



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

Appeal Number: RP/00107/2019

THE IMMIGRATION ACTS

Heard at Field House

**On 12 October 2021
*Extempore decision***

**Decision & Reasons
Promulgated
On 15 November 2021**

Before

**THE HONOURABLE MR JUSTICE SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE STEPHEN SMITH**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ISAAC KONTOH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr L Youssefian, Counsel, instructed by Sabz Solicitors

DECISION AND REASONS

This is an appeal by the Secretary of State. For convenience we will use the terminology of the parties as they were before the First-tier Tribunal; we refer to the appellant before the First-tier Tribunal as the appellant.

The Secretary of State appeals against a decision of First-tier Tribunal Judge Monson promulgated on 23 April 2021. The judge allowed an appeal by the appellant against a decision of the Secretary of State dated 25 October 2019 to refuse his human rights claim. The Secretary of State's decision was taken in the context of refusing representations the appellant had made in an attempt to resist his deportation.

The appellant is a citizen of Nigeria born in 1998. He arrived in this country in approximately 2002 or 2003 and was granted refugee status “in line” with his parents. His parents had been recognised as refugees following their own successful appeal before an adjudicator, Mr Oliver, on 13 August 2003. In her decision of 25 October 2019, the Secretary of State also revoked the refugee status held by the appellant. In the proceedings before the First-tier Tribunal, the appellant appealed against both the revocation of his protection status and the refusal of his human rights claim. That protection limb of his appeal has been dismissed, and there has been no cross-appeal in relation to that element of the decision.

Factual Background and the Decision of the First-tier Tribunal

The appellant was granted indefinite leave to remain in October 2004. His childhood was largely crime-free. However, from the age of 17 he began to offend, committing offences of escalating seriousness. By the date of the hearing before Judge Monson, the appellant had accrued nine convictions for twenty offences. On 28 February 2019 before the Crown Court at Guildford, the appellant pleaded guilty to three counts of possession of a class A drug with intent to supply. For each of the three counts he was sentenced to 34 months’ imprisonment, to run concurrently. Those convictions engaged the automatic deportation provisions of the UK Borders Act 2007 and the Secretary of State pursued the appellant’s deportation.

The appellant had made a human rights claim to the Secretary of State on 27 March 2019. In his claim he sought to explain the circumstances that led to his offending, and set out a number of other factors which, he contended, would render his deportation disproportionate for the purposes of his rights under Article 8 European Convention on Human Rights (“the ECHR”). Those factors are set out at [74] of the decision of the Secretary of State. They include having associated himself with the wrong crowd, living with his mother, who was ill, assisting her with her medication, and providing financial and practical assistance, for example with the grocery shopping. The appellant also stated that his imprisonment and separation from the family and its long-term impact upon his potential removal from the country could result in his mother falling into a further period of depression. He described his mother and his younger brother as “the love of his life”.

The appellant’s human rights claim also said that he had resided in the UK for the majority of his life. He had no memory of living in Nigeria. He attended primary and secondary school in the UK, followed by college in Sutton. He had completed courses with the Prince’s Trust, and undertaken work experience with the British Heart Foundation, as well as working in warehouses, sales and marketing. He had applied to an estate agent for work experience. Addressing the circumstances that would be likely to await his return to Nigeria, he stated that he did not know what he would do or where he would go. He did not speak the language, he had never been there and he would not know anybody in that country. He referred to his partner. In his view, he was a changed man. He was to distance himself from crime and the people in criminal circles in the future.

The Secretary of State refused the human rights claim under paragraph 399A of the Immigration Rules. The Sections contained in those provisions correspond directly to Section 117C of the Nationality, Immigration and Asylum Act 2002 (“2002 Act”). “Exception 1” is relevant to these proceedings. There are three criteria:

- (a) First, the individual concerned must have been lawfully resident in the United Kingdom for most of their life;

- (b) Secondly, the individual must be socially and culturally integrated in the United Kingdom; and
- (c) Thirdly, there must be “very significant obstacles” to the individual’s integration in the country to which it is proposed they would be deported.

The Secretary of State set out reasons for concluding that the appellant was not socially and culturally integrated in this country. The reasons were based primarily upon the appellant’s criminal record. The Secretary of State considered that the appellant would not face “very significant obstacles” to his integration in Nigeria. He was a citizen of the country and would be able to return at an age when he would be able to acquire familiarity with life there. Accordingly, in the Secretary of State’s view, the appellant was not able to meet the requirements of paragraph 339A of the Immigration Rules. The Secretary of State refused the appellant’s human rights claim.

The Decision of the First-tier Tribunal

At [27], the judge outlined the serious criminal record the appellant had accrued since turning 17. Then the judge then quoted the Crown Court sentencing judge’s remarks in full, at [28]. He summarised the human rights claim advanced by the appellant at [30] to [33] and dealt with exclusion from protection at [50] to [67]. The appellant’s Article 8 claim was dealt with at [68] and following.

