



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

Appeal Number: HU/10979/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18th September 2018**

**Decision & Reasons
Promulgated
On 4th October 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**OOOO
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood of Counsel instructed by Coram Children's
Legal Centre

For the Respondent: Mr L Tarlow

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 10 July 1994. He came to this country as a Tier 4 Student Dependant along with his father, stepmother and stepbrother in 2008 with leave until 31 January 2010. An extension was granted until 28 June 2012. An application as a dependant was refused on 15 July 2013.
2. The appeal herein stems from the decision made on 2 November 2015 refusing the appellant's human rights application for leave to remain

based on his private life and exceptional circumstances. At the date of the application the appellant had been 20 years old and had lived in the UK for approximately seven years and he did not accordingly fall within the residential requirements of paragraph 276ADE. The Secretary of State considered whether the appellant met the requirements of showing “very significant obstacles” to his integration into Nigeria under 276ADE(1)(vi). It was not accepted that there would be such obstacles to his integration into Nigeria because he had spent the majority of his life living there. He had not lost all family, social or cultural ties in Nigeria. In relation to exceptional circumstances the Secretary of State considered the appellant’s disabilities and learning difficulties but considered that there were sufficient facilities in Nigeria to cater for the disabled and those with learning difficulties and the appellant would not “suffer any greater hardship than other people in Nigeria who are in a similar position”.

3. The appellant did not appear before the First-tier Tribunal. He lacks capacity and a solicitor appointed by the Court of Protection acted on his behalf. Mr Haywood appeared for the appellant before the First-tier Tribunal as he appeared before me. The appellant’s case was taken from statements provided by his litigation friend and an employee at his day centre. The appellant had been living in a care home since March 2017 when he made an allegation against his stepmother. His litigation friend and the employee at the day centre confirmed that the appellant could express himself quite well and make his feelings known and he had indicated that “he wants no contact with his stepmother and stepbrother since he moved out of their house”. When the stepmother tried to visit him he refused to see her or his stepbrother. The judge stated in paragraph 13 of his determination that there was “some kind of current family breakdown”. The judge accepted the summary of the appellant’s circumstances and disabilities in paragraph 15 of his decision. The appellant required constant supervision and assistance with daily living needs and had little concept of danger and was unlikely to be able to access help. He could not live independently and was estranged from his immediate family. There was very limited education provision for the disabled who were stigmatised and ostracised. His physical difficulties had arisen as a result of contracting meningoesephalitis at the age of 2 as well as symptoms of cerebral palsy, resulting in deformity of his feet and weakness in his legs. It was submitted by Mr Haywood that there would be very significant obstacles to the appellant’s integration into Nigeria. He would have no prospect of being able to integrate there. The judge concluded his determination as follows:

“18. The burden is on the appellant to show that his human rights are engaged, and it is for the SSHD to show that the removal is a proportionate decision. What is the appellant’s private life in the context of this case? He came here as a dependant upon his family, and in normal circumstances that would be the starting and end point for a dependant child – namely to remain with his family. The private life that is advanced in this case is contingent

upon the help that he is now receiving from a wide range of state services. Does the fact that the appellant is now apparently utterly dependent upon these services provide a legitimate claim for saying that he has established a private life because of being so dependent.

