



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/01999/2013

THE IMMIGRATION ACTS

Heard at : Birmingham Magistrates Court
On : 12 March 2014

Determination Promulgated
On : 24 March 2014

Before

UPPER TRIBUNAL JUDGE KING
UPPER TRIBUNAL JUDGE KEBEDE

Between

JOHNSON OMITIRAN
(NO ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Scott of Pickup Scott Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before us following a grant of permission to appeal on 15 January 2014.

2. The appellant is a citizen of Nigeria, born on 24 March 1992. He arrived in the United Kingdom in 2002 with his three brothers and his mother. On 21 July 2006 his mother submitted a SET(O) application for settlement outside the immigration rules, including him, his father and his three brothers as her dependants. She did not have leave to remain at the time. The application is still outstanding but his application as a dependant of his mother was refused in the decision to deport him.

3. On 22 December 2010 the appellant was convicted at Croydon Crown Court of possession of a prohibited forearm and possessing ammunition without a firearm certificate and was sentenced to six years imprisonment. On 14 April 2011 he was served with a notice of liability to deportation to which he responded. A decision was made on 19 August 2013 that section 32(5) of the UK Borders Act 2007 applied and a deportation order was signed against him on 20 August 2013. He appealed against the decision of 19 August 2013.

Deportation Proceedings

4. The respondent, in making the deportation decision, considered that the appellant and his mother and brothers had entered the United Kingdom as visitors in 2002 and had overstayed. The appellant was 14 years of age when his mother applied for settlement but was now an adult and no longer dependent upon her. In the circumstances, and in light of his conviction, his application for settlement as her dependent was refused under paragraph 322(1c) of the immigration rules. With regard to Article 8 of the ECHR, the respondent considered that paragraphs 399 and 399A of the immigration rules did not apply due to the length of sentence handed down and that, with respect to paragraph 398, there were no exceptional circumstances that would outweigh the public interest in his deportation. Whilst it was accepted that he had a girlfriend there was no evidence of a subsisting relationship and it was not accepted that family life had been established on that basis or with respect to his relationship with his mother and brothers. As regards private life, the respondent considered that the appellant could reasonably be expected to readjust to life in Nigeria. It was not accepted that his deportation would breach Article 8 of the ECHR.

5. The appellant's appeal was heard before the First-tier Tribunal, by a panel consisting of First-tier Tribunal Judge Thomas and Mr G F Sandall. The appellant claimed before the Tribunal to have experienced a lot of violence from his father towards his mother in Nigeria and to have had no contact with his father since coming to the UK at the age of ten years. His mother had a partner and he had a step-sister. He claimed to have attended Sunday Chapel and to have been an enhanced prisoner for six months, although he also had some adjudications in prison. He was living with his mother when he committed the offences but would live with his brother Joseph upon release from prison. The Tribunal also heard oral evidence from several witnesses, including the appellant's mother, his brother and his nephew's mother, another brother, a paternal uncle, a prison chaplain and a social worker. According to the appellant's mother, his father had paid for their travel to the United Kingdom and had brought her sons here in 2002 before returning to Nigeria.

Her own mother remained in Nigeria, in a village, and was cared for by relatives in the family home. The appellant's uncle gave details of his own brother and sister who remained in Nigeria.

6. The Tribunal accepted that the appellant had an established family life in the United Kingdom with his mother, siblings and relatives, and that he had also established a private life here. However it found there to be no exceptional circumstances outweighing the public interest in deportation and concluded that his deportation would not breach Article 8. The appeal was accordingly dismissed on human rights grounds and under the immigration rules.

7. Permission to appeal to the Upper Tribunal was sought on the grounds that the First-tier Tribunal had made two errors of fact which led it erroneously to conclude that there were no exceptional circumstances or compelling reasons to outweigh the public interest in the appellant's deportation. Firstly it was pure speculation on the part of the Tribunal that, if contacted, the appellant's maternal grandmother and paternal uncle would be able to support him in Nigeria. He did not have contact with anyone in Nigeria. Secondly the Tribunal wrongly relied on a probation report from March 2013 in concluding that the appellant would not return to the family home on release from prison but wanted to lead an independent life, whereas the oral evidence at the hearing was that he would live with his brother Joseph. The appellant's family life was therefore stronger than found by the Tribunal.

