



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/40537/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow**

**On 11 August 2014  
Decision given orally**

**Determination  
Promulgated**

**On 20 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**OMOBOLAJI GABRIEL ASHAYE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Vassiliou, instructed by McGill & Co Solicitors  
For the Respondent: Ms M O'Brien, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant who is a national of Nigeria born on 6 August 1982 has been granted permission to appeal the decision of First-tier Tribunal Judge Reid. For reasons given in her determination dated 9 April 2014, she dismissed on grounds under the Immigration Rules and Article 8, Mr Ashaye's appeal

against the decision to remove him pursuant to s.10 of the Immigration and Asylum Act 1999.

2. The facts are these. The appellant arrived in the United Kingdom in November 2006 on a six month visitor visa. It appears that he had done so on a different name and with details altered in a passport in order to give the impression of being someone older than he is in fact. He remained here unlawfully.
3. On 6 July 2012 he made application to regularise his stay on form FLR(O) which was refused on 15 July 2013 with no right of appeal. On 3 September 2013 he was encountered and arrested at the Marriage Registry in Leith, Edinburgh when he was seeking to marry a British national, Ms Esther Coutinho. The marriage did not go ahead on that occasion but the parties subsequently married on 20 May 2014. There are no children of the marriage. The appellant has a number of family members in the United Kingdom. He has four brothers who either have British citizenship or settled status and two sisters living in the United States of America. His parents have died. He explained to the judge that he had only distant relatives remaining in Nigeria and had a very large number of cousins living in the United Kingdom, with two in Edinburgh and perhaps twenty in London.
4. At the hearing which proceeded on two dates, 5 and 17 December 2013, Mr Vassiliou accepted that the appellant did not meet the criteria of Appendix FM of the Immigration Rules and he argued the case under Article 8 based on the appellant's family private life.
5. Mr Vassiliou relies on two grounds of challenge to the judge's decision.
6. The first is that the judge placed undue weight on immaterial considerations stemming from her disapproval of the appellant's family members as recorded in [99] of the determination. That ground as drafted also argues that the maintenance of effective immigration control is not among the legitimate aims under Article 8(2) although Mr Vassiliou understandably no longer wished to pursue that before me.
7. The second ground argues that the judge had erred by failing to consider the role that the relatives played in the appellant's life in the United Kingdom and failed to consider whether removal of the appellant from the UK would be a disproportionate interference. It is further argued that the judge had erred by failing to make findings on the existence of a private life for the purposes of Article 8.
8. Permission to appeal was granted by First-tier Tribunal Judge Andrew. The Secretary of State has responded with a notice pursuant to Rule 24. This response acknowledges that the judge may not have specifically addressed private life, however it was clear that there were family members still in Nigeria and very unlikely that the appellant had lost all social and cultural ties with that country. The appellant was

neither working nor studying in the United Kingdom and the judge was entitled to consider the strength of any Article 8 claim lay with the relationship he had with Ms Coutinho. The judge did not consider that the existence of that relationship meant the decision was a disproportionate one and it seemed to the Secretary of State “inherently unlikely that [the judge] would have found [the appellant’s] claim to succeed on private life”.

9. I am grateful to Mr Vassiliou and Ms O’Brien for their submissions to which I have had careful regard. Candidly Mr Vassiliou accepted that the findings by the judge on credibility were properly open to her but he maintained that her approach had been unduly influenced by those findings. The witnesses had been called to demonstrate the extent of the appellant’s connections with the United Kingdom. Ms O’Brien argued that the judge had taken into account all the factors and that the determination was required to be read as a whole.
10. My conclusion is that there is no merit in either ground of challenge. As to the first which argues the judge gave undue weight to immaterial matters, the appellant chose to call a number of witnesses whose evidence was relied on to demonstrate their relationship to the appellant and thus the strength of his ties in the United Kingdom. Their evidence is set out over a number of paragraphs of the determination.
11. At [12] to [13] the judge set out the appellant’s own evidence regarding the ties that he has with the UK and his long-term plans are referred to in [14]. The evidence of the witnesses including the testimony of Ms Coutinho are set out over nine pages demonstrating the care with which the judge approached the task before her. Her findings on the evidence are set out over six pages of the determination. At [99] the conclusions on the evidence of the appellant’s brothers are set out. It is this paragraph in particular which Mr Vassiliou argues has given rise to error.
12. It has to be said the judge was clearly unimpressed by the brothers’ testimony observing that they were unhelpful about how or when they knew the appellant had not returned to Nigeria after the expiry of his visa. There is no doubt that the judge clearly had in mind the strength of the appellant’s connections in this country, in particular to his brothers and was justified in her critical analysis. Their testimony was one factor among several that were taken into account by the judge in reaching her conclusions. She was required to assess the quality and extent of the appellant’s private life built up when he was aware that he had no right to be in the United Kingdom. The brothers’ evidence was part of the overall picture and I do not consider it can be said that the judge’s focus was unduly distracted by this aspect from an assessment of the evidence as a whole when reaching a conclusion on the proportionality of the interference with the private life.
13. This leads me on to the second ground which in essence complains about the adequacy of the private life assessment and the absence of findings.

This is not a sustainable ground. As well as recording in detail the evidence that she had heard, the judge noted the submissions from the Presenting Officer and Mr Vassiliou. It was clear from those submissions that Mr Vassiliou was relying on the appellant's private life as part and parcel of his Article 8 claim which was principally focused on his relationship with Ms Coutinho. The judge made findings on what the appellant would encounter on return to Nigeria. At [98] she observed that there was evidence of the appellant's degree from Nigeria and no objective evidence that with such a degree he would find it impossible to obtain employment as he claimed. She concluded at [101]:

"There is no evidence whatsoever that any relationships which the appellant enjoys with his brothers and second cousin extend at all beyond the usual bonds of affection and shared history between adult family members. Those relationships could be continued by modern electronic means and by visits."

14. It is clear that the judge addressed the circumstances the appellant would face if returned to Nigeria and what he would leave behind. In substance the judge addressed private life and the fact that she did not specifically state that the appellant's removal would not be a disproportionate interference, I have no doubt that based on the findings which she had reached, had she done so, the result could have been any different. For these reasons I am not persuaded that the judge erred on the basis claimed and accordingly this appeal is dismissed.

Signed

Date 19 August 2014



Upper Tribunal Judge Dawson