



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

Appeal Number: UI-2021-001669  
(PA/03434/2020)

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 23 September 2022**

**Decision & Reasons Promulgated  
On 11 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE  
UPPER TRIBUNAL JUDGE HANSON**

**Between**

**TNA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. By a decision dated 29 June 2022, this Tribunal allowed the Secretary of State's appeal against a decision of the First-tier Tribunal. Our reasons were as follows:

1. We 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 was born in 1978 and is a male citizen of Sierra Leone. By a decision dated 29 May 2020, the respondent refused the

appellant's claim for international protection. The appellant appealed to the First-tier Tribunal, which, in a decision promulgated on 26 May 2021, allowed the appeal on human rights grounds (Article 8 ECHR: Private Life). He dismissed the appeal on asylum and Article 3 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing at Bradford on 29 June 2022, Mr Diwnycz, Senior Presenting Officer, appeared for the Secretary of State. The appellant was not present or represented. The (electronic) file shows that the notice of hearing was served on the appellant's last known address in Leeds and upon his then solicitors by email on 1 June 2022.

3. The appellant's solicitors, Bankfield Heath, emailed the Tribunal on 15 June 2022 upon receiving the notice of hearing stating, 'further to your email below, I confirm that the notice of hearing has been forwarded to the Respondent by email. I can also confirm that we have received no further contact from the Respondent.' The Tribunal then enquired by email whether the solicitors wished to remain on record. By an email also dated 15 June 2022, the solicitors asked to be removed from the record.

4. We are satisfied that the notice of hearing was served on the appellant at his last known address and that he has been given 'reasonable notice of the time and place of the hearing' as required by the Tribunal Procedure (Upper Tribunal) Rules 2008 (the Upper Tribunal Rules), paragraph 36. We are also satisfied that the application has been validly served by the notice of hearing sent to his solicitors who, at the date of service, were on the record as acting for him; Bankfield Heath were removed from the record only after service had been effected.

5. Paragraph 38 of the Upper Tribunal Rules provides:

38. If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

6. We find that all reasonable steps have been taken to notify the appellant of the initial hearing on 29 June 2022 and further that it is in the interests of justice to proceed to hear the appeal in his absence.

7. Mr Diwnycz relied on the grounds of appeal.

8. The First-tier Tribunal judge summarised the respondent's decision as follows:

6. The Respondent accepted that the Appellant is a national of Sierra Leone and did not dispute the Appellant's account of his experiences prior to coming to the UK. However, the Respondent considered that Articles 1F(a) and (b) of the Convention applied to the Appellant and certified that the Appellant is not entitled to the protection of Article

33(1) by virtue of section 55 of the Immigration, Asylum and Nationality Act 2006. For the same reasons the Respondent considered that the Appellant is not eligible for humanitarian protection with reference to paragraph 339 D of the immigration rules.

7. The Respondent also considered the Appellant's application under paragraph 276ADE(i) of the Immigration Rules. The Respondent did not accept that there were insurmountable obstacles to his integration into his home country. As such the Respondent was satisfied that the Appellant did not meet the requirements of paragraph 276ADE

9. At [24], the judge found he did not need to determine whether the appellant had aided or abetted in crimes against humanity and/or war crimes [21] but concluded that:

... I am satisfied that armed robbery is a serious non-political crime and it does not matter that the Appellant was not charged or convicted. Accordingly, the Respondent has satisfied me that the Appellant falls to be excluded from the refugee convention under article 1F(b). For the same reasons the Appellant is excluded from humanitarian protection. [the judge's emphasis].

10. The Secretary of State's first ground asserts:

The FtTJ's finding at §56, that there would be very significant obstacles to integration, and that R therefore meets paragraph 276ADE (1) of the immigration rules, is absurd. This is because by finding that 1F(b) of the Refugee Convention is engaged, the FtTJ had to proceed on the basis that R no longer met the rules by virtue of S-LTR.1.6 and SLTR.1.8(a) [Sultan Mahmood (paras. S-LTR.1.6. & S-LTR.4.2.; Scope) [2020] UKUT 00376 at [50]-[52]].

