IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: HU/20756/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
31 March 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Emmanuel Kanu
(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Moriarty, Counsel instructed by Sutovic & Hartigan Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2023

DECISION AND REASONS

1. This is the rehearing of an appeal by a citizen of Nigeria against the decision of the Secretary of State on 25 September 2018 refusing him leave to remain on human rights grounds. The appeal has a protracted and regrettable procedural history. In a decision promulgated on 25 February 2022 I found that the First-tier Tribunal had erred in law and I set aside its decision and ordered the appeal to be reheard in the Upper Tribunal. On that occasion the appellant was responding to an appeal by the Secretary of State and was identified in the title accordingly. As it is clearly his appeal against the Secretary of State's decision that has to be determined I have reverted to that description in the title above.

2. My Reasons for Finding an Error of Law is to be considered on its own terms but there I noted that the appellant is the subject of a deportation order. He says he was born in April 1978 and has lived in the United Kingdom since 1988 when he was 10 years old. He is now about 45 years old.

3. He has a poor criminal record. Between 1993 and 2017 he was convicted of a total of 41 offences. As I said when I decided that the First-tier Tribunal had erred in law, the offences are not all equally serious but they include assault against a police office, fraud, public disorder and drugs related offences.

4. Importantly, because it makes him a "foreign criminal" within section 117D(2) of the Nationality, Immigration and Asylum Act 2002, the appellant was sentenced to 15 months imprisonment at the Central Criminal Court on 9 July 2009 for an offence of handling stolen goods.

5. I have read the Respondent's Supplementary Bundle which includes summary outlines of much of his offending and gives details of events described as "Not Guilty Disposals" although I treated them with great caution as, by definition, they did not lead to his guilt being established. I have no evidence alleging criminal misconduct since March 2017. This makes sense because the decision complained about was in September 2018 but it is trite law that I must decided human rights appeals in the light of the present rather than historical facts.

6. It is for the appellant to prove the facts on which he relies and for the respondent to justify any interference with the appellant's private and family life consequent upon his removal.

7. It was established before the First-tier Tribunal that the appellant is not a "persistent offender" within the meaning of the law but that he is plainly a "foreign criminal" for the purposes of part 5(a) of the Nationality, Immigration and Asylum Act 2002.

8. Mr Moriarty had produced a skeleton argument dated 24 February 2023 which I am embarrassed to say had eluded my attention before the hearing. I begin by considering that skeleton argument. It is, I find, balanced and helpful.

9. He makes the point that the appellant has been resident in the United Kingdom for 35 years and was given indefinite leave to remain on 31 March 1994. It is his case that his deportation would be disproportionate because there would be an unduly harsh impact on his children, who are British citizens, and there are very significant obstacles to his integration in Nigeria where he has no family members or support network.

10. There are three core issues in the appeal. The first is would deportation be unduly harsh for the qualifying children within the meaning of Section 117C(5) of the Act? the second is whether there would be "very significant obstacles" to the appellant's integration in Nigeria within the meaning of Section 117C(4) of the Act? and the third is whether there are "very compelling circumstances" within the meaning of Section 117C(6) of the Act, based on a holistic assessment of the appellant's private and family life in the United Kingdom, that would make his deportation disproportionate?

11. The appellant relied on "Exception 2", set out in section 117C(5) of the Act, which applies where the applicant "has a genuine and subsisting parental relationship with a qualifying partner, or a genuine and subsisting parental

relationship with a qualifying child, and the effect of the child's deportation on the partner or child would be unduly harsh".

12. It is the appellant's case that he has a subsisting parental relationship with his two daughters who I identify as D who was born in 2008 and is now aged 14 years and K who was born in 2012 and is now aged 10 years. It was contended that their best interests lie in their father remaining in the United Kingdom where they can see him frequently and, whilst that is not determinative, their best interests are a primary consideration because that is what statute requires. It was not suggested by anyone that the children could be expected to go and live with their father in Nigeria. Neither is this a case where the appellant has a qualifying partner.

13. It was properly and helpfully conceded by Mr Tufan that the appellant has a parental relationship with his children but that is still something about which I need to make findings because a "parental relationship" can take many form and the nature, as well as the description, of the relationship is important when considering the effects of removal. Some "genuine and subsisting parental relationships" are more important than others. In outline, it was the appellant's case that he played a significant role in providing emotional and practical care for his daughters who would be adversely affected by his removal and that the child D particularly was upset and anxious at the thought of his being removed. K had not been told of the possibility of his going.

