there

are very significant obstacles to his integration in Nigeria in order to satisfy the private life exception in those regards. The Judge went on to consider whether there are very compelling circumstances over and above the exceptions rendering deportation disproportionate. She concluded that there were. She therefore allowed the appeal for that reason.

6. The Respondent appeals on two grounds. First, she says that the Judge failed to make any finding in relation to the private life exception (as we have already noted) and made contradictory findings in relation to the situation facing the Appellant on return to Nigeria. Second, she says that the matters relied upon by the Judge when reaching her conclusion as to the circumstances over and above the exceptions relied on the self-same matters as within the exceptions and failed to explain how the circumstances met the very compelling threshold. Reliance is placed on the Tribunal's decision in Bossade (ss.117A-D - interrelationship with Rules) [2015] UKUT 415 (IAC) ("Bossade"). Based on Bossade, it is submitted that the factors on which the Judge placed reliance were insufficient to amount to very compelling circumstances.
7. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 4 April 2021 in the following terms so far as relevant:
  3. In a careful, nuanced and focused decision the Judge throughout adequately considered the pertinent law and all the material evidence in the context of that law. The Judge made adequate findings for adequately expressed reasons having considered the evidence as a whole. However, the judge's conclusion and decision to allow the appeal for cumulative reasons, appears to be inconsistent with the earlier findings on those issues when they were considered individually.
  4. For the above reason/s the judge's conclusion was arguably made on the basis of an arguably material error of law."
8. The Appellant filed a detailed Rule 24 reply dated 22 November 2021 seeking to uphold the Decision. The Respondent filed a skeleton argument dated 23 November 2021. We also had before us a core bundle of documents relating to the appeal and the Appellant's bundle which was before the First-tier Tribunal. Mr Whitwell also arranged for us to be sent after the hearing the Respondent's bundle before the First-tier Tribunal which we did not have previously. As this is a challenge to the reasoning of the Judge, and there is no challenge to her factual findings, we do not need to refer to the evidence.
9. The matter comes before us to determine whether the Decision contains an error of law. If we conclude that it does, we may set aside the Decision and, if we do so, we may either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

10. Having heard oral submissions from Mr Whitwell and Mr Georget, we indicated that we would reserve our decision and issue that in writing which we now turn to do.

## **DISCUSSION AND CONCLUSIONS**

11. We have reached the conclusion that there is no error of law in the Decision and that it should be upheld. In order to explain our reasoning, it is necessary to set it out in the context of the salient passages of the Decision. The section of the Decision dealing with the Judge's reasons begins at [21]. The reasoning and findings made are interspersed with references to the evidence and case-law which does at times make the flow of the reasoning difficult to follow.
12. Having referred to the nature and extent of the public interest in deportation of foreign offenders at [23] of the Decision, the Judge referred at [24] to the remarks of the sentencing Judge as follows:

“In sentencing the appellant on 11 April 2019, her honour Judge Barnes noted that the appellant pleaded guilty to the offences. She also noted that the appellant had been on the streets from the age of 16 and had been given the enormous help by various charities which supported and guided him. She stated that he was ripe for drug dealers to use where he was on the streets in Brighton.”

We have now seen those sentencing remarks to which Mr Georget made reference (as appear in the Respondent's bundle). The above summary is accurate. As we will come to, Mr Georget submitted that the reference to the circumstances in which the Appellant found himself and the suggestion that he was open to exploitation is relevant to the Judge's conclusion.

13. The Judge thereafter set out the evidence about the Appellant's upbringing in the UK and the difficulties he would experience on return to Nigeria. He has not been to Nigeria since he was aged nine. His father, stepmother and siblings are all in the UK. The Appellant's mother and grandmother are dead. The Judge heard evidence that the Appellant's stepmother and father still have some family members in Nigeria. The Judge had regard to the legal test in relation to the potential for integration in Nigeria as set out in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 (“Kamara”).
14. Having set out the evidence and legal test, the Judge reached findings about the Appellant's private life at [30] and [31] of the Decision as follows:

“30. I find that the appellant entered the United Kingdom as a minor. He has not returned to Nigeria since then. He has not worked in Nigeria. I find that he has some relatives in Nigeria including the siblings of his

stepmother and a paternal aunt. Both the relatives in Nigeria and those in the United Kingdom would be able to collectively provide the appellant with a network of support on return to enable him to settle. In **CI (Nigeria) [2019] EWCA Civ 2021**, the court held that an inference that an immigrant who has no memory of his country of origin having left it as an infant, must nevertheless have acquired some knowledge of its culture and traditions through his upbringing and this might in some cases be a reasonable conclusion to draw.

