



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03816/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 6 June 2018

Decision & Reasons Promulgated  
On 13 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H Y

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer  
For the Respondent: Ms Bashow, instructed by Parker Rhodes Hickmotts Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, HY, was born in 1978 and is a male citizen of Nigeria. The appellant was refused international

protection by the Secretary of State in a decision dated 5 April 2017. He appealed to the First-tier Tribunal (Judge Henderson) which, in a decision promulgated on 20 November 2017, allowed the appeal on human rights grounds and under the Immigration Rules. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant claimed to have entered the United Kingdom in January 2000. It is accepted by both parties that he was arrested in September 2006 having obtained employment by deception. He was arrested again in July 2013 for being in possession of a counterfeit identity card. He first claimed asylum on 8 November 2013 and his claim was refused and certified as clearly unfounded. Further submissions led to a reconsideration of the claim and the decision of the Secretary of State (with an in country right of appeal) which is now under appeal.
3. There was no Presenting Officer before the First-tier Tribunal. However, it is clear from the refusal letter that no concession had been made by the Secretary of State regarding the length of time which this appellant had resided continuously in the United Kingdom. By implication, the letter accepts that the appellant was in the United Kingdom on the dates of the two arrests in September 2006 and July 2013. There was no further concession as regards the appellant's residence in this country.
4. Judge Henderson has conducted her analysis on the understanding that the appellant has been living continuously in the United Kingdom since 2000. However, at no point in her analysis had she given any reasons for that finding. That the length of residence of the appellant was important in her analysis is apparent. For example, at [62], Judge Henderson wrote, "the appellant has been absent from Nigeria for a period of seventeen years. The contacts he had with the NBM in Nigeria were in his immediate location. The personalities involved may no longer be there or may be deceased." At [64], when considering paragraph 276ADE(vi), Judge Henderson concluded that, "on account of [the appellant's] severe mental health condition and the medical treatment he requires ... there are present very significant obstacles to his integration in Nigeria, a country where it is accepted that he has not lived for nearly eighteen years ..." It is not clear who has accepted that the appellant has not lived in Nigeria for eighteen years. The Secretary of State has not accepted that or any claimed period of continuous residence.
5. Judge Henderson's failure to give any reasons for finding that the appellant had been living in the United Kingdom for eighteen years seriously undermines her analysis. In particular, I find that her assessment of the obstacles which may impede his reintegration into Nigerian society (see paragraph 4 above) is, in consequence of the error, flawed. I set aside the decision. I do not preserve any of the findings of fact. There will need to be a new fact-finding exercise which is better conducted in the First-tier Tribunal, to which this appeal is now returned for that Tribunal to remake the decision.

**Notice of Decision**

6. The decision of the First-tier Tribunal, which was promulgated on 20 November 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Henderson) for that Tribunal to remake the decision.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11 JULY 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 11 JULY 2018

Upper Tribunal Judge Lane