



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34723/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 16 November 2017

Decision & Reasons Promulgated  
On 4 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

FATAI GUBLAHUN TAOFEK  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Al-Rashid, Counsel, instructed by David A Grand  
For the Respondent: Mr. P. Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Davidson, promulgated on 3 February 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse further leave to remain.
2. Permission to appeal was granted as follows:

"The grounds contend error in taking account of the Appellant's unlawful immigration status whilst still a minor. Although he was an adult by the date of the decision appealed against, the failure of the judge at paragraph 31 to distinguish between his pre and post adult unlawful status may give rise to an arguable error of law."

3. I heard submissions from both representatives following which I reserved my decision.

### Submissions

4. Mr. Al-Rashid submitted that there was no dispute regarding the history of the Appellant's case. He came to the United Kingdom aged eleven and had been here ever since. His parents had come before him and his younger sister came with him. They had all been granted 30 months leave under the immigration rules. He had two other siblings who were British citizens. He was the only member of the family who remained without leave. The Respondent had refused his application because he was aged over 18, he had no family life with his family, and there were no significant obstacles to his return. The judge had agreed with this. I was referred to paragraphs [16] and [27] of the decision where the judge stated that there was no claim to remain under the immigration rules. He submitted that this was clearly wrong because consideration of a claim had to start with the immigration rules.
5. In relation to paragraph 276ADE(1)(vi), "very significant obstacles", I was referred to the case of Kamara [2016] EWCA Civ 813, in particular paragraph [14]. This states:  
  
"The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."  
  
6. I was referred to [23] of the decision. The judge had not adequately considered whether or not there were very significant obstacles to the Appellant's reintegration. He made no reference to the caselaw. The Appellant had been in the United Kingdom between the ages of 11 and 21. No reasoning had been given at [23] as to why there were no significant obstacles to his reintegration into Nigeria. It was submitted that there was no way that the Appellant would be enough of an insider. He was in fact an outsider to life in Nigeria. The test applied in relation to "very significant obstacles" was wrong.
7. The judge had found there was no family life at paragraphs [18] and [22]. It was submitted that this went against all the settled authorities. I was referred to the case of Rai [2017] EWCA Civ 320, in particular paragraph [18], which confirmed the older authorities on the existence of family life between adults. Rai referred to the fact that the judgment in Kugathas [2003] EWCA Civ 31 had been interpreted too restrictively in the past. It also referred to the case of AA [2012] Imm AR 1, which held that a significant factor would be whether or not the adult child had founded a family life of his own. If he was still single and living with his parents, he was likely to enjoy family life with them. There was also a quotation from paragraph [49] of AA: "An examination of the Court's case-law would tend to suggest that the applicant, a

young adult of 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having “family life”.”

8. I was referred to [20] of Rai, which quotes from the case of Singh [2015] EWCA Civ 630:

“I point out that the approach of the European Commission for Human Rights cited approvingly in *Kugathas* did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.”

9. I was also referred to [16] of Singh. It was submitted that there was no criminality in the case of the Appellant. I was referred to the quotation from Boussara and also from JB (India) [2009] EWCA Civ 234. At five occasions in the decision, at [16], [20], [21], [31] and [32], the judge had referred to the illegal entry status of the Appellant and had blamed him for his parents’ misdemeanours, which was wrong.

10. I was referred to the case of HK (Turkey) [2010] EWCA Civ 583, set out at [22] of Singh, and the case of AP (India) [2015] EWCA Civ 89, set out at [23] of Singh. This states:

“It seems to me that adult children (male or female) who are young students, from most backgrounds, usually continue to form an important part of the family in which they have grown up. They attend their courses and gravitate to their homes during the holidays, and upon graduation, while (as the FTT put it) they seek to ‘make their own way’ in the world. Such a child is very much part of the on-going family unit and, until such a child does fly the nest, his or her belonging to the family is as strong as ever. The proportionality of interference with the family rights of the various family members should receive, I think, careful consideration in individual cases where this type of issue arises.”

11. In response Mr. Nath submitted that the judge had set out the Appellant’s situation at [22] and [23]. The judge had not incorrectly considered the wrong requirements. He had to consider whether there were very significant obstacles. It was a consideration for the judge that the Appellant had arrived illegally at the age of eleven. It was open to the judge to consider that the Appellant was now here as an adult.
12. In relation to family life and the other siblings, he queried how the case had been put to the First-tier Tribunal. There was not much in the decision on that issue and it had not been submitted that the emphasis was on the family and the Appellant’s integration into his family. He was an adult. If he went to Hull University, he would

not be looking to his family for support. This finding was open to the judge. The other family members had some form of limited leave. It was open to the judge to find that there was no family life given his age and surrounding circumstances.

