Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
UI-2021-001799 (HU/04029/2020)
UI-2021-001800 (HU/04031/2020)

THE IMMIGRATION ACTS

Heard at Field House
On the 14th September 2022

Decision & Reasons Promulgated
On the 30th January 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

OLAIDE OLUWATOSIN DAGUNDURO
ISRAEL OLUWATOSIN DAGUNDURO

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: In person
For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, who are husband and wife, appealed the respondent's decision (SSHD) dated 25 February 2020 to refuse a human rights claim.

2. First-tier Tribunal Judge Wood ('the judge') dismissed the appeal in a decision sent on 07 September 2021. The judge summarised the procedural history, the evidence given by the appellants, and Mrs Dagunduro's father, as well as the submissions made by the legal representatives [1]-[17]. The judge went on to summarise the relevant legal principles [18]-[20] before turning to making his findings.

3. The judge considered whether the appellants met the private life requirement contained in paragraph 276ADE(1)(vi) of the immigration rules. To succeed under that rule the appellants would need to show that there were 'very significant obstacles' to their integration in the country to which they would have to go if required to leave the UK. The judge quoted the relevant guidance set out by the Court of Appeal in *SSHD v Kamara* [2016] EWCA Civ 813 [22]. He also considered the respondent's policy guidance relating to private life applications under paragraph 276ADE(1)(vi) [23].

4. The judge concluded that the appellants had failed to show that there would be very significant obstacles to their integration in Nigeria. Both had spent most of their lives there. They were still familiar enough with the culture not to be outsiders. He found that it was unlikely that they would be without family or friends who could provide some practical and emotional support [24]. He accepted that the evidence relating to the economic situation in Nigeria indicated that it was likely to be challenging to find work. However, they had both shown resilience and flexibility in forging lives in the UK, which they could do again on return to Nigeria. He did not consider that the economic situation in Nigeria was sufficient to show that there were 'very significant obstacles' to integration [25].

5. In so far as it was argued that the health of Mrs Dagunduro's mother, who lives in the UK, was somehow relevant to whether the appellants themselves would face 'very significant obstacles' to integration in Nigeria, the judge also considered the available medical evidence. He summarised the correspondence, which confirmed that the first appellant's mother suffered from various conditions including an inflammatory disease that affected her skin and gastrointestinal system, scleroderma, and Type 2 diabetes [27].

6. However, the judge noted that none of that evidence assisted him to evaluate the extent or severity of her conditions. What he considered to be of 'crucial importance' was the fact that the evidence did not show that her mother could not care for herself because of her medical conditions. He noted that the first appellant's mother was 64 years old and therefore was not an elderly woman [28]. The judge went on to find that, even if the first appellant's mother did need some assistance, there was insufficient evidence to show that it was necessary for the appellants to provide it. The judge considered the claim that the first appellant's father suffered from asthma and high blood pressure and was therefore unable to assist his wife. He concluded that this assertion was not consistent with the fact

that her father was well-enough to work full-time [29]. In addition to those findings, the judge noted that the first appellant's mother received a daily visit from social services. Even if her mother did require some level of care, he was satisfied that it could be provided by her husband, social services, or external carers [31].

7. The judge also considered evidence which indicated that the first appellant suffered from severe endometriosis. She had been advised to have a hysterectomy but still hoped to receive fertility treatment in the UK. Although he acknowledged that it was sad that her condition might limit her chance of having children, it had not been suggested that treatment would not reasonably be available to her if she returned to Nigeria [32]. For these reasons he found that the appellants had failed to show that they met the private life requirements of paragraph 276ADE(1)(vi) of the immigration rules.

8. The judge went on to conduct a broader assessment of their private and family life under Article 8 of the European Convention. He considered the submission that the second appellant had been offered work, but in the absence of an application or evidence to show that he was likely to be granted leave to remain on this basis, he found that there was insufficient evidence to show that it would render the decision disproportionate. Having found that the appellants did not meet the requirement for leave to remain under the immigration rules, which are said to reflect where a fair balance lies for the purpose of Article 8, he concluded that it would not be unjustified or disproportionate to expect the appellants to return to Nigeria [43].

9. The appellants' solicitors applied for permission to appeal to the Upper Tribunal. The grounds of appeal make general submissions with reference to generic case law relating to Article 8 without particularising any errors of law clearly. However, the following broad points can be derived from the rather generalised pleadings.

    (i) The judge failed to give sufficient weight to the evidence relating to the medical conditions of Mrs Dagunduro and her mother.

    (ii) The judge failed adequately to evaluate the evidence produced by the appellants, which showed that there were 'serious and compelling circumstances, and insurmountable obstacles'.

    (iii) The judge failed to consider what weight should be given to the effect of the decision on the first appellant's parents with reference to the House of Lords decision in *Beoku-Betts v SSHD* [2008] UKHL 39.