Turning to the judge’s Article 8 analysis, he outlined, correctly, that the private life exception contained in paragraph 399A of the Immigration Rules mirrored Exception 1 contained in Section 117C(4) of the 2002 Act. It was common ground that the appellant had lived here lawfully for more than half of his life. At [75] and [76] the judge gave reasons for finding that the appellant was socially and culturally integrated:

“75. With regard to the second limb of the test, the respondent reasonably contends that the appellant’s offending behaviour cannot be regarded as ‘examples of either integration, or behaviour which is of benefit to wider community.’ However, as is highlighted elsewhere in the RFRL, the appellant’s offending behaviour did not begin until 2015, when he was 17 years old. The disclosed documentary evidence relating to the appellant’s attendance at primary and secondary school is fragmentary, but it is sufficient to establish on the balance of probabilities that the appellant was in full-time education from at least the time when he was granted ILR at the age of six until the age of 16 when he sat for public exams in a range of subjects in the summer of 2014 as a pupil at Rutlish School in Merton; and achieved a few good grades such as a merit in Applied Science BTEC Level 2 awarded by Pearson. There is also a report from the school dated April 2014 detailing that his attendance record from September 2013 was 93.1%.

76. Accordingly, I consider that the appellant was already socially and culturally integrated into the UK by the time that he began his criminal offending in 2015; and, I do not consider that his offending behaviour thereafter means that he is no

longer to be treated as being socially and culturally integrated.”

At [77] to the end of the decision, the judge dealt with the third limb of the exception to deportation, namely whether the appellant would encounter very significant obstacles to his integration in Nigeria. The judge began by summarising the conclusions of the Secretary of State’s decision at [102] that the appellant’s father has family in Nigeria. In relation to that assessment the judge said this, at [77]:

“This assessment runs counter to both the findings of fact made by Mr Oliver in the asylum appeal of the appellant’s parents and also the clear implications of such findings in terms of the appellant being able to access a family support network on return to Nigeria. The respondent’s assessment completely ignores the evidence given by the appellant’s mother, which was accepted by the judge, that her mother, her three children and the other relatives on her side of the family who had taken refuge in the church had disappeared in February 2001 and that it later emerged that her mother and the three children had fled to Benin. The assessment also ignores the plain implication of Mr Oliver’s findings which was that there were no relatives remaining in Nigeria to whom the appellant’s parents, and hence the appellant, could realistically turn to for support, since the relatives on Mr Kontoh’s side were the agents of persecution and, as regards the close relatives on Mrs Kontoh’s side, their whereabouts were either unknown or they were known to have fled to another part of Africa.”

Against that background the judge, then addressed the well-known authority of Kamara v The Secretary of State for the Home Department [2016] EWCA Civ 813 at [14], citing the relevant extract from the judgment of Lord Justice Sales (as he then was).

Drawing those findings together, the judge reached the following global conclusion at [79]:

“I consider that the appellant could survive in Nigeria, but I also consider that he would be a stranger to the country, the people and the way of life there, and that, in the absence of a family support network, there would be very significant obstacles to him building up within a reasonable time a variety of human relationships such as to give substance to his private or family life. Accordingly, I am persuaded that there would be very significant obstacles to his integration into the country of return.”

The judge found that the private life exception contained in section 117C(4) was met and allowed the human rights limb of the appeal on that basis.

Grounds of Appeal

The grounds of appeal are essentially twofold.

First, in relation to the findings that the appellant was socially and culturally integrated the Secretary of State submits that the judge failed to consider that the appellant's prior integration may be broken by his repeated criminal offending. The grounds of appeal relied on Binbuga v The Secretary of State for the Home Department [2019] EWCA Civ 551, which quoted with approval of the decision of this tribunal in Bossade [2015] UKUT 415 (IAC) concerning the impact of offending on breaking social and cultural integrative links.

Secondly, that the judge's assessment of what amounted to "very significant obstacles" to integration in Nigeria did not, in fact, amount to very significant obstacles. The judge failed to give sufficient reasons for reaching that conclusion in light of the factors set out in the refusal letter.

Permission to appeal was granted by First-tier Tribunal Judge Fisher on the basis that it was arguable that there was "serious discontinuity in integration" due to the appellant's history of offending. Permission was granted on all grounds.

Submissions

On behalf of the Secretary of State, Mr Melvin, a Senior Presenting Officer, submitted a skeleton argument on 23 August 2021. Ms Cunha appeared before us, and made a range of further submissions amplifying both the grounds of appeal and Mr Melvin's skeleton argument. She submitted that the judge failed properly to address the impact of the appellant's offending in light of its gravity and frequency in a relatively short period of time. In relation to the appellant's care for his mother and the other matters he raised in his human rights claim, Ms Cunha submitted that those factors went simply to the quality of the appellant's family life with those in his immediate family, and did not demonstrate any wider evidence of integration in the broad sense addressed by the exception.

