IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003910

First-tier Tribunal Nos: PA/54336/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 30th of January 2025

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

The Secretary of State for the Home Department

Appellant

and

Kevin Okenwa Asonye
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr M Parvar, Senior Home Office Presenting Officer
For the Respondent: Unrepresented and did not attend

Heard at Royal Courts of Justice on 13 January 2025

DECISION AND REASONS

1. By my decision of 24 October 2024 I set aside the decision of the First-tier Tribunal. I now remake that decision.

2. The appeal is brought by the Secretary of State. However, for convenience, I will refer to the parties as they were designated in the First-tier Tribunal.

Background

3. The appellant is a citizen of Nigeria who came to the UK in 2004, at the age of 4. He has committed several criminal offences and is currently detained.

4. The appellant's first crime on record is a caution received in 2014 for facilitating the acquisition or possession of criminal property. The most serious conviction was for aggravated burglary, for which he received a sentence in March 2018 of 90 months' imprisonment.

5. On 25 August 2021 a decision was made to deport the appellant and to refuse his protection and human rights claim.

6. The appellant appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Lawrence. The appellant argued in the First-tier Tribunal that his deportation would breach Articles 3 and 8 of the ECHR. Judge Lawrence rejected the argument that deporting the appellant would violate Article 3 ECHR, but found that his deportation would breach Article 8 ECHR.

7. The respondent appealed against this decision. There was no cross-appeal from the appellant. I heard the appeal on 16 September 2024. The appellant did not attend. I was informed that he refused to leave his cell on the morning of the hearing. I decided to proceed, despite the appellant's absence, as the appellant had chosen to not attend and had not provided a reason for this. I considered that it was consistent with the overriding objective to proceed with the hearing.

8. Following the hearing, I allowed the respondent's appeal and directed that the decision would be remade in the Upper Tribunal, with the scope of the appeal limited to Article 8 ECHR (as the First-tier Tribunal's finding on Article 3 was not challenged).

Decision to not Adjourn

9. The appellant is currently detained. Arrangements were made for him to attend the hearing. I was informed that the appellant refused to leave his cell and attend the hearing. The reason he gave the officer was that he did not know anything about the hearing.

10. I asked Mr Parvar to make submissions on whether the hearing should be adjourned. His response was that as the appellant had voluntarily absented himself the hearing should proceed.

11. I have carefully considered, with reference to the overriding objective to deal with cases fairly and justly, as set out in Section 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, whether to adjourn the case. Weighing in favour of adjourning the appeal is that (i) the case, to a very significant extent, turns on the circumstances of the appellant, his child and his siblings, and I have no up-to-date evidence about them; and (ii) it is important that parties are able to participate fully in proceedings so far as practicable. Weighing in favour of proceedings is that (i) the appellant was aware that the hearing was scheduled for today and has chosen not to attend; (ii) a good reason for not attending has not been provided; (iii) this is the second time the appellant has refused to attend a hearing; and (iv) there is no evidence of a vulnerability or other factor that would make it difficult for the appellant to attend. Balancing these considerations, I am of the view that it is fair and just to proceed.

Legal Framework

12. Section 117C of the Nationality, Immigration and Asylum Act 2002 provides as follows:

> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

13. The appellant was sentenced to a custodial term of over four years. He is therefore required by section 117C(6) to establish that there are very compelling circumstances, over and above the Exceptions described sections 117C(4) and 117C(5). Although he cannot directly rely upon Exceptions 1 and 2, he can rely upon them to support his case under article 8 and they are relevant to whether there are compelling circumstances "over and above" the Exceptions. I therefore start by considering whether the appellant falls within either Exception.

Exception 1: Obstacles to Integration in Nigeria

14. Judge of the First-tier Tribunal Lawrence found that the appellant would not face very significant obstacles integrating in Nigeria and that therefore Exception 1 was not satisfied. This finding was not challenged and therefore stands.

Exception 2: Unduly Harsh Effect on the Appellant's Children and Partner

15. Exception 2 applies where a foreign criminal has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of their deportation on the partner or child would be unduly harsh. A qualifying child is defined at section 117D(1) as a person under the age of eighteen and who is a British citizen or has lived in the United Kingdom for a continuous period of seven years or more

16. Unfortunately, there is no up to date evidence before me about the appellant's relationship with his children and partner. The only evidence before me is that which was before the First-tier Tribunal, and is now over two years old. This includes:

    (a) The appellant's witness statement, which states that he is a father and expecting a second child; and that he wants to be given an opportunity to be in the life of his children.

