



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/23940/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 14 March 2016

**Decision Promulgated
On** 5 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M T A
(Anonymity Direction Made)**

Respondent

Representation:

For the Appellant: Mr S Staunton, Senior Home Office Presenting Officer
For the Respondent: Mr J Waithe (counsel) instructed by Greenland
Lawyers LLP

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made by the First-tier Tribunal.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Bowes, promulgated on 11 September 2015, which allowed the Appellant's appeal under the Immigration Rules

Background

3. The Appellant was born on [] 1968 and is a national of Nigeria.

4. On 14 May 2014 the Secretary of State refused the Appellant's application for leave to remain in the UK.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bowes ("the Judge") allowed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 25 January 2016 Judge Colyer gave permission to appeal stating *inter alia*

"2. The respondent submits that there was the making of a material misdirection of law on a material matter. It is arguable that the judge erred in law for the following reasons:

a. The immigration judge records that the appellant was born in 1968, and came to this country in 2000 (Paras 1 and 3 respectively). She therefore lived in Nigeria some 32 years. She has a long relationship with someone of Nigerian ethnicity (Paras 12 and 13). The judge of the first-tier tribunal finds that she has ties to Nigeria. (Paras 24).

b. The judge then makes a finding at paragraph 25 that the attack by her husband is capable of usurping those ties. That finding is inadequately reasoned

3. Permission to appeal may be granted if I am satisfied that there may be a material error of law that may have made a material difference to the outcome of the original appeal. This could be due to adverse or irrational findings or a lack of findings on core issues as established in the case of R (Iran etc) v SSHD 2005 EWCA Civ 982. It is arguable that the judge has misdirected himself for the above reasons and the grounds submitted by the respondent on these points are arguable. Permission to appeal to the Upper Tribunal is granted."

The Hearing

7. Mr Staunton, for the respondent, adopted the terms of the grounds of appeal and focused on [24] and [25] of the decision. He reminded me that at [24] the Judge acknowledges that the appellant's claim is not a claim for international protection, but then goes on to find (at [25]) that,

because the appellant has been the victim of a violent and life threatening attack by her husband in Nigeria, the appellant has no ties to Nigeria. He argued that the Judge fails to give reasons & provides no explanation to support the conclusion that the appellant has no ties (whether social, cultural or family) to her country of origin. The respondent's attack on the Judge's decision relates entirely to the adequacy of the reasons which lead the Judge to his conclusion.

8. Mr Waithe, counsel for the appellant, told me that the decision is a well-reasoned decision which does not contain an error of law with material or otherwise. He drew my attention to what is clearly a typing error in the ultimate sentence of [24] and suggested that the word "*usurping*" in the final sentence of [25] might (more appropriately) be "*severing*". He referred me to [22] and told me that it is clear from the content of that paragraph that the Judge made a rounded assessment of all of the evidence, and applied the correct legal test. He suggested that, because the appellant is a recognised victim of domestic violence, it is logical for the Judge to draw the conclusion that the acts of violence in themselves are sufficient to sever all ties to the appellant's country of origin. He argued that there was no deficiency in the fact-finding exercise. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

9. The history of the appellant's application is that on 15 December 2010 the appellant, for the first time, made an application for leave to remain on article 8 ECHR grounds. The respondent rejected that application because it was not accompanied by a fee. A further application (on similar grounds) was submitted on 25 February 2011. That application was rejected by the respondent because the application form had not been fully completed. The appellant's application was resubmitted on 7 April 2011 and refused by the respondent on 18 April 2011. That refusal did not carry a right of appeal.

10. The appellant's solicitors sought reconsideration of the decision of 18 April 2011 by letters dated for August 2011 and 9 January 2012. At the request of the respondent, the appellant's solicitors provided further information on both 22 April 2014 and 12 May 2014. The respondent then considered those representations and rejected the appellant's application on 14 May 2014.

11. In his decision, the Judge dealt with the appellant's appeal in so far as it related to appendix FM of the immigration rules between [19] and [21]. The Judge's reasoning is brief, but no challenge is taken by either party to the Judge's decision that the appellant cannot fulfil the requirements of appendix FM.

12. At [2] of decision the Judge correctly focuses attention on paragraph 276 ADE (1)(vi) of the rules. Paragraph 276 ADE says:-

"276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and*
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and*
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or*
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK;*
- or*
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or*
- (vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."*

The Judge then considers paragraph 276 ADE of the immigration rules between [22] and [26]

13. The Judge's findings at [24] relate to the fear that the appellant has of her violent former partner, from whom she fled several years ago. At [25] the Judge finds that the appellant speaks the language of Nigeria and maintains contact with a cousin there. The Judge finds that the appellant speaks Yoruba; that the appellant was educated in Nigeria, and that the appellant lived in Nigeria for 31 years.

