



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004398
First-tier Tribunal No: PA/00470/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 22 January 2025**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**OLASUNKANMI RAZAQ ADELE
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Nath

For the Respondent: Ms McKensie, Senior Presenting Officer

Heard at Field House on 10 September 2024

DECISION AND REASONS

1. By a decision dated 23 February 2024, Deputy Upper Tribunal Judge Welch and I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. Our error of law decision appears at Annex 1. As recorded at [5-6] of our error of law decision, the background of the appeal is as follows:

The Appellant is a national of Nigeria, born in 1960. Having been granted a six-month visa as a visitor, he entered the United Kingdom ("UK") on 20 April 2007 and thereafter remained in the UK unlawfully.

Following his conviction for money laundering, the Respondent made a decision, dated 25 November 2014, to deport the Appellant. The subsequent challenges to this decision culminated in a decision by the First-tier Tribunal, promulgated

on 3 March 2017, to dismiss the Appellant's appeal. Insofar as is relevant to this appeal, further submissions were subsequently made by the Appellant. Those further submissions were refused by the Respondent in a decision dated 23 May 2022. This is the decision which is the subject matter of the current proceedings.

2. At the outset of the resumed hearing, Mr Nath, for the appellant, told us that the error of law decision contained an factual error at [27(2)]; the appellant's wife, Ms Zipperle, had never had a carer during the time she has lived in the United Kingdom but had relied on the care provided by the appellant only.
3. Both the appellant and his wife (Ms Zipperle) gave evidence at the resumed hearing. The burden of proof is on the appellant and the standard of proof is the balance of probabilities. As recorded in the error of law decision, the appellant must prove that it would be (i) unduly harsh for Ms Zipperle to return to Nigeria with the appellant or (ii) unduly harsh for her to remain in the United Kingdom whilst the appellant returns.
4. At the conclusion of Ms Zipperle's evidence, the appellant commented that her understanding of English was poor. I noted the comment, but I am satisfied that Ms Zipperle had understood the questions put to her.
5. Ms Zipperle said that she believed the NHS would be able to care for her if the appellant returned the Nigeria. She appeared to be confused as regards the last time she had been in Nigeria but eventually said that this had been 2021 in order to attend her mother's funeral. She said more than once that, although she had become ill as long ago as 2006, she had not need any care before 2021. Cross examined by Ms McKensie, Senior Presenting Officer for the Secretary of State, Ms Zipperle confirmed that she is a German citizen. She had returned her Nigeria passport but she did not deny that she would be able to enter and reside in Nigeria.
6. The evidence of both witnesses was unsatisfactory in so far as they contradicted each other and their own evidence provided at earlier stages of the litigation. Ms Zipperle said that she believed the NHS could meet her care needs if the appellant left the country. She said that on her last (2021) and penultimate (2019) visits to Nigeria 'someone like' her niece had cared for her, strongly indicating the existence in Nigeria of a care network or, at least, individuals able and willing to care for Ms Zipperle. Both witnesses had previously asserted that nobody would be able to care for Ms Zipperle in Nigeria. It was also puzzling that, whilst she claimed that since at least 2019 she had required continual care, Ms Zipperle said that she had been able to care for herself in 2021. I find that these inconsistencies damaged Ms Zipperle's credibility as a witness.

7. I am reminded that the burden of proof is on the appellant. I find that he has failed to prove that Ms Zipperle would face unduly harsh consequences if he left her in the United Kingdom whilst he returned to Nigeria; as Ms Zipperle herself says, her care needs (the full extent and duration of which have been exaggerated, in the light of Ms Zipperle's oral evidence) would be met through the NHS.
8. As regards both the appellant and Ms Zipperle returning together to Nigeria, I find that, contrary to the assertions of the applicant, there are individuals in Nigeria (most likely family members) who could and would care for Ms Zipperle if required to do so. Ms Zipperle does not appear to possess a current Nigerian passport, but it was not argued that she could not redocument herself if she had to travel to Nigeria (of which country she remains a citizen). As regards medication, there was no expert evidence to support the appellant's assertion that he could not obtain the medicines he requires in Nigeria. Ms McKensie submitted that Ms Zipperle could travel between Nigeria and the United Kingdom every three months to obtain fresh supplies of medicines. Whilst I accept such an arrangement might be reasonable in the shorter term, it is unlikely to be a viable longer term solution. However, as with the appellant, there was no expert or country evidence to support Ms Zipperle's apparently uninformed claim that her medication is not available in Nigeria. Given the unreliability of the oral evidence of both witnesses, I find that their respective assertions regarding the unavailability of medicines in Nigeria insufficient to discharge the burden of proof.
9. I conclude that (i) Ms Zipperle has care needs and that these are currently met entirely by the appellant (ii) it is reasonable and certainly would not be unduly harsh for both Ms Zipperle and the appellant to return together to Nigeria where that care could continue and (iii) the care provided by the appellant would be supplemented by family members in Nigeria. (iv) In the short term, the couple could take with them to Nigeria the medicines which they require whilst (v) the appellant has not proved that the medicines required cannot be sourced in Nigeria, albeit at a cost. In the light of those conclusions, the appellant's appeal is dismissed.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 22 May 2022 is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: UI-2023-004398

