



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/51461/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 10<sup>th</sup> July 2014

Determination Promulgated  
On 18<sup>th</sup> August 2014

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MICHAEL DIONGOLI

Respondent

**Representation:**

For the Appellant: Ms R Pettersen, Senior Presenting Officer  
For the Respondent: Mr Michael Diongoli in person

**DETERMINATION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal (Judge Pacey) who, in a determination promulgated on 10<sup>th</sup> April 2014, allowed the appeal of the Respondent against the decision of the Secretary of State to refuse his application for further leave to remain on the grounds of his private life.

2. Whilst this is an appeal by the Secretary of State, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.
3. The history can be summarised as follows. The Appellant is a national of Nigeria born on 10<sup>th</sup> October 1981. He is from the Bayelsa State in Nigeria and graduated with a BSc in Business Education Management from Niger Delta University. On 2<sup>nd</sup> September 2010 the Appellant first entered the United Kingdom with leave to enter as a Tier 4 (General) Student valid until 3<sup>rd</sup> January 2011. He was subsequently granted an extension of stay in the United Kingdom until 25<sup>th</sup> September as a Tier 4 (General) Student. Whilst in the United Kingdom he studied for a Master's Degree in International Business and Management from the University of Bradford. The Appellant finished his course in May 2012.
4. On 24<sup>th</sup> September 2012 the Appellant applied for further leave to remain based on his private life under Article 8 of the ECHR.
5. In a notice of immigration decision dated 15<sup>th</sup> November 2013 that application was refused by the Secretary of State. It was noted that he had entered the United Kingdom as a Tier 4 (General) Student on 2<sup>nd</sup> September 2010 and consideration was given to his claim to remain on private life grounds under Article 8 which fell for consideration under paragraph 276ADE of the Rules. The immigration decision set out the relevant paragraphs, noting that he had entered the United Kingdom on 2<sup>nd</sup> September 2010 and had not lived continuously in the UK for at least twenty years, therefore he could not meet the requirements of paragraph 276ADE(iii). Similarly, at the time of the application he was aged 31 and was not under the age of 18. Furthermore, he was not aged between 18 years or above and under 25 and therefore he could not meet the requirements of paragraph 276ADE(iv) and (v). In respect of the requirements of paragraph 276ADE(vi) it was considered that having spent 29 years in his home country it was not accepted that in the period of time that he had been in the UK he had lost ties to his home country. As to Article 8 outside of the Rules, the decision also considered whether the application raised or contained any exceptional circumstances, however, it was considered that the facts of the case did not merit consideration outside of the Rules. His application was therefore refused under paragraph D-LTRP.1.3 with reference to R-LTRP.1.1(c) and (d), paragraph 276CE with reference to paragraph 276ADE(iii)-(vi) of HC 395 as amended.
6. The Appellant exercised his right to appeal that decision and on 3<sup>rd</sup> December 2013 submitted Grounds of Appeal.
7. The Appellant's appeal was heard in the First-tier Tribunal before Judge Pacey on 1<sup>st</sup> April 2014. The Appellant appeared before the Tribunal unrepresented although a bundle of documents had been prepared by his former legal representatives. The judge recorded the evidence of the Appellant at paragraphs [5]-[9]. At the time of the application, it had been stated that he was in a relationship with a British citizen, however, as recorded at [5] that relationship had ended. The judge identified that the issue to be determined was whether the Appellant could demonstrate that he had "no ties, including social, cultural or family, with the country to which he would have to go

if required to leave the United Kingdom” (see paragraph [5] with reference to paragraph 276ADE [6]).

8. The judge noted his evidence that he had entered the United Kingdom in September 2010 as a student. Prior to this he had lived in Nigeria, having been brought up by his aunt (his mother’s sister) who had died. The judge made reference to a death certificate dated 29<sup>th</sup> March 2013. The judge also recorded that the Appellant had employment in the United Kingdom and also had many friends and was well established. As to his evidence concerning ties to Nigeria, it was recorded by the judge that the Appellant said that he had no family in Nigeria and that the effect of his aunt’s death was gauged by the fact that he had to take an additional year to complete his studies. The Appellant, however, said that he did have some relatives in Nigeria, namely cousins, but that he had never had anything to do with them. He said that his aunt had discouraged attempted contact with family members as a result of a form of witchcraft. The Appellant further stated he had not been able to establish contact with any other family members in Nigeria and after his graduation had lived on his own without his aunt for about six months. The judge also recorded the Presenting Officer’s submission that this had indicated that the Appellant would be able to re-establish himself in Nigeria (see [8]).
9. The judge also recorded that in this context the Appellant referred to the bad employment situation in Nigeria, citing the recent incident reported in the press of applicants who attended a sports stadium resulting in the death of some even though relatively few jobs were on offer. The judge recorded that “whether the Appellant could re establish himself in Nigeria, and his job prospects, are factors that are not directly relevant to the criteria of paragraph 276”. The judge also recorded at [9] that the Appellant had given evidence in “entirely sincere and heartfelt terms” and said that he would have no-one to go back to and that his education and life experience in the United Kingdom has shaped his life to the extent that he would be “destroyed” if he had to return to Nigeria. It was also recorded that the Presenting Officer had submitted that there was evidence that the Appellant did have ties in Nigeria given that he was able to obtain documentary evidence (the death certificate of his aunt) from a neighbour but the judge found that that alone did not suggest “ties” of any substance.
10. The judge then referred to the decision of **Ogundimu (Nigeria) [2013] UKUT 60 (IAC)** and at [11] the judge set out his conclusions. The judge accepted that the Appellant had spent most of his life in Nigeria and would not be a stranger to that country or to the people or the way of life. He had had “considerable exposure to the cultural norms of Nigeria” and spoke the language. But the judge went on to state that:
 

“Set against that, however he has no connection with any family in that country (through no fault of his own). He said that occasionally – and only occasionally – he spoke to friends in Nigeria on Facebook but his links with those friends appear to be somewhat tenuous and of a very different nature from the strength of his friendships with people in the United Kingdom. He has very strong relationships with people in this country, where he had been for a significant period of time. He has forged strong

and durable links with the United Kingdom through his educational background here, his work, his involvement with the local church and with many people. There is, in my judgment, no real continued connection to life in Nigeria. The Appellant, in my view, has only remote and abstract links to that country. In the light of all this then, I conclude that the Appellant meets the criteria of paragraph 276."

11. Thus the judge allowed the appeal under the Immigration Rules.
12. The Secretary of State sought permission to appeal that decision to the Upper Tribunal and permission was granted by a Judge of the First-tier Tribunal on 16<sup>th</sup> May 2014.
13. Thus the appeal came before the Upper Tribunal. The Secretary of State was represented by Ms Pettersen and Mr Diongoli represented himself as he did before the First-tier Tribunal. I explained the procedure that would be adopted and ensured that he understood the proceedings. I also ensured that he had paper to make any notes that he wished to make so that he could make his submissions to the Tribunal.
14. Ms Pettersen expanded on the grounds. She referred the Tribunal to the relevant paragraphs of the decision of **Ogundimu** where the Tribunal considered the issue of ties retained in a home country. For the purposes of this appeal, she submitted that the judge had failed to properly consider the decision of **Ogundimu** in the context of the facts of this particular case. Here, the Appellant had entered the United Kingdom in 2010 when aged 29 years of age and therefore the age he had left the country was of direct relevance to the issue of whether or not he had no ties. Even when the judge had heard the case, she submitted, he had spent 90% of his time in Nigeria. It could not be said that he had no exposure to cultural norms, unlike **Ogundimu** who came as a child aged 6. There were also no language difficulties for the Appellant. Thus the judge fell into material error by not properly considering those factors in the light of the conclusion reached at [11].
15. Whilst the judge found he had no family members, that was not entirely right because the Appellant on his own evidence had submitted that he had cousins and also he had occasional contact with friends on Facebook. The judge fell into error at paragraph 11 by reaching the conclusion that his links with Nigeria were "tenuous" by contrasting that with the relationships that he had with the people in the United Kingdom. However, in respect of the letters in the bundle the judge referred to, none of those friends had attended the hearing to attest to the strength of relationship. Thus it was difficult to see, she submitted, how friends in the United Kingdom could be assessed as having been strong.
16. Ms Pettersen also submitted that even on the evidence before the judge it did not demonstrate that he had lost all ties and that whilst he preferred to stay in the United Kingdom having finished his studies that was not a proper consideration of paragraph 276ADE, bearing in mind the age when he left Nigeria, and it could not be said that there were remote and abstract links as that was not supported by the evidence.

17. Ms Pettersen also submitted that a point to take into account was that the Appellant was able to contact a neighbour to obtain the death certificate very quickly (see page 16 of the bundle) and only a matter of weeks before the appeal hearing. Whilst he may not have a family member (other than cousins) he did have some point of contact in Nigeria. Thus if the judge had applied properly the decision of Ogundimu to the facts of the case the judge would not have reached the conclusion and thus the only outcome on the facts of the case could be that the appeal should be dismissed as he had not demonstrated that he had lost all ties to Nigeria.
18. I then heard from Mr Diongoli. He asked the Tribunal to take into account a number of matters. Firstly that he was able to obtain a death certificate but that did not mean that he had ties in Nigeria. He said that he did have contact with friends on Facebook but that they were acquaintances. Whilst he had conversations they did not know him and he did not know them. He stated that it was true that he had come to the UK when he was 29 years of age but there had been “challenges” in Nigeria. He said that his aunt wanted the best for him and that he was given the best opportunity to come to the United Kingdom for educational purposes. He said he took his studies seriously. As to his cousins, he said he had never been in contact with them or met them and whilst he would like to see people he was related to it was not fault that he had not. Therefore the Secretary of State was wrong to say that he had any ties. He said that he had friends with people in the church who had given him hope and that it had been shaped by the four years he had been in the country. He said he knew nothing about people in Nigeria and that he had been crying since the death of his aunt and had been unable to visit her grave in Nigeria which had upset him. He submitted that his church and his neighbours had kept him going and that he could not envisage any return to Nigeria. He submitted that he did not believe the judge made an error in the decision and the decision should be upheld.
19. Ms Pettersen by way of reply submitted that the Appellant had entered the United Kingdom as an adult having studied at university and that it was not credible that he had no friends whatsoever when he left Nigeria. The fact that he had lost his aunt did not cut off all ties to Nigeria.
20. At the conclusion of the submissions the Appellant stated that he would wish to say something further. As the Appellant was representing himself, I had no hesitation in allowing him to make any further submissions that he wished to. He said that he had gone to university in Nigeria and he had had a close life with his aunt but he had never had any ties with anybody at university, having kept himself to himself. He said his aunt had sacrificed his life for him. He said he had nowhere to live or any finances in Nigeria as there were millions of Nigerians out of work and that whilst he had a master’s degree it did not give him anything to start a life in Nigeria.
21. He confirmed that his circumstances were still the same as those before the First-tier Tribunal and that had nothing had changed since that time.

## Conclusions

22. It is common ground that the Appellant could not meet any other provisions of paragraph 276ADE given his short length of residence and his age and also because he could not meet any of the requirements of Appendix FM as he had no partner and/or child living in the United Kingdom. As the judge recorded at [5] whilst his case originally before the Secretary of State and set out in the application in September 2012 was based on his relationship with a British citizen, that had ended (see letter of 15<sup>th</sup> March 2013). Thus the relevant paragraph to the Appellant's application was that of paragraph 276ADE(vi):

“He is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the United Kingdom.”

23. I have therefore given very careful consideration to the submissions made by Ms Pettersen on behalf of the Secretary of State and the submissions made by Mr Diongoli who gave them in heartfelt and sincere terms, as he did before the First-tier Tribunal. Having done so, and considering those submissions in the context of the evidence and the decision of Ogundimu, I am satisfied that the judge fell into error in his consideration of paragraph 276ADE and the application of the principles set out in the decision of Ogundimu (Nigeria) [2013] UKUT 60 (IAC). It was recognised in paragraph 124 that the test under paragraph 276ADE(iv) is an exacting one, and that there must be a rounded assessment of all the relevant circumstances, and the assessment should not be limited to “social, cultural and family” circumstances, when considering whether a person has “no ties”.
24. The relevant paragraphs in the decision can be found at paragraphs 123-125 of that decision as follows:

“123. The natural and ordinary meaning of the word ‘ties’ imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has ‘no ties’ to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to ‘social, cultural and family’ circumstances. Nevertheless, we are satisfied that the Appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the Appellant or any ties that could result in support to the Appellant in the event of his return there. Unsurprisingly, given the length of the Appellant's residence here, all of his ties are with the United Kingdom. Consequently the Appellant