    (b) The statement of the appellant's partner where she states that she is pregnant and due to have a child on 14 October 2022. She states that the

appellant is kind, generous and a big support in her life, as well as a father figure to her other child.

(c) The statement of the appellant's father, where he expresses remorse at the appellant's offending, for which blames himself for not being there for the appellant. He refers to the appellant's partner being pregnant.

(d) The appellant's aunt's statement, which comments on the appellant's partner expecting a child.

17. The evidence about the appellant's children is extremely limited. The appellant refers in his statement to having one child and his partner being pregnant with another. However, no information is given about his relationship with the older child and I have no evidence about the younger child (who was not yet born when the statements were written). Given the absence of evidence, the appellant has not discharged (or even come close to discharging) the burden on him to establish that he has a genuine and subsisting relationship with a qualifying child or that the effect on any such child of his deportation would be unduly harsh.

18. Likewise, the evidence provided by the appellant and his partner about their relationship is extremely limited. It is insufficient for me to gain any sense of how the appellant's removal might impact on his partner; or indeed even to assess whether the relationship is genuine and subsisting.

Section 117C(6): Very Compelling Circumstances

19. Section 117C(6) of the 2002 Act necessitates a full assessment as to the proportionality of the appellant's deportation. The term "compelling" is not to be taken literally; it simply means that circumstances are more compelling than Exceptions 1 and 2. It is a demanding test, requiring a wide-ranging exercise so as to ensure that Part 5A of the 2002 Act produces a result compatible with article 8. This requires a holistic evaluation of all relevant factors including those which might have already been assessed in the context of the Exceptions. I have approached section 117C(6) by adopting a balance sheet approach, identifying factors weighing for and against the appellant.

20. Weighing against the appellant is that he has committed a very serious offence, which means that there is a strong public interest in his deportation.

21. Weighing for the appellant is that he has children and siblings in the UK who are under 18 and who are likely to be affected by his deportation.

22. Although the appellant has failed to provide any evidence about his relationship with his children, I accept that it is nonetheless in their best interests for him to remain in the UK if only to enable a relationship to develop in the future. However, although the best interests of his children are a primary consideration, I give this consideration only little weight in the balance given the absence of evidence about a meaningful relationship that deportation would disrupt.

23. There is some evidence before me about the appellant's relationship with his siblings. The witness statement of the appellant's aunt (dated 16 April 2022) states that the appellant is an enormous help with them. The siblings have submitted short letters (also over two years old) expressing their love and affection for the appellant, and describing how he supports them. Unfortunately, the evidence of the appellant and his aunt about the relationship with his siblings

has not been tested. I note, in this regard, that no reason was given to explain the non-attendance by the appellant's aunt. In any event, her witness statement provides very limited detail. I accept that it would be in the best interests of the appellant's siblings for the appellant to remain in the UK but due to the limited evidence as to the impact on them of the appellant's deportation this consideration is given only little weight in the balancing exercise.

24. The appellant and his partner have not provided up to date evidence and, based on the evidence before me, I am not satisfied that it has been established that the appellant remains in a relationship with his partner. I do not, therefore, attach weight in the proportionality assessment to the disruption to this relationship.

25. Weighing in the appellant's favour is that he has lived for the vast majority of his life in the UK and would undoubtedly face significant challenges integrating in Nigeria, where he has not lived since he was a very small child. Even though the threshold of very significant integration is not met, this is still a significant factor in the proportionality assessment.

26. I am satisfied that the balance falls firmly – and by a significant degree - in favour of deportation. This is because (a) the appellant committed a very serious offence which means that the public interest in his deportation is very high; and (b) he has failed to adduce evidence that establishes that one or both of the Exceptions in section 117C is met or that there are compelling circumstances "over and above" one or both of the Exceptions. Accordingly, I find that it would not violate Article 8 ECHR for the appellant to be deported.

Notice of Decision

27. The decision of the First-tier Tribunal was previously set aside. I remake the decision by dismissing the appellant's appeal.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 January 2025