19. The essential conclusion to be reached from the appellant's evidence is that he faces no prospects of being able to integrate into the UK, let alone anywhere else in the world. He is in a home, and it appears from the evidence submitted that he has no prospect of independent living. He is therefore totally dependent upon state care. In my view it follows, therefore, that to talk in terms of significant obstacles to reintegration is inapplicable in this case. This appellant is not capable of integrating anywhere - and, therefore, to say that in some way he cannot be returned to Nigeria because he cannot be integrated, it [sic] to confuse the issue of whether the appellant is capable of any independent life at all.
20. In my view, the circumstances surrounding the breakdown in relationships between the appellant and his immediate family are not satisfactorily explained, nor have they been properly probed during the appellant's treatment. There is some anxiety in my part as to the conduct of the appellant's step-mother in relation to her immigration history where she seems to have used first this appellant to launch an appeal, and then her other son to launch another appeal. It is plain, from previous Tribunal findings, that her motives are suspect.
21. What is plain is that this appellant's step-mother who has apparently cared for him since he was about 2 and his step-brother, if returned to Nigeria, would be returned as a family unit. In other words, were the appellant to be returned to Nigeria, it would be in the context of his immediate family who, subjective to administrative issues, presumably be removed and/or returned at the same time. That would put him in the position that he was in before he came to the UK.
22. Although Mr Haywood referred to Article 3, it was not developed and (in my view) it is inapplicable in this case. Article 3 has been previously considered in two determinations, and in the determination of 2014 it related specifically to this appellant, and an appeal against that decision was refused. I therefore take as a starting point that the Tribunal has already rejected this appellant's claim that in some way his return to Nigeria involves a breach of his Article 3 rights.
23. I am therefore not satisfied that paragraph 276ADE(1)(vi) is applicable to the appellant in this case because either I do not

consider that integration is the correct test, or because also I do not consider that he has demonstrated that the significant obstacles test is one that is applicable to him.

24. In my view, the right way to approach this case is to carry out a **Razgar**-type assessment. The first question is whether the appellant has established a private life in the UK. From what I have set out above, that is debatable. However, I will assume that he has established a private life based on the current care he is receiving and that his proposed removal does engage it. The real issue in this case, therefore, relates to the fifth limb of **Razgar** as to whether that decision is proportionate. Again, although not referred to in his skeleton argument, it is important to have regard to section 117B, which provides guidance as to the appropriate weight to be given to private life in these circumstances. The fact is that, on the appellant's case, he has claimed a right to remain in the UK which will be at the expense of the state. Section 117B expressly provides that it is not in the public interest to allow a person to remain in the UK where they are a burden on the tax payers. As has been previously observed by another Judge, there is a distinct feeling in this case that this family are seeking to exploit public resources. Nevertheless, without ascribing any impure motive to the step-mother, the question is whether under a proportionality assessment, considering the interests of immigration control and the fact that there is no automatic right to NHS care/state support, the issue, in my view, resolved in favour of the SSHD.
25. It follows, from my decision, that clearly the appellant and his step-mother and step-brother will have to consider some kind of reconciliation, because in due course they will be returned to Nigeria as a family unit. It follows, on that basis, that there is nothing to distinguish the conclusions I have reached in this appeal from that which were reached back in 2014 – when the Tribunal on that occasion concluded that it would not be disproportionate for the family as a unit to return to Nigeria. I find that to be powerful evidence to support my conclusion that, were the appellant and his immediate family returned to Nigeria, he would have the necessary protection and support from his family, which would mean that he would not be rendered destitute”.

4. The judge accordingly dismissed the appeal of the appellant.
5. The appellant applied for permission to appeal and permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge had erred in his consideration of paragraph 276ADE(vi). The First-tier Judge observed that whether or not an applicant satisfied the

Rules was a weighty consideration when considering whether a decision to remove was proportionate. As the First-tier Judge put it:

“It was an arguable error of law therefore for the judge not to consider whether the appellant satisfied paragraph 276ADE and/or apparently to find that he did but to disregard the same. Further, the respondent applied paragraph 276ADE to the appellant when considering his application for leave. Therefore, the judge’s failure to do the same was arguably a material unfairness giving rise to an error of law”.

6. There was no response filed by the Secretary of State.
7. Mr Haywood relied on his skeleton argument before the First-tier Tribunal. The analysis of the evidence appeared to have been accepted by the First-tier Judge in paragraph 15 of his decision. The day centre manager had indicated that the appellant needed support to mobilise and was at risk of falling and had communication difficulties. His speech was difficult to understand. He had refused to see his mother when she had attempted to visit. There had been a local authority assessment concluding that there was a duty to support the appellant under the Care Act 2014 to avoid breaching his human rights and his relationship with his family had broken down and the appellant was adamant that he did not want contact with them. There was little support in Nigeria to individuals with disabilities and most families could not provide for the daily needs of disabled children and it was “almost impossible” to attend to the special educational needs for pupils with learning disabilities. Paragraph 276ADE was, Mr Haywood submitted, the Secretary of State’s interpretation of Article 8 private life.
8. The private life claim could only succeed where there were insurmountable obstacles. This was how the Secretary of State had framed the Rule. Mr Haywood referred to **Secretary of State v Kamara [2016] EWCA Civ 813** at paragraph 14:

“... It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of ‘integration’ calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life”.

