



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01980/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 November 2015

Determination Promulgated  
On 20 November 2015

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR OSEATOFOH HILARY INEOMO  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr Staunton, Senior Home Office Presenting Officer

For the Respondent: Mr Jibowu, Counsel

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

No anonymity order was made by the First-tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

**DECISION AND REASONS**

## **Background**

1. This is an appeal by the Secretary of State. For ease of reference, I refer below to the parties as they were in the First-Tier Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal. The Secretary of State appeals against a decision of First-Tier Tribunal Judge Gibbs promulgated on 18 December 2014 (“the Decision”) allowing the Appellant’s appeal against the Secretary of State’s decision dated 18 October 2014 that section 32 UK Borders Act 2007 applies and making a deportation order against him dated 16 October 2014.
2. The background facts so far as it is necessary to recite them at this stage are that the Appellant who is a national of Nigeria arrived in the UK from Kenya in 1995 aged eleven years with his sister to join his mother, stepfather and brother. He is now aged thirty years. He was granted indefinite leave to remain on 8 July 2003. He has visited Nigeria only once since his arrival here, in 2004 for his maternal grandfather’s funeral. The remainder of his family are now British citizens. The Appellant has been in a relationship with Stacey Owusu, a British citizen, for eight years. They married on 22 February 2013. At the date of Decision, she was pregnant with their first child. She has since given birth to a son, E, on 5 July 2015. E is a British citizen.
3. The Appellant has one conviction for cheating the public revenue for which he was sentenced on 21 June 2013 to two years and three months in prison. I will return to the nature and seriousness of that offence below.
4. The Judge allowed the Appellant’s appeal on human rights grounds, finding that deportation of the Appellant would be unduly harsh and that the public interest in his deportation was outweighed by his ties to the UK and that he has no ties to Nigeria.

## **Error of law decision**

5. The Respondent challenges the Decision on the basis that the Judge failed to properly consider whether deportation would have an unduly harsh effect on the Appellant’s wife by applying that test only to the impact on her and not considering it as part of a balance against the public interest in deportation. The Respondent also challenges the Decision on the basis that the Judge failed to properly consider whether it would be unduly harsh for the Appellant’s wife to remain in the UK without him. The grounds of appeal challenge also the Judge’s failure to consider whether there would be very significant obstacles to the Appellant’s integration in Nigeria. Permission to appeal was granted by First-Tier Tribunal Judge Murray on 28 July 2015 on all grounds.
6. In relation to how the test of undue harshness should be applied in the circumstances of this case, Mr Staunton relied on the Tribunal’s decision in Secretary of State for the Home Department v KMO [2015] UKUT 00543 (IAC). He accepted that the Tribunal reached the opposite view in Secretary of State

for the Home Department v MAB [2015] UKUT 00435 (IAC) but submitted that KMO is rightly decided and MAB is wrongly decided. Neither decision is binding on me.