10. First-tier Tribunal Judge Hollings-Tennant granted permission to appeal noting that 'in some respects the grounds amount to little more than disagreement with the Judge's findings.' The judge went on to make the

following statements about matters that largely were not pleaded in the grounds:

> '4. However, whilst the Judge embarked on a balance sheet approach to assessing proportionality it is not clear whether he afforded any weight to factors that arguably reduce the public interest in removal, namely Mrs Dagunduro's qualifications in the healthcare sector, her voluntary work, to which he refers [in paragraph 10], and the extent to which the burden of any additional care provision for her mother may fall on the taxpayer in the Appellants are removed. Further, whilst he notes there was limited information in respect of Mr Dagunduro's offer of employment, the Judge makes no clear finding as to whether he accepts the offer was genuine and, if so, the weight to be afforded to such evidence in the balancing exercise.
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> 5. It is also not entirely clear whether the Judge accepted that Article 8(1) is engaged with regards to the Appellants (sic) family life with Mrs Odebiyi (see Kugathas [2003] EWCA Civ 31) and, if so, he fails to provide any assessment of the extent to which removing the Appellants may amount to a disproportionate interference with her rights under Article 8(2), notwithstanding his conclusion that there was insufficient evidence to demonstrate dependency upon her daughter.'

11. The appellants were unrepresented at the hearing before the Upper Tribunal. They did not seek an adjournment to obtain legal representation and confirmed that they were content to proceed. I explained my role and the procedures to them. I explained that the grounds of appeal had been drafted by a legal representative and that these formed the basis of the arguments that had been put forward on their behalf in the appeal before the Upper Tribunal.

12. I am conscious of the fact that the hearing took place as long ago as 14 September 2022. Unfortunately, the preparation and sending of this decision has been considerably delayed by a period of illness. For that I apologise because I know that the appellants will have been anxious to know the outcome of the appeal.

Decision and reasons

13. The appellants are both citizens of Nigeria. The first appellant entered the UK in 2009 with entry clearance as a student, when she was 27 years old. The second appellant entered the UK on in 2013 with entry clearance as a Tier 2 Minister of Religion, when he was 32 years old. At the date of the First-tier Tribunal hearing the first appellant had lived in the UK for 12 years and the second appellant for just over 8 years. Both appellant's had lawful leave to remain until the respondent decided to curtail the second appellant's leave as a Tier 2 Minister (with his wife as his dependent) because his Tier 2 sponsor was no longer licenced. Their leave was curtailed to expire on 15 August 2017. Further applications for leave to remain were refused. At the date of the First-tier Tribunal hearing the appellants had remained in the UK without leave for a period of five years.

14. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

15. The immigration rules are said to reflect where a fair balance is struck for the purpose of Article 8. If a person does not meet the requirements of the immigration rules compelling circumstances are likely to be required to outweigh the public interest in maintaining an effective system of immigration control.

16. The appellants did not meet the family life requirements of Appendix FM because neither of them had leave to remain. There is no provision in the immigration rules for leave to remain as an adult child nor as a carer for a parent who is settled in the UK. The appellants did not meet the long residence requirement contained in paragraph 276B of the immigration rules because they did not have 10 years of continuous lawful residence. The appellants fell far short of the 20 year long residence requirement for those who have periods without lawful leave.

17. This much appears to have been recognised by their legal representative because it was only argued that they met the private life requirement of paragraph 276ADE(1)(vi) of the immigration rules and/or in the alternative that their removal would amount to a disproportionate interference in their Article 8 rights.

18. I have already noted that the original grounds of appeal drafted by Graceland Solicitors were poorly pleaded. They repeated general arguments relating to Article 8 with reference to trite case law, without particularising how or why the judge's decision involved the making of an error of law. It is insufficient to disagree with specific findings. The Upper Tribunal only has power to set aside a First-tier Tribunal decision if it involved the making of an error of law that might have made a material difference to the outcome of the appeal.

19. In assessing whether there would be 'very significant obstacles' to integration in Nigeria, the judge applied the correct test contained in paragraph 276ADE(1)(vi). He also referred to the relevant guidance given by the Court of Appeal in the case of *SSHD v Kamara* [2016] EWCA Civ 813. The judge went on to consider relevant matters including the fact that the appellants have spent most of their lives in Nigeria, are familiar with the culture there, that it was likely that they would still have friends and family members there, that they have worked there in the past, and could find work again if they returned. He considered the submission that

it might be more difficult to find work there, but it was open to him to find that this was not a weighty consideration.

20. Part of his assessment included consideration of the health issues of the appellant and her parents, and in particular, her mother. Given that the test under paragraph 276ADE(1)(vi) concentrates on whether the appellants themselves could re-establish a private life in their country of origin within a reasonable time, it is difficult to see how the health issues suffered by the first appellant's mother could have any significant bearing on that issue. The judge rightly considered whether the appellant's own health issues might create obstacles to integration, but it was within a range of reasonable responses to the limited evidence produced in support of the appeal to conclude that her condition was not life threatening and that there was no evidence to suggest that she could not receive treatment in Nigeria.

