



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/01525/2016

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 12 September 2017**

**Decision Promulgated
On 18 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**AHMED OBADIRAN OBANIYI KUTI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adalakun of Arndale Solicitors
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

DECISION 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 consider it necessary to make an anonymity direction.
2. The Appellant was born on 4 November 1987 and is a national of Nigeria.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 27 March 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 2 March 2016 to refuse the Appellants human rights claim.
5. The refusal letter gave a number of reasons which were in essence that :
 - (a) The Appellant did not meet the suitability requirements in relation to his private life in the UK under the Rules as he had an outstanding debt to the NHS for medical treatment.
 - (b) It was not accepted that the Appellant had lived in the UK since 2004 as claimed as there was no evidence of his presence.
 - (c) There would not be very significant obstacles to his reintegration in Nigeria for the purpose of paragraph 276 ADE1(vi) of the Rules as he had spent the majority of his life there, his mother is usually resident in Nigeria, he has family ties there.
 - (d) In relation to reasons outside the Rules the Appellants medical history this did not justify a grant of leave as his cancer had been successfully treated and he was no longer on medication and any further surgery would be elective.
 - (e) In relation to the Appellants claim that he would be at risk as he had converted to Christianity there was no reason why he could not relocate and no explanation as to why he had not claimed asylum.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thorne ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing: that the Judge was wrong to fail to consider the Appellants medical condition and wrong to fail to consider his risk on return as a result of his conversion to Christianity.
8. On 11 May 2017 First-tier Tribunal Judge Omotosho gave permission to appeal.
9. At the hearing I heard submissions from Mr Adelakun on behalf of the Appellant that :

- (a) The Judge had failed to address two of the grounds of appeal that had also been addressed in the Appellants witness statement.
- (b) His client claimed that while the Judge recorded that Ms Bremang of counsel had conceded that she would not be relying on the Geneva Convention or Article 3 he could not recall discussing this with her.
- (c) When reminded by me that he had been successfully treated for cancer and was on no other medication but aspirin he conceded that Ms Bremang was right to concede that the Appellants health did not meet the high threshold of engaging Article 3.
- (d) In relation to the Appellants conversion to Christianity this was only briefly addressed in paragraph 55 (xi)

10. On behalf of the Respondent Mr Diwnycz submitted that :

- (a) The Judges task was to adjudicate on what was contested.
- (b) In this case the Appellants professional advisor made a valid concession in relation to both the issues relied on. She is an experienced representative.

11. In reply Mr Adelakun on behalf of the Appellant submitted that counsel should not have made the concession as the Appellants health and his conversion were the only issues in the case.

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

13. Mr Adelakun did not represent the Appellant before the First-tier Tribunal . The Appellant was represented by Ms Bremang, an experienced and competent member of the Bar who has appeared before me on a number of occasions. I note that at paragraph 13 of the decision, that during the course of the Appellants evidence, the Judge records:

“Mr Bremang said that he (sic) was making no argument under the Geneva Convention.”

14. I further note that at paragraph 19 the Judge records that during final submissions Ms Bremang :

“said that he was not arguing that A was at risk of persecution or that his medical condition engaged Article 3.”

15. Before me although initially relying on the argument that the Judge had failed to consider his health claim Mr Adelakun when asked to identify the health features of the case that engaged Article 3 quite properly conceded that the high threshold of Article 3 was not met. This was also a quite proper concession when made by Ms Bremang given the clear evidence in the bundle that the Appellants salivary gland cancer had been successfully treated in the UK and the only matter still outstanding was an elective, therefore not necessary, operation to seal a hole in his mouth. There was no evidence before the Judge that medical treatment in Nigeria was not free or as good as in the UK and given that the only medication he took was aspirin an Article 3 claim was unsustainable. In so far as he was required to do so for the purpose of Article 8 outside the Rules adequately addressed the Appellants health at paragraph 55 (v) of the decision based on the very limited material before him.

16. In relation to Ms Bremang's explicit concession both in the course of evidence and during final submissions that she would advance no arguments under the Geneva Convention of course I have no statement from her explaining the basis of this decision , whether it was a tactical decision or an implicit acceptance that she had insufficient material in the bundle and in the Appellants witness statement on which to mount any arguments. It would have been open to the Appellant to waive privilege and secure such a statement. I find it difficult to accept that an experienced and competent member of the Bar who has professional obligations and requirements in relation to her behaviour would not act in accordance with those obligations. There was also no statement from the Appellant setting out the circumstances in which this concession was made.

17. Moreover her decision makes sense even without that information given the woeful lack of evidence in respect of his alleged conversion contained within the Appellants bundle. The Appellant had allegedly been in the UK for 12 years but never claimed asylum; there was no evidence in the bundle to support his claim

that he was a practising Christian and no statement from a Minister of Religion confirming the claimed conversion; the Appellants witness statement makes only a very brief and vague mention of this aspect of his case in 2 short paragraphs (11 and 12) with no detail as to the circumstances of his conversion and how he manifests his faith. There was no background material in the Appellants bundle support this aspect of his claim and no material that would suggest that he could not safely relocate to another area of Nigeria which has a large Christian population. Clearly the Appellant has not been prejudiced by this decision as it is always open to him, as it always was open to him, to make an asylum claim. The findings made by the Judge in assessing this aspect of his claim for the purpose of Article 8 outside the Rules at paragraph 55 (xi) were therefore based on Ms Bremangs concession and the lack of any objective material to support his claim other than in the context of Article 8.

18. I find no merit in Mr Adelakuns argument that without the health issues and the alleged risk from his family as a result of his conversion the Appellant had no case and therefore it was illogical for the concession to have been made as clearly given the length of time the Appellant had claimed he lived in the UK there were issues in relation to his private life to be resolved which included but were not solely concerned with his health and his religion.

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 15.9.2017

Deputy Upper Tribunal Judge Birrell