Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19131/2019 (V)

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 September 2021

Decision & Reasons Promulgated
On 21 October 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

OSAZUWA KEVIN OMOREGBEE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Marziano, instructed by Westkin Associates Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. No issues arose with regard to the proceedings.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the decision to refuse his human rights claim following the making of a deportation order against him.

3. The appellant is a citizen of Nigeria born on 18 February 1988. He arrived in the UK on 17 June 1998 and joined his mother here. His mother claimed asylum on 4 August 1998 with him and his five siblings as her dependants but her claim was refused and she did not appeal the decision. On 28 February 2003 the appellant was granted indefinite leave to remain under the Overstayers Regularisation Scheme as the dependant of his mother.

4. On 25 October 2008 the appellant was convicted of robbery and attempted robbery and was sentenced to 12 months at a Young Offenders Institution. As a result of his conviction the respondent notified him of his liability to deportation and on 11 April 2007 served him with a notice of intention to make a deportation order. He successfully appealed against the decision and deportation was accordingly not pursued at that time, although he was issued with a warning letter.

5. However, the appellant committed various offences between 2011 and 2019. On 27 March 2019 he was convicted of offences including driving whilst disqualified, using a vehicle without insurance, breach of a suspended sentence for burglary and breach of a suspended sentence for possession of an article for use in fraud. On 17 April 2019 he was sentenced to various periods of imprisonment amounting in total to 12 months and, as a result, the respondent served him with a deportation decision on 23 May 2019 on the basis that his deportation was deemed to be conducive to the public good under section 3(5)(a) of the Immigration Act 1971.

6. The appellant then made a human rights claim on 1 September 2019, relying upon his lawful residence in the UK for most of his life and his family life with his partner Laverne Skinner and his two children from previous relationships, Nylah Nelson and Ezekiel Omoregbee. The respondent refused his claim in a decision of 5 November 2019, deeming him to be a persistent offender whose deportation was conducive to the public good. The respondent accepted that the appellant had been lawfully resident in the UK for most of his life but did not accept that he was culturally and socially integrated in the UK or that there were very significant obstacles to his integration in Nigeria. The respondent did not accept that the appellant had a genuine and subsisting relationship with either Ms Skinner or his two children and considered that, even if he had, the effect of his deportation on them would not be unduly harsh.

7. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Chinweze and First-tier Tribunal Judge Loke sitting as a panel. There were several witnesses at the hearing including the appellant, the mother of his son Ezekiel, his own mother, his partner, his partner's eldest child, his half-brother and his sisters, all of whom gave oral evidence either in person or remotely via video link. The judge recorded the evidence about the appellant's past and current relationships and his children from two previous relationships as well as his relationship with his partner's three children from her past relationship. The evidence was that the appellant was not currently in contact with his daughter Nylah as her mother had blocked him from seeing

her, but he visited Ezekiel at least once every two weeks. The appellant's evidence was that his father had died in April 2019, he had no relatives or support in Nigeria and he had not been back to Nigeria since coming to the UK. He had lived with his grandmother in Nigeria before coming to the UK but she was no longer alive. His mother gave evidence about the supportive role he played in the life of his five siblings, in particular his brother Amen who suffered from schizophrenia. The evidence was that the appellant was not living with his partner but he was usually at her house every other weekend and had a close and supportive role in her children's lives. He lived with his mother, brother Amen and half-brother.

8. The panel noted that it was not disputed that the appellant had resided lawfully in the UK for most of his life. As for social and cultural integration in the UK, the panel had regard to the positive findings of the Tribunal in the appellant's previous appeal which they took as their starting point. They also noted the courses undertaken by the appellant, the qualifications he had achieved in the UK and his employment history as well as his relationship and family ties in the UK. The panel also considered the appellant's offending history and went on to consider the evidence of his integrative links in light of that history. They considered it particularly significant that the appellant did not stop offending after he was convicted for affray in 2011, less than three years after he received a warning letter about future conduct and that he went on to commit a further ten offences including offences committed in breach of a suspended sentence for domestic burglary and the index offence committed after his son was born. The panel considered that that repeated offending had the effect of breaking the continuity of the appellant's integration in the UK and that he could not, therefore, show that he was socially and culturally integrated in the UK. The panel went on to consider the appellant's ability to integrate in Nigeria and found that his current position was substantially different to that at the time of the appeal before the previous Tribunal. They concluded that there were no very significant obstacles to integration and that the appellant did not, therefore, meet Exception 1.

9. As for Exception 2, the panel accepted that the appellant had a genuine and subsisting relationship with his partner Ms Skinner and his two children, albeit that contact had been limited and more recently non-existent with his daughter Nylah. The panel considered that it would be unduly harsh to expect Ms Skinner and the children to leave the UK to live with the appellant in Nigeria but did not accept that it would be unduly harsh for them to remain in the UK without him. Accordingly they found that the requirements of Exception 2 were not met. The panel found further that there were no very compelling circumstances outweighing the public interest in deportation and they accordingly dismissed the appellant's appeal.

10. The appellant sought permission to appeal that decision to the Upper Tribunal on the grounds that the panel had misapplied the law in respect of social and cultural integration in the UK by balancing integrative links against criminal offending and by departing from the findings of the previous Tribunal in regard to integration in Nigeria; that the panel had erred in their application

of the law to the facts of the case and had misapplied the guidance in HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 by requiring "something more" than the ordinary level of harshness; and that the panel had made an unbalanced assessment of compelling circumstances.

11. Permission to appeal was refused in the First-tier Tribunal, but was granted in a renewed application to the Upper Tribunal, in a decision of Upper Tribunal Judge Keith dated 23 March 2021.

