



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01549/2014

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 1 August 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CI

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Ms R Moffatt, Counsel instructed by Duncan Lewis & Co Solicitors
(Harrow Office)

DECISION AND REASONS

1. The respondent (hereafter “the claimant”) is a citizen of Nigeria born in 1992. On 10 July 2014 the appellant (hereafter “the Secretary of State” or “SSHD”) made a deportation order by virtue of section 32(5) of the UK Borders Act 2007. In a decision sent on 14 August 2015 Judge Kinnell of the First-tier Tribunal (FtT) allowed his appeal under paragraph 399A of the Immigration Rules. Subsequently on 8 October 2015 Upper Tribunal Judge Jordan set aside his decision for error of law and re-made

the decision by dismissing the claimant's appeal. The claimant obtained permission to appeal to the Court of Appeal and in an order sealed on 28 June 2016 the Court of Appeal set aside the decision of UTJ Jordan save for his finding that there had been an error of law in the FtT decision dated 14 August 2015. The Court remitted the case to the Upper Tribunal for a re-hearing to determine the claimant's appeal against the deportation order.

2. Before me there was a considerable body of evidence that had not previously been available or which had come into being since. This included the Lambeth Social Services records (occupying four Lever Arch files), a psychiatric report by Dr Rachel Thomas dated 22 October 2017, a risk assessment report by Dr Natalie Brotherton dated 27 November 2017 and an independent social worker report from Peter Horrocks dated 2 May 2018. These further documents also include a letter from Hampshire Constabulary dated 6 November 2017 stating that it had been decided to take no further action in relation to the claimant's arrest following an allegation of burglary on 15 July 2017; and an e-mail dated 19 July 2018 from Surrey and Sussex Policing Together stating that it had been decided to take no further action in relation to offences for which the claimant was arrested on 4 July 2017, namely "Concerning the supply of class A, Theft and Possession of an offensive weapon in a public place".
3. The claimant produced a witness statement dated 29 May 2018. This addressed the circumstances in which he had grown up in South London with his mother and two older sisters. He described constant physical and emotional abuse and neglect by his mother; what he remembered about his two sisters being taken into care; his experiences when attending secondary school; frequent visits by people from social services; his being taken into care in 2007; when he was about 16 years old being given appointments with CLAMHS (Children Looked After Mental Health Services); his exclusion from high school for absenteeism and incidents of fighting; his time at a special education centre; in 2008 being moved into semi-independent accommodation with four or five other boys of the same age; his studies at GCSE level (he gained six GCSE's), A-level (he attained A levels in IT and Art) and university level (in 2012 he studied for a Foundation degree in IT Java Script and Programming). He also mentioned having previously held a job in sales working for a company in Brighton.
4. The claimant said he had been trying to do training in online stock trader work.
5. His witness statement also addressed his history of criminal offending from 19 February 2009 – 9 August 2013. He expressed regret for his offending. He said that his experiences of being in prison had affected his mental health. He had tried following the recommendations of Dr Thomas to access counselling services but was told each time he was rejected because of his immigration status; he would undertake counselling if he were granted leave to remain.
6. The claimant wrote that the threat of deportation had affected his relationship with his British citizen son born in December 2017; he had not engaged in a father-son relationship for fear he would be separated from him.

7. The claimant wrote that since his release on immigration bail in February 2017 he had abided by his weekly reporting conditions, he had tried to get work but had been unable to because of his immigration status.
8. The claimant said that he had kept in regular contact with his little brother (An) and little sister (Ax) even when he had been in prison/detention; he was keeping an eye on them.
9. The claimant said that he had come to the UK as a baby and did not remember anything of Nigeria or any family there, or the culture. He had gone to school, college and university in the UK. His son was born here. All of his siblings live in the UK. He does not know anyone back in Nigeria and has no links to the country whatsoever. If he was deported to Nigeria he would not know how to find a job, get accommodation or access counselling for his mental health. He feels that deportation would be detrimental to his mental health.
10. There was also an e-mail from his older sister CJ, and a short letter from younger sibling Ax.
11. At the hearing before me the claimant gave oral evidence which broadly covered ground already covered in his recent witness statement. He said he was not on any medication. He felt fine but he was aware he had psychological problems. He had gone once to the counselling clinic recommended by his doctor but they had told him they could not help because of immigration status.
12. Asked about whether he thought he would re-offend, the claimant said he believed he could avoid that because he did not want to experience prison again; he felt remorse for his past offending; and he had now learnt how he could make money by legal means. He believed that with more training he could become a financial adviser. He was not currently in a relationship.
13. Asked if he felt he would become a financial adviser in Nigeria the claimant said he would need more training which he could not afford.
14. He had not made enquiries about jobs or accommodation in Nigeria; he found it very hard to get his head around such a future.
15. The claimant said he was on reasonable terms with his siblings, but he did not think any of them would be able to help him financially whilst he was looking for work in Nigeria.
16. The claimant said that since he had been released from immigration detention he had been staying with a girlfriend for eight months and then another girlfriend more recently.

