IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10674/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 December 2015	**On 6 January 2016**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

DAVID OPEYEMI ALAWODE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms N Nnamani, of Counsel instructed by ILAS (LLP)
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 7 September 1993 who entered Britain as a visitor on 4 November 2004 and overstayed after his leave expired in February 2005. On 20 May 2013 he applied for indefinite leave to remain. That application was refused and a decision was made to remove him to Nigeria. The appellant appealed. His appeal was dismissed by Judge of the First-tier Tribunal Youngerwood in a determination promulgated on 3 October 2014.

2. An application for permission to appeal was refused in the First-tier but then granted in the Upper Tier by Deputy Judge of the Upper Tribunal

Archer on 30 March 2015. The appeal then came before Deputy Judge of the Upper Tribunal Juss who set aside the decision of Judge Youngerwood and remade the decision allowing the appeal. The basis of his decision was that he incorrectly believed that the appellant had lived in Britain for 22 years.

3. On application to the Court of Appeal the decision of Deputy Judge of the Upper Tribunal Juss was set aside and the matter remitted to the Upper Tribunal.

4. In these circumstances the appeal came before me to determine whether or not there was a material error of law in the decision of Judge Youngerwood.

5. As stated above the appellant arrived in Britain in November 2004. At that date he was aged 11. He entered Britain with his brother and since his arrival has been looked after by his uncle and aunt ostensibly on the basis that his parents had been in financial difficulties in Nigeria. The appellant's younger brother, with whom he had arrived in Britain, has now been granted indefinite leave to remain.

6. Judge Youngerwood noted that Ms Nnamani, who appeared before him had argued that the appellant "has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK" and that she had relied on the decision on **Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60** where it had been held that the word "ties" imported:

> "... a contact involving something more than merely remote and abstract lengths to the country of proposed deportation or removal. It involves there being continued connection to life in that country; something that ties a claimant to his or her country of origin".

7. The Judge noted that the appellant in **Ogundimu** had left his country of origin at the age of 6 and had been in Britain for 22 years. He stated that each case had to turn on its own facts and that consideration of relevant circumstances should conclude consideration of the age that an appellant had left his country, the exposure he had had to the cultural norms of that country, whether he spoke the language and the extent of family and friends that the person had in the country to which he was being removed and the quality of the relationship that the person had with those family members.

8. He stated that in this case the appellant had left home at the age of 11 and there had been some contact between himself and his parents and more particularly between his uncle, whom he treated as a father, and his parents. There were, in addition, other family members in Nigeria. He stated the arrangement whereby the appellant came to and stayed in Britain was clearly a financial one rather than based on any hostility towards the appellant by his parents and he concluded that the appellant still had social and cultural ties to Nigeria, which were not diminished by

his ties to his uncle, and that he had not lost all family ties there. He therefore concluded that the appellant did not meet the requirements of paragraph 276ADE of the Rules.

9. He then went on to consider the rights of the appellant under Article 8 of the ECHR. He stated:

> "It is clear that he is financially dependent upon his uncle and uncle's wife. Whilst there is case law, referred to in the skeleton argument, that the key decision in **Kugathas [2003] EWCA Civ 31**, as to the meaning of family life, has been interpreted too restrictively in the past, I consider that, whilst there may not be an automatic fine line in which family life, as understood in the jurisprudence, ceases to exist, a key principle must still be the extent of emotional dependence upon members of a family. The fact that a member of a family continues to be financially dependent upon other members of the family is in my view of little significance, or the more so, given the reality of the financial situation in relation to housing in this country, with the result that many adult children find it necessary to remain in their parents' homes because they simply cannot afford to get on to the housing ladder. There are no medical factors relating to this appellant and I take the view that family life, as understood in the jurisprudence, is not met."

10. He however went on to find that the issue of private life was clearly met but concluded that the decision was proportionate in the maintenance of proper immigration control. He stated he could give little weight to private life established by an appellant who was and continued to be in Britain unlawfully.

11. He commented that:

> "Whilst the appellant's education would clearly be seriously interrupted, he knew full well at the time he entered that education that his status in the UK was precarious. Any financial assistance currently being rendered by the appellant's uncle, who pays his university fees, could be supplied to the appellant on return to Nigeria."

12. The grounds of appeal, on which Ms Nnamani relied, argued that the judge had erred in his consideration of paragraph 276ADE of the Immigration Rules in that it was the appellant's evidence that his family ties in Nigeria "were practically remote". They argued that the Judge was incorrect to conclude that family life had not been established in Britain due to the appellant's age.

