



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

Appeal Number: HU/12219/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 January 2018**

**Decision & Reasons  
Promulgated  
On 20 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**OLATUNDE BENJAMIN IKUSEDUN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Tampuri, legal representative with Tamsons Legal Services Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by a citizen of Nigeria against the decision of the First-tier Tribunal refusing him leave to remain on private and family life grounds on 22 April 2016.
2. Permission was given by Upper Tribunal Judge Lindsley. The main reason is given at point five of her grant of permission where she said:  
“However, it is arguable that the consideration of the appeal outside of the Immigration Rules should have balanced the fact that if the Rules were considered at the date of hearing, and thus if a new application had been made

at that time, the applicant did satisfy those Rules as he was 24 years and 6 months at the date of hearing, and he had entered the UK when he was 12 years and 2 months according to the findings of the First-tier Tribunal at paragraph 20. It is also arguable that the findings at paragraph 21, and 27 to 32 err for want of reasoning.”

3. There are many aspects of the First-tier Tribunal’s decision that puzzle us. As is perfectly plain from the Reasons for Refusal dated 22 April 2016 the Secretary of State was deciding a decision application made on 11 December 2015. The decision correctly told the appellant that he had a right of appeal against the decision to refuse the application on human rights grounds and although the appellant’s grounds are in a narrative form it is plain that the decision is challenged on human rights grounds. Since the amendments to the Nationality, Immigration and Asylum Act 2002 introduced by the Immigration Act 2014 with effect from 20 October 2014 it has not been possible to appeal a decision under the Rules. The only decisions that can be appealed to the First-tier Tribunal are protection claims of various kinds and human rights claims. The permissible grounds of appeal are identified in statute and the only relevant ground of appeal here is that permitted by Section 84(1)(c) of the 2002 Act namely:
 

“That removal of the appellant from the United Kingdom would be unlawful under Section 6 of the Human Rights Act 1988 (public authority not to act contrary to the Human Rights Convention).”
4. We are therefore surprised that the First-tier Tribunal Judge purported to decide if the appellant satisfied the requirements of the Rules and then to dismiss the appeal under the Rules. There was no appeal under the Rules and no power to entertain such an appeal and consequently no power to dismiss such an appeal. The part of the decision that says otherwise is wrong and is at the very least otiose.
5. The judge also dismissed the appeal on human rights grounds but we have to say we find it astonishing that a judge could decide, as this judge did, that “the consequences of the appellant’s removal is not so grave as to engage Article 8” even though the judge had found that by the time she decided the case the appellant had spent over half of his life in the United Kingdom having arrived when he was aged 12 years and some months.
6. There is a much about this decision that is less than satisfactory.
7. However the judge was right to consider the Immigration Rules because a person’s ability to satisfy the Rules often illuminates (it does not determine) a human rights claim.
8. The judge, appropriately, albeit for inappropriate reasons, set out the terms of paragraph 276ADE(1) of HC 395. The paragraph sets out conditions that an applicant must satisfy at the date of application. It is accepted that the appellant does not fall for refusal on suitability grounds and that he had made a valid application for leave to remain on private life grounds and it was never suggested that he had lived continuously in the United Kingdom for more than twenty years. Plainly he was over the age of 18 and so paragraphs 276ADE(1) (i), (ii), (iii) and (iv) are not applicable. The following provisions might have

been relevant, subject to the requirements that the conditions must be met at the date of application not the date of decision:

“(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) subject to subparagraph (2), is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.”

