



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

Appeal Number: HU/08876/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 6 January 2020
Extempore**

**Decision & Reasons Promulgated
On 14 January 2020**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR AMBROSE SAMSON IDAHOTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dolan, Counsel, instructed by FA Legal

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Beg (“the judge”), promulgated on 6 August 2019, by which she dismissed his appeal against the Respondent’s refusal of his human rights claim.

The Appellant, a national of Nigeria, entered the United Kingdom in December 2011 as a visitor. He subsequently overstayed and has had no lawful status since. He then entered into a relationship with a dual Nigerian-British citizen, Ms A. He married Ms A on 21 March 2019. The human rights claim was

essentially based upon his family life in this country. It was said that there would be insurmountable obstacles to the couple going to live together in Nigeria and that a separation would be disproportionate. The Respondent considered the human rights claim both within and without the context of the relevant Immigration Rules, concluding that the Appellant could not succeed on either basis.

The judge had a number of credibility concerns with the Appellant's evidence, specifically relating to his intentions when coming to the United Kingdom and his decision to remain here after the expiry of leave to enter. In going beyond that to consider the Article 8 claim, the judge considered what is often described as the Chikwamba point, in other words, the possibility of an individual returning to their country of origin to make an entry clearance application and then re-join their partner in the United Kingdom (Chikwamba [2008] 1 WLR 1420).

On the facts of the case before her, the judge concluded that Ms A, a staff nurse at a London hospital, could accompany the Appellant and live in Nigeria on a permanent basis. Alternatively, the judge concluded that Ms A could either go back there on a temporary basis whilst the Appellant made an entry clearance application or could remain in this country whilst he made such an application alone.

The grounds of appeal are primarily focussed upon reasons challenges in relation to the adverse credibility findings mentioned previously. In addition, paragraph 8 of the grounds states that the judge had attached "insufficient weight" to Ms A's overall circumstances, including in particular her employment and the importance to the United Kingdom community thereof.

Permission to appeal was granted by First-tier Tribunal Judge Bristow on 19 November 2019.

At the hearing before me, Mr Dolan acknowledged the limited scope of the grounds (of which he is not the author) and comments made in the grant of permission. He accepted that weight was a matter for the judge and that there was no challenge to the judge's conclusion that the Appellant could potentially return to Nigeria alone and make an entry clearance application from that country. He did, however, submit that the judge had failed to conduct an adequate proportionality exercise with particular reference to Ms A's circumstances. Her employment as a staff nurse had been left out of account. Whilst the significance of her employment may not have inevitably led to a different outcome, such a possibility existed, and this rendered the judge's failure material.

In respect of the credibility issues, he submitted that there were no sufficient reasons. On the face of the evidence, there were no clear contradictions and the judge appeared to have simply found the Appellant to be unreliable for the simple reason that he had overstayed his visit visa in the first place. In fact, it was submitted, the Appellant had stated throughout that he had intended to

return when arriving in the United Kingdom, but matters had changed in respect of his family circumstances back in Nigeria.

Ms Everett submitted that there were no material errors of law. On the facts of this case Ms A's employment was not sufficient to have had any material bearing on the outcome of the Article 8 claim and the judge was entitled to find against the Appellant in respect of the visit visa issue. Alternatively, any errors in relation to the latter issue were immaterial. Ms Everett submitted that the judge was fully entitled to take account of the timing of the marriage, Ms A's dual nationality, and her general ties to Nigeria, when considering the issue of insurmountable obstacles.

I conclude that there are no material errors of law in the judge's decision.

I do have some concerns about the judge's reasoning in respect of [17], [18] and [19] of her decision, relating to the visit visa issue. Whilst the judge was certainly entitled to rely on the Appellant's inability to state whom he had been coming to visit in this country, the substance of his evidence in respect of what he had claimed had occurred back in Nigeria in relation to his father and stepmother did not on the face of it contain particularly clear inconsistencies, and it is somewhat difficult to discern what the judge meant when she said the evidence was "confusing" at [19]. It is right that the Appellant did overstay his visit visa and this of itself may have led to an adverse view of credibility generally, but specific reasons are still required for the overall conclusion that an individual has not been telling the truth.

However, in my view, the findings relating to the credibility issues and any error related thereto are simply immaterial to the Article 8 claim as a whole, particularly as this was effectively focussed entirely upon the Appellant's relationship with Ms A. Even if there had been difficulties with the Appellant's family back in Nigeria, I conclude that on no legitimate basis could this have made a properly material impact on the issue of whether the Appellant and his wife could have gone to live somewhere else away from the family without being subject to any relevant hostility such as to render this scenario so significantly difficult as to meet the threshold of insurmountable obstacles, or indeed unjustifiably harsh consequences. There was, for example, never a suggestion that the family had wide-ranging influence or the ability to track the Appellant down in other locations.