has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."
25. Whilst the judge made a self-direction to the decision of Ogundimu at paragraph [10], I accept the submission made by Ms Pettersen that the assessment of the evidence did not demonstrate that the case was considered properly in that context or in light of the decision when considered as a whole. The judge recorded that the Appellant had spent most of his life in Nigeria in a country where he would be familiar with the culture, tradition, history and had "considerable exposure to the cultural norms of Nigeria" and also that he spoke the language but nonetheless found that he had "no real continued connection to life in Nigeria" (see paragraph [11]). This appears to be based on the evidence of the Appellant that he had no family in Nigeria (his aunt having died). Whilst the judge found that he had cousins in Nigeria from his own evidence and that he had friends in Nigeria (whom he was in contact with on Facebook), the judge contrasted that with the friendships that he had made in the United Kingdom where the judge found he had been for a "significant period of time". However, the Appellant had not been in the United Kingdom for a "significant period" he had been in the UK on the temporary basis as a student since 2010 for a period of four years at the time of the hearing. Furthermore, whilst there were a number of letters in the bundle from friends and from his contacts in the church which he had begun attending in 2011, none of them had attended court to attest to the strength of the relationship and to that end the evidence was wholly untested as to the strength of those relationships.
26. In reaching the conclusions that he had "no real continued connection to life in Nigeria" and that "he had only remote and abstract links to the country" wholly failed to take into account or place weight upon a number of relevant factors established from the evidence. Those factors are as follows; the Appellant had entered the United Kingdom on 2<sup>nd</sup> September 2010 when aged 29, thus he had spent 29 years of his life in his country of nationality prior to coming to the United Kingdom and thus as Ms Pettersen submitted he had spent over 90% of his life in Nigeria. Having spent such a long and significant period of time in his country of nationality, it could not properly be said that he had no connection or no ties to life in Nigeria. The facts of the case are not like those in the decision of Ogundimu where the Appellant came to the United Kingdom at the age of 6 with his father and had spent 22 years living in the United Kingdom. Here, the evidence established that the Appellant had spent

the greater part of his life in Nigeria; he was born there, he had spent his formative years there and was educated there. He attended university in Nigeria and obtained a BSc in Business Education Management at the Niger Delta University. Thus the Appellant left his country of nationality as an adult. There are no language difficulties for the Appellant as the judge recorded and it cannot be said that after living in the United Kingdom for a period of only four years that he had lost all links to the culture, history and traditions of Nigeria which would have been formed during his upbringing and his adulthood and life in Nigeria. Applying the decision of **Ogundimu**, the exposure that he had to the cultural norms of Nigeria must be significant given the length of residence of 28 years in Nigeria and four years in the United Kingdom.

27. It is accepted that the Appellant has spent four years in the United Kingdom and during this time has established ties to the United Kingdom through his membership of the church which he entered in 2011 and the friendships that he has established. I take into account the contents of the letters, as did the judge, attesting to the friendships that he has made whilst a student, during his worship at his church and during his time in employment, but that does not mean that he has lost his connections to Nigeria, his country of nationality. The Appellant has stated that he has no family in Nigeria although his evidence before the judge was that he had cousins living in Nigeria but he had no contact with them. But that of itself is not a determinative factor when set against the other factors that have been set out above. As the decision in **Ogundimu** makes it plain, that whilst each case turns on its own facts, the test is an exacting one and there must be a rounded assessment of the relevant circumstances when considering a person has “no ties” to their country of nationality. Thus I find the judge did fall into error for the reasons given above. The Appellant has confirmed that his circumstances have not changed since the decision of the First-tier Tribunal in April and no further evidence has been filed in accordance with the directions sent with the grant of permission by either party. I have taken into account the Appellant’s submission to the Tribunal that his life is now in the UK and that has no friends whatsoever. However, the judge had found that he did have friends in Nigeria that he had spoken to on Facebook. Whilst the Appellant has said that they are not friends but acquaintances and that “they do not know me” even if it could be said that those friendships may be tenuous by reason that the Appellant has lived in the United Kingdom for four years that does not mean that he cannot re-establish friendships with those that he is in contact with or seek to do so.
28. Furthermore, it cannot be said that he has “remote and abstract links to Nigeria” and, as the Presenting Officer noted, he was able to contact a former neighbour concerning his aunt very quickly and within a short period of time before the hearing (see the re-establishment of email contact at page 16 of the bundle).
29. Thus having taken into account all those factors identified above at paragraphs 26-28, it cannot be said that the Appellant had “no ties” to Nigeria within the meaning of paragraph 276ADE(vi) and thus he cannot succeed under the Immigration Rules.



30. As set out earlier, the Appellant could not meet the other requirements of paragraph 276ADE given his short length of residence nor could he meet the requirements of Appendix FM as he had no partner and/or child living in the United Kingdom. Applying the decision in Nagre and Gulshan, there are no good arguable grounds for the Appellant's circumstances to be considered outside the Immigration Rules. The Appellant's private life claim and the consideration of those issues relevant to paragraph 276ADE(vi) take into account all the issues relevant to Article 8. In terms of the principles in Nagre and Gulshan there are no arguably good grounds for granting leave to remain outside of the Rules and in those circumstances it is not necessary to go on to consider Article 8 in a wider context.

### **Decision**

The making of the decision of the First-tier Tribunal involved an error on a point of law. The appeal of the Secretary of State is allowed; the decision of the First-tier Tribunal is set aside. The appeal is re-made as follows: appeal is dismissed.

Signed

Date

Upper Tribunal Judge Reeds