7. Mr Jibowu did not disagree with Mr Staunton that KMO is rightly decided but submitted that the Judge in fact applied the test in the way advocated by that decision and took account of the public interest when considering whether deportation of the Appellant would have an unduly harsh impact on his wife. He relied on the Tribunal's decision in McLarty (Deportation – proportionality balance) [2014] UKUT 315 (IAC). He submitted that the Judge was entitled to find that there were compelling circumstances in the Appellant's case which tipped the public interest balance away from deportation. He submitted that this was the basis on which the Judge allowed the appeal and that the Judge was entitled to reach the outcome she did on the basis of her reasoning albeit that the reasoning was brief.
8. The decision in McLarty is an error of law decision in which the Tribunal found an error of law in the First-Tier Tribunal's decision and remitted it for reconsideration. Whilst the headnote may provide some minimal support to the Appellant, it does no more than state principles which are now readily discernible from the primary legislation and case law, particularly SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550. As SS makes clear, the Tribunal is required to consider the Article 8 rights of the deportee and in that case the deportee's children against the background of the Respondent's policy as now stated in primary legislation that deportation of foreign criminals is in the public interest. In McLarty the Tribunal found that this had not been done and remitted the appeal for re-hearing.
9. The same criticism can be made of the Decision in this case, albeit in relation to the Judge's consideration of the Article 8 factors in the context of the exceptions which were said to apply in paragraphs 399 and 399A of the Rules. The basis of the Judge's finding that deportation of the Appellant would be unduly harsh for his wife is based on findings that she is a British citizen, has all her family in the UK and no family in Nigeria, that she required monitoring of her pregnancy due to her medical condition and wishes to bring up her child in the UK where all of his biological family live. There is no reasoning for the assertion at [25] that it would be unduly harsh for her to remain without the Appellant in the UK where she would have support from her and the Appellant's family. There is no discernible balancing of the public interest in deportation of foreign criminals or consideration of section 117C (1) and (2) when considering whether it would be unduly harsh for her to accompany the Appellant to Nigeria.
10. In relation to the consideration of the Appellant's own position, the focus of the Judge's reasoning is on the ties which the Appellant has formed in the UK and not on the absence of ties with Nigeria. This case is one decided after the changes to the Immigration Rules in July 2014 and therefore the relevant test is one of whether there are very significant obstacles and not whether the

Appellant has no ties to Nigeria. There may be some difference in outcome under the former test because the emphasis is on the future possibility of integration and not the present situation. In either event, the Decision contains no statement of what the obstacles to re-integration are said to be other than that the Appellant has lived in the UK for the majority of his life, has not visited Nigeria for over ten years and was educated in the UK [18]. There is no consideration whether those amount to “very significant obstacles”.

11. For the foregoing reasons, I am satisfied that the Decision does involve the making of a material error of law. Accordingly, I set aside the Decision.
12. I indicated at the end of the hearing that if I were to find a material error of law, I proposed to go on to re-make the decision based on the submissions made at the hearing and on the evidence before me, which now includes evidence that the Appellant’s wife has given birth to their son who is a British citizen. It was agreed that all of the evidence is contained in documents before me, that there is no dispute as to credibility of the Appellant or his witnesses and that no further oral evidence is required. I have received and take into account the Appellant’s short statement updating the factual position (although I note that the version which I was given is unsigned and undated). I therefore go on to re-make the decision taking into account the findings made and all the evidence before me.

**The relevant legal provisions**

13. The Rules applicable to this case are as follows:-

**Deportation and Article 8**

A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom’s obligations under Article 8 of the Human Rights Convention;
- (b) ...

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

- (a) ...
- (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 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.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –
- (a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and
    - (i) the child is a British Citizen; or
    - (ii) ...
      - (a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
      - (b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or
  - (b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and
    - (i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
    - (ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
    - (iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.
- 399A. This paragraph applies where paragraph 398(b) or (c) applies if –
- (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.

14. I am required to have regard to section 117. The provisions of that section so far as relevant to this case are:-

**“PART 5A Article 8 of the ECHR: public interest considerations**

**117A Application of this Part**

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
- (a) breaches a person’s right to respect for private and family life under Article 8, and

- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
  - (a) in all cases, to the considerations listed in section 117B, and
  - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

**117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to –
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner,  
that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.
- (6) ...

**117C Article 8: additional considerations in cases involving foreign criminals**

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where –
  - (a) C has been lawfully resident in the United Kingdom for most of C’s life,
  - (b) C is socially and culturally integrated in the United Kingdom, and
  - (c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C’s deportation on the partner or child would be unduly harsh.
- (6) ...
- (7) ...

#### **117D Interpretation of this Part**

- (1) In this Part –
  - “Article 8” means Article 8 of the European Convention on Human Rights;
  - “qualifying child” means a person who is under the age of 18 and who –
    - is a British citizen, or
    - has lived in the United Kingdom for a continuous period of seven years or more;
  - “qualifying partner” means a partner who –
    - is a British citizen, or
    - who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).
- (2) In this Part, “foreign criminal” means a person –
  - (a) who is not a British citizen,
  - (b) who has been convicted in the United Kingdom of an offence, and
  - (c) who –
    - (i) has been sentenced to a period of imprisonment of at least 12 months,

- (ii) has been convicted of an offence that has caused serious harm, or
- (iii) is a persistent offender.”

### **Discussion of the evidence**

15. The Appellant’s wife was born in the UK and has never visited Nigeria. Her evidence is that all her family are in the UK. She works in the UK although is currently on maternity leave. She would be concerned about going to live in Nigeria with her husband and child because of the risk of terror attacks, particularly because they would be singled out as foreigners due to their English accent. She says that the socio-economic environment is alien to her and the Appellant.
16. The Appellant’s wife was diagnosed with “borderline tumour of the ovary” in 2009. She has since undergone fertility saving surgery. The medical evidence is that she continues to have regular follow up to monitor her progress. The latest evidence is a letter from her consultant dated 7 November 2014 in which he opines on the prospect for her treatment if she were to move abroad. He says that “from her medical point of view she would be best served by staying in the country and if however she decides to relocate the advice would be to a country where there are the resources and expertise for management of her on-going clinical care”. Her follow up treatment appears to be blood tests to check for further tumours and CT scans. There is no evidence that such treatment is not available in Nigeria. The Appellant’s wife says that she would like to have more children within a short timescale because of the gynaecological complications.
17. The couple now have a son who is aged about four months. There is no dispute that the child is British. The child is obviously too young to have formed any independent life beyond his mother and father. I deal below with his best interests.
18. The Appellant has been in the UK since the age of eleven years. He received his secondary education in the UK up to “A” level standard. He appears to have continued his education thereafter to some limited extent and has obtained a certificate of higher education in law in 2007. He had some sporting prowess which is evidenced by various certificates in the Appellant’s bundle.
19. I do not downplay the Appellant’s contribution to the voluntary sector. His work with young people to deter them from committing criminal offences is laudable. I note also the letters of support in particular from the Chaplain at HMP Brixton praising his behaviour whilst in prison and that he received a certificate in relation to his exemplary behaviour. He has also worked with a charity called Gharweg since his release and they have written in his support as have BBC News in relation to his work with them.



20. The Appellant relies also on his voluntary contributions to UK society in the period before his conviction. Although there is some evidence of the work which he carried out in that period, that evidence is limited in terms of the nature and extent of that work and the assertions made by him may be overstated. There is for example a lack of evidence in relation to the setting up of SkillsPlus Project which the Appellant claims to have set up, securing funding from Jobcentre Plus. The work experience detailed in his statement appears to have been mainly as a salaried employee albeit often working with disadvantaged people and to have been temporary in nature. I note that there is reference in the OASys report to the Appellant being in receipt of Job Seekers Allowance at the time of his conviction and to his financial circumstances being one of the drivers of his offending.
21. In relation to the Appellant's family ties to the UK, his evidence is that all his known family are in the UK. He indicates in his statement that he has at times been estranged from his family due to his relationship with his wife and his religious beliefs which are Christian rather than Catholic. It is clear that the Appellant has strong religious commitment and has been baptised since his release from prison. The Appellant's evidence in relation to his family ties is contradictory in parts. He claims in his statement to be estranged from his family but goes on to say that his younger siblings look to him to be there when "sensitive issues in the family arise". He indicates that, following his release from prison, he is intent on rebuilding his family ties. There is no statement from his mother, stepfather or siblings and they did not give evidence at the hearing before the First-Tier Tribunal.
22. The Appellant's father apparently remains in Nigeria but he has no contact with him which is understandable in light of the fact that his mother left due to suffering domestic violence. The Appellant claims to have suffered sexual abuse by an employee when living with his grandparents in Nigeria before coming to the UK and therefore has bad memories of living there. His grandparents are now deceased. He therefore apparently has no family ties in Nigeria.
23. The Appellant's wife says that she and the Appellant are funded by her employment for the local authority and have no savings so that there would be no financial support for the Appellant if he were to be deported. The Appellant says that his stepfather and mother have always been in full time employment and it is reasonable to expect that, if ties with his family are re-established, they could provide some financial support to him whilst he establishes himself in Nigeria.
24. The Appellant's offence is described in the Crown Court sentencing remarks as one involving fraudulent VAT claims which started in July 2007 and continued to August 2011. The Appellant assisted the ringleader to recruit a number of people into the fraud. He was described by the Judge as "the second in command". Although the Appellant appears to have profited only to a limited