19. Therefore, the FtTJ erred in not proceeding solely on an Article 8 outside of rules basis only; and thus, failed to address the question they were tasked with, whether there were exceptional circumstances in R's case leading to unjustifiably harsh consequences on removal.

20. In NE-A (Nigeria) v SSHD [2017] EWCA Civ 239 at [14], the Court of Appeal endorsed the rationale in Rhuppiah v SSHD [2016] EWCA Civ 803 at [45], that the "have regard to" sections 117B and (where applicable) section 117C, mean that the statutory scheme constitutes a "complete code" for the purpose of considerations in sections 117B and 117C, and the various provisions of sections 117B and 117C themselves in the consideration of article 8 in the context of immigration removal and deportation.

21. The FtTJ had to apply the provisions of s.117B only, which involved, for the same reasons given at §61, attaching weight to R not meeting the rules.

Paragraphs SLTR of HC 395 (as amended) provide that 'an applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply. SLTR-1.6 provides for refusal if:

The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

11. We consider that the Ground 1 is made out. The judge has allowed the Article 8 ECHR appeal because he found that the appellant met the requirements of paragraph 276ADE. We agree with the respondent that the judge should have considered whether suitability considerations arising from his Article 1F(b) finding should have led to the appellant's exclusion from the provisions of paragraph 276ADE. Had he concluded that the appellant could not meet paragraph 276ADE, then, as the Secretary of State argues, it would have been necessary for the judge to consider whether there are exceptional circumstances leading to unjustifiably harsh consequences on removal. Any such analysis is missing from the decision. At [56], the judge makes a clear finding that the appellant satisfies paragraph 276ADE but then moves to a wider consideration of Article 8 ECHR by reference to section 117B of the 2002 Act [57]. However, it is clear at the conclusion of the decision [62] that the finding that the appellant meets the requirements of the Immigration Rules was determinative; 'in reaching this conclusion a determining factor is my finding that there would be very significant obstacles to the Appellant's integration into Sierra Leone.'

12. In our opinion, the judge has fallen into error. He has not factored into his Article 8 ECHR analysis his finding that the appellant is excluded from refugee status on account of Article 1F(b), a finding which should, in turn, have led the judge to consider the general provisions in the Rules regarding suitability when deciding whether the appellant met the requirements of paragraph 276ADE. The error goes to the core of the judge's reasoning in respect of the human rights appeal and is, absent other errors, sufficiently serious for us to set aside the decision.

13. The remaining grounds also have merit. At [56] the judge appears to give positive weight to the observation that the appellant has not committed criminal offences whilst in the United Kingdom. As the grounds point out, such a factor is properly of neutral effect only. However, we do not propose to examine the remaining grounds in detail having concluded that the decision should be set aside. The appellant has not challenged the judge's findings in respect of Article 1F(b), asylum or Article 3 ECHR so we direct that those findings shall stand.

#### Notice of Decision

The decision of the First-tier Tribunal is set aside. The judge's findings in respect of Article 1F(b), asylum and Article 3 ECHR shall stand. The decision will be remade in the Upper Tribunal following a resumed hearing.

2. At the resumed hearing at Bradford on 23 September 2022, the appellant appeared in person. Mr Diwnycz, Senior Presenting Officer, appeared for the Secretary of State. The appellant told us that he had been unable to attend the initial hearing of his Upper Tribunal appeal on account of illness.; he had been suffering from tuberculosis. He said that he had no medical evidence as he 'had not had chance to get any.' He is now receiving drug therapy and is no longer sleeping rough. As a consequence,

his condition is improving. He made no mention at all to us of any ongoing mental health problems.