Dated: 10 January 2025

Annex 1

Introduction

1. We refer to the parties as they were in the First-tier Tribunal, with Mr Adele as the Appellant and the Secretary of State as the Respondent.
2. This is an appeal against a decision of First-tier Tribunal Judge Bird (“the Judge”), promulgated on 6 September 2023. By that decision, the Judge allowed the appeal against the decision of the Respondent to refuse the Appellant’s claim under Article 8 of the European Convention on Human Rights (“ECHR”) but dismissed the protection element of his appeal (there is no cross-appeal).
3. The Appellant’s claim arose out of the making of a deportation order following his conviction, on 24 June 2014, at the Maidstone Crown Court, for an offence of converting criminal property (in other words, money laundering) for which he was sentenced to a term of 3 years’ imprisonment.
4. An anonymity order was not made by the Judge, despite there being a protection element to the appeal. No application was made to us for an anonymity order but we have nonetheless considered whether to make such an order. We conclude, given that there is no cross-appeal in relation to the protection element of the Appellant’s case, that no such order is required.

Factual background

5. The Appellant is a national of Nigeria, born in 1960. Having been granted a six-month visa as a visitor, he entered the United Kingdom (“UK”) on 20 April 2007 and thereafter remained in the UK unlawfully.
6. Following his conviction for money laundering, the Respondent made a decision, dated 25 November 2014, to deport the Appellant. The subsequent challenges to this decision culminated in a decision by the First-tier Tribunal, promulgated on 3 March 2017, to dismiss the Appellant’s appeal. Insofar as is relevant to this appeal, further submissions were subsequently made by the Appellant. Those further submissions were refused by the Respondent in a decision dated 23 May 2022. This is the decision which is the subject matter of the current proceedings.

The decision of the First-tier Tribunal

7. The Judge allowed the appeal because she found that the effect of the Appellant’s deportation on his wife would be unduly harsh (applying section 117C(5) of the 2002 Act). The Judge’s findings and reasons are found at [57-61] of her decision.
8. In summary, the Judge found that the Appellant’s wife has “significant medical issues which make her mobility extremely limited” [57]. Whilst the Appellant’s wife has a carer, this person only provides her with “the minimum of assistance”, with the Appellant meeting the majority of her care needs [58]. If the Appellant were no longer in the UK, “it is reasonably likely that ... [his wife’s] life will

become more restrictive because of her very limited mobility” [57]. Whilst the Appellant’s wife has family in the UK, they would not be able to replace the care that the Appellant currently provides for her [60].

9. The Judge then stated:

“The Respondent states that their family life can be continued by the wife either moving with the Appellant to Nigeria or by visits. The wife states that she has children and grandchildren in the UK who will find it difficult to visit her and the Appellant. The family life rights that the children and grandchildren have will be interfered with and this interference is disproportionate.[59]

I find that the Appellant’s deportation from the United Kingdom will have an impact on her that can only be described as unduly harsh. She does not have any other members of her family who can live in with her to provide the care that is provided by the Appellant. The public interest in these particular circumstances therefore do not require that the Appellant be deported firstly because he has reintegrated well into (sic) community after his release from prison and has rehabilitated. He has not committed any further offences and poses a low risk of harm to the public as well as a low risk of reoffending. [60]

Apart from the support that his wife will be deprived of, there is also the care and support that the Appellant continues to provide to his ex-wife who has suffered from mental health issues since 2006. His family life with his children and grandchildren will also be affected. [61]