extent, it was found that he was “clearly aware” of the fraud. The Judge also noted in sentencing that the Appellant by his own admission was “an essential part of the whole scheme” and the Judge also concluded that the Appellant would have continued with the fraud if the ringleader had disappeared albeit would have found it very difficult to do so. The overall gain to the fraudulent enterprise was in excess of £250,000. In sentencing, the Judge noted as follows:-

“Ineomo, you too are a good character and again, I accept that prison will have an enormous impact upon you and your wife and your soon to be born child. I accept that you have carried out much good work in the community and that there must be due credit. As I’ve already said, I accept the submission that I should not put you in the same category as Matthew Ekuku and I state that I take as the grid that’s appropriate for you, a fraud that is fraudulent from the outset and either a fraud carried out over a significant period of time or multiple frauds. I do not put you in the same professional category as Matthew Ekuku. The starting point I take in your case is one of two and a half years’ imprisonment, that is towards the lower end of the range and I put you towards the bottom of that because I accept that yours was a subsidiary role and as I’ve already said, I doubt that you would have been able to carry out this fraud at all if Matthew Ekuku had for some reason (*sic*). I will also give you some credit for your good character but I can give you no credit for a guilty plea and therefore the sentence you must serve is two years, three months. You too will be banned from being a director of a company, but in your case, the period will be one of five years.”

25. Although the OASys assessment as to risk of re-offending is low and the Appellant expresses remorse and indicates in his statement that he has learned his lesson, there are indications in the OASys assessment that the Appellant does not accept responsibility for his crimes, continues to maintain that he is innocent and was duped by others and fails to recognise the consequences of his actions. There are also indications in that assessment that the Appellant’s financial circumstances formed a large part of his motivation for the crime and that should he continue to be unemployed and associate with the peer group with whom he associated in the past, he might well re-offend (see in particular sections 2 and 4-7 of the report).

### **Unduly harsh**

26. I deal first with the impact of the Appellant’s deportation on his wife and child. There is no dispute that the Appellant’s relationship is genuine and subsisting. It began at a time when he had indefinite leave to remain. It is common ground that the Appellant’s relationship with his wife and child would amount to an exception to the public interest in deportation if the effect of deportation would be unduly harsh. In considering the impact of deportation on them, I am also required to consider the best interests of the Appellant’s child. Those are a primary but not the primary consideration and can be outweighed by other factors in the public interest.
27. The Appellant’s partner and child are British citizens. It is therefore evident that neither can be deported with the Appellant and to that extent whether they

would go to Nigeria with them would be a matter of choice. I readily accept that the best interests of a child who is of the young age of the Appellant's son are to be with both his parents. It matters not to him at his age whether that is in the UK or Nigeria although obviously if his parents remain in the UK with him then he would also have access to his extended family. I also accept as he grows up that his best interests lie in remaining in the UK where most of his extended family live and in receiving the education to which he is entitled as a British citizen.

28. I also readily accept that the Appellant's wife would prefer to remain in the UK where she has family support and employment. However, the issue of whether it would be unduly harsh for them to accompany the Appellant to Nigeria if he were deported is not a matter of mere hardship. Whether KMO or MAB is followed, the issue is whether the consequences would be inordinately or excessively severe or bleak. If I apply KMO the impact is to be weighed against the public interest in deportation which requires consideration of the nature and seriousness of the Appellant's offence. If I apply MAB the consideration is only the impact on the Appellant's wife and child.
29. I have reached the conclusion that KMO is to be preferred and Mr Jibowu did not suggest otherwise. If the Appellant and his wife were to both go to Nigeria, their son would obviously accompany them. He would then lose immediate contact with his extended family in the UK but the Appellant's wife could continue to visit the UK with him. Admittedly, he would lose the benefit of education in the UK but that would be a matter of his parent's choice since he could not be compelled to leave. In relation to the Appellant's wife, English is widely spoken in Nigeria. The Appellant's wife has a job in the UK working for a local authority and will therefore have skills which are transferable in Nigeria. The Appellant has worked in the UK and there is no evidence that he would not be able to find work in Nigeria. There is no evidence that the Appellant's wife's medical treatment could not be obtained in Nigeria and, if it were not or were unaffordable or not as good, it would be open to the Appellant's wife to come to the UK to visit her family and attend medical appointments here. I reiterate however that this would be a matter of choice for the Appellant's wife as neither she nor their son could be required to accompany the Appellant on return.
30. I recognise also that the Appellant's wife would prefer to remain in the UK where she has family and would prefer to bring up her child who is a British citizen within the education system here. I recognise also that it is in the child's longer term best interests to be educated in the UK. I have therefore also considered whether it would be unduly harsh for her and the Appellant's son to remain in the UK without him if they choose not to leave. The evidence is that the relationship is genuine and subsisting and the couple have been together for a number of years. The relationship was formed at a time when the Appellant was in the UK lawfully and his immigration status was not precarious (as otherwise the exception in paragraph 399 could not apply at all).

However, the Appellant's wife is in employment in the UK and can therefore support herself and her child (there being no evidence that the Appellant is in gainful employment and supporting the family). The Appellant's wife's family are in the UK and could support her if the Appellant were deported and she did not accompany him.

31. On the basis that the impact on the Appellant's wife and son has to be balanced against the public interest in deportation when considering whether that impact would be unduly harsh and applying section 117C (1) and (2), I am required to have regard to the public interest in deportation of foreign criminals and to have regard also to the nature and seriousness of the offence. As noted in SS at [54]:-

“...the more pressing the public interest in removal or deportation, the stronger must be the claim under Article 8 if it is to prevail. The pressing nature of the public interest here is vividly informed by the fact that by Parliament's express declaration the public interest is injured if the criminal's deportation is not effected. Such a result could in my judgment only be justified by a very strong claim indeed”

32. In the Appellant's favour, he has committed no offences other than the index offence. However, I have regard to the fact that the offence was committed over an extended period of four years. It was an offence committed against the public revenue involving a substantial amount of public money albeit the Appellant did not personally benefit significantly. I also have regard to the OASys report referred to at [25] above. Although the report finds that the Appellant is at a low risk of re-offending, that is based on a points scoring exercise and the narrative does not paint such a positive picture. In his statement, the Appellant does recognise the adverse consequence of his offending and remorse for his actions but that is in the light of action by the Respondent to deport him. I also take account of the need to deter other foreign criminals from committing similar offences (see N (Kenya) v Secretary of State for the Home Department [2004] EWCA Civ 1094. The fact that the Appellant is a very low risk of re-offending does not mean that it is not in the public interest to deport: Gurung v Secretary of State for the Home Department [2012] EWCA Civ 62.
33. Balancing the impact of deportation of the Appellant on his wife and child against the public interest in deportation of the Appellant as a foreign criminal and having regard to the nature and seriousness of the Appellant's offence, I find that it would not be unduly harsh for the Appellant's wife and child to remain in the UK without him or to return to Nigeria with him should they choose to do so. The consideration is more finely balanced if I am required to consider the impact without reference to the public interest balance and based only on the impact on the Appellant's wife and child. However, on the basis that the threshold for what is unduly harsh is a high one, I am satisfied that it would not be unduly harsh for them to accompany him to Nigeria should they choose to do so or remain in the UK without him.

**Very significant obstacles**

34. I turn now to consider the Appellant's case under paragraph 399A of the Rules in relation to the impact on his private life. There is no dispute that the Appellant meets paragraph 399A (a). He has lived in the UK for twenty years from the age of eleven years. In terms of his social and cultural integration in the UK, the evidence is as follows. He received his secondary education in the UK. He spent his first ten years in Nigeria. There is some evidence that he has been employed intermittently in the UK and that some of that employment has been in the furtherance of good causes. He attends church regularly with his wife and representatives. Before his conviction and since his release from prison, he has been involved in some voluntary work. All his family with whom he has retained contact are in the UK. There is some evidence that he has at times been estranged from his family in the UK and it is not clear what the current position is but he now of course has his own family and there is evidence of ties also with his wife's family.
35. In terms of obstacles to his reintegration in Nigeria, his relatives there are dead with the exception of his father with whom he understandably has no contact and no wish to make contact. Balanced against that, though, the Appellant speaks English which is a main language in Nigeria. He had the ambition and aptitude to find work in the UK and has skills in recruitment, mentoring and other areas of work which would be transferable in Nigeria. There is no evidence that he would not be able to continue to practise his religion in Nigeria.
36. The high point of the Appellant's case in relation to the difficulties which he would face if deported to Nigeria is contained in paragraph [3] of the Appellant's witness statement as follows:-
- "My close extended family members are all in the UK. I have never had any contact with my biological father, because he was domestically abusive to my mother, hence why she fled Nigeria. In my early years, I was temporarily left in the custody of my maternal grandparents Mr and Mrs Ineomo in Nigeria; who are now both deceased. At this time, when I was about 7 years of age, I was sexually molested by a "house-help" employee to the family. I suffered in silence until it was discovered and she was subsequently sacked. I do not have any pleasant memories of my early life in Nigeria and do not know any family there. All my family connections are in the UK and my only language is English".
37. I accept that the Appellant has lived in the UK for a substantial period and enjoyed his secondary education here. I accept also that all of his family ties are in the UK although as I note above his evidence is that the relationship is precarious due to a difference in religious beliefs and a disagreement about his choice of wife. I note the Appellant's employment in the UK but, as a young adult male, there is no reason why he could not find employment in Nigeria. He speaks English and there is therefore no language barrier on return. Whilst he has not lived in Nigeria for some time, he would be aware of the Nigerian

culture from his formative years spent there. Re-integration is a forward looking assessment and is not based on the current position. Simply because he has not lived in Nigeria for a long period and has no family there does not mean that he could not reintegrate. Furthermore, the factors which the Appellant prays in aid as obstacles to his reintegration may very well be difficult to surmount. However, the issue is whether they can be said to be very significant. On the basis of the evidence before me, I am satisfied that there are not very significant obstacles to his reintegration in Nigeria.

**Compelling circumstances**

38. For the foregoing reasons, I find that the Appellant does not fall within one of the exceptions to the presumption of deportation contained in paragraph 398 of the Rules. The Appellant can only succeed therefore if there are compelling circumstances over and above those already considered under paragraphs 399 and 399A of the Rules which, when balanced against the public interest, would render the decision to deport disproportionate. There is nothing in the evidence before me which suggests that there are circumstances beyond the Appellant's relationship with his wife and child, his personal circumstances in the UK and difficulties which he would face in Nigeria. I have already considered those circumstances in detail and reached the conclusion that, when balanced against the public interest, those are not sufficient to outweigh the public interest. I find that there are no compelling circumstances over and above the factors already considered which justify allowing the Appellant to remain in the UK.
39. It follows that I am satisfied that the Respondent's decision to deport the Appellant is proportionate.

**DECISION**

**I dismiss the appeal under the Rules and on Article 8 grounds**

Signed 

Date 19 November 2015

Upper Tribunal Judge Smith