21. The grounds of appeal do not identify any other significant factors that the judge should have, but failed to, consider in the assessment under paragraph 276ADE(1)(vi). The grounds simply repeated the same arguments that were made before the First-tier Tribunal and amount to nothing more than a disagreement with the judge's evaluation of the evidence. For these reasons, I conclude that the judge gave adequate reasons for his findings relating to paragraph 276ADE(1)(vi), which were within a range of reasonable responses to the evidence.

22. The judge went on to consider whether removal would be disproportionate even though the appellants did not meet the requirements of the immigration rules. He directed himself correctly to Part 5A of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'), which sets out statutory considerations that a court or tribunal must consider in assessing where to strike a fair balance between the interests of the individual and the public interest in maintaining an effective system of immigration control for the purpose of Article 8. The provisions state that little weight should be given to a person's private life in the UK that was established when a person's immigration status was precarious or unlawful. He had already found that the appellants did not meet the private life requirements of the immigration rules.

23. I accept that the judge did not make a structured finding relating to the issue of whether the first appellant had established a family life with her mother that engaged the operation of Article 8(1). Although it is clear that they have a family life within the normal usage of the word, for the purpose of the legal definition, a family life between adult relatives will only engage the operation of Article 8(1) if there are elements of dependency that go beyond the normal emotional ties between adult relatives involving real, effective and committed support: see *Kugathas v SSHD* [2003] EWCA Civ 31, *Patel v ECO* [2010] EWCA Civ 17, *Ghising (Gurkhas/BOCs: historic wrong: weight) Nepal* [2013] UKUT 567 (IAC), and *Singh v SSHD* [2015] EWCA Civ 630.

24. At first blush, this would appear to be an omission from the decision. However, when one considers the decision as a whole the judge summarised the relevant evidence [8]-[14] and made clear findings relating to the extent of the dependency between the first appellant and her mother [27]-[31]. Those findings of fact have not been specifically challenged and were open to the judge to make on the evidence.

25. The judge noted that there was little evidence to show that the medical conditions that the appellant's mother suffered from were such that she could not care for herself. There was little evidence to support the assertion that she required a high level of care. It was open to the judge to find that the appellant's father lived with her mother and that, even though he suffered from high blood pressure and asthma, was fit enough to work full time. He concluded that any support that the appellant's mother required could be provided for by her father, social services, or outside care providers.

26. The judge heard from the appellant's father, but not her mother. I note that the witness statement of the appellant's mother outlined her medical conditions and stated that her daughter provides her with general support during the day. It is clear from that statement that she would prefer her daughter to provide support, but there is little detail about the nature and extent of their relationship or the impact that it might have on her if the appellants were to return to Nigeria.

27. In light of the judge's findings of fact, it is difficult to see how the judge could have concluded that family life between adult relatives would have been engaged for the purpose of Article 8(1). Even if Article 8(1) was engaged, his findings of fact relating to the level of dependency and the availability of care (if even needed) were such that the mother's situation was unlikely to have made any material difference to the outcome of his overall proportionality assessment. It is sufficiently clear from the decision that the judge had considered the family circumstances as a whole. His conclusion that removal would not amount to a disproportionate interference with the appellant's right to family and private life was within a range of reasonable responses to the evidence.

28. With respect to the First-tier Tribunal judge who granted permission, he included additional points that were not argued in the grounds of appeal. For the sake of completeness, I find that none of those points indicate an error of law that would have made any material difference to the outcome of the appeal.

29. The fact that the first appellant has qualifications in health and social care and her husband had been offered work were not weighty matters that would have made any material difference to the balancing exercise if the appellants did not otherwise qualify for leave to remain under the immigration rules in work categories. The evidence only sought to

underline the fact that the appellants have the qualifications and ability to find work in Nigeria.

30. Even if it were arguable that the second appellant was likely to qualify for entry clearance to work in the UK it would be proportionate to expect the couple to return to apply for entry clearance if he would not otherwise meet the requirements while remaining unlawfully in the UK. The argument put forward at the First-tier Tribunal hearing relating to the exceptional principles outlined in *Chikwamba v SSHD* [2008] UKHL 40 could not have succeeded in light of the subsequent decision in Y*ounas (section 117B(6)(b); Chikwamba; Zambrano)* [2020] UKUT 00129 and the most recent consideration of the principles in *Alam v SSHD* [2023] EWCA Civ 30.

31. It is understandable that the appellants might prefer to remain in the UK where they have lived for some time. They have family members here and might have better opportunities to work. However, their understandable desire to remain does not necessarily equate to a right to remain under human rights law. The judge made clear and sustainable factual findings that were open to him on the evidence. His findings were sufficiently clear for a person reading the decision to be satisfied that he considered all relevant matters before coming to his conclusions on the legal framework.

32. For the reasons give above, I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law that would have made any material difference to the outcome of the appeal. The decision shall stand.

Notice of Decision

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed M. Canavan Date 30 January 2023
Upper Tribunal Judge Canavan