14. Mr Moriarty reminded me of well-known passages including **AA (Nigeria) v SSHD [2020] EWCA Civ 1296** where the Court of Appeal said:

> "it is potentially misleading and dangerous to seek to identify some "ordinary" level of harshness as an acceptable level by reference to what may be commonly encountered circumstances: there is no reason in principle why cases of undue hardship may not occur quite commonly; and how a child will be affected by a parent's deportation will depend upon an almost infinitely variable range of circumstances."

15. It was not disputed that the appellant had been lawfully resident in the United Kingdom for most of his life. It was his case that he had been socially and culturally integrated into the United Kingdom. Periods of imprisonment are not indicative of cultural integration and whilst the appellant is not "persistent offender" within the meaning of section 117D(2)(c)(iii) of the Act, frequently getting caught committing offences is not indicative of a person who is integrated into British society. These things are finely balance and Mr Tufan conceded that the appellant was and is *now* socially and culturally integrated into the United Kingdom. Given that he has little life experience of anywhere else and has lived in the United Kingdom since coming out of prison on the last occasion without, as far as I know, getting into further trouble, this was another entirely appropriate concession with which I agree.

16. The skeleton argument makes the point the appellant was last sent to prison in 2013 and was last in trouble for drugs offences in 2015. He was last in trouble in 2017 and there is no evidence before me of his being convicted of offences since then.

17. It is his case that he had no support mechanism at all in Nigeria and was ill-equipped to cope in Nigeria. He said that, cumulatively, the circumstances that

he relied on in support of Exception 1 and Exception 2 also supported a finding in his favour on his third ground.

18. I remind myself that the appellant's criminal record includes his being fined for possession of a class B drug in May 2015 and again in September 2015 and his being made the subject of a suspended sentence of imprisonment at the Crown Court sitting at Harrow in March 2017 for harassment. I know no other convictions and at the time of writing and that conviction is now just over five years old.

19. The appellant gave evidence and adopted the statement he signed on 14 February 2023. The statement referred to an earlier statement made in earlier proceedings that is also before me. The statement is dated 19 April 2010. There he described his coming to the United Kingdom as a child and rebuilding his relationship with his mother who had been working in the United Kingdom as an air hostess.

20. In many ways his childhood was unhappy. He recalled an occasion when he saw his stepfather beating his mother. That made his angry.

21. He fathered his first child when he was 17 years old. He tried to provide financial and emotional support to the mother and the child. He said he remained on aimable terms with his son's mother and was in contact with his son, although his son is now an adult and does not feature very heavily in his case.

22. He began his relationship with his daughters' mother in 2001. Their child D was born in December 2008.

23. Paragraphs 27 and 28 of the earlier statement are, I find, particularly pertinent. There he said:

> "27. The prospect of being deported to Nigeria is completely terrifying to me. I do not remember anything of the country, and I would not know the first thing about how to get by and live there. I know that it is a corrupt and violent society, and if I am deported there, I will in effect be dumped there without any means of being able to support myself and I will have nowhere to go. When I came to the UK I spoke broken English. However, I cannot even remember how to speak in this way, and my accent is very clearly English. I am currently detained at Lindholm Immigration Removal Centre and I am in a cell with two other Nigeria nationals. They will speak broken to each other and I will not understand what they are saying. Whilst the words individually make sense, I do not understand the context of the sentences or what they are saying to each other.
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> 28. I do not speak the local language in Nigeria, and I believe this would be a further hindrance to me. My skills in the music production industry would not assist me in Nigeria. I believe that I am incredibly unlikely to be able to find employment there, and I do not have a family or friends remaining there who would be able to support me. All other people that are important in my life live in the UK. My son who I have been heavily involved with since he was born, lives here. My daughter, who had recently been born also lives in the UK. They are both British citizens. My partner, Natasha, was herself born in the UK and has lived

> here all her life. She is also a British citizen. My mum, who was raised in the UK, and has also lived here continuously since we both arrived in the country. I have a very close and special relationship with my mother, and I have lived the majority of my life with her and know what she would be devastated about my deportation, as I would be."

24. I cannot help noting at this point that, notwithstanding his professed fear, he was in trouble after making that statement including being convicted on a total of three occasions, twice for possessing a class B controlled drug and once for harassment.