13. It was argued that by concluding the appellant had family ties in Nigeria the Judge had erred in law, notwithstanding the appellant's uncle's "sporadic contact".

14. The grounds referred to the judgment of Sales J in **Nagre** where he stated that:

> "(ii) In relation to paragraph 276ADE, for example, there may be individual cases of adults who have lived in the United Kingdom for less than twenty years and who do retain some ties to their country of origin, but

> in relation to whom the ties they have developed and the roots they have put down in the United Kingdom manifestly and strongly outweigh those ties, so that it would be disproportionate to remove them."

15. It was also argued that the Judge had erred in his consideration of the appellant's rights under Article 8 of the ECHR and in his interpretation of the judgment in **Kugathas**. They argued that a young adult who had not formed an independent family unit and was still financially dependent would be considered to enjoy a family life. Moreover the judge had erred in his consideration of the proportionality of the decision and in referring to Section 117B had erroneously imported into that consideration the fact that he considered there had been a "so-called family conspiracy" whereby the appellant had overstayed here. Moreover the appellant should not be penalised for overstaying because he had been a child when he had entered. It was emphasised that his brother had been granted discretionary leave to remain notwithstanding his unlawful presence here.

16. At the hearing of the appeal before me Ms Nnamani referred to the judgment of the Court of Appeal in **Singh [2015] EWCA Civ 630** which held that the judgment of the Court of Appeal in **Kugathas** related to extreme facts and that a young adult living with his parents or siblings would normally have a family life which would be respected under Article 8 and that a child enjoying family life with his parents did not suddenly cease to have a family life at midnight when he turned 18 years of age.

17. She also referred to the Immigration Directorate Instructions dated August 2015 with regard to the assessment of whether or not there were "very significant obstacles to integration" to the country of return. It was her argument that the judge should have found that the appellant had no ties in Nigeria and that he was fully integrated here. Moreover the judge had not been entitled to suggest that there had been a family conspiracy. He had been wrong, she argued, to place so little weight on the family life that had built up between the appellant, his brother and his uncle and aunt.

18. She referred to the judgment in **Ogundimu** and emphasised the lack of contact between the appellant and his biological parents. She stated that there was no evidence of social or cultural ties and the mere fact that the appellant's parents lived in Nigeria was not sufficient.

19. She stated that the judge had not properly considered the ties between the appellant and his uncle and aunt or assessed the quality of the family life.

Discussion

20. I consider there is no material error of law in the determination of the Judge in the First-tier. He was correct in his interpretation of paragraph 276ADE of the Rules. He placed particular weight on the fact that the appellant's parents live in Nigeria and there was no evidence that there

had been a breach between the appellant and his parents. As he stated, in paragraph 18, the arrangement whereby the appellant had come to Britain to live here had been basically a financial one rather than based on any hostility towards him. He correctly noted the continued contact between the appellant's uncle and the appellant's father and that there were other relatives in Nigeria. Moreover, of course, the appellant remains living in a Nigerian family. The conclusions of the Judge that the appellant still had social, family and cultural ties with Nigeria was entirely open to him.

21. Moreover, when considering the rights of the appellant under Article 8 of the ECHR the Judge was correct in his analysis of the issue of family life. He did not say that, taking into account the judgment of **Kugathas** that there was a clear line at 18 when the applicant ceased to be a member of his uncle's family. He merely stated the fact that the appellant was now at university and was aged 21 meant that there had been such a lessening of ties that he did not consider that the appellant's right to family life was infringed by the decision. That position was perfectly tenable. However, even if that were not the case, the Judge, when considering the issue of proportionality, as he correctly went on to do was entitled to take into account a number of factors including the fact that the applicant's parents were in Nigeria as were other members of the family, that support from his uncle here could be given to him in Nigeria and that under the provisions of Section 117B little weight should be given to private life established by a person at a time when the person's immigration status is precarious. His overall conclusion that the decision was not a disproportionate interference with a right to the appellant under Article 8 of the ECHR was entirely open to him on the evidence before him.

22. I therefore find there was no material error of law in the determination of the Judge of the First-tier Tribunal and that his decision dismissing this appeal on both immigration and human rights grounds shall stand.

Decision

This appeal is dismissed on both immigration and human rights grounds.

Signed Date

Upper Tribunal Judge McGeachy