



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006043

First-tier Tribunal No:
HU/51952/2022
IA/03030/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 December 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

OPEYEMI OLANREWAJU AKERELE

Appellant

and

S S H D

Respondent

Appellant present; no representative

For the Respondent, Mr M Diwyncz, Senior Home Office Presenting Officer

Heard at Edinburgh on 6 December 2023

DECISION AND REASONS

1. FtT Judge Komorowski allowed the appellant's appeal by a decision promulgated on 30 November 2022. The crux of his decision is in the last paragraph: the appellant's departure to apply for entry clearance would be a substantial interference with his and his partner's rights to family life; he would probably secure entry clearance; he did not have a significantly adverse immigration history, so the public interest in his removal as an overstayer was "relatively modest"; and the interference would be disproportionate.
2. The SSHD's single ground alleges at (a-b) failure to take account of the public interest factors in section 117B of the 2002 Act; (c) reference to *Younas* [2020] UKUT 00129 without applying its principles; and (d) failure

to factor in the finding of no insurmountable obstacles to family life in Nigeria.

3. On 2 January 2023, FtT Judge Cruthers granted permission:

In deciding that a grant is appropriate here (but without restricting that grant), I offer the following comments:

- referring to subparagraph 1(d) of the grounds on which the respondent seeks permission to appeal, the judge did refer at least twice to the appellant not meeting the “insurmountable obstacles test” (paragraphs 10 and 31 of the decision under consideration). It is possible that on further inspection, no substance will be found in this ground

- referring to subparagraphs 1(a) to (c) of the respondent’s grounds, it seems to be correct that the judge has not explicitly engaged with the public interest factors set out in section 117B of Nationality, Immigration and Asylum Act 2002 (*cf*, for example, *Younas*). It is possible that on further inspection, no materiality will be found in this ground (because it is possible that the decision under consideration sufficiently covers “the 117B factors” without explicitly mentioning section 117B) but at this stage I consider that a grant of permission is appropriate

4. Mr Diwyncz relied upon but did not add any further substance to the grounds.

5. This was plainly a marginal grant of permission.

6. The grounds are selective. They do not fairly represent the whole of the Judge’s careful decision-making process. They do not undermine his identification at 9(ii) of what came to be the decisive issue, whether *“the deterrent to the appellant and his partner on insisting on entry clearance is disproportionate to the benefit to immigration control”*.

7. The Judge plainly found there to be no insurmountable obstacles, which was not the end of the case.

8. There are cases which resolve into balancing the requirement in the rules to apply for clearance from abroad against the degree of difficulty so caused and any adverse immigration history.

9. The Judge did mention section 117B. The grounds do not show that in getting to the point he needed to say anything more specific about it.

10. The respondent does not say this was a case with only one rational outcome. Even if it might have gone either way, no error of law is shown by the Judge coming down on the side he did.

11. The SSHD’s appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 December 2023