13. In response Mr. Al-Rashid referred me to the Appellant's bundle and the witness statements of the Appellant and his father. The judge had taken no issue with the evidence before him. I was referred to [6] to [8] of the Appellant's statement, and [2] to [4] of his father's statement. The unchallenged evidence had been accepted by the judge, and the evidence showed that there was family life. He submitted that it was wrong of the judge to find that, if the Appellant stayed in the United Kingdom, he would use public funds for his education [21]. This was not correct given that there was now no public funding of university even for British citizens.

### **Error of law**

14. In relation to the judge's consideration of whether or not there was family life between the Appellant, his parents and his siblings, the judge finds at [18] that the Appellant does not have such family life. He states:

"However, Article 8 cannot be engaged in respect of his family life because he is now a single adult and therefore does not have any family in the UK, since there is no evidence of anything more than the normal ties of love and affection between the Appellant and his parents and siblings."

15. At [22] he states:

"I find that the Appellant has no family life in the UK to engage Article 8. He is now 20 and a single adult. He said himself that if he went to Hull University to study he was 'old enough to take care of himself'. His parents and younger sister only had discretionary leave to remain in the UK."

16. The judge does not reject the evidence of the Appellant or his father, and this evidence is unchallenged. At [18] the judge states simply that Article 8 cannot be engaged because the Appellant is a single adult with no family in the United Kingdom, since there is no evidence of anything more than the normal ties of love and affection. However, there was evidence before the judge in the form of the Appellant's witness statement of the dependency that he had on his family. In his witness statement he says:

"The second point to note is that in my refusal letter of 24<sup>th</sup> November 2015, the secretary of state does not mention that my two siblings are British citizens, and that my other sister and both my parents have been granted 30-months leave to remain after a successful appeal which all started with my parents' application back in June 2012. The refusal letter appears to have erased my family and our whole immigration history from the decision-making process." [6]

"My family and I are very distressed by the refusal to issue me any leave. We have

all lived together in the UK since my arrival in January 2008. I still live with my parents and siblings. I am dependent upon my parents in every respect – financially, emotionally, and support in every respect. I do not work as I am not permitted to do so. I have no income of my own. I have lived here since the age of 11, and all my friends are here. I have never been back to Nigeria (for nearly nine years now) and I do not know anyone there. I am not in touch with any relatives and do not have any family connections in Nigeria. Simbiat is 17, and the twins are 11. I help them with their school/college work, and get on with them like any normal family – going out, having fun, playing games, etc. We are one family unit and we are very upset to have to be separated in this way.” [8]

17. The Appellant’s father states:

“We both work full-time and all the children, including Fatai, are totally dependent upon us financially and in every other way. Fatai is an integral part of his family. We do things together as a family, and often Fatai does activities with his brother and sisters, and it is a joy for us parents to see them get along so well. He is really good for his younger siblings. He motivates them and tells them to work hard and do well at school.” [2]

18. The judge has not rejected this evidence. He states that there is “no evidence of anything more than the normal ties of love and affection” but there was such evidence before him. No reasons are given, either in [18] or [22], as to why this evidence has not been taken into account, or why this evidence has been rejected. This evidence points to the existence of family life.

19. I have taken into account the cases to which I was referred by Mr. Al-Rashid, in particular the case of Rai which made clear that Kugathas had been interpreted too restrictively in the past. In effect, as held by Rai, all that needs to be shown is that there is real, committed or effective support [28]. If there is such real, committed or effective support, both financially and emotionally, nothing exceptional needs to be shown and family life will be shown to exist.

20. Further, as set out in paragraph 36 of Rai:

“If, however, the concept to which the decision maker will generally need to pay attention is ‘support’ – which means, as Sedley LJ put it in Kugathas, ‘support’ which is ‘real’ or ‘committed’ or ‘effective’ – there was, it seems to me, ample and undisputed evidence on which the Upper Tribunal Judge could have based a finding that such ‘support’ was present in the Appellant’s case.”

21. I find that there was evidence before the judge to show that there was real, effective and committed support, both financial and emotional. The judge has failed to give reasons for why this evidence did not lead him to find that there was family life between the Appellant and his family, given that he did not reject the evidence.

22. I have also taken into account the case AP (India) ([11] above). The judge has placed

weight on the fact that the Appellant said that he could take care of himself if he went to university. However, just because he would be able to take care of himself when away at university does not mean that family life has ceased to exist. As made clear in AP (India), adult children who are young students usually continue to form an important part of the family in which they have grown up. It is clear from the evidence set out in that witness statement that the Appellant is an important part of the family, and that his relationship with his siblings is important as his relationship with his parents.