In relation to the finding that there were very significant obstacles or would be very significant obstacles to the appellant's integration in Nigeria, Ms Cunha submitted that the judge's reasoning was deficient. The sole reason given by the judge for reaching that finding related to the findings reached by Judge Oliver in the course of the appellant's parents' asylum appeal. That was insufficient, submitted Ms Cunha. There were a range of additional factors outlined by the refusal decision which, in Ms Cunha's submission, were not addressed by the judge. As such, the Secretary of State is wondering why she has lost this case.

Discussion

At the outset of our analysis it is necessary to recall that appeals lie to this Tribunal on the basis of errors of law and not disagreements of fact. There have been a range of authorities in the Court of Appeal and Supreme Court addressing the scope of the jurisdiction of an appellate court or tribunal when considering findings of fact reached by a judge below. Of course, certain findings of fact are capable of being infected by an error of law, as notably summarised in R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ at [9].

Mr Youssefian on behalf of the appellant drew our attention to the recent Court of Appeal authority of Low v The Secretary of State for the Home Department [2021] EWCA Civ 62. In Low Lord Justice McCombe, giving the majority judgment, drew upon the now well-known authority of Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5 at [114]. There, Lord Justice Lewison said:

“Appellate Courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best-known of these cases are *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23 [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court.”

Lord Justice Lewison continued:

“The reasons for this approach are many. They include

(i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided and what those facts are if they are disputed.

(ii) The trial is not a dress rehearsal. It is the first and last night of the show.”

Then, going on to (iv):

“(iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him whereas an Appellate Court will only be island hopping.”

The judgment in [Fage UK v Chobani](#) is now some seven years old but it continues to represent a useful summary of the law on the approach to findings of fact in appeals such as this and the deference owed by appellate tribunals and courts to first instance judges.

We conclude our brief survey of the relevant authorities by referring to [Perry v Raleys Solicitors](#) [2019] UKSC 5. At [52] Lady Hale summarised the constraints to which appellate courts and tribunals are subject in these terms. Her Ladyship said that the principles:

“may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact or that the trial judge’s finding was one that no reasonable judge could have reached”.

Against that background, we turn to ground 1, concerning whether the judge erred in relation to the finding that this appellant was socially and culturally integrated. Ms Cunha wisely sought to distance herself from the reliance on [Binbuga](#) in the grounds of appeal. In our judgment, it is important to recall the facts of [Binbuga](#). The appellant in those proceedings was a member of Turkish gangs in North London. The First-tier Tribunal Judge accepted a submission advanced on his behalf that social and cultural integration legitimately consisted of the appellant’s participation in gang culture, such was the prevalence of gang culture in that part of North London. The

Court of Appeal held that that was an error of law, for such criminal activity was anathema to the concept of social and cultural integration encapsulated by this criterion of the exception, and it was in that context that the court made the remarks at [58] and [59] which are quoted by the Secretary of State in the grounds of appeal.

The concept of social and cultural integration was more recently addressed by the Court of Appeal in CI (Nigeria) v The Secretary of State for the Home Department [2019] EWCA Civ 2027. It is necessary to examine [61] and [62] of the Court of Appeal's judgment in some depth. For present purposes we quote from [62] here. The Court of Appeal addressed the impact of offending and imprisonment on a person's previous integration in the country, in these terms:

“The impact of offending and imprisonment upon a person's integration in this country will depend not only on the nature and frequency of the offending, the length of time over which it takes place and the length of time spent in prison but also on whether and how deeply the individual was socially and culturally integrated in the UK to begin with.”

We recall the judge's operative reasoning in relation to finding the appellant to be socially and culturally integrated at [75] and [76] of the judgment below. The judge in our view legitimately ascribed significance to the fact that it was not until the appellant was 17 years old that he committed his first criminal offence. He then outlined the documentary evidence relating to the appellant's attendance of primary and secondary school, and found on the balance of probabilities (in a finding which we observe has not been challenged by the Secretary of State) that the appellant was in full-time education from at least shortly after the time he was granted indefinite leave to remain at the age of 6 until the age of 16, when he sat public exams in a range of subjects as a pupil at Rutlish School in Merton. The judge described the appellant as having achieved some good grades and merits in Applied Science BTEC Level 2 awarded by Pearson. His attendance at around that time was recorded as 93.1%.

Ms Cunha submits that the mere fact of the appellant's prior attendance at primary and secondary school is insufficient to merit a finding of this nature. The judge should have addressed the impact of the specific nature, frequency and circumstances of the appellant's offending in order to reach a conclusion concerning social and cultural integration that was open to him.

