



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

Appeal Number HU/02997/2020

HU/02834/2020

THE IMMIGRATION ACTS

Heard by “Microsoft Teams”

**Decision & Reasons
Promulgated**

On the 30th June 2021

On the 12th July 2021

Before

UT JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CHARLES AMOGE IKONWA & JENNIE OROMA ALIEZI-IKNOWA

Respondents

For the Appellant: Mr Howells, Senior Home Office Presenting Officer

For the Respondents: Mr Hussain, instructed by Simo Law Firm, Leeds

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against the decision of FtT Judge Drake, promulgated on 2 February 2021.
3. The grounds (using their paragraph numbers) allege misdirection in law, or inadequacy of reasoning, in summary, as follows:

HU/02834/2020

[1], long residence provisions - no legal basis for the finding at [15] that the first appellant had completed 10 years continuous lawful residence in terms of paragraph 276B of the immigration rules;

[2 - 7], private life - no proper consideration of the issue in terms of paragraph 276ADE(1)(vi) of the rules, being “very significant obstacles to integration”; test wrongly specified; no evidence to establish such obstacles;

[9 -10], article 8 - no specification of “unjustifiably harsh consequences” of the respondent’s decision; no application of sections 117B(4)(a) and 117B(5) of the 2002 Act; private life derived from precarious immigration status should have been given little weight; ability to speak English and financial independence incorrectly taken as positive, rather than neutral.

4. Mr Howells submitted that the FtT erred on all three above issues.
5. The statement in the decision at [15] that the appellant had achieved 10 years legitimate residence is baldly made. The judge goes on at [16] to find in the appellants’ favour on private life, without much of an explanation, and then says at [17] that “for all the reasons referred to in [2] and [12] above” the appeal is allowed “under the rules”.
6. (The FtT has no jurisdiction to allow an appeal directly under the rules, but that might be only an error of form.)
7. [2] is narrative of the appeal. [12] states that the first appellant, if he did not meet the rules, invoked article 8. Neither [2] nor [12] contains any reasons for favourable findings in terms of the rules, either on long residence or on private life. It may be that something has gone astray in drafting. Absence of reasons is a legal error.
8. On the first issue, Mr Hussain argued that the case law should be interpreted and applied to the facts of the appellant’s case to justify the finding that the first appellant had completed 10 years’ lawful residence. That is debatable, but in view of parties’ submissions on further procedure it is neither necessary nor desirable to resolve it at this stage. It suffices to say that an analysis which might support that finding is absent from the FtT’s decision.
9. (It emerged in course of oral submissions before me that in the FtT, after a case management review hearing, and before the substantive hearing, the respondent prepared a separate submission on the first issue. That submission may well have been sent out by the respondent, but it does not appear to have been received by the appellant’s representatives or the tribunal. Nothing turns for “error of law” purposes on this mishap, but it is an additional reason for further procedure to be in the FtT.)
10. On the second issue, Mr Hussain conceded, inevitably, that the judge stated the test wrongly. He contended that in substance the judge did

HU/02834/2020

apply the correct test, or alternatively, engaged in the “broad evaluative judgement” required by the case law.

11. I accept that citation of the wrong test might not require the decision to be set aside, if that was a formal slip only. However, despite the best efforts of Mr Hussain, I find error to go further than misquotation. Although the decision says at [16] that the appellants “would have little or no private life” (in Nigeria) that is unexplained (and perhaps rather mysterious). The judge does not tackle the fundamental question whether the appellants, with their history and background, might be “outsiders” rather than “insiders” on return to Nigeria. The findings are as cryptic as on the first issue.
12. The judge at [21] purports to consider section 117A-D of the 2002 Act, but applies it simply by finding that financial independence of the state and social integration require the appeal to be granted. In terms of statute and of case law, the financial aspect can be little more than neutral. Analysis in terms of other relevant parts of part 5A of the Act is absent.
13. The FtT erred on all 3 issues identified in the SSHD’s grounds.
14. Mr Howells did not ask for the UT to remake the decision. He submitted that the case should be remitted for fresh decision. If the decision were to be set aside, Mr Hussain sought the same outcome. In that light, and considering the procedural mishap above, which may have deprived the FtT of proper ventilation of the long residence aspect, the outcome is as follows.
15. The decision of the FtT is set aside, other than as a record of what was said at the hearing, and the case is remitted for fresh hearing, not before Judge Drake.
16. No anonymity direction has been requested or made.

Hugh Macleman

2 July 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

HU/02834/2020

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.