23. I find that the judge has failed properly to consider the evidence, and has failed to analyse it with reference to the case law regarding family life between an adult child and his parents, or an adult child and his siblings. I find that insufficient reasons have been given for the finding that there is no family life. The findings seem to rely simply on the fact that the Appellant is a single adult of 20 years old, and is prepared to go to university and look after himself when he is there. I find the decision contains a material error of law in the failure properly to consider whether the Appellant has family life with his parents and siblings.
24. In relation to paragraph 276ADE(1)(vi), the decision is not entirely clear as the judge states at [16] that the Appellant has “no claim to remain under the Immigration Rules”, but then goes on to consider paragraph 276ADE(1), which forms part of the immigration rules. Paragraph 276ADE(1) sets out the requirements by the Respondent for an individual to remain in the United Kingdom with reference to his private life. To state that the Appellant has no claim to remain under the immigration rules is therefore misleading.
25. When considering paragraph 276ADE(1)(vi), the judge has set out the correct test, “very significant obstacles” [23], but he has failed to take into account the caselaw which considers how “very significant obstacles” should be analysed. The case of Kamara considered the level of integration, and whether an individual would be “enough of an insider” to participate in society. The judge has found that the Appellant, as an adult, can return there. He states:

“The Appellant has lived there for the first 12 years of his life; He has some relatives still living there; He is now an adult; he was separated from his parents between the age of 4 and 12 when he was brought up by his grandmother; He can be supported by the family in the UK; He evidently adapted to life in the UK after arriving and can just as easily re-adapt to life in Nigeria on return; He is a Nigerian national.” [23]
26. In paragraph [24] he finds that the Appellant would be at no linguistic disadvantage, and could obtain education in Nigeria.
27. There is no real evaluation of the Appellant’s circumstances. He is an individual returning to Nigeria where he last lived as a young boy. He has been in the United Kingdom from the age of eleven. There is no reference to the fact that the Appellant has not spent any of his adult life in Nigeria, nor worked in Nigeria. There is no reference to the fact that his formative years from the ages of eleven onwards were

spent in the United Kingdom.

28. The judge does not make any distinction between when the Appellant was an adult and when he was a child. The Appellant came to the United Kingdom as a child. He was not involved in the decision to enter the United Kingdom illegally. The fact that he has been in the United Kingdom illegally is not of his doing. The caselaw is clear that the sins of the parents should not be visited on the children, but the judge has paid no account to the fact that he is not to blame for his illegal presence in the United Kingdom.
29. I find that uppermost in the mind of the judge was the fact that the Appellant had been here illegally for eight years. However, he has only been an adult since 2014. The majority of the time spent here illegally was as a child. He is not responsible for having come here illegally and it is incumbent on the judge to recognise that fact.
30. I find that the judge has given insufficient reasons for the finding that there are no very significant obstacles to the Appellant's integration in Nigeria at [23] and [24]. He has failed to consider whether the amount of time spent in the United Kingdom means that the Appellant is not an insider and will not be able to integrate in the same way as if he were an adult Nigerian.
31. I find that the decision involves the making of material errors of law and I set the decision aside.

### **Remaking**

32. I have considered the Appellant's appeal under Article 8, both in relation to his family and his private life. My starting point for this consideration is the immigration rules. It has been submitted that the Appellant meets the requirements of paragraph 276ADE(1)(vi) in relation to his private life.
33. I find that the Appellant has been in the United Kingdom since the age of eleven. I find that he has spent his formative years in the United Kingdom. I find that he has not returned to Nigeria since he came in 2008. He speaks English, but there is no evidence before me that he speaks any other languages spoken in Nigeria.
34. As stated above, the judge in the First-tier Tribunal accepted the Appellant's evidence but found nevertheless that he could return to Nigeria. I find that the Appellant's elderly grandparents live in Nigeria but I find that the Appellant is not in contact with any of his relatives in Nigeria. Indeed, I find that he is not in contact with anyone in Nigeria. I find on the balance of probabilities that there would not be any support for him in Nigeria from family or friends. I find that he has not lived in Nigeria as an adult. I find he has no experience of working in Nigeria. Indeed, I find that he has not worked at all, as he has not had permission to work in the United Kingdom. I therefore find that, although he would be returning as an adult, he is an adult who has spent almost ten years away from Nigeria, those years being between the ages of 11 and 21.