31. I find that the appellant does not have any immediate family members such as parents and siblings in Nigeria. I find that it is unlikely that the appellant would be able to operate on a day-to-day basis in Nigeria given the length of time that he has been in the United Kingdom. I bear in mind that the appellant has only ever lived in Nigeria as a child. However I find that in respect of the appellant's private life, all three limbs of Exception 1 have not been met as he has not lived lawfully in the United Kingdom for most of his life (**SC (Jamaica) [2017] EWCA Civ 2112**)."

15. Although it might have been helpful for the Judge to make an express finding whether the Appellant's circumstances satisfied the private life exception apart from the length of lawful residence, we accept Mr Georget's submission that it was not necessary for the Judge to make such findings where the exception could not be met.
16. However, at first sight, the findings made at paragraphs [30] and [31] appear to contradict each other. We can well understand why the Respondent might have read them in that way as did we initially. We are however satisfied, as Mr Georget submitted, that the Judge was there setting out the competing arguments about the difficulties which the Appellant would face on return to Nigeria. Properly understood, the Judge found that, although the Appellant does have some family members in Nigeria to whom he could turn for some support, those family members are not his immediate family and, given his young age when he left Nigeria, the Appellant would not be sufficiently familiar with life in Nigeria to be able to "operate on a day-to-day basis" alone.
17. We do not need to refer to the Judge's findings regarding the Appellant's relationship with his partner. As we have already summarised, the Judge found that the family life exception was not engaged because the relationship was one of short duration. She found that, in any event, the consequences of the Appellant's deportation would not have unduly harsh consequences of his partner.
18. Turning then to the basis on which the appeal was allowed, the Judge directed herself to the nature and extent of the test in Section 117C (6) by reference to what was said in NA (Pakistan) and other relevant judgments. As the Judge accurately noted at [39] of the Decision, she was entitled to have regard to the seriousness of the offence. She also had regard (as she was entitled to do) to the level of risk which the Appellant poses and his rehabilitation. She considered that evidence in the context of the case-law concerning the importance of the public

interest. She accepted at [48] of the Decision that “drugs offences are always serious” because of the societal impact. She also had regard to what is said in Section 117C about the need to consider the seriousness of the offences and the need to protect society from those who pose a danger to it. She attached “significant weight” to the deterrence aspect of the public interest. She also attached “significant weight” to society’s revulsion at the commission of drugs offences and the need to preserve public confidence in the immigration system. It cannot sensibly be argued that the Judge did not have full regard to the nature and extent of the public interest. The Respondent does not challenge the Decision on this basis.

19. The Judge then began her assessment of the factors in favour of the Appellant in the balance between interference with his family and private life on the one hand and the public interest on the other. Mr Whitwell relied in particular on [53] of the Decision where the Judge reached her conclusion as to the balance to be struck. However, that paragraph cannot be divorced from what precedes it. The Judge’s findings on the factors in the Appellant’s favour prior to the balancing assessment bear setting out in full:

“49. I accept that the appellant has expressed remorse and undertaken courses to rehabilitate himself. The issue of rehabilitation and the likelihood of re-offending has some significance. Also of relevance is the depth of the appellant’s integration into UK society. He has lived here since the age of 9 and has been moulded to a significant degree by his length of residence to a British lifestyle. The appellant’s evidence of his circumstances at the time of the offences and his reasons for getting involved in drugs are confirmed in detail in the OASys report.

50. In assessing the evidence in the round, cumulatively, I find that the appellant has not lived in Nigeria since he was a child. Although English is widely spoken in Nigeria, he would be very much an outsider, unfamiliar with how to operate in Nigerian society. I accept that he has little contact with any relatives in Nigeria. Even if his family in the United Kingdom were able to arrange temporary accommodation for him, he would face obstacles in establishing his own independence.

51. I find that the appellant has the support of Chantal Rendle as well as his relatives including his siblings in the United Kingdom. In relation to the general public interest factors contained in Section 117B of the 2002 Act, I take into account the public interest in maintenance of effective immigration controls. The appellant is fluent in English and capable of working. He is not a burden on tax payers. These are however neutral factors (Rhuppiah [2018] UKSC 58).

52. I find that the appellant has built up a private life in the United Kingdom which includes his education and employment history. However much of his private life was established when he was in the country unlawfully. I take into account his diagnosis of Sarcoidosis. There is however no suggestion that he would not be able to access appropriate medical treatment in Nigeria.”

