



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01939/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 10<sup>th</sup> June 2019

Decision & Reasons Promulgated  
On 24 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SHEDRACK [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M. Moksud (LR)

For the Respondent: Ms H. Aboni (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge M. Davies, promulgated on 7<sup>th</sup> September 2018, following a hearing at Manchester Piccadilly on 3<sup>rd</sup> September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Nigeria, and was born on 15<sup>th</sup> November 1981. He appealed against the decision of the Respondent, refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395. The decision appealed against is dated 26<sup>th</sup> January 2018.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that his father was a man of influence in Nigeria, and was a friend of the previous Nigerian prime minister, General Sani Abacha, when the Appellant's father was working in the Ministry of Agriculture in Nigeria, being involved in veterinary science. The Appellant himself became friends with General Abacha's first son. The son, Ibrahim, was then killed in a plane crash in 1996. The Appellant had been with him. He had stolen money from his house. It was therefore presumed that he had a hand in Ibrahim's death. This led to the Appellant escaping and hiding in various cities across Nigeria after Ibrahim's death. However, his father was then killed by General Abacha due to a disagreement with him over money and assets, and this happened in the year 2000. The Appellant himself eventually ended up in Gambia, where he spent nine years, and fathered a child. In 2014, his mother was contacted by the family of General Abacha and threatened. The Appellant now claims that he would be killed by General Abacha's family if returned to Nigeria.

## **The Judge's Findings**

4. The judge began at the outset by recognising that both the Appellant and his partner, Andrea Martinez, were vulnerable witnesses (see paragraphs 45 and 52), and it was in this context that the evidence was taken by the judge. However, the judge did not find the evidence to be truthful in any measure or form. He concluded that it was wholly unbelievable that the Appellant, aged 15 in 1996, could be blamed for the death of the son of General Abacha. The Appellant may well have moved to Gambia in 2000 but the judge did not accept that he did so because of difficulties stemming from his father's opposition or disagreement with General Abacha, or because the Appellant could be blamed for the death of General Abacha's son (see paragraphs 72 to 73).
5. The Appellant himself had come to the UK on a student visa (paragraph 75). He then applied in 2014 for leave to remain on the basis of Article 8 (paragraph 77). He did not seek international protection at that time at all. In fact, he applied for an EEA residence card (paragraph 78). He only claimed asylum in April 2016 (paragraph 79). The judge concluded that there was no evidence of any credibility to indicate that the Appellant on the lower standard was at risk if returned to Nigeria (paragraph 80). The judge also considered the possibility that the Appellant was a suicide risk and that this engaged Article 3 (paragraph 82), but concluded that treatment for mental health issues was available in Nigeria.

6. As for the Appellant's relationship with his partner, Andrea Martinez, the judge found that the two of them were living at different addresses and the relationship had not been a continuous one. This being so, the judge stated that, "I question whether that actually amounts to a family life for the purposes of my consideration of Article 8" (paragraph 85). However, in the alternative, the judge did consider the situation if Article 8 were to have been engaged (paragraph 87), and if that was the case the judge was clear that the interference would have consequences of such gravity as to engage Article 8.
7. That, however, was not the end of the matter. What had to be taken into account was the Appellant's "appalling immigration history and his abuse of the immigration process over a large number of years" (paragraph 89). If the family life between the Appellant and his partner was of the order that had been presented, the judge was clear, that there was no evidence put before him as to why that family life could not continue, even if the Appellant's partner remained in the United Kingdom as a British citizen, and the Appellant was to move to Nigeria. This is because "the Appellant could make an application from Nigeria to enter the United Kingdom as a fiancé and would be admitted if he can meet the terms of the Immigration Rules" (paragraph 90).
8. The appeal was dismissed.

### **Grounds of Application**

9. The grounds of application state that the judge erred in his approach to the evaluation of Article 8 (at paragraphs 85 to 86) because he gave no reasons for his finding that the Appellant's relationship with the EEA national had been for the purpose of regularising his leave. The judge had also failed to have proper regard to the medical evidence in relation to the Appellant's mental health.
10. On 11<sup>th</sup> February 2019 permission to appeal was granted.

### **Submissions**

11. At the hearing before me on 10<sup>th</sup> June 2019, Mr Moksud, appearing on behalf of the Appellant, submitted that first, the suggestion that the Appellant could maintain his family life with his partner, was not credible, given that the judge had concluded that "the Appellant could make an application from Nigeria to enter the United Kingdom as a fiancé and would be admitted if he can meet the terms of the Immigration Rules" (paragraph 90), because his partner was no longer working and would not be in a position to demonstrate the requisite financial requirements as having been met. This being so, the family life between the two of them would break down. They were already not living together because the Appellant had to meet the bail conditions by living at an address from where he could answer bail, and it was on account of this solely that the two of them had been separated.
12. Second, he submitted that the medical evidence in relation to the Appellant's mental health had not been properly taken into account, so that it could not be said that it

was proportionate to require the Appellant to return back to Nigeria, or that it would not infringe Article 3 of the Human Rights Act.

13. For her part, Ms Aboni submitted this appeal was only on the basis of Article 8. The protection aspect of the appeal had not been challenged. Given that it was based solely on Article 8, the judge had given a fulsome basis for concluding that the Appellant could not succeed at paragraph 85. He had first stated that family life was not engaged, given that the Appellant had first made an application for an EEA residence card on the basis of his relationship with a Slovakian national; and secondly, that in relation to this particular partner they were living at different addresses and the relationship “has not been a continuous one” (paragraph 85).
14. Second, the judge had concluded that the Appellant could in any event return to Nigeria and make an application as a fiancé and there was no reason why that infringes the particular family life that they were enjoying at present, bearing in mind that they were already living separately. As the judge explained “the Appellant and his claimed partner can continue to communicate” (paragraph 90).

### **Error of Law**

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision.
16. I come to this conclusion bearing in mind that the protection aspect of the judge’s findings is unchallenged, and for that reason unassailable, given the manner in which the judge has comprehensively dealt with that aspect of the claim.
17. However, this is an Article 8 appeal, and in this regard, although the judge does deal extensively with the nature of the relationship between the Appellant and his partner from paragraph 85 onwards, and concludes at paragraph 90 that the relationship could continue “if he can meet the terms of the Immigration Rules” (paragraph 90), there is inadequate consideration of the Appellant’s mental health. In this regard, the judge simply states that “treatment for mental health issues is available in Nigeria even if it may well be of a different standard ...” (paragraph 82).
18. There was documentary evidence of the impact on the Appellant’s mental health if he were to be returned to Nigeria and there was evidence of past attempted suicide, which was not referred to by the judge.
19. It is true that the judge treated the Appellant at the outset as a vulnerable witness, but he then failed to refer to a letter from the Greater Manchester Mental Health NHS Foundation Trust, which was dated 22<sup>nd</sup> August 2018, which states that the Appellant suffers from schizoaffective disorder, and is at risk of suicide if removed to Nigeria. This was directly relevant to the question of whether there were “very significant obstacles” to the Appellant’s integration on return (paragraph 276ADE(1)(vi)).

20. Finally, the Appellant's lack of cohabitation with his partner was something that he had provided an explanation for, and this is not actually set out in the determination. It is relevant because there was evidence of the Appellant's commitment to his partner, given the existence of a notice of marriage.

**Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the regional judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge M. Davies, pursuant to Practice Direction 11(b) of the practice statement.

No anonymity order is made.

This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> July 2019