3. We explained the nature of the proceedings to the appellant who speaks good English. We consider that he understood the proceedings.
4. The appeal proceeded on Article 8 ECHR grounds only. The standard of proof in the Article 8 appeal is the balance of probabilities.
5. The appellant was cross examined by Mr Diwnycz. He said that he is living in London with a friend from Sierra Leone with whom he had been at school. Asked about other friends or family in the United Kingdom, the appellant said that he has friends in Leeds including a girlfriend by whom he is '99% sure' he has a child who was born in 1996. However, he has not seen the child for over 18 months (he came to Leeds for the child's first day at school) and has been in touch only infrequently with either the child or the mother since then; he said that he 'has no way to communicate at the moment.' He had tried to call the mother's telephone but without success.
6. I asked the appellant about his current circumstances in the United Kingdom. He replied that he is law-abiding but cannot work or access benefits but that he had 'to find ways to survive.' He said that Sierra Leone is 'bad and not safe so I want to stay here.'
7. We found the appellant to be a truthful witness. Although we have not seen any medical evidence, we accept the appellant's evidence that he has been suffering from tuberculosis but find that his condition has been stabilised following an improvement in his accommodation arrangements and drug therapy. The appellant did not claim that his condition would worsen if he were to return to Sierra Leone and he has adduced no evidence of the treatment he likely to be able to access or which would be denied to him if returned to that country. We accept also the appellant's evidence regarding the child living in Leeds who he believes is his natural child by his former girlfriend. However, his evidence clearly indicates that there is no ongoing relationship with either the child or the mother which might constitute family life for the purposes of Article 8 ECHR. He has not seen the child for nearly 2 years and has no way of re-establishing contact. He did not claim to have any other relationship at present which might constitute family life for the purposes of Article 8 ECHR.
8. We have considered whether the appellant falls within the provisions of paragraph 276ADE(1)(vi) of HC 395 (as amended), '*[the appellant] is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the United Kingdom*'). We find that the appellant does not meet the requirements of the rule. We accept that he is a former child soldier and he told us that he believed that Sierra Leone is not 'safe' but his asylum and Article 3 ECHR appeals have

been dismissed. He did not claim that his former child soldier status would constitute a very significant obstacle to his integration. He has been outside Sierra Leone for more than 10 years and may have only limited family links there (a subject not addressed at all in his evidence before us). However, he speaks the official language (English) and is familiar since childhood with the culture of the country. He has not argued that he could not access appropriate treatment for his tuberculosis there. In any event, the application of S-ILR.1.8. (*'The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-ILR.1.3. to 1.6.) character, associations, or other reasons, make it undesirable to allow them to remain in the UK.'*) is engaged by the appellant's previous conduct in Sierra Leone which has led to his exclusion from seeking refugee status in the United Kingdom as found by the First-tier Tribunal. We acknowledge that he may find difficulties settling in Sierra Leone after a long absence and in finding accommodation but that has been his experience in the United Kingdom also.

9. We find that the Article 8 ECHR family life is not engaged. However, even if we are wrong, the weakness of the appellant's family life with his child and former partner is such we do not find that it constitutes exceptional circumstances leading to unjustifiably harsh consequences on removal. There is, at the present time, effectively no relationship with the child, not even by way of indirect contact, and no prospect of any resumption of the relationship. Moreover, so far as the appellant's private life is concerned, we are reminded that *'little weight should be given to a private life established by a person at a time when the person's immigration status is precarious'* (s117B (5) of the 2002 act (as amended)). Following an initial period with leave as a spouse (2011-2013), the appellant's status has been precarious. Further, the appellant's evidence made no mention of any private life ties in any of the communities in which has lived. Indeed, it seems likely that the appellant's accommodation problems may have hampered the establishment of any significant links to any community. When weight is given to the matter of suitability (including the Article 1F exclusion found by the First-tier Tribunal Judge) we find that there is nothing in the appellant's circumstances which should lead us to allow his appeal on family life or private life grounds.
10. Accordingly, for the reasons given above, we find that the appellant's appeal against the decision of the Secretary of State dated 29 May 2020.

### **Notice of Decision**

11. We have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 29 May 2020 is dismissed.

Signed

Date 30 October 2022

Upper Tribunal Judge Lane

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,**  
**the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**