20. Having set out those factors, the Judge carried out the balancing assessment at [53] of the Decision as follows:

“Although I am mindful of the great weight that must be attached to the public interest in a case of this nature, I am nevertheless persuaded on the evidence as a whole, that the cumulative consequence of the age at which the appellant arrived in the UK and his length of residence, the fact of his rehabilitation, the depth and nature of his integration, the real difficulties that he will encounter if deported to Nigeria, amount to very compelling circumstances over and above Exception 1 and 2. Consequently, I find that his deportation from the United Kingdom would outweigh the public interest, breach section 6 of the Human Rights Act 1998 and would constitute a disproportionate breach of Article 8 ECHR.”

21. One of the points raised in the Respondent’s pleaded grounds as also repeated by Mr Whitwell is the apparent inconsistency between what is said at [30] and [31] of the Decision and [50] of the Decision. However, we have already explained how we read [30] and [31] of the Decision. Read together as the Appellant suggests they should be and in the way we have previously suggested, there is no inconsistency between the Judge’s finding at [50] of the Decision and what is said at [30] and [31] of the Decision.
22. Turning then to the Respondent’s second ground, merely because many of the factors on which the Judge has based her finding of very compelling circumstances are the same as those within the private life exception does not mean that they were not relevant. We did not understand Mr Whitwell to suggest otherwise.
23. As we have already pointed out, the Judge did not make any express finding when considering the private life exception whether the Appellant is socially and culturally integrated in the UK or would face very significant obstacles to integration in Nigeria, accepting that the Appellant could not meet that exception because he had not been resident lawfully in the UK for a sufficient period. Instead, the Judge fed into her analysis of the very compelling circumstances those considerations. At [49] of the Decision, she considered the level of the Appellant’s integration in the UK. At [50] of the Decision, she considered the extent of the obstacles to the Appellant’s integration in Nigeria. We do not place any weight on the Judge’s failure to refer to the obstacles on return as being very significant. As Mr Georget pointed out, the Judge had set out the appropriate legal test in Kamara at [29] of the Decision. She did not need to repeat that. The Judge’s reference to the Appellant being “very much an outsider” in Nigeria at [50] of the Decision makes clear that she had that test in mind.
24. In relation to the Respondent’s reference in the grounds to Bossade, we accept Mr Georget’s submission that it is rarely helpful to rely on the facts of one case to support or undermine a conclusion in another.
25. We asked Mr Georget to explain to us why the Judge had reached the conclusion she did and, in particular, what were the very compelling

circumstances in this case. He submitted that these were the Appellant's length of residence, that he had come here as a child, that his "nuclear family" were in the UK, the difficulties of integration in Nigeria, the circumstances of the Appellant's offending (see the remarks of the sentencing Judge as referred to above), the reasons for it, and his rehabilitation. Although briefly stated by the Judge, those are the reasons which she gave for finding there to be very compelling circumstances at [53] of the Decision.

26. As Mr Georget urged upon us and we accept, our task is to consider whether there is an error of law in the Decision and not whether we would have reached the same conclusion. The Respondent does not put her case on grounds of irrationality but, even if she did, said Mr Georget, it could not be argued that no Judge properly directing herself could reach this conclusion. We agree.
27. We may well not have arrived at the same conclusion as did Judge Beg on these facts. However, having analysed the way in which the Judge reached her conclusion and for the reasons which she gave as summarised at [53] of the Decision read in the context of the earlier parts of the Decision to which we have made reference, the Judge was entitled to come down in favour of the Appellant in the balancing assessment. The Judge had full regard to the importance of the public interest. It cannot be said that she failed to take into account any relevant factors or took into account factors which were irrelevant. She gave adequate reasons for her conclusion.
28. For the foregoing reasons, we find that there is no error of law in the Decision. We therefore uphold the Decision with the consequence that the appeal remains allowed.

## **CONCLUSION**

29. The Respondent's grounds do not disclose errors of law in the Decision. We therefore uphold the Decision. The Appellant's appeal remains allowed.

## **DECISION**

**We are satisfied that the Decision does not involve the making of a material error on a point of law. We uphold the Decision of First-tier Tribunal Judge Beg promulgated on 16 March 2021. The Appellant's appeal therefore remains allowed.**

Signed                      L K Smith  
2021  
Upper Tribunal Judge Smith

Dated:    16    December