9. Subparagraph (2) concerns returns to a “third country” and is not relevant here.
10. The judge then found, correctly, that the appellant did not satisfy the requirements of paragraph 276ADE(1)(v) because he had not lived in the United Kingdom for at least half of his life at the time that his application was made.
11. She then considered subparagraph (vi) but found the appellant did not satisfy the requirements of that Rule because she was not satisfied that “there would be very significant obstacles to the appellant’s integration” into Nigeria. She gave her reasons for this conclusion at paragraph 21 of her decision and reasons where she said:
 

“Second, I am not satisfied that there would be very significant obstacles to the appellant’s integration into Nigeria. This is because on the evidence before me:

  - (a) The appellant was born in Nigeria and there is no evidence before me that he would be refused entry to Nigeria.
  - (b) The evidence before me is that the appellant lived in Nigeria until he was 12 years old.
  - (c) I am not satisfied that the appellant would be unable to speak the local language that he previously spoke in Nigeria on his return.
  - (d) I am not satisfied that there is no-one known to the family in Nigeria that would be able to assist the appellant with accommodation and reintegration into Nigeria.”
12. The points at (a) and (b) are unremarkable. The finding at (c) was open to the judge although we do not accept that there are no significant obstacles to integration just because the applicant has some memory of the language he spoke half a lifetime before.
13. The finding that there was “no-one known to the family in Nigeria that would be able to assist the appellant” appears to be entirely speculative. We agree with the contention in the grounds that this finding, clear as it is, is wholly unreasoned. Further the finding becomes harder to understand when we consider the evidence. The appellant’s case, disclosed through his solicitors and his own witness statement and in the witness statement of his sister and in the witness statement of his mother, is that he has never left the United Kingdom since he arrived aged 12 and a half years. There is nothing that gives any reason to suspect that there is anyone in Nigeria who would be at all interested in providing assistance to this appellant in the event of his return.
14. The appellant’s mother in her statement explained that when she left Nigeria in 2003 she left her two children with a friend as her parents had died and she

was on her own. Understandably she wanted her children to join her in the United Kingdom as soon as that could be arranged which is what happened. She said at paragraph 19 of her statement that the appellant does not know Nigeria and:

“we do not have any family members in Nigeria. My husband’s extended family are all in the United States and since his death have decided to have nothing to do with us. It is as if I caused his death”.

15. The only part of the decision that makes any findings on the appellant’s case concerning the evidence accepts his claim to have lived in the United Kingdom since 2004. Clearly this decision was based not on the appellant’s own account or his mother’s account but on the independent evidence but our point is that the judge has given no reason whatsoever to doubt the version of events put before her by the appellant except some unexplained belief that there must be somebody in Nigeria willing to help.
16. That said it seems the only reasons advanced to support the contention that there would be very significant obstacles to his integration in Nigeria is that he had no experience of living there and no contacts there. He is an apparently healthy young man. We do not in any way suggest it would be an easy or seamless transition but we see nothing that could be described properly as “very significant obstacles” to his integration. This is important. Unless it the case that *all* single healthy young Nigerian men who have lived for about half of their lives in the United Kingdom face “very significant obstacles” in the way of integration we do not see how it can be said that this appellant faces such obstacles and we reject any suggestion that *all* young men in these circumstances face such obstacles. To do otherwise would be to reduce the meaning of “very significant obstacles” to “not having lived in the country” and would be plainly wrong.
17. It follows therefore that although the First-tier Tribunal gave a weak explanation, the conclusion that the appellant did not satisfy the requirements of the Immigration Rules for admission was open to her. The evidence relied on, taken at its highest, does not support a conclusion that there were very significant obstacles to the appellant’s integration and the appellant cannot be said to have satisfied the requirements of the Rules when he made his application because he was not old enough to have lived in the United Kingdom for the period of half of his life.
18. There can be no criticism of the judge’s conclusion that the Rules were not met.
19. For all that, on the judge’s findings, if the application has been made when she heard the case, the appellant would have satisfied the requirements of paragraph 276ADE(1)(v). This is the reason that Judge Lindsley gave permission to appeal but the point was not developed before us.
20. It is trite law that human rights appeals are to be determined on the facts before the judge which may quite different from the facts when the application was made.
21. However the Tribunal’s approach to human rights appeals is governed by statute, particularly part 5A of the Nationality, Immigration and Asylum Act

2002. The rules are only relevant to the extent that they help discern public policy. They do not overrule statute law. A rule concerning the requirements to be met by person making an application is not likely to inform the requirements of public policy when the decision consequent on the application is the subject of an appeal and an appeal on human rights grounds is unlikely to be decided properly solely by consideration of the rules. Here the judge should not have been concerned about the effect of section 117B of the 2002 Act. We set it out below:

117B Article 8: public interest considerations applicable in all cases

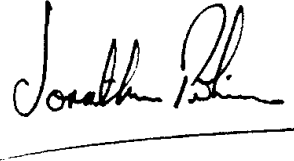
- (1) The maintenance of effective immigration controls is in the public interest.
  - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
    - (a) are less of a burden on taxpayers, and
    - (b) are better able to integrate into society.
  - (3) It is in the public interest, and in particular in the interests of the economic well-being 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.
  - (4) Little weight should be given to—
    - (a) a private life, or
    - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
  - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
  - (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
    - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
    - (b) it would not be reasonable to expect the child to leave the United Kingdom.
22. The Appellant was born on 14 July 1992 (not 1972 as is stated wrongly in paragraph 1 of the Decision and Reasons). He has lived in the United Kingdom since 2004. His status has never been better than precarious. Clearly statute requires little weight to be given to his private life and there is a public interest in maintaining immigration control. His case under section 117B is hopeless.
23. Notwithstanding the clear words of statute the Respondent is entitled to take a more generous approach. Section 117B applies to a "court or tribunal" determining an article 8 point. Clearly her policy reflected in the rules is more generous than the statute. Section 117B does not have the saving provisions

for young long-term residents that are identified in paragraph 276ADE but the more generous requirements of the rules do not help the Appellant because he had not lived in the United Kingdom for long enough to satisfy the rules when he made his application. The knotty point to which we must return is the extent to which a rule dealing with an application illuminates the proper consideration not of an application but of an appeal

24. If the judge had decided that because an application made when she considered the decision would succeed there was no public interest in removing the appellant because it cannot be right to remove someone who was entitled to remain under the Rules, we would have had a great deal of sympathy for the judge's position although we recognise the difficulties that would have followed, not the least being that an earlier application under the Rules had been refused. Here the judge had made different findings of fact from those made by the Secretary of State in an earlier application. The judge did not take this route and it does not appear to have been suggested before her that that is what she should have done.
25. From the point of view of this appellant he was a young man who wants to settle in the United Kingdom and whose only detrimental behaviour as far as we are aware is to have been brought to the United Kingdom as a child (clearly something for which he cannot be blamed) to discover that he would have satisfied the requirements of the Rules if he had made an application on another occasion but did not make an application at the right time and so now cannot remain.
26. Be that as it may this appears to be the logical consequence of the Rules and appeal process.
27. Setting aside the absurdity of the judge's finding that removal does not engage Article 8 we find no proper basis for criticising her decision that removal is proportionate. The appellant does not satisfy the requirements of the Rules. He did once but does not now. The judge is right to record that she is required by statute not to attach much weight to private life established when the appellant was either without leave or when his leave was precarious and although there are positive factors in the sense that the appellant is established in the United Kingdom and therefore integrated and speaks English and we accept would be able to earn a living if he was permitted to work, there is nothing unlawful in the conclusion that he should not be allowed to remain on private life grounds.
28. We have considered further the finding that he should not be allowed to remain on family life grounds because his family life is not engaged. The relationships relied on are the relationships between adults and the appellant is past the first flush of youth. He is a man in his 20s. There is nothing wrong in the conclusion that his removal is proportionate once the fact that he could have succeeded in an application if he had made it at the right time is swept aside.
29. We must now sit back and ask ourselves if it can be swept aside. We must deal with the facts as they presented themselves to us. The fact is that the judge made an erroneous finding about the operation of Article 8. If we set aside the decision we would have to consider things as they are now and as things are now we would have to conclude as did the judge that removal is proportionate.

He is only able to rely on the “private life” end of the private and family life spectrum and that can be given little weight. If he had established a right to remain little weight would have been sufficient to have tipped the balance in his favour because there is no public interest in removing someone who was entitled to remain but that is just not what happened.

30. It follows that although we find the decision unsatisfactory we have to find no material error on the part of the First-tier Tribunal Judge and we dismiss the appeal.

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 11 April 2018