14. What the Judge does is identify cultural, social and family ties to Nigeria. In the final sentence of [25] the Judge finds that those links, which he clearly finds exist, are extinguished ("*usurped*") by the attack that the appellant endured at the hands of her former partner several years ago.

15. In Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42 (IAC) it was held that the requirement set out in paragraph 276ADE (vi) (in force from 9 July 2012 to 27 July 2014) to show that a person "*is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK*", requires a rounded assessment as to whether a person's familial ties could result in support.

16. In Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC) the Tribunal said that the natural and ordinary meaning of the word '*ties*' in

paragraph 399A of the Immigration Rules (HC194) imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. In Hamzat 2015 EWHC 499 it was said that where the evidence was limited to the fact that there were no relatives in Nigeria it was not appropriate to say that there were no ties in the absence of other evidence - in a case in which there was no reference to what had happened to the appellant since school, to any friends or employment opportunities or lack thereof, to the extent of her education or to any family members extended or otherwise.

17. In R (on the application of Akpan) [2015] EWCA Civ 1266 the Claimant entered the UK at the age of 14 from Nigeria. She claimed to be unable to get in touch with any of her family in Nigeria since she left in 2003 and that she had no exposure to the cultural norms of Nigeria. It was held that the decision in Ogundimu, which provided authoritative guidance regarding the meaning of 'no ties', referred at paragraph 125 to a list of considerations relevant to the assessment of whether a person had ties to his or her country of origin. The Deputy Judge erred in treating those as mandatory considerations, which always had to be present before ties could be found. The Deputy Judge treated the presence or absence of a relationship with persons in Nigeria as the critical factor in deciding whether ties existed for the purpose of paragraph 276ADE(vi). In contrast, in Ogundimu, the Upper Tribunal correctly construed the relevant phrase as importing a general evaluative judgement as part of an exacting test that focused on the question of whether there was a continued connection to life in the country in question amounting to ties that could result in support to a claimant in the event of return, so that the consequences for the claimant in trying to re-establish herself in her country of origin would not be unjustifiably harsh. The Upper Tribunal was not seeking to put the rounded assessment into a straightjacket or to create a checklist of matters which had to be present or which had to be addressed directly in a decision letter. It was simply indicating that the listed considerations could on no view be regarded as irrelevant for the purposes of the assessment to be made. The Deputy Judge had to consider the Claimant's bald assertions regarding the absence of family and friends in Nigeria, along with the fact that the Claimant had lived in Nigeria until she was 14 and hence had acquired familiarity with customs there at an age when it was not unreasonable to think she would retain a basic understanding of how to function in that society. It could not be said that the Secretary of State's conclusion that the Claimant had failed to demonstrate an absence of relevant ties to Nigeria, and thus failed to show that she was within the scope of the exacting test in paragraph 276ADE(vi) of the Immigration Rules, was an irrational one.

18. Although the Judge lists factors which can be interpreted as indicating that there are cultural, social and family ties to Nigeria, in the final sentence of [25] the Judge reaches the conclusion that those ties are extinguished by one historic, violent, act. The Judge does not explain why he reaches that conclusion. It is at least implicit that the Judge was moved by what the appellant has endured, but implication is not sufficient. It is incumbent on the Judge to make reasoned findings of fact; and those findings of fact are absent from the decision.

19. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

20. I therefore find that the decision is tainted by material errors of law and must be set aside.

21. I consider whether I am in a position to substitute my own decision but find that I am unable to do so. There is force in Mr Staunton's submission that this case requires to be heard of new. The errors in the decision include an inadequacy in the fact-finding process. The Judge allowed this appeal under the immigration rules, but his decision is based on a material error of law. No consideration has been given to whether or not the appellant's case should be considered on article 8 ECHR grounds outside the rules. It is clear that the appellant lead evidence directed at the establishment of both family and private life within the meaning of article 8 ECHR. The Judge did give adequate consideration to that evidence.

22. These are all matters which may well be determinative of this appeal at a renewed hearing; They are matters on which the appellant should have the opportunity of leading up-to-date evidence.

Remittal to First-Tier Tribunal

23. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 a case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that,

having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

24. In this case I have determined that the case should be remitted because of the nature and extent of the fact finding exercise necessary to reach a just decision in this appeal. None of the findings of fact are to stand. A complete re-hearing is necessary.

25. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Bowes.

CONCLUSION

Decision

26. The decision of the First-tier Tribunal is tainted by material errors of law.

27. I set the decision aside. The appeal is remitted to the First Tier Tribunal to be determined of new.

Signed

Date 21 March 2016

Deputy Upper Tribunal Judge Doyle