In respect of the insurmountable obstacles test (I acknowledge the apparent concession recorded in [9] of the decision but it is clear that the judge did deal with this matter as a substantial issue in any event), the judge was entitled to conclude that there were no such obstacles for the Appellant and Ms A living in Nigeria on a permanent basis. The judge was fully entitled to take into account the timing of the marriage, with Ms A being fully aware of a lack of her husband's status and the distinct possibility of them having to live elsewhere. She was fully entitled to take account of Ms A's dual Nigerian-British nationality, with the obvious consequences that she (Ms A) was entitled to go to and reside in Nigeria. The judge was entitled to take into account Ms A's skills and qualifications in respect of her employment as a staff nurse and the

possibility (in the absence of any evidence to the contrary) that she would be able to find some sort of employment (perhaps in a similar field) in Nigeria. Finally, the judge was entitled to take account of the fact that Ms A had family in Nigeria, including her mother, and that she herself had lived and worked there for a relatively short period in the recent past.

Given the high threshold applicable to the insurmountable obstacles test, or indeed that of unjustifiably harsh consequences, the conclusion reached by the judge on this discrete issue was open to her.

Further, as mentioned earlier, the judge set out two other alternative possibilities: first, that the Appellant and Ms A could return together temporarily to Nigeria whilst he applied for entry clearance to come back to this country; second, that the Appellant could return to Nigeria alone to make that application, with Ms A supporting him from the United Kingdom. As Mr Dolan quite properly recognised, neither of these alternatives are challenged in the grounds. That fact is of itself a sufficient basis upon which the appeal to the Upper Tribunal must fail.

In any event, the judge's conclusion that these possibilities existed and were not disproportionate was entirely open to her on the facts of the case. There appears to have been no suggestion that a temporary separation would have caused any particular difficulties to either the Appellant or Ms A. This is not a case involving, for example, children or ill-health on the part of one or other of the couple, and, as I read the evidence, there was nothing to indicate that Ms A would have had to cease her employment during a temporary separation whilst the Appellant made an entry clearance application from Nigeria. So, on either one of the alternative scenarios, the Appellant's appeal was almost bound to fail in any event.

I say the following about Ms A's employment. It is certainly the case that nurses, and perhaps staff nurses in particular, are much valued within the NHS and our society as a whole. It is right that the judge has not specifically addressed the issue of contribution to the community, as it might be described. However, it is not a freestanding factor in Article 8 cases, and whilst it is right that this may be *capable* of bearing relevance to the question of the weight attributed to the public interest, following UE (Nigeria) [2010] EWCA Civ 975, the President has relatively recently analysed the issue and urged significant caution in respect of the relevance of employment or value to the community in any given case (see Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 336 (IAC)). In acknowledging the binding nature of the point of principle in UE, at [112]-[115] he states the following:

"112. Accordingly, the warnings contained in the judgments of Sir David Keene and Richards LJ are important. Before coming to the conclusion that submissions regarding the positive contribution made to the United Kingdom by an individual fall to be taken into account, as diminishing the importance to be given to immigration controls, a judge must not only be satisfied that the contribution in question directly relates to those controls. He or she must also be satisfied that the contribution is "very significant". In practice, this is likely to arise

only where the matter is one over which there can be no real disagreement.

113. I am not sure that the list of examples given by Lord Bridge in Bakhtaur Singh are all of this kind. It must be remembered that those examples were given against the background of the former appellate regime which, as I have said, gave adjudicators a foothold in the policy realm that is not shared by their successors.

114. Without in any way intending to be prescriptive, it is likely that one touchstone for distinguishing between instances that lie, respectively, exclusively in the policy realm and in the area of Article 8, is whether the removal of the person concerned will lead to an irreplaceable loss to the community of the United Kingdom or to a significant element of it.

115. If judicial restraint is not properly maintained in this area, there is a danger that the public's perception of human rights law will be adversely affected."

With all due respect to Ms A, I cannot see that her position as a staff nurse could rationally have carried such significant weight so as to have made a material difference to the outcome of the appeal. In any event, this point could only have gone to the questions of whether there were insurmountable obstacles to the couple going to live in Nigeria permanently, and/or perhaps whether there were exceptional circumstances in the case. As to the latter, the facts and case-law on contribution to the community presented an insuperable threshold. In relation to both questions, the possibility of the NHS losing Ms A was irrelevant to the judge's unchallenged and fully sustainable conclusion on the entry clearance option (by which Ms A would remain in the United Kingdom whilst the Appellant applied from Nigeria).

For all the reasons set out above, the judge's decision shall stand and the Appellant's appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

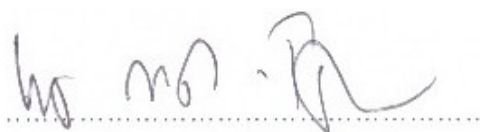
Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The Appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal shall stand.

Signed



Date: 7 January 2020

Upper Tribunal Judge Norton-Taylor