When all the various factors, in particular the impact on the Appellant’s wife, are put together, I find that the Appellant’s removal from the United Kingdom will be unduly harsh.” [62]

The grounds of appeal and the error of law hearing

10. The Respondent relies upon the following grounds:

(1) Ground 1

- (i) failure to give adequate reasons for concluding that it would be unduly harsh for the Appellant’s wife to remain in the UK without the Appellant;
- (ii) failure to give adequate reasons for concluding that it would be unduly harsh for the Appellant’s wife to return to Nigeria with the Appellant;
- (iii) misapplication of the test of undue hardship by taking into account irrelevant considerations.

(2) Ground 2 - failure to give adequate reasons and/or failure to take into account relevant considerations in the assessment of the public interest.

11. Permission to appeal was granted by First-tier Tribunal Judge Dainty. The grounds upon which permission was granted were not restricted.

12. At the error of law hearing, Mr Terrell relied upon the grounds of appeal and both advocates made oral submissions. During the course of this decision, we address the points they made.

Discussion and conclusions

Ground 1(i) - the Appellant's wife remaining in the UK

13. This ground was not, with good reason, the focus of Mr Terrell's submissions. The complaint of the Respondent, as set out in the grounds of appeal, is that the Judge failed to give adequate reasons for accepting the evidence of the Appellant and his wife about the wife's care needs in the context of an absence of independent corroborative evidence, whether expert or otherwise. Ms Victor-Mazeli submitted that, on the evidence before the Judge, she was entitled to make the findings she did about the extent of the wife's needs and the effect upon her of the Appellant's deportation.
14. Contrary to the pleaded ground, there was medical evidence supporting the accounts of the Appellant and his wife. For example, a letter, dated 8 December 2022, from the Appellant's wife's doctor, stating that she has a number of medical issues, including a degenerative joint disease which significantly affects her mobility and that the Appellant is "an integral figure" in supporting her (the appeal bundle, pdf page 134). A conclusion that a Judge has given insufficient reasons will not readily be drawn and, in the circumstances of this case, the Judge was presented with a wealth of evidence which fully supported her conclusion, both in relation to the extent of the wife's needs and the role of the Appellant in providing his wife with care. In the circumstances, little needed to be said by the Judge to explain why she accepted their evidence. We therefore find that there is no error of law.

Ground 1(ii) - the Appellant's wife relocating to Nigeria

15. Mr Terrell submitted that the Judge's reasoning is limited to a finding at [59] that the Appellant's wife's family would have difficulty visiting her in Nigeria. He submitted that this is plainly inadequate to explain why the effect on the Appellant's wife would be unduly harsh, particularly in circumstances where the Judge had found that the Appellant is his wife's primary carer. Ms Victor-Mazeli submitted that the Judge was not required to address every aspect of the evidence and that, in the circumstances, she was entitled to reach the conclusion that she did.
16. We remind ourselves of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Lowe [2021] EWCA Civ 62, at paragraphs 29-31 and AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41. We also remind ourselves that the Judge's decision must be read sensibly and holistically and that we are neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons.

17. We have reached the conclusion that the Judge has given inadequate reasons for her conclusion that it would be unduly harsh on the Appellant's wife to relocate to Nigeria because it is not possible to know from the decision:
- (1) why any impediments to family visiting the Appellant's wife in Nigeria are capable of leading to the conclusion that the effect on the Appellant's wife would be unduly harsh; and
 - (2) whether the Judge took into account other relevant factors, such as her finding that the Appellant is his wife's primary carer and the uncontested fact that the Appellant's wife was born in Nigeria and, if she did take these factors into account, why she concluded that they were outweighed by the one adverse consequence that she identified.
18. We therefore conclude that the Judge erred in law and that the error was material.