Submissions

17. I heard submissions from the representatives. Mr Wilding submitted that the claimant could not meet the requirements of the Rules since under paragraph 399A (and the same was true of section 117C(4) of the NIAA 2002) he could not show he had been lawfully resident in the UK for most of his life; and his pattern of

criminality compromised the extent of his integration into UK society. Nor could the claimant show that there were very significant obstacles to his integration into Nigerian society. The claimant had shown that he was capable of leading an independent life in the UK and he would be able to do the same in Nigeria by entering into social relationships, obtaining work and finding accommodation.

18. As regards the expert evidence, their reports indicated that the claimant was at medium to high risk of re-offending.
19. Mr Wilding contended that the claimant had also failed to establish compelling circumstances outside the Rules. The reports on the appellant's mental health and the report by Peter Horrocks (which lay much of the blame for the claimant's criminality at the door of Lambeth Social Services Department for failing to intervene sooner to protect the claimant from an abusive mother) could not weigh heavily in the Article 8 balancing exercise. Everyone had a story.
20. Similarly, he considered that Ms Moffatt's argument that the claimant should have been granted ILR much earlier could only take his case so far, since he was ultimately granted ILR (in 2010) and that did not stop him offending. In any event the old seven year policy (DP5/96) was a discretionary one and he had no legitimate expectation he would benefit from it earlier on. The claimant's criminal history had begun in 2009, which was a date before he was granted ILR.
21. Ms Moffatt developed her submission by close reference to her lengthy skeleton argument. She submitted that Mr Wilding's remark that "Everyone has a story" wrongly ignored the highly unusual and abnormal circumstances the claimant had had to endure as a child during his most formative years. She recounted the history of physical and psychological abuse. She noted that the claimant's mother was a drug user and had even used him to buy her drugs. From around 2007 when he was 14 there were concerns about the effect of his upbringing on his mental health. When in detention he had been transferred to a psychiatric hospital on three occasions. He had had PTSD. Had he been diagnosed earlier for his major depressive disorder and psychotic symptoms he may have avoided criminality.
22. As regards the claimant's immigration history, Ms Moffatt submitted that having arrived in 1994 he had lived in the UK for seven years by 2001. His mother applied under the then policy DP5/96 but did not receive a decision for two years. In November 2004 she applied for a different family concession. There was a six year delay, three years of which were the fault of his mother and three, from 2007-2010, the acknowledged fault of the SSHD. By the time the claimant received ILR in 2010, it was nine years since he had been eligible under DP5/96. Hence if the claimant did not meet the "lawful residence" requirement of paragraph 399A that was because of failures by his mother and the SSHD.
23. In any event the claimant's residence was lawful, submitted Ms Moffatt. It is clear from Court of Appeal authority, **SC (Jamaica)** [2017] EWCA Civ 2112 in particular, that temporary admission constituted lawful residence. The claimant's mother had applied for asylum in early 1994 and only became appeal rights exhausted on 24 July

1997. Even after that date the claimant had to be deemed to be in the UK on temporary admission, because he was a person liable to detention.

