



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/29901/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 April 2015  
Prepared on 21 April 2015

Decision & Reasons Promulgated  
On 30 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR ABIOLA ABDULKAREEM  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Howorth, Solicitor

For the Respondent: Mr S Whitehead, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Nigeria born on 12 March 1979. He appealed against a decision dated 8 July 2014 which revoked his indefinite leave to remain and replaced it with limited leave for 30 months. His appeal was allowed at first instance by Judge of the First-tier Tribunal Hopkins sitting at Birmingham on 3 November 2014. The

Respondent appeals with leave against that decision but for the sake of convenience I shall continue to refer to the parties as they were referred to at first instance.

2. The Appellant arrived in the United Kingdom on 24 October 1999 as a student. On 3 March 2004 he was granted a residence card on the basis of his marriage to a Portuguese citizen. In 2007 the Appellant bigamously married a French citizen but on the strength of that relationship was issued in October 2007 with a further residence card. On 11 March 2010 he was granted indefinite leave to remain in the United Kingdom but on 7 January 2011 he was convicted at Oxford Crown Court of one count of bigamy, five counts of assisting unlawful immigration and one of possessing criminal property. He was sentenced to three years' imprisonment. The offences of assisting unlawful immigration involved arranging travel to Oxford of a number of French women so that they could enter into sham marriages with Nigerian citizens who had otherwise no permanent right of residence in the United Kingdom. The criminal property was the proceeds of this unlawful activity. He had denied that he had acted for commercial gain but the jury convicted him.
3. On 28 February 2013 the Respondent decided to make a deportation order against the Appellant. He appealed and his appeal was allowed, the Tribunal finding that the Appellant had a genuine parental relationship with three children who did not live with him. Thereafter the Respondent gave notice on 5 August 2013 of her intention to revoke the Appellant's indefinite leave. The Appellant appealed against that decision, arguing that the revocation of his indefinite leave was a disproportionate interference with the Article 8 rights of himself and his children. He lived with Ms Mobolaji Abdulkareem, a Nigerian citizen, and the couple's three children. He was dependent on public funds. The Appellant also argued that in the absence of evidence from the Respondent that the Appellant's deportation was conducive to the public good there was no power to revoke the existing indefinite leave to remain.

### **The Decision at First Instance**

4. Section 76(1) of the Nationality, Immigration and Asylum Act 2002 provides that the Respondent may revoke a person's indefinite leave to enter or remain if the person is liable to deportation but cannot be deported for legal reasons. "Liable to deportation" means that the Respondent deems the Appellant's deportation to be conducive to the public good (Section 3(5) of the Immigration Act 1971). Judge Hopkins, following the case of Ali [2011] UKUT 250, drew a distinction between the expression that "the deportation of a foreign criminal is conducive to the public good" on the one hand and on the other hand that deportation is conducive to the public good,. The Judge held that what was required was an express indication by the Respondent that the Appellant's deportation was conducive to the public good and as that had not happened the Judge was not satisfied that the power to revoke indefinite leave granted by Section 76(1) of the 2002 Act had been lawfully exercised by the Respondent.

5. The Respondent had not actually deemed the Appellant's deportation to be conducive to the public good. The Judge felt there would be a problem if the Respondent subsequently decided to deem the Appellant's deportation to be conducive to the public good and make a fresh decision under Section 76(1). A deportation order had been made against the Appellant in 2012 but subsequently withdrawn by the Respondent. The question was whether the withdrawal by the Respondent of that deportation order meant that it had never existed (which would mean that the Respondent could theoretically go on to make a revocation of leave order under Section 76) or it had existed for a period of time, in which case it had revoked the Appellant's indefinite leave to remain by operation of law and the previous indefinite leave would not have revived when the deportation order was withdrawn, see the case of George [2014] UKSC 28. If the Appellant's indefinite leave had already been invalidated the Judge pointed out at paragraph 27 of his determination: "The revocation of leave decision on 8 July 2014 [the decision against which the Appellant was appealing] is ineffective". He allowed the appeal.

### The Onward Appeal

6. The Respondent appealed against that decision, arguing that the Judge had made a material misdirection of law. The Respondent's grounds of onward appeal in effect argued with the Judge's interpretation of Ali, stating, "In the instant case the [Respondent] made a decision to deport pursuant to Section 32 of the UK Borders Act 2007 and thus deemed the deportation of the Appellant to be conducive to the public good for the purposes of Section 3(5)(a) of the Immigration Act 1971".
7. The Respondent also took issue with the First-tier's finding that the Appellant's indefinite leave to remain may already have been invalidated by the first deportation order. The Respondent disagreed, stating that indefinite leave to remain was not invalidated where a foreign national offender succeeded at an in country appeal as the deportation order could not be said to have come into force and so had not invalidated leave. Under Section 79(4) of the 2002 Act a deportation order made in reliance on Section 32(5) of the 2007 Act does not invalidate leave in accordance with Section 5(1) of the 1971 Act if and for so long as an appeal under Section 82 of the 2002 Act is pending. The First-tier had failed to resolve the matter before it by finding the decision not in accordance with the law such that it remained outstanding before the Respondent to take.
8. The application for permission to appeal came on the papers before First-tier Tribunal Judge Mailer on 26 January 2015. In granting permission to appeal he wrote that the Respondent had made a decision to deport the Appellant under Section 32 of the 2007 Act and had thus lawfully exercised her power of revocation and arguably lawfully exercised her powers under Section 76(1) of the 2002 Act.

## **The Hearing before Me**

9. Shortly before the hearing before me the Appellant's solicitors sent a fax to the Tribunal dated 7<sup>th</sup> April 2015 stating that the Appellant had left the United Kingdom the previous weekend to attend his grandmother's funeral. He was expected to be in Nigeria for five days or so from the following Monday but in the solicitors' view this did not mean that he had abandoned his appeal. The case before the Upper Tribunal was now the Respondent's appeal rather than the Appellant's. They asked for the hearing to be adjourned or confined to error of law only.
10. At the hearing before me the Appellant's solicitor confirmed that a fax had been sent (in fact the fax itself arrived shortly after the hearing before me but I accept that it was sent in time.) It was argued on the Appellant's behalf that as he had indefinite leave to remain and had succeeded in his appeal the fact that he was out of the country did not operate as an abandonment of the appeal. The solicitors were acting under their professional obligation to inform the Tribunal of the whereabouts of their client.
11. After allowing both parties some time to consider this matter in the light of the Immigration Rules, I indicated that in my view the result of the Appellant's voluntary departure from the United Kingdom meant that the appeal had been abandoned and I would give full reasons in my determination which I now do.

## **Findings**

12. Section 104(1) of the 2002 Act provides that an appeal under Section 82 is pending during the period beginning when it is instituted and ending when it is finally determined, withdrawn or abandoned. Sub-Section (2) provides that an appeal under Section 82(1) is not finally determined for the purposes of sub-Section (1) above while an application for permission to appeal under Section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination, permission to appeal under either of those Sections has been granted and the appeal is awaiting determination or an appeal has been remitted under Section 12 or 14 of that Act and is awaiting determination.
13. In this case the Respondent's application for permission to appeal the First-tier decision was awaiting determination by the Upper Tribunal. The Appellant's appeal therefore, whilst successful at first instance, had not been finally determined for the purposes of Section 104. The decision of the First-tier was that the Respondent's decision was not in accordance with the law and therefore remained outstanding. If that decision stood it would bring the Appellant's appeal to an end because having succeeded at first instance there would no longer be a Respondent's decision to appeal against. However, the effect of the Respondent's onward appeal and the obtaining of permission from Judge Mailer was that the application for permission to appeal under the Tribunals, Courts and Enforcement Act 2007 was awaiting determination.

14. By reason of Section 92(8) of the 2002 Act, where an Appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under Section 94(1), 94(7) or 94B. Those certifications relate to certifications by the Respondent that the claims are clearly unfounded, which is not relevant in this case.
15. Thus as a result of the Appellant voluntarily leaving the United Kingdom his appeal falls to be treated as abandoned by operation of Section 92(8). It does not matter that at the time the Appellant left the United Kingdom it was the Respondent who had appealed the First Tier decision. That concludes the matter. I did not invite submissions from the parties in these circumstances as to the true interpretation of the case of Ali and the perhaps somewhat fine distinction between a statute providing that a foreign criminal's deportation is conducive to the public good and the view of the Respondent that the particular foreign criminal's deportation is conducive to the public good. In the circumstances the Appellant's appeal must fail by reason of his abandonment thereof. The Respondent's onward appeal does not of itself succeed and there is no need to make any adjudication thereon.
16. I would merely add that on the assumption that the Appellant was granted 30 months' leave to remain following the revocation of his indefinite leave to remain, it would appear that he still has leave to remain in this country and can therefore re-enter the United Kingdom. He would be out of time to make a fresh appeal against the Respondent's decision to revoke his indefinite leave to remain which in any event has been abandoned as I have found. However, it does not appear that the Respondent has made any decision to remove the Appellant and presumably therefore at the end of his period of leave he would be entitled to appeal again against any such decision. That, however, is not a matter for me and I leave the matter there.

**Notice of Decision**

The Appellant having left the United Kingdom his appeal against the Respondent's decision is treated as abandoned.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 27th day of April 2015

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Deputy Upper Tribunal Judge Woodcraft

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was payable in this case and therefore there can be no fee award.

Signed this 27th day of April 2015

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Deputy Upper Tribunal Judge Woodcraft