



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/05860/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On February 23, 2016

Decision & Reasons Promulgated
On March 1, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

M O M
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Yekini (Legal Representative)

Respondent

Mr Richards (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a Nigerian national. The appellant entered the United Kingdom in January 2008 by air on a student visa that was valid until January 1, 2010. He applied to extend his stay as a Tier 4 student and this was granted until May 23, 2011. On September 29, 2012 he applied for further leave to remain but this was refused. On November 11, 2013 he claimed asylum and was served with form IS151A as an overstayer. He was interviewed on March 7, 2015 but his claim was refused on all grounds on March 12, 2015.

2. The appellant appealed on April 2, 2015 against that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The matter was heard by Judge of the First-tier Tribunal Pacey (hereinafter referred to as "the Judge") on July 30, 2015 and in a decision promulgated on August 19, 2015 she refused his application on all grounds.
4. The appellant applied for permission to appeal on September 3, 2015 submitting the Judge had erred in her approach to private life. He submitted the Judge should have dealt with the appellant's private life claim primarily under paragraph 276ADE and then, if appropriate, considered it under article 8 ECHR. The Judge did not consider paragraph 276ADE HC 395 and thereby erred.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Brunnen on September 21, 2015 on the ground argued.
6. The matter came before me on the above date and I heard submissions from both representatives. At the conclusion of those submissions I reserved my decision.
7. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

8. Mr Yekini relied on the grounds of appeal and submitted the Judge had erred because she had not considered the appeal under paragraph 276ADE HC 395. He submitted the appellant's medical condition amounted to very significant obstacles and the Judge erred by not considering the same. He further submitted the Judge should have made further enquiries about the appellant as the medical report stated he suffered from memory loss. As he was unrepresented it was incumbent on the Judge to ensure the appellant's case was presented fairly even if that meant adjourning for more evidence. The Judge had no regard to the fact he would be unable to pay for his medical treatment in Nigeria. The Judge failed to properly consider the appellant's family life and the fact he was bi-sexual.
9. Mr Richardson accepted the Judge did not directly address paragraph 276ADE but submitted that in view of the fact she had considered the wider ambit of article 8 then there was no material error. The test under paragraph 276ADE HC was higher than the test under article 8 and the fact the Judge found article 8 was not engaged (having already dismissed his asylum claim) meant there would be no material error. In any event there was no evidence to show he was receiving any ongoing medical evidence. He had been treated and the doctor referred to a check up but he was not prescribed any medication. In any event there were hospitals and doctors in Nigeria. There was no error in law.
10. I reserved my decision.

DISCUSSION AND FINDINGS

11. In considering whether there has been an error I have had regard to my record of proceedings, the grounds of appeal, the rule 24 response and submissions.
12. Mr Yekini's grounds of appeal are correct in that the Judge did not deal with paragraph 276ADE HC 395. However, as the Judge did consider the appellant's appeal under article 8 the Judge's omission does not mean there is an error in law.
13. Most private life appeals that come before this Tribunal centre around the fact a judge has considered paragraph 276ADE but then did not consider the appeal under article 8 ECHR. The argument being that if there are matters that did not meet the test of "very significant obstacles" in paragraph 276ADE then consideration could be made made under the wider test of article 8 ECHR.
14. The Judge was clearly aware of the appellant's medical background as she referred to this in her decision. She noted the letter from Dr Okirie and this was the only real medical evidence before her. When seen by the doctor in 2014 he was in a wheelchair following a road traffic accident but he was now able to walk with the assistance of crutches. The Judge considered his medical condition in paragraph [46] of her decision and noted that he had received minimal treatment for polio which he had been born with. The Judge noted he did not appear to be receiving medical treatment here. She noted there was no evidence he would die without treatment or that he could not continue his rehabilitation in Nigeria. He had received £11,000 compensation and the Judge concluded that if funds were needed then he could use some of those monies.
15. The Judge considered his personal circumstances and had regard to his medical circumstances. All these factors were matters she would have had regard to when considering paragraph 276ADE and in particular whether there were very significant obstacles in him integrating back in Nigeria. Mr Yekini submitted the defendant was slow in thought process but in the absence of further medical evidence the Judge had little to go on, as do I.
16. The Judge therefore identified nothing that could be argued would amount to very significant obstacles to him integrating in Nigeria and therefore based on the evidence presented I am satisfied that there was no material error.
17. I am satisfied the Judge would have dismissed any 276ADE application based on the findings made and in those circumstances her omission cannot be material.
18. Mr Yekini raised issues of family life but these were not matters raised in the permission to appeal. He raised the appellant's sexuality but these were not raised in the grounds of appeal and I find no reason to consider this argument further.

DECISION

19. There was no error in law. I uphold Judge of the First-tier Tribunal Pacey's decision and I dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis