IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01714/2014

THE IMMIGRATION ACTS

Heard at Bradford Magistrates' Court	**Decision & Reasons Promulgated**
On 26 October 2015	**On 6 January 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SCOTT UYI IGIE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Krause, Meritz Chambers
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Scott Uyi Igie, was born on 25 May 1982 and is a male citizen of Nigeria. The appellant claimed asylum in 2011 (he claimed to have been in the United Kingdom since 2006) and, although his claim was refused, he was given discretionary leave to remain outside the Rules until 9 August 2014. On 28 January 2013, the appellant was convicted at Leeds Crown Court of conspiracy/knowingly concerned in the evasion of a prohibition or restriction on the import of a class A drug. He received a sentence of imprisonment of six years. The appellant sought the

revocation of a deportation order signed on 26 August 2014 but his application was refused. He appealed to the First-tier Tribunal (Judge Birkby) which, in a decision and reasons promulgated on 18 February 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal as summarised in the grant of permission issued by Upper Tribunal Judge Lindsley:

> "1. It was [arguably] procedurally unfair not to adjourn the [First-tier Tribunal] hearing as [the appellant] was not able to be represented on the day and did not have the opportunity to provide updated evidence from his wife and a psychologist's report.
>
> 2. It was said that this procedural unfairness materially affected the determination of the appeal under Article 8 ECHR as the Tribunal was deprived of relevant evidence regarding the appellant's family life ties with his daughter and because a wrong assessment was made of the appellant's criminality due to assumptions made by his continuing to maintain his innocence. In this connection it was said inter alia that he had an outstanding appeal relating to his criminal conviction."

3. The appellant appeared in person before the First-tier Tribunal at the hearing on 23 January 2015. I was told by Ms Krause, who appeared before the Upper Tribunal at Bradford Magistrates' Court on 26 October 2015, that the appellant had chosen to represent himself as he did not wish to spend money on representation if an adjournment was refused. I also heard submissions from a Mr Ecehendu, although it was not entirely clear in what capacity he appeared.

4. It was clear that Judge Birkby considered the various representations made by the appellant at the hearing [27] to be "in effect" an application for an adjournment. Thereafter, in his decision at [28] *et seq* Judge Birkby considered in detail the question of an adjournment:

> "I considered all the circumstances, the background and the submissions made with regard to the application for an adjournment. I noted that the Respondent was not challenging the fact that the Appellant had a close relationship with his wife and his young daughter and that they had been to visit him in prison. I was not given an explanation from Ms Krause, the Appellant's current legal representative, as to why there was no statement from the Appellant's wife, bearing in mind what she had said in the letter to the Tribunal to which I have referred. There was also no clarity from Ms Krause as to why she did not attend, bearing in mind what had been said previously, save for the statement to the court clerk over the telephone that she had been told not to attend and that she was reluctant to do so. It was not clear why there was not a psychologist's report bearing in mind what Ms Krause had said. It was not clear as to what the psychologist's report would concern itself with. I also note that the Appellant had until very recently been represented by his earlier solicitors who had prepared bundles on his behalf, which were substantive and full with

> regard to his case. The Appellant seemed to imply at one point that he would still have to pay Ms Krause for her representation. The full bundles from the Appellant's previous solicitors had been submitted to the Tribunal in November 2014 and the decision clearly went back as far as 26th August 2014. In all the circumstances I considered that the Appellant had had a full opportunity to provide evidence and to obtain legal representation. I was not satisfied that it would be in the interests of justice in all the circumstances that this appeal should be adjourned. I therefore refused the Appellant's application."

5. I have a copy of the psychologist's report of Dr Saima Latif which is dated 3 October 2015. Having read the report, I am not satisfied that there is anything at all in it which, had the report been available to Judge Birkby, would have led to a different outcome of this appeal. Dr Latif takes issue with the OASys Report of October 2014 in which the appellant was found to be at high risk of reoffending. Dr Latif observed that this assessment could not be "valid at the present moment in time due to changes in Mr Igie's thinking processes and behaviour due to interventions undertaken in prison". The "moment in time" is, of course, 3 October 2015, some eight months after the First-tier Tribunal hearing. Judge Birkby clearly did not err in law by basing his analysis upon the OASys Report of October 2014. Further, Dr Latif observes that the removal of the appellant from the United Kingdom "will impact upon his daughter's upbringing and development and upon balance may affect her education social and psychological wellbeing". With respect to Dr Latif, that is little more than an unsupported assertion which makes no specific reference to any evidence. The assertion is of such a general nature as to be of little assistance to the Tribunal. Judge Birkby's observation at [28] that "it is not clear as to what the psychologist's report would concern itself" has been shown, in the circumstances, to be entirely reasonable.

6. As regards updated evidence from the appellant's wife, Judge Birkby noted that she had not attended before the First-tier Tribunal and had not produced a written statement. In evidence before the Upper Tribunal, the appellant told me that he was aware that his wife wanted to separate from him at the date of the First-tier Tribunal hearing. He said that he had hoped to persuade her not to do so. Ms Krause told me that she had seen the appellant's wife on 19 January 2015 and had been told by her that she intended to separate from the appellant. At [73 and 74], Judge Birkby wrote:

> "It was also considered that a level of contact could be maintained between the Appellant's daughter in the UK through modern forms of communication and visits to Nigeria. As such it was not considered that paragraph 339(a) would have availed the Appellant if it had applied in his case, which it did not. Therefore there were no compelling circumstances over and above the exception to deportation outlined in paragraph 339(a).
>
> The Respondent went on to state that as the Appellant had been convicted and sentenced to a period of over four years' imprisonment, the factors outlined in paragraph 339(b) of the Immigration Rules in

> relation to family life with a spouse or partner did not apply in the Appellant's case. The requirements of the exception to deportation on the basis of family life with a partner were set out at paragraph 399(b) of the Immigration Rules, which the Respondent cited at paragraph 95 of the decision notice."

7. At [122] Judge Birkby went on to consider Article 8 ECHR outside the Immigration Rules:

> "For the sake of completion I have considered Article 8 of the Human Rights Convention as it applies to the Appellant outside the Immigration Rules and outside the assertions stated by the Respondent, which I have adopted. In considering Article 8 of the Human Rights Convention I accept that the best interests of the Appellant's child is a primary consideration. It is clear in this case that Article 8 of the Human Rights Convention is engaged. The decision of the Respondent to deport the Appellant interferes with the Appellant's right to respect for his private and family life. However, I find that the decision is lawful and pursues the legitimate aim of immigration control. I also find that the decision is proportionate and reasonable. Clearly the best interests of the Appellant's child are that she is brought up by her mother and if possible by the Appellant. However, the Appellant has been convicted of a particularly serious offence which I find has the potential for doing serious damage to members of UK society. The Appellant is a Nigerian national and has only lived in the UK since 2008. His wife is Zimbabwean, but I am not satisfied that she would not be able to move with her daughter with the Appellant to Nigeria for the reasons stated by the Respondent in the decision letter. Even if the Appellant and his wife decided that the Appellant's wife would not either seek to or would not be able to move to Nigeria, I still find that the decision is proportionate and reasonable, and that the Appellant would and should go to Nigeria alone and maintain contact with his family through modern means of communication. As I have indicated the Appellant's conviction in the United Kingdom is so serious that in my judgment it outweighs the Appellant's right and his child's right to have an immediate family life that the Appellant seeks. In any event, I do not accept that the Appellant's wife and child would not be able to live in Nigeria with the Appellant. I believe that it would be safe for them to do so and I believe that the Appellant would be able to re-establish a life in Nigeria himself and would be able to settle there with his wife and child. I accept that his child was born in the United Kingdom, but she is very young and would be able to re-adapt to life in Nigeria. As I apprehend the whole of the family speaks English which they would be able to speak in Nigeria. I have carefully considered all the effects of Section 117 as amended of the Nationality, Immigration and Asylum Act 2002 in coming to my conclusions. I adopt as I have indicated already the assertions of the Respondent in that regard, as also I adopt all the assertions of the Respondent and the Respondent's analysis of the Appellant's Article 8 claims under the Rules, case law and legislation as stated in the letter of refusal."

8. The scenario whereby the appellant's wife and child might join him in Nigeria upon his return does not appear to be realistic given the wife's stated intention that she wishes to separate from the appellant. This appellant was sentenced to six years' imprisonment for a very serious drug offence. The public interest concerned with the removal of such an

individual is very considerable, as the judge properly observed. The judge's conclusion that the appellant's conviction was "so serious" that it "outweighs the appellant's right and his child's right to have an immediate family life that the appellant seeks" was plainly available to him on the facts. The judge was right not to adjourn the hearing to obtain a psychologist's report which, as I observed, adds virtually nothing to the appellant's side of the argument. In any event, the judge carefully considered all relevant matters before rejecting the arguments in favour of adjournment. Further, the assertion made by the appellant that he was seeking to overturn his criminal conviction also amounts to nothing. Ms Krause told me at the Upper Tribunal hearing that she had no evidence at all that either the appellant in person or solicitors instructed by him had sought to make an application to appeal his conviction. I find that the appellant has not been a victim of any procedural unfairness as a consequence of the judge's refusal to grant an adjournment. I find that Judge Birkby has written an extremely detailed and thorough decision and that he has given this appellant, who appeared in person before him, every opportunity to make submissions. In the light of the wife's decision not to remain with the appellant, it seems very likely that, following the appellant's removal to Nigeria, he will have to maintain any relationship with his child indirectly by correspondence and electronic means. There was no evidence before the First-tier Tribunal that that outcome would so seriously affect the child's best interests that it would be unreasonable or that any other circumstance which might favour the appellant remaining in the United Kingdom outweighed the very considerable public interest concerned with the removal of a serious drug offender. In my judgment, Judge Birkby did not err in law for the reasons asserted in the grounds of appeal or at all. Finally, I can state that, even if I were re-making the decision in the light of the psychologist's report and the other evidence now available, I would dismiss the appellant's appeal against the immigration decision.

Notice of Decision

9. This appeal is dismissed.

No anonymity direction is made.

Signed Date 20 December 2015

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 20 December 2015

Upper Tribunal Judge Clive Lane