



IAC-FH-AR-V2

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

Appeal Number: OA/08658/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 July 2015
Prepared 2 July 2015**

**Decision & Reasons Promulgated
On 17 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**HENRY TURTON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ECO - LAGOS

Respondent

Representation:

For the Appellant: Miss V Akintola, Legal Representative, Harrison Morgan Solicitors

For the Respondent: Mr T Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 3 June 1994, appealed against the Respondent's decision, dated 26 February 2013, to refuse entry clearance with reference to paragraph 297 of the Immigration Rules HC 395.
2. The appeal together with appeals by a sibling (Edwin) and his mother (Emily), came before First-tier Tribunal Judge S Russell (the judge) who, on

3 April 2014, dismissed the Appellant's appeal under the Immigration Rules and, although the matter was disputed, also under Article 8 of the ECHR.

3. Permission to appeal that decision [D] was first refused by First-tier Tribunal Judge McCarthy on 5 September 2014 but allowed by Upper Tribunal Judge Coker on 29 January 2015.
4. In her opening submissions Miss Akintola accepted that the judge had made a finding on the Appellant's failure to meet the requirements of paragraph 297(ii) of the Immigration Rules. It is correct that [D23] the judge concluded that the second Appellant (this Appellant) was, at the date of application, over the age of 18 and therefore could not succeed under paragraph 297 of the Rules. It followed that grounds 1-3 do not disclose any arguable error of law. In any event the fact that this Appellant had previously applied, when under 18 years of age, was immaterial.
5. Miss Akintola argued that the judge had failed to consider the claim under Article 8 of the ECHR. At D3, D25 to 28 the judge referred to the Appellants ("Appellants").
6. It is plain therefore from the outset the judge was not confining the issue of Article 8 to anything other than all the Appellants. The judge theretofore concluded at D28 by saying:

"I start my enquiry by looking at the Appellants' own evidence. I accept that the first Appellant (Mrs Emily Turton) and Mr Turton (the Sponsor) are in a genuine and subsisting marriage. I note the efforts he is making to reunite with his wife and children. Nonetheless the cause of the separation of the family is not the ECO's decision but the voluntary decision of Mr Turton to migrate to the UK. In the intervening period, the Appellants have lived without him and, in the case of the second (this Appellant) and third Appellants, grown up without the daily guidance of a father. I find, therefore, that while the ECO's decision represents an interference with their right to respect for family life, it is not so serious as to engage with Article 8 ECHR." (my parenthesis)
7. The judge at [D27] in the decision had set out with reference to Huang [2007] UKHL 11 and Razgar [2004] UKHL 27 the staged questions posed in Razgar. It was therefore clear that the judge found that the first question was answered in the affirmative but the second question was answered in the negative. It followed there from that the remainder of the questions posed in Razgar did not fall to be considered.
8. With the help of Miss Akintola I examined the original grounds of appeal to the First-tier Tribunal from the Respondent's decision. It is plain that there are two references in the most generic sense to Article 8 ECHR. I was therefore satisfied that as matter of approach the judge considered, as he was required to do, Article 8 of the ECHR insofar as it is was relevant to the each of the three Appellants before him including this Appellant.

8. I further considered the evidence made available which, in fairness Miss Akintola she may only have had a part: It may be the entirety of the evidence but I cannot tell. The evidence included a statement from the Sponsor in the UK, Mr Turton, making plain his wish to be reunited with his wife. Similarly there was a statement from Mrs Turton, again speaking to her desire to be with her husband. What is not revealed on the file are statements, letters or other information from or about the second Appellant (this Appellant) or the third Appellant touching upon either the impact of separation as between themselves and/or their parents. Nor was there evidence from their parents on the implications of any separation between them and their children. I examined the case files and did not find any related documents. In the circumstances Miss Akintola, but this is no criticism of her presentation, was unable to alight upon material evidence which could have informed and provided any assistance in assessing the judge's decision consideration on Article 8 as applicable to this Appellant or his sibling or his parents.
9. In the grant of permission Upper Tribunal Judge Coker refers to the consideration of Article 8 by the judge as arguably woefully inadequate. She also referred to the judge failing

“... to consider the intra-family relationships and the effect on the sibling who has been unsuccessful under the Immigration Rules. It is arguable he makes no adequate analysis of family life and that he gives no reasons for his findings that the interference in family life is not sufficiently grave to engage Article 8.”
10. It seemed to me Upper Tribunal Judge Coker's remarks are factually correct in some respects but the problem was that there simply does not appear, nor was I taken to any, to be evidence in relation to such family life which would have been pertinent to an assessment of family life or in intra family relations. Thus to criticise the judge on the basis of the insufficient consideration seemed to be unsustainable given the voluminous case files and lack of evidence in his case .
11. For my part I would have found it more helpful for the judge to have provided more extensive reasons but it seemed to me, on the evidence to which I have been taken to and contained with the case files, there simply was not the evidence before the judge to make a positive finding under Article 8 ECHR grounds in relation to this Appellant.
12. This Appellant fell by the wayside when the appeals of his mother and sibling succeeded under the Rules. Perhaps the danger of his failing under the immigration rules because of his age should have been foreseen and a fallback position prepared based on Article 8 ECHR with significant evidence relating to the impact of separation and other exceptional circumstances, bearing in mind this Appellant was not a child. It is unfortunate that a difference should have arisen when the other Appellants succeeded under the Rules but that was something the

Appellant's representatives were in the best position to judge and take steps accordingly.

13. I am satisfied that First-tier Tribunal Judge S Russell made no arguable error of law in the consideration of this Appellant's claim under Article 8 of the ECHR.

Notice of Decision

14. The Original Tribunal decision stands. The appeal is dismissed.

Anonymity Order

15. No anonymity order was requested nor do I find none is appropriate.
16. The appeal has failed and therefore there is no award of costs to be made.

Signed

Date 10 July 2015

Deputy Upper Tribunal Judge Davey