9. The appellant could not live independently and he did not intend to have any contact with his family. His case was supported by the independent

witnesses. The judge had not been entitled to disapply paragraph 276. He had to allow the appeal on the evidence before him. Counsel referred to **Pretty v United Kingdom [2002] 35 EHRR 1** at paragraph 61:

“As the court had previous occasion to remark, the concept of ‘private life’ is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual’s physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world. There are no previous cases established any such right of self-determination as being contained in Article 8 of the Convention, the court considers that the notion of personal autonomy is an important principle underlining the interpretation of its guarantees”.

10. Mr Tarlow submitted that the grounds were simply a disagreement with the determination. The judge had referred to the previous determination on 12 May 2014 by First-tier Judge Abebrese. The Tribunal had found that:

“The medical facilities which are needed for the second appellant can be found in Nigeria even though cost may be an issue. The Tribunal also make a finding that it would be possible to obtain a wheelchair and this would of course have cost consequences also”.

The judge was clearly referring to the earlier determination. The judge also had in mind Section 117B and the issue of the appellant being a burden to taxpayers. The judge had properly directed himself when undertaking the proportionality assessment. There was no material error of law in the judge’s approach.

11. In reply, Mr Haywood submitted that the decision of Judge Abebrese was in 2014 before the family rift and the assessment of the medical evidence was vague. There was no lawful basis to disapply paragraph 276ADE. The appellant would not be returning to or with his family. It appeared from paragraph 12 of the decision that the appellant had been living in a care home since March 2017 when the allegation against his stepmother had been made.
12. At the conclusion of the submissions I reserved my decision. I have carefully considered the points made. I remind myself that I can only interfere with the decision of the First-tier Judge if it was materially flawed in law.
13. The principal point taken by Mr Haywood is in relation to the approach of the First-tier Judge to paragraph 276ADE(1)(vi).

14. In my view the first point to note is that this appeal is on human rights grounds. It is not an appeal under the Rules. The judge was right to approach the case by carrying out a **Razgar**-type assessment as he did. In carrying out this assessment he was required by statute to take into account the public interest considerations set out in Section 117B as he did. Sub-Section (3) is as follows:

“It is in the public interest and in particular in the interests of the economic wellbeing of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons -

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society”.

It is perhaps not without significance in this appeal that that the ability to integrate into society features in both in this and the preceding sub-section. On the judge’s findings the appellant has no such ability. In a case such as this I do not find that the judge erred in his approach to paragraph 276ADE(1)(vi) as counsel submitted. He did not re-write the rule but gave it a sensible interpretation in the context of the facts as he found them. In any event, as I have said, this is not an appeal under the rules.

15. There is of course, apart from the question of financial independence, issues of immigration control which the judge explored in paragraph 20 and elsewhere. Mr Tarlow submitted that the judge correctly applied the findings and conclusions in the previous determination by Judge Abebrese. Mr Haywood submitted that the family breakdown had occurred since that time but the judge was not satisfied as he says in paragraph 20 that the circumstances surrounding the breakdown in relationships had been satisfactorily explained. This was a question of fact for him. He rejected the Article 3 case which had not been developed before him and had already been previously considered. The judge for the reasons he gave was correct to limit his approach to the issues under Article 8 and he conducted in my view a proper proportionality exercise. I do not find that the judge left out of account any salient evidence. The points taken in relation to 276ADE(1)(vi) raise no material error of law. This appeal is dismissed.

Anonymity Direction

It is appropriate in this case to make an anonymity direction.

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date 26 September 2018

G Warr, Judge of the Upper Tribunal