24. She submitted that even if I was not persuaded that the claimant had lawful residence I should attach very significant weight when assessing Article 8 outside the Rules to his long residence in the UK. The fact that for a significant period of his time in the UK the SSHD had delayed making a decision meant that he should benefit from the guidance given in **EB (Kosovo)** [2008] UKHL 41 as the SSHD accepted that she had been responsible for three years of the delay.
25. Turning to the requirement in paragraph 399A of social and cultural integration, the claimant had spent 24 out of his 25 years of life in the UK (having arrived in the UK when he was 1 year old). He had never left the UK. He identified as “black British”. He had no real links with Nigeria. He lived with his mother until he was 15 but she could scarcely be said to have taught him to love his country of nationality since she was abusive. He had worked before he began his offending. To the extent his character and conduct were anti-social, it was the strong view of the experts and the independent social worker Peter Horrocks that the claimant was a product of the UK system and it had failed him, by failing to take him into care earlier in his life.
26. The claimant’s efforts to get his life back together again since he was released from immigration detention should also be weighed in his favour.
27. As regards very significant obstacles on integrating back in Nigeria, there would be difficulties he would face of obtaining work, having to deal with a country which was not his home, having no friends or family there. He did not have a network of family or friends in the UK so finding such in Nigeria would be that much more difficult. His psychological/mental health problems would prevent him from being able to access health services. He would be re-traumatised.
28. Ms Moffatt submitted that even if I were to conclude that the claimant does not meet the Rules, there were clearly very compelling circumstances in his case, including the culpability of the Home Office for its delays in making a decision on his case.
29. Mr Wilding submitted that it would be wrong to consider that DP5/96 was the equivalent of a non-discretionary policy. It was clear from **NF (Ghana)** [2008] EWCA Civ 906 that the SSHD should start from a presumption that ILR should be given and had to consider a number of factors (six in total) in exercise of her discretion.

My decision

30. I have to decide the claimant’s appeal in the light of all the evidence before me which includes a much greater body of documentary evidence than has been before previous judges. I have also received oral evidence from the claimant. Most of his evidence, I observe, is uncontentious. I record that I have treated him as a vulnerable witness pursuant to the Joint Presidential Guidance Note of 2010, by virtue of his psychological/mental health problems.
31. It is not in dispute that the claimant is a foreign criminal and that his sentences total 3 years 7 months. Leaving aside a sentence in November 2015 of 7 months for having assaulted a fellow prisoner, when his mental health may have been a factor) his latest

conviction, on 22 August 2013, for robbery for which he received a sentence of fifteen months, means he falls within paragraph 398(b) and so falls first to be considered under paragraph 399A. Paragraph 399A has the effect of protecting a person from deportation if –

- (a) the person has been lawfully resident in the UK for most of his life;
- (b) he is socially and culturally integrated in the UK; and
- (c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

I shall deal with each subparagraph in turn. In addition to SC, I have had regard to the reported decision of the Upper Tribunal in (Deportation: "lawfully resident": s.5(1)) [2018] UKUT 199 (IAC). As the panel in this case observes at para 15, in order for the exception in paragraph 399A or Section 117C to apply, an applicant needs to establish all three elements.

“...lawfully resident in the UK for most of his life”

32. Despite Ms Moffatt’s valiant efforts to argue otherwise, I am not persuaded that the claimant has been lawfully resident in the UK for most of his life. In relation to the phrase ‘most of his life’ I have to adopt a quantitative approach: see AS (Iran) v SSHD EWCA Civ [2017] 1284 and [53] of SC. He was born in October 1992 and is presently aged 25. Of the 24 years he has lived in the UK his period of lawful residence at best amounts to less than 12 years. He was brought to the UK on 29 January 1994 by his mother on a visit visa valid for six months. She applied for asylum with the claimant as her dependant on 2 August 1994. Their asylum claim was refused on 2 December 1994. She became appeal rights exhausted on 24 July 1997. On the authority of SC the claimant can therefore add to his original six months of lawful residence a further two years eleven months, making a total of three years five months. On 12 October 2010 he was granted ILR, since when he has been lawfully resident for seven years eight months. This means he has been lawfully resident for eleven years and one month. To have been lawfully resident for most of his life he would have had to show lawful residence of over twelve-and-a-half years.
33. Ms Moffatt sought to argue that upon becoming appeal rights exhausted in July 1997 the claimant has to be considered to have remained in the UK on (deemed) temporary admission and that, on a proper reading of SC, temporary admission constitutes lawful residence even outwith the context of an asylum claim. However, in my judgement the claimant had become an overstayer by the time his mother claimed asylum. Even if that was not the case, the period of temporary admission which commenced on the date his mother claimed asylum came to an end on 24 July 1997 when he became appeal rights exhausted following refusal of his mother’s asylum claim. Even if his mother had claimed asylum within the period of six months leave as a visitor, his stay in the UK became unlawful from the 24 July 1997. There are two reasons, both sufficient in themselves, why the claimant cannot construct a further period of lawful residence between this date and when he was granted ILR in October 2010. The first, which I would accept is not beyond doubt, is

