



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: IA/28758/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 July 2014**

**Determination Promulgated  
On 16 July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**RAMAN UWAIS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Uwaezuoke of Duncan Lewis solicitors

For the Respondent: Mr S Whitwell Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Plumtre promulgated on 7 April 2014, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 25 August 1985 and is a citizen of Nigeria. On 20 June 2013 the Respondent refused the Appellant's further representations for leave based on his family and private life in the United Kingdom and on 25 June the Appellant was served with a notice of decision to remove. The Appellant's application was considered by reference to Appendix FM and paragraph 276 ADE. In relation to the partnership route the Appellant did not meet the eligibility requirements set out in E-LTRP 1.2-1.12. In relation to the parental route the Appellant had failed to provide evidence that the Appellant's child was a British citizen, or had lived in the United Kingdom for 7 years, or he had parental responsibility for the child. EX.1 did not apply. The Appellant did not meet the requirements of 276ADE in view of how long he had lived in the United Kingdom and the fact that there was no evidence he had lost ties with Nigeria. Consideration was given to the Appellant's child's medical condition. It did not meet the high threshold to engage Article 3. All other factors relevant to paragraph 353 B were considered and removal was still appropriate.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Plumtre (hereinafter called "the Judge") dismissed the appeal against the Respondent's decision. The Judge found that the Appellant could not meet the requirements of Appendix FM and paragraph 276 ADE; she found that the best interests of the Appellant's child were to remain with one or both of his parents and that he could readily adapt to life in Nigeria; she found that the circumstances of the child's medical condition were not sufficiently compelling to warrant a grant of leave outside the Rules.

5. Grounds of appeal were lodged and on 16 May 2014 First-tier Tribunal Judge Levin gave permission to appeal.
6. At the hearing I heard submissions from Ms Uwaezuoke on behalf of the Appellant that :
  - (a) She relied on the grounds of appeal.
  - (b) Although the Judge purported to take into account the child's circumstances she does not refer to the fact that the Appellant had been in the United Kingdom for 18 years and came into the United Kingdom as a minor.
  - (c) An assessment should have been carried out under Article 8 outside the Rules.
7. On behalf of the Respondent Mr Whitwell submitted that :
  - (a) The Judge took into account Gulshan but found at paragraph 85 that there were no sufficiently compelling reasons for her to look at Article 8 outside the Rules.
  - (b) It was only if the circumstances were not catered for in the Rules or the circumstances were sufficiently compelling that there was a requirement to look beyond the Rules: the Appellant did not meet paragraph 276 ADE , his family life did not meet the requirements of Appendix FM and the health of the child was considered in paragraphs 64-76 and 85.
  - (c) The decision may not be the best structured but the decision was clear that EX.1 did not apply.
  - (d) This was simply a disagreement with the outcome of the decision.
8. In reply Ms Uwaezuoke on behalf of the Appellant submitted :
  - (a) The child's condition had not been given sufficient consideration and was not a case covered by the Rules.
  - (b) She conceded that the Appellant could neither meet Appendix FM nor paragraph 276ADE.

## **The Law**

9. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
12. Having conceded that the Appellant does not meet the requirements of Appendix FM and paragraph 276ADE this is in essence a challenge to the Judge's decision not to look at the Appellant's case outside the Rules on the basis that the circumstances of the health of the Appellant's child, who has sickle cell anaemia, were sufficiently compelling to warrant a grant of leave outside the Rules.
13. The determination in this case runs to some 19 pages and includes at paragraphs 1-62 a meticulous, detailed and well structured summary of the relevant caselaw, the evidence, lengthy background, the oral evidence of all the witnesses. On no rational analysis can it be suggested that the Judge was not perfectly aware of the full circumstances against which she was making her decision.
14. The Judge's findings in 'Facts and credibility' at paragraphs 63-91 are a detailed analysis of the evidence previously recorded starting with an acknowledgement that the best interests of the child in the case were a primary consideration. The

Judge then examines the child's condition in meticulous detail at paragraphs 67-76 taking into account, in essence, the COIS report in relation to the treatment of the condition in Nigeria, the fact that the child is not a British citizen so is not entitled to the free NHS treatment he had been receiving, the public interest in the removal of the Appellant and his family in those circumstances, that the diagnosis is 'by no means fatal' as there is treatment available in Nigeria, that the child's best interests are to remain with the parents who could return as a family.

15. The Judge then moved on to look at the Appellant's circumstances at paragraphs 77-83. At paragraph 84 the Judge refers to Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC) correctly identifying that in accordance with headnote (b) that only if there may be arguably good grounds for granting leave to remain outside the Immigration Rules is it necessary for article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them. She then states:

“For the reasons given earlier I find that the diagnosis of sickle cell anaemia is not of itself sufficiently compelling circumstance”

16. Given the rational, detailed and logical analysis of the child's circumstances I am entirely satisfied that this was a conclusion that was open to her and I find no merit in the submission that the child's circumstances were not properly taken into account.

17. In determining that there was no other reason to look beyond the Rules the Judge again analyses the Appellant's circumstances at paragraphs 86-91 including, amongst other factors, the length of time he has lived in the United Kingdom. Again there is no merit in the submission that the Judge had not taken into account the length of residence. The conclusion she reached at paragraph 91 that the Appellant's circumstances did not warrant a grant of leave outside the Rules was one that was open to her on the evidence.

18. It is abundantly clear from the determination when read as a whole that Judge Plumtre carefully considered all the relevant evidence and spent a good deal of time in carefully addressing the complex history and issues in a clear and logical way in her determination. It is not necessary for a judge to painstakingly and

repeatedly set out every piece of evidence considered, provided that it has been properly considered and taken into account but it is in fact impossible in this case to identify any relevant fact that the Judge did not consider. The conclusions reached by the Judge were ones that she was entitled to reach on the evidence before her.

## **CONCLUSION**

**19. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**20. The appeal is dismissed.**

Signed

Date 16 July 2014

Deputy Upper Tribunal Judge Birrell