



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01625/2020**

THE IMMIGRATION ACTS

**Heard at Field House
And via Teams
On 2nd February 2022**

**Decision & Reasons Promulgated
On 16th March 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**MR EDIKE [P]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr C Rahman, Counsel, instructed directly by the appellant
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 2nd February 2021.
2. Both representatives attended the hearing via Teams, while I was present at Field House, which was also open to members of the public. The parties did not object to attending via Teams and I was satisfied that the representatives were able to participate effectively in the hearing.

3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Zahed (the ‘FtT’), promulgated on 6th May 2021, by which he dismissed the appellant’s appeal against the respondent’s refusal on 5th February 2020 of his protection and human rights claims. The representatives agreed that the FtT’s reference to a subsequent decision of 8th March 2021 appears to be a typographical error, as there is a separate appeal against that decision before another First-tier Tribunal, which has yet to be determined.
4. In essence, the appellant’s claims involved the following issues: first, whether the appellant had a well-founded fear of persecution based on his Christian faith, when it was expected that he would become an idol worshipper. This element of the appellant’s appeal is only relevant because he subsequently withdrew his protection claim but asserted that the FtT ought not to have considered his credibility in relation to his human rights appeal based on matters in his protection claim. The second issue was the appellant’s relationship with a partner, who had leave to remain in the UK and whom the appellant claimed to have entered into a proxy marriage in Nigeria. The respondent accepted the genuineness of the relationship akin to marriage, but not that there would be insurmountable obstacles to family life with the appellant continuing outside the UK, noting that the appellant’s partner was of Nigerian origin, the same country of origin as the appellant. In respect of private life, the appellant had not lived in the UK for at least 20 years and there were not very significant obstacles to his integration in Nigeria. The refusal decision did not deal with any article 3 ECHR rights in respect of mental health.

The FtT’s decision

5. The FtT recorded that the appellant wished to withdraw his protection claim at §§15 to 16. He noted that the appellant nevertheless wished to pursue claims under article 3 based on his mental health and article 8 ECHR. The FtT analysed the appellant’s credibility at §§20 to 28, in part based on inconsistencies in the document said to evidence the appellant’s customary marriage and also the appellant’s account during the asylum interview. At §28, the FtT stated that he was not prepared to accept that the appellant had no siblings or that his extended family intended to harm him if he returned to Nigeria. At §13, the FtT concluded that there were no insurmountable obstacles to the couple’s return to Nigeria, as both were Nigerian nationals with a significant support network including their church, and skills, education and experience in the UK. The FtT analysed at §§33 to 36 the appellant’s mental health condition but concluded that the appellant had no suicidal ideation and would be able to obtain medication in Nigeria.
6. Having considered the evidence as a whole, the FtT rejected the appellant’s appeal.

The grounds of appeal and grant of permission

7. The appellant relied on three grounds of appeal.
 - 7.1. Ground (1) was that the FtT had not referred to, and had ignored, an independent social worker report dated 17th August 2020, which was arguably relevant to the FtT's concerns about any NHS treatment being based on the appellant's reports of his condition.
 - 7.2. Ground (2) was that the FtT ought not to have considered whether the Nigerian authorities were able to protect the appellant and had erred in considering interview notes without the screening interview notes, which provided a different account and which illustrated that there were no inconsistencies in the appellant's evidence.
 - 7.3. Ground (3) was that the FtT failed to consider very significant obstacles to integration, under Paragraph 276ADE(1)(vi) of the Immigration Rules, rather than exceptional circumstances.
8. Designated Judge Shaerf initially refused permission, but permission was granted by Upper Tribunal Judge Gill on 4th September 2021. She regarded it as arguable that the FtT's reliance upon credibility matters without giving the appellant notice of his concerns was unfair and it was also arguable that the FtT had erred by failing to consider the appellant's article 8 claim by reference to paragraph 276ADE. She did not exclude the first ground and granted permission on all grounds.

The hearing before me

9. Mr Rahman's skeleton argument bore little relation to the permitted grounds and instead includes two separate sets of grounds: the first at §§12a to d, together with recitation of case law, some of which is irrelevant, for example, a discussion of the best interests of the child, where there is in fact no child; and the second set, at §§35 a to h. I remind myself of the need for procedural rigour and the fairness of focusing upon the permitted grounds unless there is an application to amend. Mr Rahman did not dwell on these alternative sets of grounds in his submissions.
10. Turning to his oral submissions, Mr Rahman said that the appellant's representative before the FtT had lacked professionalism. In noting this remark, there is no suggestion that the former representative has had a chance to respond to that criticism, as per BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311. Nevertheless, the appellant had been advised to withdraw his asylum claim, a withdrawal he did not seek to resile from, and instead focus on his human rights claim based on his relationship with his wife. However, in withdrawing his protection claim, this did not mean that he did not fear persecution. Instead, he had accepted that there was sufficiency of protection.

11. The independent social worker report's report had referred to the appellant reporting suicidal ideation. The FtT had merely referred to GP's notes not suggesting suicidal ideation, without referring to the social worker report.
12. In relation to the final ground, the FtT had made no reference to very significant obstacles. They still existed, namely of adverse interest, even if not presented as a protection claim.
13. In response, Mr Avery stated that the appellant had been legally represented before the FtT. The terms of the appellant's withdrawal of his protection claim were clear and were recorded at §16. It was not merely the case that the appellant continued to fear persecution and was pursuing this to a lower standard of proof. Rather, at §16, the FtT recorded the appellant as stating that he did not fear that he would be forced into idol worship.
14. In relation to the independent social worker report, the central focus of this had been the existence of family life, which was not in dispute. To the extent that the appellant mentioned during his interview with the social worker about suicidal ideation, which was not consistent with NHS records, it could, if anything, only have harmed the appellant's claim, on that basis his assertions to the social worker were unsupported by his discussions with his doctors.
15. In relation to the third ground, whilst the test of very significant obstacles had not been expressly referred to, the FtT had referred expressly, at §§30 to 31, to paragraph 276ADE and to the refusal letters, which had clearly referred to very significant obstacles. The FtT had therefore considered very significant obstacles when referring to and considering the refusal letters.
16. In response, Mr Rahman relied upon the fact that the appellant had now been present in the UK for nearly 20 years; was married to a British citizen, with whom he had a genuine and subsisting relationship; and had been the subject of immigration detention but had never committed a crime. The implication was that the appellant was of good character.

Discussion and conclusions

17. I note a number of Mr Rahman's remarks which do not appear to me directly to be pertinent to whether the FtT erred in law. In particular, it matters not whether the appellant had not committed a crime. This is not, for example, a deportation appeal and no adverse issue was taken on the basis of any suggestion of criminal offending. The current period of his residence in the UK is also irrelevant to whether the FtT erred in law.
18. I return to the first permitted ground and the FtT's discussion of issues relating to the appellant's asylum claim. On the one hand, the ground asserts that the FtT ought not to have considered and made adverse findings in relation to inconsistencies in the appellant's narrative, when he

had withdrawn the protection claim. On the other hand, Mr Rahman now suggests that the appellant maintains his fear of persecution, albeit only by reference to very significant obstacles to integration. The two positions on the first ground are irreconcilable. If, as is now said, the appellant required the FtT to consider whether he had a well-founded fear of persecution, the FtT cannot have erred in law in assessing the credibility of that narrative, for the purposes of considering very significant obstacles. In relation to the second aspect of ground (1), on the one hand, the FtT did not make express reference to the asylum screening interview notes, as opposed to the substantive interview notes. On the other hand, the FtT expressly stated at §18 that he had considered all documents that had been submitted in addition to the evidence that had been given at the hearing. I am conscious that it is not necessary for a judge to recite all elements of evidence before them, provided they consider matters in the round. I also note the guidance (and caution) about attaching particular weight to discrepancies between screening and substantive interview notes (see: JA (Afghanistan) v SSHD [2014] EWCA Civ 450). Moreover, a potential inconsistency between the two sets of notes is unlikely to have assisted the appellant's claim to be credible. In the circumstances, the lack of reference to the initial screening notes does not disclose any material failure to consider the evidence in the round. This ground discloses no error of law.

19. I turn to ground (2) and the question of consideration of the independent social worker report. I accept Mr Rahman's submission that there was no express reference to the independent social worker report. However, I return first to the FtT's reference at §18 to having considered all of the evidence. I also agree with Mr Avery's submission that the report largely deals at §§6 to 9 with the genuineness of the relationship between the appellant and his wife, which was not disputed. The lack of any dispute would explain the FtT's lack of reference to the report on that issue. To Mr Rahman's point that the FtT failed to consider §10 of the report which had referred to suicidal ideation, whereas the NHS records did not, I accept Mr Avery's submission that this cannot be material. Any inconsistency in what the appellant told the social worker would, if anything, have counted against the appellant. It was also not suggested that the independent social worker report is a medical expert.
20. In summary, first, a judge can be expected to have considered the evidence before them where they expressly state they have done so and it is unnecessary, where the focus of the evidence is on an undisputed matter, to refer to it expressly. Second, to the extent that in this case there was an inconsistency in evidence not referred to by the FtT, where that inconsistency did not assist the appellant, it does not, in my view, amount to an error such that the FtT's decision should be set aside.
21. I turn to ground (3) and the suggestion that the FtT failed to consider very significant obstacles to integration. The difficulty with this ground is, as Mr Avery points out, the FtT's reference at §30, which reads as follows:

"I find that the appellant cannot succeed under Appendix FM family life or paragraph 276ADE private life under the Immigration Rules for the reasons given in the respondent's detailed reasons for refusal dated 5th February 2020 ..."

22. The refusal letter of 5th February 2020 makes express reference to very significant obstacles, at §§105 to 106. Therefore, the test of very significant obstacles is one that was plainly considered by the FtT, when he referred to the refusal letter.
23. I conclude that there were no errors of law in the FtT's decision, such that it is appropriate to set his decision aside. Therefore, the appellant's appeal against the FtT's decision fails.
24. I reiterate one final point. The FtT referred to a subsequent decision of 8th March 2021. The representatives agree that that appeal was not before me, nor I have been provided with a copy of that decision. Mr Avery has confirmed that there is an outstanding appeal before the First-tier Tribunal which has been stayed. I therefore have not considered whether the FtT erred in law in respect of that second decision.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the First-tier Tribunal's decision should be set aside.

No anonymity direction is made.

Signed J. Keith

Date: 9th February 2022

Upper Tribunal Judge Keith