



IAC-FH-AR-V1

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

Appeal Number: DA/01549/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 September 2015**

**Decision & Reasons Promulgated  
On 8 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

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

Appellant

**and**

**CHUKWUKU DALLAS IHEKE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: In person

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State against the decision of First-tier Tribunal Judge Kinnell promulgated on 14 August 2015 in which he considered the appeal brought by Mr Iheke against the decision made by the Secretary of State that he wishes to deport Mr Iheke. In order to remain consistent with the judgment in the Tribunal below I will refer to Mr Iheke as the appellant as he was in the First-tier Tribunal and the Secretary of State as the respondent, if not the Secretary of State.

2. The appeal is against the decision to apply the provisions of s. 32(5) of the UK Borders Act 2007 in relation to this appellant following his conviction for various offences. The appellant was born on 2 October 1992 in Nigeria and is a national of that country but he came into the United Kingdom on 29 January 1994 as a visitor for six months. He was then only aged some 16 months and was of course entirely innocent of any wrong doing as far as overstaying was concerned. However, in due course his mother who brought him into the United Kingdom had an asylum appeal considered and that was dismissed in 1997.
3. The appellant has been the subject of a number of criminal convictions. They are referred to in the sentencing remarks of Her Honour Judge Karu in the Inner London Crown Court on 15 July 2013. At that stage he was before the court on an indictment containing a number of counts, some of which were not the subject of a conviction. In particular the sentencing judge took into account an attempted robbery but approached the matter upon the basis that there was no adequate evidence that the appellant had a knife in his possession. This appears to have arisen as a result of a concession that was made by the prosecuting Counsel. The offences, however, were part of a series of offences which had taken place over a period of time.
4. Broadly speaking they involve the theft of motor vehicles which had been advertised on the internet. He and another organised the theft of such vehicles by inviting the owner to visit them and whilst the owner was leaving the car, the accomplice would remove it. It was therefore a case of theft. That happened on two occasions but there was then a further and much more serious offence, and that was the attempt to rob a cab driver. It has to be said that the appellant is very well built and he shouted at the cab driver in a manner that clearly terrified him and subjected him to a considerable degree of intimidation with the intention that he would then remove the car. The appellant managed to make good his escape but before doing so stole some money from the vehicle. In addition to those offences he asked for a number of other offences to be taken into account of stealing motor vehicles.
5. The judge treated it as a spree that had been continued for a period of three or four months of the year and it followed a series of other convictions dating back to 2009 for motor vehicle related offences, handling stolen goods, burglary, possession of cannabis and driving while disqualified. The sentencing judge then went on to deal with what had occurred as a result of his convictions in March 2010 and in May 2010 and concluded with the result that he should undergo a period of 28 months as a remedial custodial sentence in a young offenders institution.
6. The appellant's offending unfortunately did not end there because he also appeared before His Honour Judge Price on 22 August 2013 at the Kingston Crown Court. There is an interesting preface to the judge's sentencing remarks here because he considered the position of the earlier

sentence and concluded, which is at page E2 of the court bundle, in these terms:

“I make it clear the Crown were quite wrong in accepting that basis of plea and had the learned judge been told the facts as I have been told them by Mr Glover this morning there is not the slightest prospect of the learned judge making the indication which he did and it would have been a starting point of four years’ custody.”

7. In the event the judge imposed a further period of imprisonment of fifteen months to run consecutively from that imposed in July the previous year. It therefore meant that the appellant was sentenced to a total period of some three years and seven months imprisonment. It seems to me that I am entitled to take into account the judge's comment in relation to the adequacy of the original sentence but overall I do not intend to depart from the fact that this appellant was sentenced to a total period of imprisonment of three years and seven months and that marks the extent of the wrongdoing with which I am concerned.
8. The appeal came before the First-tier Tribunal and the facts as I have set out were recited. No witnesses were called and the judge then proceeded to deal with what he considered to be the relevant decision. The decision that was made by the Secretary of State was a decision made on 16 July 2014 and it therefore predates changes that were subsequently made to the legislation. In the decision the Secretary of State considered deportation in the light of s. 32(5) of the UK Borders Act 2007, recited the facts of the case and the sentencing remarks of the judges to which I have earlier referred, and then gave consideration to Article 8 and in particular looked at and set out in part the provisions of paragraph 398 of the Immigration Rules as they then were. This involved a consideration of paragraphs 399 and 399A and a further consideration that it would only be in exceptional circumstances that the public interest in deportation would be outweighed by other factors.
9. The respondent went on then to consider the other factors that might apply and in particular was concerned with whether or not there were any ties with the country of the appellant’s origin. The decision maker concluded that he was not satisfied that such ties no longer existed and he concluded that there were no reasons why the appellant would not be able to establish a private life in Nigeria.
10. The situation had significantly changed when the judge came to deal with the case on 6 August 2015. The changes reflected the changes to the Rules which set out a different test. The judge, however, in paragraph 34 of his determination whilst acknowledging that the new Rules were amended on 28 July 2014 and involved the concept of a consideration of whether there were very significant obstacles to reintegration, took the view that he should approach the case on the basis of whether the appellant had any ties to Nigeria. He concluded that he did not have such ties. He did so because the appellant had come to the United Kingdom in

January 1994 at the age of 15 months with his mother and sibling; that he knew nothing of his father apart from what his mother had told him and had been brought up in the United Kingdom during his entire life. Consideration was given to the fact that he had been brought up in a Nigerian family unit but it was also the case that he had been taken into care at the age of 13 (or perhaps it was at the age of 15) and was only aware that his mother was born in Nigeria when he reached the age of 16. The judge considered evidence of a Dr Smith who described the appellant's upbringing as chaotic and that he was the subject of abuse at the hands of his mother. She was frequently intoxicated and heavily into smoking cannabis. As a result the appellant had spent at least three years in a foster home until he reached his majority.