25. In his most recent statement he outlined the circumstances of his offending.

26. He said his son is now a graduate and he was emotionally close to his son.

27. His second daughter with Natasha was born in April 2012.

28. He said that the daughters spend "every other weekend" with him and part of their birthdays, Christmas day, Father's Day and some of their school holiday is spent with him. He described himself as "very much involved in their progress at school and wellbeing". They live in Watford and Natasha brings them over to him on Friday night by car or sometimes Saturday and collects them on Sunday. The appellant now lives in London, SW1.

29. He said that the offence leading to his conviction in March 2017 was when he was involved in protecting his aunt who was being beaten by her partner. That may be right but he still conducted himself in a way that attracted a suspended sentence of imprisonment.

30. He did say that he had had no contact with the police for five years and that appears to be roughly right.

31. He also explained that he had a close relationship with his mother Dorothy Chambers. They lived together from 2019 until 2021 because he was instructed to shield on medical grounds as "extremely vulnerable" during the height of the COVID-19 pandemic. They live very close to each other and see each other every other day. The appellant explained how he had been stabbed in the chest in 2017. As a result of that his spleen had to be removed and that leaves him particularly prone to infections. In 2019 he was diagnosed with posttraumatic stress disorder and was given therapy but that stopped during COVID lockdown.

32. He said that removing him to Nigeria would be "like sending me to my death". He explained there is no support or medication readily available. It would be expensive for him and he would have no financial support of anywhere to live. His mother could not send him any money. She was a healthcare worker earning a regular but modest wage that left no surplus to support him. He had not lived in Nigeria for 34 years but was fully integrated into the United Kingdom. He did not speak the language, he had no family there and would be identified as British by his accent. He is frightened for his future in Nigeria and did not want to leave his family in the United Kingdom. He also said he did not want his daughters to grow up without a father. He had grown up without a father and it had had a bad effect on his life.

33. When it was permissible he wanted to restart his barbering business. He had explained before that he had a very modest barbering business run from a van.

34. He was cross-examined by Mr Tufan.

35. He said that he was not allowed to work and was not working but he still contributed to his family from the benefits he had received. Sometimes he raised capital by selling things but, obviously, there was limited scope to generate income in that way because he could only sell something once.

36. He said in evidence that he saw his daughters every weekend but that, I think, was clearly a slip and just not what he meant to say. The other evidence is that he saw them every other weekend plus family gatherings and other occasions.

37. He said he was particularly concerned about getting medication in Nigeria that he needed because his spleen had been removed. He said that in addition to cost considerations, fake medicines were a problem and he would not have the wherewithal to know he was buying from a reliable supply. He had not been in Nigeria since he came to the United Kingdom.

38. He was told that he came to the United Kingdom when he was aged 10 years and that things had been said since that made him think he might have been a bit younger.

39. He explained that his mother did a great deal for him. This was not indulgence but because he found it hard to do things. His disabled arm, for example, made it hard to handle clothes and cook. He did not suggest that he was completely helpless.

40. He explained how his daughters were close to their grandmother, his mother, and she had taken a particular interest in teaching them “Nigerian” cooking.

41. He did not know how many times his mother had been to Nigeria but did recall an occasion when she went to look for work but she returned to the United Kingdom.

42. His partner Natasha Moghaddam gave evidence. She had made a statement. The copy supplied to the Tribunal was not signed but Mr Moriarty went to considerable trouble to make quite sure that she identified the document in electronic form and adopted it as her evidence.

43. She explained that they each have a son from another relationship but they have two daughters together. They have known each other for over twenty years and said “we are as close as a couple or aren’t in relationship can be” and that their priority is their children who they were bringing up together. She explained she was also close to the appellant’s mother.

44. They spend time together at social occasions and family events. She described busy weekends trying to fit in the demands of K’s football, which she seems to take very seriously, and recognised that her daughters enjoy being with their father and having time with him. She said that she and the appellant clearly have a “good friendship” and illustrated this by their readiness to spend time together. Worrying about her father being removed is impacting on D. She described D as a “daddy’s girl” and said that they had not told K about his possible removal.

45. She explained how the appellant had been involved in their lives. He taught them to swim and to ride their bicycles. She said he had “delivered” K.

46. He also provided financial support, although clearly found that difficult when he was not able to work. Nevertheless, he did help.

47. She explained that she did not have the resources to take the children to Nigeria.

48. She said that the appellant contributed to the community with his talents as a football coach.

49. She said at paragraph 14:

> "It would be really difficult to bring up the girls without him. Financially and emotionally we rely on him and the girls would be devastated. It would have a domino effect on everyone – his mum, his son, R, R's baby, and us. The girls would be emotionally scarred if he was not around."

50. She also produced a short letter but I do not think that added anything to the rest of her evidence.

51. Cross-examined, she said she did not know how often the children had contacted their father. They had their own telephones and they were able to contact their father without telling her and she was content that they did but from conversations with her daughters she thought that they talked to him at least twice a week.

52. She said they had conversations together about the children to discuss issues relating to parenting. They last lived together as a family about six years ago.

53. She was not re-examined.

54. The appellant's mother, Dorothy Chambers, gave evidence. She adopted statements signed on 10 January 2023 and April 2010. The first statement is dated 12 April 2010. I consider first the statement dated 12 April 2010.

55. There Ms Chambers explained how she first came to the United Kingdom in the 1960s, returned to Nigeria in 1976 after her mother's death and because of a change of circumstances could not afford to return to the United Kingdom. She became pregnant with Emmanuel. His father was not interested in taking any part in his life and his family tried to make her terminate the pregnancy. However, the appellant was born safely, and she then ran away. She had worked for Nigerian Airlines as an air traffic controller and that job gave her access to cheap flights to the United Kingdom. She returned and wanted to remain there. When she could, she arranged for the appellant to join her. She married but the relationship between her husband and son were tense and the marriage became violent and ended in divorce. She spoke of the appellant's relationship with his son who then was a minor and the daughter D, who was then a baby.

56. The appellant would have a difficult time in Nigeria. A particular difficulty is that his name "Emmanuel" is a Christian name appropriate for someone coming from the largely Christian south of Nigeria but he was in fact a Muslim. The appellant had nobody to help and was very vulnerable. He would not know how to cope. In Nigeria you had to know how to bribe people to get things done and that was not a skill he had learnt.

57. She had travelled to and from Nigeria over the years thinking she might one day return to her country of nationality or birth but appreciated how difficult it was to do that and her son, the appellant, had less standing than did she.

58. He was particularly useful as a barber in managing his daughter's "black" hair. Their mother is a "white" woman and "black hair is different". The child K was showing promise as a footballer. He helped her and he supported his daughters financially within the limited means available to him. She related very disturbing experiences that the appellant had had as a child.

59. She was cross-examined and gave answers that confirmed the gist of the appellant's evidence about his relationship with his daughters. She talked about her relationship with her granddaughters and how she was teaching them to cook and her evidence on that topic was one of those very rare moments in the hearing room where the spontaneity and detail of an answer and the demeanour and body language with which it was said suggests very, very strongly that it was the truth.

60. She is 64 years old and had a modest income as a care worker. She has had no spare money.

61. There is a letter from the appellant's daughter D dated 1 September 2022. It is typed but the register suggests to me that it is the child's work. By saying:

> "If you deport our dad to Nigeria we would never see him, as we do not have any passports or my mum would not have the money to fly us over there.
>
> We would miss our dad very much and we would be really sad if he got deported, you would be taking our father away from us."

62. I note that there is a suggestion in the papers that the appellant's close relatives are frightened of him and both Ms Moghaddam and Ms Chambers have called the police for help on different occasions. Be that as it may there was nothing before me that suggested that the either of the witnesses and been other than willing witnesses who had cooperated with solicitors by preparing statements and attending voluntarily. Ms Chambers would no doubt have a mother's interest in the appeal but neither of them even hinted that they were under pressure to give the evidence that they did.

63. There is a psychologist's report dated 2 February 2023 described as an independent psychological assessment prepared by Carleen Saffrey who is a BPS chartered and HCPC registered forensic psychologist. The report is of limited value. It offers no independent evidence about the appellant's relationship with his daughters but it does provide support for the appellant's claim to be continuing to suffer from the result of his traumatic injuries when he was stabbed many times. The report states in terms that "His profile is indicative of someone with PTSD symptoms" and the psychologist saw possible benefits of therapy and similar support and intervention. Without therapy it was expected that his mental health would deteriorate.

64. There is other medical evidence in the documentation. The most relevant part of that is, I find, confirmation of his claim to have had his spleen removed after he was stabbed.