that in my view the ratio of **SC** concerns lawful residence accrued whilst a person has a pending asylum claim: see [57] (per Sir Ernest Ryder, SPT) and [73] (per Davis, LJ). Its rationale can only be that in order to ensure compliance with international obligations under the Refugee Convention, asylum applicants cannot be classed as in the UK unlawfully for the period whilst their asylum claim is pending. Once the claimant's asylum appeal had been finally determined, he did not remain in the UK as someone who had been granted, or can be deemed to have been granted, temporary admission. He was simply someone who, to use the wording of section 4(1)(c) of the Immigration Act 1971, "remain[ed] unlawfully". Whatever the legal basis for his period of immigration detention, it did not and could not convert his status as an overstayer in breach of immigration laws into someone lawfully resident. The other reason why he cannot claim further lawful residence between 24 July 1997 and October 2010 is that there is no evidence to show that he was ever granted, or was the subject of temporary admission, during that period.

"...is socially and culturally integrated in the UK"

34. As regards paragraph 399A(b), it would be unwise to attempt an exhaustive definition of what factors constitute social and cultural integration. The question of whether someone is socially and culturally integrated requires a broad evaluative judgement (see **Kamara v SSHD** [2016] 4 W L R 152 at [14]) but in contrast to paragraph 399A(c) (where the focus is integration into the country to which it is proposed to deport someone), the focus is on integration within the UK. Unlike 399A(a), paragraph 399(b)'s focus is principally on the claimant's current situation, not his historic situation ("he is socially and culturally integrated"), although clearly assessment of the present situation must have regard to what has gone before.
35. Factors pointing in the claimant's favour include that he has lived all but the first year of his life in the UK, that he has been educated in the UK, that he speaks fluent English and that he identifies as someone who is "black British". Mr Wilding has not suggested that the claimant is someone who has grown up identifying himself as a Nigerian or adopting a Nigerian lifestyle. He has worked in the UK, (albeit briefly).
36. On the other hand, even before he became an adult and even before he was granted ILR the claimant had become a youth offender and between February 2009 - mid 2013 (a total of four-and-a-half years) he had committed 22 offences. During that period he received two custodial sentences of 28 months and fifteen months respectively. He is due credit for not offending since 2013 (save for his being sentenced to 7 months for having assaulted a fellow prisoner, in respect of which he may have been in the grip of psychotic ideation), but it is also relevant, in considering the period since, that (i) following the conditional release date for his criminal offences, he was held in immigration detention until February 2017; and (ii) he himself describes his life as being "on hold" since the deportation order against which he now appeals was made in July 2014.
37. Considering the claimant's life since February 2009 prompts the question, can social and cultural links a person has forged in the UK be broken (or demonstrate a lack of integration)? In my view, in the context of paragraph 399A(b), social (if not also cultural) integration can be broken by anti-social behaviour in the form of criminal

offending, particularly when there has been a pattern of offending over a significant period of time. It can also be broken by imprisonment consequent upon conviction for such anti-social behaviour. However, consideration of this question will be highly fact-sensitive, and much will depend on the particular circumstances of the case.

