



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003849

First-tier Tribunal Nos: HU/54125/2022
IA/06216/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

YEKINNI ORIADE MOHAMMED
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Mavrantonis of Counsel instructed by J F Batula Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 28th June 2024

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria whose date of birth is recorded as 2nd July 1958. On 11th June 2021 he made application for leave to remain in the United Kingdom as the partner of Dawn Avril MacNeill. On 30th June 2022 a decision was made to refuse the application on the basis that the Appellant, having entered the United Kingdom as a visitor on 23rd July 2003 with no other valid leave to enter or remain in the United Kingdom, failed to meet the requirements of paragraph E-LTRP.2.1 of Appendix FM to the Immigration Rules. Still further, the Respondent, after considering the exception to the Rule, was not satisfied despite Ms MacNeill's ill health and it being accepted that the relationship was genuine that there would be insurmountable obstacles to the couple living together in Nigeria.

2. Having refused the application on family life grounds the Respondent went on to consider the Appellant's private life. It was noted that the Appellant had lived in the United Kingdom for seventeen years and eleven months and so fell short of the twenty years' long residence requirement. The Respondent then considered whether the decision would have unjustifiably harsh consequences but decided these did not exist in this case.
3. Not content with that decision the Appellant appealed to the First-tier Tribunal. The appeal was heard on 3rd July 2023 by First-tier Tribunal Judge Wood sitting at Taylor House. In a Decision and Reasons dated 3rd August 2023 Judge Wood dismissed the appeal. Crucial to this appeal was that by the date the decision was promulgated the Appellant had in fact been resident in the United Kingdom in excess of twenty years, albeit by a few days and had only done so after the date of the hearing.
4. By notice dated about 15th August 2023 the Appellant made application for permission to appeal to the Upper Tribunal. There were two grounds. The first related to Ms MacNeill and what the judge observed for himself in the hearing without, it was contended, raising these observations so as to give the Appellant, Ms MacNeill or his representative, the opportunity to comment. The second ground contended that as the Appellant now met the "twenty-year rule" he ought to have succeeded in the appeal.
5. On 7th September 2023 First-tier Tribunal Judge Grimes refused permission on all grounds. However, in a renewed application to the Upper Tribunal, Upper Tribunal Judge O'Callaghan, on 24th October 2023, whilst refusing permission to appeal on the first ground granted permission on the second, thus the matter comes before me.
6. It is very unfortunate to note that the decision of Judge Wood does not appear to have been proofread by him. The numbering of the paragraphs makes no sense. Having said that, it seems to me that the appeal has merit. The objection taken by the Respondent to this appeal is that the taking of the twenty-year point was a new matter but the proper approach to how that point should be approached is dealt with in the guidance in the case of **OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 65 (IAC)**.
7. I look to the materiality in this case. Even if the Immigration Rules had not been met it is trite law now that the decision of the judge is not complete until it is promulgated, and it was the case that by the time this decision was promulgated the Appellant had completed twenty years. That goes to a specific Immigration Rule and to the wider application of Article 8.
8. In a proportionality assessment it is also trite law that one should look to the guidance in the case of **R (Razgar -v- Secretary of State for the Home Department [2004] UKHL 27** and although that guidance was in respect of removal being resisted the questions are:
 - (i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

- (ii) If so, will such interference have consequences of such gravity as potentially engage the operation of Article 8?
 - (iii) If so, is such interference in accordance with the law?
 - (iv) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others?
 - (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?
9. The Secretary of State has a Rule which subject to there being particular objections as to why a particular individual should not be permitted to remain, he or she having achieved twenty years' continuous residence in the United Kingdom is entitled to remain. In other words, the private interests outweigh the public interest where what is contained within the Immigration Rules is met the fourth **Razgar** test.
10. I invited Ms Isherwood to tell me whether if now the Appellant having achieved twenty years, there would be any basis for the Secretary of State to resist the Appellant being granted status. She pointed to the decision itself but accepted there really was no objection. In those circumstances it seems to me that the appeal is to be allowed, the decision is to be re-made and in the re-making the Appellant succeeds on the basis that he has been here for twenty years with there being no reason for him not to be permitted permission to remain.
11. I finish by expressing my gratitude to both representatives for their assistance in this matter.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside and remade such that the appeal is allowed.



**Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber**

3 July 2024