Ground 1(iii) - irrelevant considerations

19. Mr Terrell submitted that the Judge took into account irrelevant considerations, namely (i) the question of the Appellant's rehabilitation and (ii) the consequences of his deportation on his ex-wife and other wider family members. He submitted that it is apparent, at [62] of the decision, that the Judge took into account these factors in reaching her conclusion under section 117C(5) of the 2002 Act. In doing so, he submitted that the Judge has improperly taken into account factors that are only capable of being relevant to the proportionality question. Ms Victor-Mazeli submitted that in the decision, the Judge set out the law accurately at [54-55] and referred to the skeleton argument of the Appellant's Counsel (in which the relevant case law had been identified and explained). In these circumstances, it cannot be said that the Judge misapplied the legal test.
20. The Judge carrying out an assessment of the public interest was unnecessary, and linking that assessment to the question of undue hardship was wrong, given such an assessment would only be required if the Judge had found that Exception 2 was not satisfied and was proceeding to consider section 117C(6) of the 2002 Act.
21. However, in our judgment, it is sufficiently clear, from reading the whole of the relevant paragraph [60], that the Judge's reference to the public interest was no more than her seeking erroneously to explain why her finding that Exception 2 was satisfied was determinative of the appeal, as opposed to her factoring in any question of proportionality to the assessment of undue hardship. In other words, whilst we conclude that there is an error of law, we further conclude that the error is not material.
22. The consequences of the Appellant's deportation on wider family members was a factor equally irrelevant to the assessment of the question of undue hardship. In terms of materiality, as Mr Terrell rightly points out, the Judge undoubtedly took this factor into account in reaching her conclusion in relation to Exception 2. However, in our judgment, it is sufficiently clear from the reasoning of the Judge that she had formed the view that the effect on the Appellant's wife would be unduly harsh irrespective of the effect on any wider family members (see, for

example, [60]). Consequently, whilst the Judge stated that she took into account what we deem to be an irrelevant consideration, we are satisfied that this consideration was in fact not material to her overall conclusion under section 117C(5). We therefore conclude that, whilst there is an error of law, the error is not material.

Ground 2

23. Any error in the approach of the Judge to the assessment of the public interest is not capable of being material, given that the Judge's finding in relation to section 117C(5) of the 2002 Act was determinative of the appeal.

Summary of conclusions

24. We conclude that:

- (1) the Judge made a material error of law in her assessment of the effect on the Appellant's wife if she were to return to Nigeria with the Appellant;
- (2) whilst we find that the Judge erred in relation to her assessment of the consequences for the Appellant's wife if she remained in the UK without the Appellant, that error was not material; and
- (3) any error in relation to the Judge's assessment of the public interest is not capable of being material.

Notice of Decision

25. The decision of the First-tier Tribunal involved the making of a material error on a point of law and the decision is set aside.

Remaking decision

26. We conclude that the appropriate forum for remaking is the Upper Tribunal because only limited findings of fact need to be made. In reaching this decision, we apply paragraph 7.2 of the Senior President's Practice Statement and take into account the oral submissions of the advocates.
27. The material error we identified does not affect the validity of the conclusions reached by the Judge in relation to the effect on the Appellant's wife if she remained in the UK. We therefore preserve the following findings of fact:
- (1) "... The Appellant's wife has significant medical issues which make her mobility extremely limited. At present she relies heavily on the Appellant to manage her did (sic) day-to-day living. His removal from the United Kingdom in the circumstances will have an impact on her which will be unduly harsh ..." [57].
 - (2) "[The Appellant's wife] does have a carer who provides her with the minimum of assistance as the Appellant provides her with the majority of the care that she needs. He helps her get up in the mornings and helps her wash and dress and helps her throughout the day. He looks after the home, does the shopping and the cooking. It is reasonably likely that without the Appellant's support

her life will become more restrictive because of her very limited mobility” [58].

(3) “[The Appellant’s wife] does not have any other members of her family can live in with her to provide the care that is provided by the Appellant” [60].

28. The issues to be determined at the remaking will therefore be whether the effect on the Appellant’s wife of her relocating to Nigeria would be unduly harsh and, if necessary, whether there are very compelling circumstances, over and above those described in Exceptions 1 and 2, such that the public interest in the Appellant’s deportation is outweighed.

Directions

29. The following directions applying to the future conduct of this appeal:
- (1) The Resumed hearing will be listed at Field House, reserved to Upper Tribunal Judge Lane, with a time estimate of 3 hours.
 - (2) Within 14 days of the date this decision is sent, the Appellant shall notify the Upper Tribunal and the Respondent whether any witnesses are to be called, and if so, must identify the witness and confirm whether they need the assistance of an interpreter.
 - (3) At least 14 days before the next hearing the parties shall file and serve any up-to-date evidence upon which they wish to rely.