38. I accept that a somewhat different view was taken by a distinguished panel in **Tirabi** but I do not find the reason given in that case for considering commission of an offence to be incapable of breaking integration (or in the panel's terms, creating a "lack of integration") convincing. The Tribunal states in **Tirabi** at para 15 that: "[b]earing in mind again that these factors are being taken into account always in the context of the deportation of a person who has committed an offence, it is inconceivable that it could have been intended that, in any general sense, the commission of an offence would demonstrate a lack of integration." However, this seems to convert a question of fact into a legal rule. Is the commission of a string of serious offences over a period of 20 years, say, to be equally irrelevant as the commission of a very minor offence on one isolated occasion? If the drafters intended to exclude commission of offences from the potential range of factors relevant to social and cultural integration, one would have expected them to say so. If the opposite of "social[ly]" is "anti-social" and if criminal behaviour is anti-social, then on the panel's approach one could have the anomaly of a decision-maker finding there was integration even though the person concerned had exhibited consistently anti-social behaviour. Further, to the extent that it sheds light on the general purport of para 399A(b), the Home Office policy instructions to staff as set out in "Criminality: Article 8 ECHR" Version 6, 22 February 2017, clearly considers the commission of offences as relevant to the issue of integration in this context¹.
39. In my judgement, the effect of the claimant's pattern of offending over a period of some 3 years 7 months and his periods in detention was to break the social and cultural integration he had acquired during his childhood. The question therefore is whether since February 2017 he has reacquired the status of someone who is culturally and socially integrated.

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1. At pp.29-30 this Instruction to staff states: "Immigration status is likely to be important. A person who has been in the UK with limited leave to enter or remain is less likely to be integrated because of the temporary nature of their immigration status. A person who is in the UK unlawfully will have even less of a claim to be integrated. Criminal offending will also often be an indication of lack of integration. The nature of offending, such as anti-social behaviour against a local community or offending that may have caused a serious and/or long-term impact on a victim or victims (such as sexual assault or burglary) may be further evidence of non-integration.

To outweigh any evidence of a lack of integration, the foreign criminal will need to demonstrate strong evidence of integration. Mere presence in the UK is not an indication of integration. Positive contributions to society may be evidence of integration, for example an exceptional contribution to a local community or to wider society, which has not been undertaken at a time that suggests an attempt to avoid deportation. If such a claim is made, you should expect to see credible evidence of significant voluntary work of real practical benefit.

It will usually be more difficult for a foreign criminal who has been sentenced more than once to a period of imprisonment of at least 12 months but less than 4 years to demonstrate that they are socially and culturally integrated, because they will have spent more time excluded from society, than for a foreign criminal who has been convicted of a single offence."

40. In certain respects he has clearly continued to form social relationships and to maintain some level of contact with his mother and siblings. From one of his relationships he has had a child and has stated that the only reason he has not sought to form a father-son relationship with this child is because he is afraid this might be disrupted by his deportation.
41. In other respects, however, he is not someone who has developed significant private life ties. Indeed, Ms Moffatt emphasised more than once in her submissions regarding obstacles to his integration into Nigerian society that he does not have a network of family or friends in the UK and no-one came to support him in his appeal. Nor has the claimant been in employment for a number of years. He has given evidence that he has not been able to find work because of his immigration status, but he is someone who has ILR and (as Ms Moffat confirmed in reply to a question sent from me to the parties on 15 June 2018) that only ceases to have legal effect if and when he proves unsuccessful in his appeal against a deportation order. He has also given evidence that he has taken active steps to learn how to become a financial adviser; that is to his credit; but it remains he has not had any connection with the labour market for some time. His history of offending represents anti-social behaviour in very strong form. As regards his risk of re-offending, the report from Dr Brotherton states that the risk of violent offending is moderate and that "I do not think that his risk of re-offending has significantly reduced" [from what is was assessed as being in the Pre-Sentence report by a probation officer in July 2013] (para 7.3.1). Although the claimant stated in his evidence to me that he has shown remorse, Dr Brotherton concluded in the same report that "there was no evidence of remorse, aside that for his own personal consequences and references to others' material loss" (7.1.2). Whether or not as a result of his own mental health difficulties at the time, the claimant's time in detention was not one where he engaged in any behaviour specifically identified as positive. In my judgement, on the facts of his case the integrative links the claimant had with the UK were broken by his period of offending and his period of imprisonment; and, since his release from detention, they have not been re-formed. (I leave open the question of whether I would take the same view of someone whose history was the same as the claimant's save that he or she was a British citizen, except to note that British citizenship in itself constitutes an important integrative link, but in any event this claimant is not a British citizen.) Considering the evidence in the round, the claimant is not someone who is presently "culturally and socially integrated in the UK".
42. Ms Moffatt has submitted that the claimant should be considered as someone who has remained socially and culturally integrated by virtue of the fact that he was denied a normal childhood through forces outside his control - his mother having treated him abusively as a child and Lambeth Social Services having failed to take him into care until he was aged 14/15, when he was clearly in need of protection much earlier. She relies on the observations made by doctors Brotherton and Thomas and independent social worker Horrocks in this regard. These reports present a harrowing picture. They also confirm that he has Major Depressive Disorder secondary to his past and present life circumstances with some significant post-traumatic traits and psychotic symptoms. However, even assuming I were