We disagree. The judge was clearly aware of all the material that was before the Secretary of State and was under no requirement to repeat back to the parties the evidence that was either considered in the refusal letter or the subject of submissions before him. In our judgment, it was open to the judge to ascribe significance to the appellant's educational history and reach a finding that there was full integration prior to the age of 17. In that respect, drawing on CI (Nigeria) at [62], it is significant that there the Court of Appeal quoted from the Secretary of State's own criminality Article 8 ECHR guidance in these terms:

“If the person has been resident in the UK from a very early age it is unlikely that offending alone would mean a person is not socially and culturally integrated.”

Against that background, the judge correctly identified the issue as being whether, in light of the social and cultural integration which characterised the

appellant's childhood, his subsequent offending had the effect of breaking that integration.

The approach that should be taken to finding that social and cultural integration has been lost was helpfully calibrated by the Court of Appeal in AM (Somalia) v The Secretary of State for the Home Department [2019] EWCA Civ 774. Those proceedings concerned an individual whose initial integration was demonstrated through his life as a married man, with children, working in a number of different roles. Unfortunately, his life entered a downward spiral of decline. Over a thirteen or fourteen year period AM had engaged in a long history of drink-related offending and accrued 27 convictions for 45 offences. He was homeless and jobless. He knew very few people. His marriage broke down, and he had no contact with any members of his family and there was no evidence that he had any friends or other indications of a private life. He lived in a hostel and was addicted to alcohol. It was held that he was not socially and culturally integrated. The position of the appellant in AM (Somalia) readily contrasts with the position of the appellant in these proceedings.

The assistance the appellant provided to his mother, his educational background and his relative offending-free youth were all matters that this judge was entitled to take into account. In our judgment, it cannot be said that in concluding that this appellant was socially and culturally integrated the judge reached a finding that was not open to him or, to adopt the words of Lady Hale in Perry v Raleys Solicitors, that the judge reached a finding that no reasonable judge could have reached. While the Secretary of State may well disagree with the judge's analysis, the reality is that in this tribunal we would merely be "island hopping", to adopt the terminology of Lewison LJ in Fage UK Ltd, if we sought to substitute our own view for that reached by the judge below. The judge below had the benefit of considering all the evidence in the case. We have not. We defer to his assessment of the facts.

We therefore dismiss the Secretary of State's appeal insofar as it relates to ground 1.

We turn now to the second limb of the Secretary of State's appeal. Here, the Secretary of State mounts a similar disagreement of fact relating to the judge's approach to whether the appellant would face "very significant obstacles" upon his return to Nigeria. Ms Cunha submits that the judge failed to take into account a range of considerations set out in the refusal letter such as the fact that the appellant speaks English, an official language of Nigeria, and that he is a young healthy male of working age.

What the judge did was to begin his assessment with the position outlined in the Secretary of State's refusal letter and to critique it. He noted that the refusal letter concluded that the appellant enjoyed contact with family members on his father's side in Nigeria, for the reasons given at [77]. The judge correctly highlighted that that conflicted with the findings reached by Mr Oliver in the asylum appeal of the appellant's parents. The judge rightly concluded that the Secretary of State's opinion concerning the appellant's likely circumstances in Nigeria, as set out in refusal letter, were founded on the incorrect premise that the appellant would be returning to a country that would welcome him in the form of having family members ready to receive him. That was simply incorrect. In our judgment, the judge was entitled to ascribe significance to the mistaken factual premise relied upon by the Secretary of State and, having done so, reach his own findings.

The judge correctly directed himself concerning what the concept of integration for these purposes entails and, although his reasons at [79] are relatively brief, one must

read the decision as a whole. This is an appellant who has been resident in this country since a very young age. He had lived here for the majority of his life and had no memory of life in Nigeria, as the judge summarised at [32] to [33]. Bearing in mind the erroneous factual basis upon which the Secretary of State's analysis of this issue was set out in the refusal letter, the judge gave sufficient reasons for making the finding that the appellant would face very significant obstacles to his integration in Nigeria for the reasons he gave.

Although the Secretary of State may well contend that the judge could have reached a different conclusion, and indeed Ms Cunha submits a range of additional factual considerations which, she submits, the judge should have had regard to, in our judgment, the judge reached findings that were properly open to him on the evidence that he heard. While another judge may have reached a different conclusion, it cannot be said that the judge reached a decision that no reasonable judge could have reached.

It follows that the Secretary of State's second ground of appeal must also be dismissed.

Accordingly, we find that the decision of Judge Monson did not involve the making of an error of law and this appeal is dismissed.

Notice of Decision

The decision of Judge Monson did not involve the making of an error of law.

The appeal is dismissed.

No anonymity direction is made.

Signed *Stephen H Smith*

Date 14 October 2021

Upper Tribunal Judge Stephen Smith