35. I find, with reference to the case of Kamara, that the Appellant has shown on the balance of probabilities, given the length of time he has been absent from Nigeria, and the lack of support in Nigeria, that there would be very significant obstacles to his reintegration into Nigeria. I find that the Appellant will not be “enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it”. I find that the Appellant meets the requirements of paragraph 276ADE(1)(vi).
36. I have considered the Appellant’s appeal under Article 8 outside the requirements of the immigration rules. I find that the Appellant has a family life with his parents and siblings sufficient to engage the operation of Article 8. In making this finding, I have taken into account the evidence of the Appellant and of his father as set out in their witness statements, which was not challenged. I have taken into account the caselaw set out above. I find that the Appellant lives with his parents and three siblings. I find that he is financially dependent on his parents. He does not have any income of his own. I find that he is emotionally dependent on his parents and siblings. He has not formed his own family. He has not formed an independent life away from his parents and siblings. I find that the Appellant is as much a part of the family now as he was when he was under the age of 18, and is as much a part of the family as his younger siblings are. I find in accordance with the caselaw, that although he is an adult, he still has a family life with his parents and siblings sufficient to engage the operation of Article 8.
37. I find that the Appellant has been in the United Kingdom since he was eleven years old, almost ten years, and has formed a private life sufficient to engage the operation of Article 8. I find that the decision interferes with both his family and private life.
38. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
39. In considering whether the decision is proportionate I have taken into account my findings above in relation to the immigration rules.
40. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant meets the requirements of the immigration rules in relation to his private life under paragraph 276ADE(1)(vi). I therefore find that the maintenance of



effective immigration control will not be compromised by a grant of leave to remain.

41. I find that the Appellant can speak and understand English (section 117B(2)). I find that he is not financially independent (section 117B(3)). Section 117B(4) provides that little weight should be given to a private life established by a person at a time when the person is in the United Kingdom unlawfully. While I find that the Appellant was in the United Kingdom unlawfully, I find that this was not his decision. He was brought to the United Kingdom as a child. He was not involved in the decision to stay in the United Kingdom unlawfully and no blame should attach to him for this. He was still a child when an application was made for leave to remain, as he was dependent on his parents' application ([5] of the Appellant's witness statement). I find that in the Appellant's circumstances, where I have found that he meets the requirements of paragraph 276ADE(1)(vi), and where he was not responsible for his illegal status, greater weight should be given to his private life.
42. Section 117B(5) does not apply. Section 117B(6) is not relevant as the Appellant does not have a parental relationship with any qualifying children, although two of the the Appellant's younger siblings with whom he has a family life are British citizens.
43. I find that the Appellant forms part of a family unit consisting of two siblings who are British citizens, and his parents and a further sibling who have been granted leave to remain. The Appellant is the only one who was not granted leave to remain by the Respondent although, when his parents made an application in 2012, the Appellant was included as a dependent on that application. The Respondent refused to grant him leave primarily on the basis of his age, and although she referred to his parents and siblings, she did not give full consideration to his family circumstances. The fact that he has since become an adult does not mean that he has ceased to form part of the family unit, as I have found above. I find that it would be disproportionate to separate him from this family unit in all the circumstances.
44. I find that the Appellant has lived in the United Kingdom since the age of eleven. As stated above, the fact that he was not here legally is not his fault. He cannot be held responsible for the actions of his parents who brought him here when he was still a child. He has spent his formative teenage years in the United Kingdom. He has spent almost half of his life in the United Kingdom. He has not been back to Nigeria since he came to the United Kingdom in 2008, almost ten years ago. He has no contact with Nigeria. He has never lived in Nigeria as an adult. He is a young adult who has not yet developed an independent life.
45. Taking into account all of the above, and giving particular weight to the fact that I have found that the Appellant meets the requirements of the immigration rules, I find that the balance comes down in favour of the Appellant. I find, in carrying out the balancing exercise required, that the Appellant has shown on the balance of probabilities that the decision is a breach of his rights, and those of his parents, and siblings, to a family and private life under Article 8 ECHR.
46. I do not make an anonymity direction.

**Decision**

47. The decision of the First-tier Tribunal involves the making of a material error of law, and I set the decision aside.
48. I remake the decision, allowing the Appellant's appeal on human rights grounds with reference to his family and private life under Article 8. The Appellant meets the requirements of paragraph 276ADE(1) of the immigration rules.
49. No anonymity direction is made.

Signed

Date 2 January 2018

Deputy Upper Tribunal Judge Chamberlain

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

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. The Respondent did not give proper consideration to the Appellant's family circumstances in the decision. She was aware that the Appellant had applied as a dependent on his parents' application. She was aware that he was the only member of his family to whom she had not granted leave, but she failed to give due consideration to his family situation. In the circumstances I make a fee award for the entire fee paid.

Signed

Date 2 January 2018

Deputy Upper Tribunal Judge Chamberlain