65. I am satisfied that the witnesses, including the appellant, told the truth as they saw it.

66. Ms Moghaddam presented as a sensible mother who was happy for her daughters to have a good relationship with their father and who took steps to facilitate their relationships.

67. I am quite satisfied that it is in the children's best interests that the appellant remains in the United Kingdom.

68. Mr Tufan said that the appellant had worked when he could in the United Kingdom and he could get work in Nigeria. He was qualified to work as a barber and had entrepreneurial skills and he was Nigerian.

69. I have re-read the decision to refuse a human rights claim dated 10 October 2018. I note that the appellant was born on 4 November 2009 and that he was liable to deportation. His appeal was allowed, he obtained his status as a person with indefinite leave to remain and he got into further trouble. He was warned in January 2014 that he was liable to deportation but on that occasion deportation action would not be taken and he got into trouble again on three further occasions. I note paragraph 18 of the refusal letter. The Secretary of State was told because of information submitted by the Metropolitan Police that the appellant was linked with the involvement of the supply of class A drugs. I am very aware of the seriousness of drugs offences and the harm that they do to society.

70. However the appellant does have a parental relationship. It is very important to emphasise that although no longer a partner with the mother of the children, there is clearly a good, joint relationship. The father is very much involved in his daughters' lives. They see each other frequently, they contact each other freely without objection from the mother and see each other at the very least once a fortnight and on other occasions. It is quite plain that the appellant is involved in their lives in the way that a supportive father ought to be involved in the lives of his daughters and I accept the unsurprising evidence from D that they would miss him.

71. I accept that removing the appellant would significantly diminish their relationship. I accept there is no likelihood of their being able to go to Nigeria in the reasonably near future. I have to ask if consequences of removal would be "unduly harsh". I have no doubt that the children would manage. They clearly have a loving and supportive mother. I see no reason whatsoever why the could not continue their entirely healthy relationship with their paternal grandmother, who I am quite sure would be pleased to see them, and I have no reason to think that their mother would do anything to discourage that relationship but the relationship with their father would end. No doubt there would be some contact but short text messages or even telephone calls are not an equivalent of a loving father's support.

72. I also note the evidence that the appellant's son, who was a prominent consideration in earlier proceedings, has grown up, as far as I know, to be an industrious member of society who has taken advantage of educational opportunities. Whatever can be said to the appellant's detriment, there are reasons to think he is a useful parent.

73. The courts have helped us to understanding the meaning of unduly harsh. Perhaps I am too old fashioned and too inclined to give considerable weight to the useful role that a father can play in the lives of a child but if this appellant is removed these girls would lose frequent contact with a man who looks after them and encourages and supports them and in so doing gives their mother appropriate respite and support. It would be a big loss and after considerable thought I have concluded it comes within the category of unduly harsh. That is sufficient reason to allow the appeal.

74. The other point concerns the appellant re-establishing himself in Nigeria. What is quite clear to me is that the appellant has no links with Nigeria. There is no reason whatsoever to doubt that evidence which was consistent and clear. He would stand out as a sore thumb, at least initially. No doubt his experiences in prison have given him some coping strategies and I find he is sufficiently entrepreneurial to obtain work.

75. What bothers me is the emotional and practical support he gets from his mother and the need for it, identified in the psychologist's report, which of course was not available when the case was last heard. I have decided that the appellant is not coping as well as initially presents. Although he manages to live on his own, he is very dependent on his mother for practical and emotional support. The respect he showed for his mother and appreciation for what she did was very noticeable, but she provides emotional as well as physical care she provides. I have decided that without that support, or that prop, he would not manage. There are very significant obstacles to integration in Nigeria.

76. In the circumstances I see no need to undertake a detailed "article 8 balancing exercise". The statutory criteria are made out.

77. I now understood the First-tier Tribunal's decision more clearly. I hope I have explained the same conclusion better. Perhaps I have not. It is important in my reasoning that undue harshness is not something which has to be particularly severe or particularly unusual and breaking up parental relationships is a very serious thing to do because it hurts children and I find the consequences would be unduly harsh in this case.

78. Although I am also persuaded that there are very significant obstacles in the way of the appellant re-establishing himself in Nigeria I found that test to be only just satisfied. However, given the confirmatory nature of the psychological report and the clear evidence of the appellant's relationship with his mother the case is made out.

79. The third ground really adds nothing and I make no findings on it.

Notice of Decision

80. The appellant's appeal is allowed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 March 2023