prepared to accept their assessment that Lambeth Social Services bears significant responsibility for the distressing problems the claimant faced as a child, he has been in care since 2014 and I do not consider the evidence demonstrates that his welfare and best interests were mishandled from then on. For that reason (even leaving aside the fact that not every child who has a blighted childhood goes on to commit offences) I do not consider that the claimant can be said to have lost the ability to be responsible for avoiding anti-social behaviour.

“...very significant obstacles to his integration...”

43. Turning to 399A(c), Ms Moffatt submits that there would clearly be very significant obstacles to the claimant’s integration into Nigeria, a country which he left when he was 1 year old and in which he has no family ties, no cultural or social affinities, and where he would face significant difficulties, aggravated by his mental health condition, in obtaining accommodation, employment and access to health services. She pointed out that there was no evidence to indicate that the claimant would receive financial support from family members or friends in the UK. I am prepared to accept that the claimant would face significant obstacles for the aforementioned reasons, but not that they would cross the threshold of “very significant obstacles”. That is for a combination of two sorts of reasons. First of all (focussing on his experiences in the UK), whilst the claimant may have no family ties there and may identify as black British, he spent fourteen/fifteen years of his life living with his mother and siblings and it has not been suggested that his mother brought him up ignorant of Nigerian customs and traditions. Ms Moffatt has argued that the fact that the claimant’s mother was abusive towards the claimant meant he could not have felt any love for Nigeria; that may be so; but that does not demonstrate that he lacked familiarity with his mother’s cultural way of life. Second (focussing on his likely situation in Nigeria), Nigeria is a country where English is widely spoken, so the claimant would not struggle with daily communication with other Nigerians. Ms Moffatt has highlighted the difficulties the claimant would have accessing health services, but given that the claimant has shown some degree of ability to seek and obtain help from health professionals in the UK, I do not see that he would lose that ability simply by virtue of being deported back to Nigeria. She has also submitted that the claimant’s psychological/mental health problems would make the claimant vulnerable and less able to integrate; she has also highlighted that Dr Brotherton considered that his deportation would have a “devastating effect on [his] mental health and rehabilitation” (7.1.8). However, as Dr Brotherton conceded, she is not an expert in mental health facilities in Nigeria or in anything to do with Nigerian society. The background evidence does not demonstrate that the claimant would be unable to access mental health facilities or community assistance if he needed them.
44. I am prepared to accept that the claimant’s psychological /mental health problems would make it more difficult for him to integrate than a normal adult in his mid 20s, but on the available evidence these problems of his have not prevented him from taking active steps in the UK to become a financial advisor. He is also someone who was assessed by the probation officer in the Pre-Sentence report as having ‘good social skills’ and to be clearly someone of intelligence and ability to make a good life for himself without illegal activities. He did work previously for a company in

Brighton (and there was also some mention by him of working for TalkTalk for a while as a sales agent) and so has some work experience. Even if he would not be able to find work in Nigeria immediately in the financial advice field (because he could not afford the fees for the training courses), it is likely that he would be able to find work. I also consider it likely that he would be able to obtain accommodation, even if initially it was by accessing health/welfare services.

