



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004384

First-tier Tribunal No: EA/01102/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 2<sup>nd</sup> of May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**Mr Adams Oladehinde Ajiboye  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: No legal representation

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House on 21 February 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Davies, promulgated on 1<sup>st</sup> August 2023, following a hearing at Manchester Piccadilly on 21<sup>st</sup> July 2023. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Nigeria, and was born on 13<sup>th</sup> March 1988. He appealed against the decision of the Respondent, dated 27<sup>th</sup> September 2022, refusing his human rights claim for leave to remain in the United Kingdom, on the basis of his relationship with a Ms Oluwatosin Callisto, and her daughter, as well as his medical condition.

### **The Judge's Findings**

3. The judge observed how there had been a previous Tribunal decision in February 2018 in respect of an earlier application for leave to remain. At the time, the Appellant was married to a Ms Pascal, and he had argued that there were insurmountable obstacles to the relationship continuing in Nigeria, because his wife had a congenital heart condition. Given that there was no medical evidence, the judge found that the medical problems were insufficient to amount to insurmountable obstacles. The judge, this time around, found that in relation to the Appellant's private life his witness statement "for this appeal adds nothing", and although he was unrepresented at the appeal, "he made no comment on any difficulties on return to Nigeria" (paragraph 20). The judge referred to the issue of integration into Nigerian life should he have to return and noted the well-known decision in **Kamara [2016] EWCA Civ 813**, which requires a broad evaluative judgment to be made. The Appellant accepted that he had an extended family in Nigeria (paragraph 22) but the judge noted that he had never worked in Nigeria, although there was no reason why he could not, especially as he had carried out cleaning work in the UK (paragraph 23). The Appellant also received financial support from family members (paragraph 24). He did not have a significant medical condition because although he had been prescribed sleeping pills, "he has never been referred to a psychiatrist" and the judge was satisfied "that the Appellant enjoys generally good health" (paragraph 25).
4. However, the judge then went on to conclude that the Appellant "has developed a significant private life in the UK", because not only did he have friends and had developed relationships but "he is a musical producer or player" (paragraph 26). Nevertheless, the judge's conclusion with respect to the Appellant's private life was that the Appellant had not shown that there would be very significant obstacles to his reintegration into Nigeria (at paragraph 28).
5. The judge then went on to consider the Appellant's family life on the basis of a very brief witness statement (at paragraph 29). It was noted that the Appellant was in a relationship with Ms Callisto and in a quasi parental role with her daughter. However, he had given few details in the witness statement and did not call Ms Callisto to give oral evidence (paragraph 29). There was an older witness statement of 27<sup>th</sup> June 2020 which provided more information but this was three years old (paragraph 30). Consideration was given by the judge to the Appellant's 2020 statement and a further statement of 9<sup>th</sup> August 2022, where it was said that they live together and Ms Callisto stated that her daughter's

biological father was not involved (paragraph 32). The Appellant himself claimed that Ms Callisto's daughter saw him as a dad and that the parental relationship dated from the time when he moved in with the child's mother.

6. However, the child did not call the Appellant "dad" and did have an ongoing relationship with her biological father (paragraph 33). When the Appellant produced a letter from the school dated 11<sup>th</sup> December 2020 for the child, it was noted that the letter was not addressed to the Appellant as a parent or a guardian, but was but was a circular to all parents (paragraph 35). In the end, the judge concluded that "I am satisfied that the Appellant has not shown that there is a parental relationship with Ms Callisto's daughter" (paragraph 36). He had produced only one document to support his claim to be living with Ms Callisto in a relationship akin to marriage and "that is an undated document from the Land Trust" (at paragraph 37). Moreover "the Appellant has not shown that he has a genuine and subsisting relationship with Ms Callisto or that they have lived together in a relationship akin to marriage for two years or more" (paragraph 38).
7. Having roundly rejected the Appellant's claim both in relation to his private life and his family life, the judge then went on to consider the Appellant's Article 8 rights. The judge observed how the Appellant had "developed a significant private life in the UK over some fifteen years" and that although he did not meet the requirements of the Immigration Rules, "his removal would interfere with his private life developed over many years in the UK" so that Article 8(1) was engaged (at paragraph 40). Given that the Appellant did not meet the requirements of the Immigration Rules, the judge carried out a proportionality exercise under Article 8(2). Regard was had by the judge to the factors set out at Section 117 of the 2002 Act and "the maintenance of immigration control" being "in the public interest" (at paragraph 42). Nevertheless, "his private life was developed while in the UK unlawfully and I must attach little weight to it" but that this "does not mean no weight" because the Appellant had developed his private life "over a long period of time" (paragraph 43). He was not financially self-sufficient. He relied on the support of friends and family and obtained some income from casual work such as cleaning for others and from his musicianship (at paragraph 44).
8. However, the judge then went on to considering the "very significant factor in this proportionality exercise of delay" (paragraph 46). The judge observed that it cannot be said that the Home Office had carried out this statutory function in this case because they had taken no steps to remove the Appellant from the UK over a period of fifteen years. That being so, regard was had by the judge to the well-known case of **EB (Kosovo) [2008] UKHL 41** where Lord Bingham had made it clear that there is a relevance of delay in three particular respects. Thus, a person might develop closer personal and social ties in the community; the sense of impermanence may fade away with the passing years; and the delay might be relevant in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control (at paragraph 47). That particular principle had been recognised by Baroness Hale (at paragraph 32) and in the well-known case of **Agyarko [2017] UKSC 11** where the Supreme Court had also referred to how the cogency of public interest in the removal of a person may diminish with the passage of time (at paragraph 48).
9. On this basis, the judge's firm conclusion was that,  
  
"I am satisfied that a delay of some fourteen and a half years in enforcing immigration control, which has not been explained, very significantly

reduces the cogency of the public interest and augments the weight to be attached to the Appellant's private life." (Paragraph 49)

And the appeal was allowed on human rights grounds.

### **Grounds of Application**

10. The grounds of application by the Respondent Secretary of State are to the effect that the judge misdirected himself in relation to the judgment in the decision in **EB (Kosovo) [2008] UKHL 41**. In particular, the judge failed to take into account the Appellant's immigration history which had frustrated any attempt at enforcing removal.
11. On 15<sup>th</sup> September 2023, permission to appeal was granted by the First-tier Tribunal.

### **Submissions**

12. At the hearing before me on 21<sup>st</sup> February 2024, Mr Lindsay, appearing on behalf of the Respondent Secretary of State, submitted that the judge was simply wrong to have allowed the appeal on the basis of the Appellant's private life under Article 8 because what he was required to do was to undertake a balancing exercise between the Appellant's private life and the public interest in the enforcement of immigration control. The judge had stated initially (at paragraph 43) that "The Appellant has developed a significant private life in the UK", but that "his private life was developed while in the UK unlawfully and I must attach little weight to it", although he had also added that "little weight does not mean no weight".
13. However, towards the end of his determination the judge had then found himself stating (at paragraph 60) that the Appellant had built up a "powerful private life" which is unreasoned and without any basis, because in the instant case the Appellant cannot be said to have fallen victim to a dysfunctional immigration system, in the way envisaged by the court in **EB (Kosovo)**.
14. On the contrary, it was his repeated unmeritorious applications which had led to the delay, and these should actually be weighted against him in any proportionality exercise rather than weighted against the Secretary of State. Thus, there has been no administrative delay on the part of the Secretary of State. The Appellant had been making applications to remain in the UK, including JR applications, for several years, and they were all unsuccessful. There was never a period when the Secretary of State was doing nothing. On the contrary, the Secretary of State was responding to applications which were made during the period of the Appellant's unlawful stay. Therefore, on the application of Section 117(b) the Appellant's private life that had been developed during this time must be given "limited weight" because his position had always been precarious in this country.
15. For his part, the Appellant who was unrepresented, stated that he had been in the UK for nearly sixteen years now. He was a different person to the one who arrived in this country all those years ago. He was a musician and a producer now. He had studied architecture in this country and was grateful for the opportunities given to him by this country and it was unfair now to deprive him of the right to remain in this country after all these years.

### **Error of Law**

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that the decision stands to be set aside. This is because the well-known strictures of Lord Bingham in **EB (Kosovo)** have been misconstrued. This is not a case where the Appellant's private life, built up during a time when his status in this country was precarious, was the result of a dysfunctional immigration system. On the contrary, the immigration system was responding to his repeated applications to remain in this country. He was availing himself of the right to make repeated applications, all of which turned out to be unsuccessful and all of which were responded to by the Secretary of State. If there has been a passage of time, many years during that phase, that is not suggestive of an administrative delay in his removal. It is an indication of the system working.
17. Second, it is not clear exactly how it is that the judge comes to the view that the Appellant had developed a "powerful private life" (at paragraph 60), as this is not properly explained in the determination. For all these reasons, the appeal needs to be looked at again.

### **Notice of Decision**

18. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Davies under Practice Statement 7.2.(b) because the nature or extent of an judicial fact-finding, which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

**Satvinder S. Juss**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**26<sup>th</sup> April 2024**