11. On that basis the judge allowed the appeal concluding that the appellant had established he was entitled to remain in the United Kingdom by applying the provisions of paragraph 399A of the Immigration Rules. The judge was satisfied there were no ties which the appellant had maintained with his native Nigeria.
12. I am satisfied that the approach that was adopted by the judge was wrong. There were no transitional provisions which were introduced by the Immigration Rules on 28 July 2014 and it was therefore for the judge to consider the situation as it stood at that stage, not as it existed at the date the Secretary of State's decision was made. Therefore it required him to disregard the old wording and the reference to '*ties*' and to approach the case on the basis of the new Rules which included the expression '*very significant obstacles to his integration*':

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

...

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399A. This paragraph applies where paragraph 398(b) or (c) applies if

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- (a) the person has been lawfully resident in the UK for most of his life; and
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

The position of the current law is set out in the case of the Tribunal in **Bossade (Section 117A - D inter-relationship with Rules) [2015] UKUT 00415**. Suffice it to say that in a case such as the appellant, the approach that had to be adopted was that his deportation was conducive to the public good and in the public interest because in the view of the Secretary of State the offending had caused serious harm or the appellant was a persistent offender who showed particular disregard to the law and the Secretary of State in assessing that claim would have to consider paragraph 399 and 399A.

13. The law in relation to criminal deportees is also contained in Part 5A and a consideration of Article 8. Section 117A sets out the process which is to be adopted when dealing with criminal deportation and s. 117B concerns the public interest considerations applicable in all cases. To a great extent they mirror the provisions that I have already mentioned in the Immigration Rules but they have a significant difference in that these considerations now form part of Parliament's intention and are enacted by statute. They require a decision maker to consider integration into society. They assert that little weight should be given to a private life or relationships which are formed during the periods of time in which a person is in the United Kingdom unlawfully and little weight should be given to private or indeed family life established by a person at the time when the person's immigration status is precarious.
14. Accordingly there were a number of factors which have to be taken into account in dealing with this particular offender. In addition s. 117D deals with matters of interpretation whilst s. 117C deals with additional considerations when concerning foreign criminals including social and cultural integration into the United Kingdom.
15. The position as far as this appellant is concerned is to some extent mirrored by the case of **Bossade** and in particular consideration was given to the issue of integration. The evidence as far as this appellant is concerned is that whilst he had been in the United Kingdom for many years, indeed his entire life save for the first unimportant sixteen months, the issue of integration has to be taken within the context of a period of criminal offending. He had in fact been subject to a caution for theft in 2007 but it is the offending which commenced in 2009 when he was a teenager that really begins the period of criminal offending and it has to be said that during this period criminal activity there was very little evidence of his being integrated into the community.

16. However, there is a significant first hurdle that the appellant does not reach in that it appears from the opening word of paragraph 399A(a) (*'the person has been lawfully resident in the UK for most of his life'*) that the appellant does not meet that threshold. He has not been living the United Kingdom lawfully for the relevant period of time. He has never been lawfully in the United Kingdom save for the first six months. Consequently he falls at that first hurdle. Secondly, when it comes to integration, the appellant has indicated by his criminal offending that the level of integration that he has achieved so far is marred and limited by the scope of his criminal offending. When finally it comes to consider whether there are very significant obstacles in his reintegration into Nigeria the relevant and material factors are that the appellant has obviously spent at least the first thirteen years of his life within a Nigerian family unit, albeit a unit that has been living in the United Kingdom. It is not known the circumstances in which he was reared during the period of his being taken into care. He speaks English which is a language which is almost universally adopted in certainly some parts of Nigeria and that will therefore not act as a significant obstacle to his reintegration. In addition, he has received an education in the United Kingdom. Although there have been periods in which that education has obviously been made more difficult by his periods of imprisonment nevertheless he has spent significant periods of time in education in the United Kingdom which should put him in good stead and render his integration easier and more profitable.
17. Importantly, however, if the appellant is required to establish that there are very significant obstacles to his integration into Nigeria it was necessary that he provide positive evidence of this. There was no evidence as to specific difficulties that he might face on return to Nigeria. There is no evidence for example as to whether he or his mother had ever visited Nigeria. There was no evidence about other family members in Nigeria albeit distant family members. There was however evidence that his mother and his siblings were in the United Kingdom.
18. Taken overall, there is and there has to be a high threshold when considering clogs on the removal of a foreign offender where serious offending has taken place. In this case the threshold is set at *'very significant obstacles in integration'*. In my judgement having found that there was an error of law in remaking the decision and applying paragraphs 398, 399 and 399A as well as s. 117A-D I am satisfied that the appellant does not meet the high threshold that the statutory provisions now provide. As a result, the error of law made by the judge is a significant one and I remake the decision by allowing the Secretary of State's appeal against the decision in the First-tier Tribunal and substituting a decision dismissing the appellant's appeal against the decision to make a deportation order on all the grounds advanced.

## DECISION

The Judge made an error on a point of law and I re-make the decision allowing the appeal of the Secretary of State and dismissing the appeal of Mr Iheke.

No anonymity direction is made.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL