Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11786/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 May 2015	**On 11 May 2015**
Prepared 5 May 2015	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

OYEKUNLE OYEKALE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, born on 16 March 1977, appeals with permission, against a decision of Judge of the First-tier Tribunal K S H Miller, who, in a determination promulgated on 20 October 2014 dismissed his appeal against a decision of the Secretary of State made on 4 March 2014 to refuse his application for leave to remain and to make a decision

that he should be removed under the provisions of Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant was born in Ghana. His mother is Ghanaian and his father is Nigerian. He attended school in Ghana and then studied at the University of Ghana, from which he graduated with a first-class honours degree in 2004.

3. He stated that after university he decided to travel to Nigeria to try to establish a proper relationship with his father who was living there. He was unable to do so. In 2007 he returned to Nigeria and started working at the British Council, receiving a full-time post in 2009. That job ended in 2010 and he then obtained a scholarship to study at the University of Southampton. In February 2012 he was granted limited leave to remain until 14 February 2014 as a Tier 1 Highly Skilled Post-Study Migrant.

4. The reasons for the refusal were set out in a letter dated 4 March 2014. It was pointed out that the appellant could not meet the requirements of Rules 276ADE(1) of the Immigration Rules in that he had not lived in Britain continuously for twenty years. Moreover at the time of his application he had been aged 36 and was not under the age of 18 or aged between 18 and 25 and therefore could not meet the requirements of Rule 276ADE(1)(iv) and (v). It was noted that he had stated in his application form that he had family members living in his home country and it was not accepted that he had lost ties with his home country, and therefore it was not considered that he could meet the requirements of Rule 276ADE(1)(vi). Moreover it was considered that there were no exceptional circumstances which would mean that he should be granted leave to remain under the provisions of Article 8 of the ECHR.

5. Judge Miller heard evidence from the appellant and took account of relevant case law including **Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 00060 (IAC)** and **Shahzad (Article 8: legitimate aim) [2004] UKUT 00085 (IAC).** He noted the claimant did not know where his parents were and that he had left Ghana in 2007 and that he stated that he had two sisters and two brothers but did not have contact nor did he have contact with his uncles.

6. He had claimed that when he had gone to Abuja in 2007 he had lived with “a good Samaritan” and that he had worked at the British Council as a UK education project assistant before moving on to work as a learning development coordinator.

7. In paragraph 17 onwards of the determination the judge set out his conclusions. He noted the short time the appellant had lived in Britain and accepted that he was well regarded here but pointed out that he had no family here and had spent all but the last four years living in West Africa where he had numerous family members. The judge went on to say:-

> "I do not accept that the fact that he grew up in Ghana and accordingly has a 'dual nationality' prevents him from being able to integrate into Nigerian society. His own sister lives there and, in his evidence before me, he stated that he lived in Abuja where he worked for the British Council from 2007 until 2010. There is no evidence before me whatsoever to show that Ghanaians experience difficulty in living in Nigeria, and his own history belies his assertion that it was a problem."

8. He went on to say that he found the appellant less than candid in some evidence that he gave and pointed to the appellant's vagueness about his contact with his own father.

9. He concluded that the appellant was not entitled to leave to remain.

10. The grounds of appeal stated that the judge had not properly considered the Article 8 rights of the appellant. In granting permission to appeal Judge of the First-tier Tribunal Landes referred to the decision in **Ogundimu** and stated that it was arguable that the judge had erred in law by failing to give proper consideration to the evidence about the absence of ties to Nigeria or in his interpretation of the term "ties". On that point he granted permission to appeal, stating that he was granted permission in relation to the judge's interpretation of paragraph 276ADE(1)(vi).

11. At the hearing of the appeal before me the appellant was unrepresented. He asserted that he had no ties in Nigeria and had lived all his life away from that country and that that his mother's father did not live in Nigeria. He referred to the life which he had built up here over the last four years.

12. In reply, Mr Clarke referred to the determination of the Tribunal in **Bossadi (Paragraph 276ADE; suitability; ties) [2015] UKUT 00042 (IAC)**. He emphasised that in that determination the Tribunal had made it clear that if ties could be renewed it could not be said that an appellant had no ties with their own country. He referred to the fact that the appellant had only arrived in Britain in 2010 having spent the previous three years in Nigeria where he had been able to find work and indeed had been provided with accommodation. He referred to the lack of clarity in the appellant's evidence relating to his relationships with his relatives and pointed to the relevance of Section 117B of the Nationality, Immigration and Asylum Act 2002 and the importance of the public interest in maintaining immigration control. He stated that it was clear that the appellant did not meet the terms of the Immigration Rules and it was appropriate that he should be removed.

13. The appellant in reply stated that Mr Clarke was wrong to allege that he had dual nationality but stated that in any event he had difficulty in establishing himself in Nigeria and when he had arrived there he had had to live without accommodation for three days.

14. I consider that there is no material error of law in the determination of the judge. Clearly the appellant has only lived in Britain for four years and entered as a student. As such he was aware that he was not entitled to remain indefinitely. Moreover the reality is that it cannot be said that he has no ties with the country of his nationality. He lived and worked there for three years before coming to Britain as a student, leaving Nigeria as recently as 2010. When he last entered Nigeria he was able to find steady work and there is no reason why he should not be able to do so in the future. Moreover, it cannot be said that the removal of the appellant would be a disproportionate interference with his rights to private life, given that although he has worked here and has made friends in the community and may well have undertaken charitable work here, there is no reason why he would not be able to develop private life with friends and charitable work in Nigeria.

15. I therefore conclude that the determination of the judge dismissing this appeal both under the Rules and on human rights grounds shall stand.

Notice of Decision

The appeal is dismissed.

Signed Date

Upper Tribunal Judge McGeachy