12. In a Rule 24 response dated 22 April 2021, the respondent opposed the appellant's appeal.

13. The matter then came before me. Both parties made submissions.

Hearing and Submissions

14. Mr Marziano acknowledged that permission had been refused on the second ground of appeal challenging the panel's findings on the issue of "very significant obstacles to integration" in Nigeria. He accepted that the private life exception to deportation could therefore not be met, but he submitted that the question of integration in the UK was relevant to the proportionality assessment and accordingly that was not an immaterial matter. He submitted that the panel had erroneously applied a balance between the appellant's integrative links and his offending history and had failed to engage with the two authorities, Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 415 and Binbuga (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 551 which were clearly distinguishable from the appellant's circumstances. He submitted that the appellant's offending was nowhere at the level in those two cases and that in this appellant's case there was evidence of rehabilitation. The panel's balancing act was an error of law and that was not immaterial as it affected their proportionality assessment. As for the panel's findings on the "unduly harsh" test in relation to the family life exception, they had given very little holistic consideration to the consequences of the children remaining in the UK without the appellant. The panel's findings were limited to those at [98] to [101] and were concerned with practical and financial circumstances rather than the emotional impact on the children. The panel's section 55 assessment was flawed and the proportionality assessment was not sufficient for the purposes of HA (Iraq). Mr Marziano submitted that the panel's findings on the 'unduly harsh' question and proportionality were not sustainable and the decision should be set aside in its entirety and the case remitted to the First-tier Tribunal.

15. Mr Walker relied upon the rule 24 response and submitted that there were no material errors in the panel's decision. The challenges to the panel's decision were little more than disagreements with their findings.

Discussion and Findings

16. It is asserted on behalf of the appellant that the judges erroneously adopted a 'balance sheet' approach to the test of social and cultural integration by undertaking a balancing exercise between the appellant's existing integrative links and the negative aspects of his criminal conduct. I have to agree that the wording used by the panel at [72], notably the question of "weighing the evidence of the appellant's integrative links against his offending history" does perhaps give rise to the suggestion of such an approach, and is therefore perhaps somewhat unfortunate. However a full and proper reading of the findings at [63] to [74] shows that that was not in fact the approach followed by the panel. Neither was it the case, as suggested by Mr Marziano, that the panel failed properly to consider the cases of Bossade and Binbuga and the extent to which they were distinguishable from the appellant's case. On the contrary, what the panel did was to follow the approach set out in the cases of Bossade and Binbuga: there is nothing in the their decision to suggest that they were not fully aware of the differences in the circumstances of the respective appellants and it is clear that they applied the authorities to the extent that the principles therein were relevant to the appellant's case. The panel properly directed themselves as to the guidance in Devaseelan but then went on to consider the appellant's persistent offending since the previous decision and the impact that had upon his integrative ties established since that time as recognised at [67] and [68]. At [73] and [74] the panel gave cogent reasons for concluding that the integrative ties had been broken by the appellant as a result of his repeat offending despite the receipt of a warning letter and owing to his breach of two suspended sentences. The panel were fully and properly entitled to conclude as they did in that regard and I do not accept that they made errors of law in so doing.

17. In any event, as Mr Marziano accepted, the appellant could not benefit from the private life exception to deportation under paragraph 399A owing to the properly made, and upheld, findings of the panel that there were no very significant obstacles to integration to Nigeria. I do not accept his suggestion that an error in approach in relation to paragraph 399A(b) to the extent stated would have materially undermined the panel's overall proportionality assessment, given the absence of any very compelling circumstances in the appellant's case and considering the findings made in relation to the family life exception under paragraph 399(a) and (b).

18. Turning to those findings, I do not consider there to be any merit in the grounds as stated or as included in the grant of permission at [5]. I do not agree that the panel misapplied the principles in HA (Iraq) when it is clear that they were fully aware of those principles as set out at [91] to [93] and specifically applied them from [94] onwards. Neither do I agree with Mr Marziano that the panel restricted their findings to financial and practical circumstances concerning the children. On the contrary the panel gave full consideration to the best interests of the children and to the emotional impact on them of separation from the appellant, as is apparent from [97] to [101]. It has to be borne in mind that the evidence before the panel was limited and the panel were therefore restricted to that evidence. There was no social worker's report and no medical reports suggesting that there would be any particular

detrimental impact upon the children's emotional well-being if the appellant had to leave the UK. On the limited evidence before the panel the conclusion they reached on the question of undue harshness was entirely open to them and I would venture to say was in fact the only sensible one they could have reached.

19. As for ground 4, the findings on very compelling circumstances, the panel clearly adopted the correct approach in considering and balancing factors in the appellant's favour and those against. As to the circumstances in the appellant's favour the panel considered all relevant factors and had regard to the entirety of the evidence. In addition to the considerations already undertaken about the appellant's relationship with his partner and children, the panel went on to consider at length his relationship with his partner's children and the best interests of those children, his relationship with his brother Amen and his role as a carer for his brother, his relationship with his mother and other brother, the evidence of his rehabilitation and risk of re-offending, the nature of his offending and the age at which he offended and the public interest factors. Contrary to the assertion in the grounds at [12], the panel's decision was a detailed and careful one taking account of all relevant matters and including a rounded assessment of the evidence.

20. Accordingly, I find that none of the appellant's grounds are made out. The panel's decision was a full and comprehensive one which included a detailed assessment of all the evidence and all relevant matters and cogently reasoned findings and conclusions. The decision to dismiss the appellant's human rights appeal was fully and properly open to the panel on the evidence before them and the grounds and grant of permission disclose no errors of law in their decision.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision of the First-tier Tribunal to dismiss the appellant's appeal therefore stands.

Signed S Kebede
Upper Tribunal Judge Kebede Date: 27 September 2021