8. Permission to appeal was granted on 15 January 2014.

9. The appeal came before us on 12 March 2014. We heard submissions from both parties on the error of law. Mr Scott expanded upon the grounds of appeal and Mr Jarvis responded accordingly.

Consideration and findings.

10. In our view the Tribunal did not make any errors of law such that its decision needs to be set aside. Our reasons for so concluding are as follows.

11. It is asserted that the Tribunal made two factual errors in its findings. The first was said to be in its finding that the appellant would have support in Nigeria from his grandmother and uncle, whereas it was the appellant's evidence that he had no contact with any family in Nigeria. However when we enquired further, Mr Scott agreed that the Tribunal had made no error in its recording of the evidence at paragraph 12, that the appellant had an uncle, two cousins and an aunt in Nigeria. Further, with regard to paragraph 25 relating to the appellant's grandmother and paternal uncle in Nigeria, Mr Scott accepted that whilst there was no evidence that they would support him, there was likewise no evidence that they would not.

12. Clearly, therefore, there was no error in the Tribunal's recording of the evidence as to the appellant's relatives remaining in Nigeria. The ground of appeal in that respect

amounts to no more than a disagreement with the Tribunal's finding that the evidence did not suggest that the appellant would have no access to family support in Nigeria. The evidence before the Tribunal was that there were several family members living in Nigeria and it was entitled to conclude that the appellant would be able to access some support from those family members.

13. In any event the question of family support was not materially relevant to the issue of "exceptional circumstances" for the purposes of paragraph 398 of the rules, particularly since the appellant was an adult with no issues of particular dependency or vulnerability such as would necessitate a support system in Nigeria. Family and other ties to the country of nationality was a relevant factor only under paragraph 399A which, given the length of the appellant's sentence, did not apply in his case. Accordingly there was no error of fact or of law in the Tribunal's findings in that regard.

14. The second error fact raised in the grounds of appeal is in regard to the Tribunal's findings at paragraph 26 of its determination where it is asserted that the Tribunal wrongly found that the intended contact between the appellant and his mother and siblings would be limited. The grounds assert that the Tribunal wrongly relied upon a probation report of March 2013, in which reference was made to the appellant's desire not to return to his family home upon release but to lead an independent life, and ought instead to have accepted the evidence given at the hearing that he would be going to live with his brother. However, again, that ground of appeal is simply a disagreement with the Tribunals' findings. There was no error in the recording of the evidence and the Tribunal was fully entitled to rely upon the information in the probation report and upon the evidence given by the appellant at that time as to his desire to live an independent life. In any event, the point raised is not a material one since there was no suggestion that the appellant's relationship with his brother, or indeed any other family member in the United Kingdom, involved any particular emotional or other dependency. The Tribunal was entitled to find that there was nothing in the family ties to indicate the existence of particularly compelling circumstances.

15. Having regard to the Tribunal's findings at paragraph 24 to 33 it is clear that full and careful consideration was given to all factors in the appellant's favour, including the age at which he came to the United Kingdom and his length of residence here, his family ties in this country, his conduct and progress in prison, his educational qualifications and his involvement with the church. The Tribunal considered the evidence of the various witnesses and took into account the favourable comments they made. However, the Tribunal properly had regard to the weight to be attached to the public interest in the deportation of foreign criminals and to the fact that paragraph 398 required the appellant to demonstrate "exceptional circumstances" if his own interests were to outweigh that of the public. It was fully entitled to find that the factors relied upon by the appellant were insufficient to amount to "exceptional circumstances", in particular when considered in the light of the adverse factors arising in his case. The conclusion that the Tribunal reached was entirely consistent with the principles set out in Nagre, R (on the application of) v SSHD [2013] EWHC 720, MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192 and Kabia (MF: para 398 - exceptional circumstances) (Gambia)

[2013] UKUT 569. There was no error of law in its decision and the appeal was properly dismissed under the immigration rules and on Article 8 grounds.

DECISION

16. The appellant's appeal before us is dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law, such that the decision has to be set aside. We do not set aside the decision. The decision to dismiss the appellant's deportation appeal therefore stands.

Signed

Date

Upper Tribunal Judge Kebede