45. For the above reasons, I conclude that the claimant cannot succeed under any of the three sets of requirements necessary to bring a person within paragraph 399A.
46. Accordingly, the claimant can only succeed in this appeal if I can be satisfied that there are “very compelling circumstances over and above those described in paragraph 399A”.
47. Ms Moffatt rightly submits that in deciding whether there are very compelling circumstances I must take into account the extent to which the claimant meets the elements or requirements of paragraph 399A even if he does not meet them all or meets them insufficiently. In light of my earlier findings, the claimant’s is not a case in which it can be said he has broadly met most or all of these requirements. Even if my assessment of one or two of these three requirements were incorrect, it would remain he had failed to bring himself within the para 399A exception. That said, all the factors counting in his favour, including his very lengthy residence, the fact that if his mother and the Secretary of State had not delayed as long as they did he may well have acquired ILR earlier, his distressing childhood and his mental health difficulties stand to be weighed in the balance when considering very compelling circumstances.
48. The basis of the claimant’s Article 8 claim rests on his right to respect for private life. It cannot be said that his ties with his mother and siblings go beyond normal emotional ties and on his own evidence he has no real relationship with his son.
49. In assessing whether there are very compelling circumstances I take into account that had the claimant’s mother from 2000 onwards taken active steps to apply for leave to remain for the claimant on the basis of seven years residence, he would likely have been granted ILR earlier and would thus, in 2018, have been able to show he had spent most of his life in the UK lawfully. By virtue of having gone through the UK education system he has become anglicised and someone who identifies as black British. The claimant is also someone who has lived in the UK as a minor for all but one year of his life. At the same time, he is not able to invoke the principles set out **Maslov v Austria** [2008] ECHR 546 because he was not for most of his childhood a settled migrant. And it remains that his actual history of residence does not show continuous integrative links with the UK. As explained earlier, they were broken by his pattern of criminal offending between 2009-2013 and his subsequent periods in detention. In my judgement they cannot be said to have been revived since his release from immigration detention in February 2017, in view of his lack of a significant social network and his absence from the labour market.
50. The claimant’s psychological/mental health difficulties are significant but it remains that he does not currently meet the criteria for Anti-Social Personality Disorder

(APPD) he is not currently on any medication and medical professionals have not taken steps open to them to put him into mental health programmes. The most that has been done is for one of the doctors to recommend that he does counselling. Although he sought counselling, on his own evidence (correcting a claim that he had tried several times), it was just on the one occasion. He said he was told that the could not be accepted on such a course because of his immigration status, but Ms Moffatt has not produced any evidence to show that he would have received the same negative response if he had tried other suitable sources of counselling help. In point of fact his immigration status does not lawfully prevent him from having the same access as other settled persons enjoy. The same applies to his access to the labour market.

51. I have dealt earlier with the claimant's likely situation on return to Nigeria. In short, I find that he would not face very significant obstacles to integrating into Nigerian society. When considering private life ties in the context of return, it is necessary to take into account not only actual ties (of which I accept he has none save for familiarity with cultural norms through living with his mother for 14 years), but potential ties as well as the extent to which he is someone who ordinarily relies or depends upon on close personal ties. On the claimant's own evidence, he is presently someone who chooses to live a mobile lifestyle without wishing to develop long-term attachments. As noted earlier he is someone who was assessed by his probation officer in July 2013 as having good social skills and the intelligence and ability to make a good life for himself without illegal activities.
52. In terms of the public interest factors, the claimant, albeit a foreign criminal, has not been sentenced to a period of imprisonment of four years or more. He has not reoffended since 2013. He has expressed remorse. Equally he was imprisoned for a total of 3 years 7 months with allowance being made in the context of his youth offending for the fact that he was a minor and the sentencing judge (Judge Price) in August 2013 noted the Pre-Sentence probation report (which set out the claimant's troubled childhood history); and he has not been able to meet the requirements of paragraph 399A; he remains as someone assessed at medium to high risk of reoffending; although he has expressed remorse Dr Broterton did not consider there was any evidence of remorse aside that for his own personal consequences and references to others' material loss.
53. It is possible to argue that in some cases a person's criminal conduct renders their immigration status precarious but I do not consider the provisions of section 117B(5) can easily be applied to the claimant's case given he may have received ILR earlier had his mother acted promptly and he is someone who since 2010 has had ILR. It remains, however, that strong weight has to be given to the public interest in the deportation of a foreign criminal.
54. Taking all of the evidence in the round I conclude that there are no very compelling circumstances justifying a conclusion that the deportation order would breach the claimant's Article 8 right to respect for private or family life. The public interest factors pointing in favour of his deportation outweigh factors pointing in favour of him being allowed to remain.

55. Accordingly, the claimant's appeal fails under both the Immigration Rules and outside the Rules.

56. To conclude:

The decision of the FtT judge has already been set aside for material error of law; the decision I re-make is to dismiss the claimant's appeal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed:

Date: 27 July 2018

Dr H H Storey
Judge of the Upper Tribunal