IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004512

First-tier Tribunal No: HU/00116/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of January 2025

Before

UPPER TRIBUNAL JUDGE LODATO

Between

ABRAHAM OLUSOJI COKER
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed, counsel instructed by Chipatiso Associates LLP
For the Respondent: Mr Tufan, Senior Presenting Officer

Heard at Field House on 20 December 2024

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against the decision, dated 5 August 2024, of First-tier Tribunal Judge Chinweze ('the judge') to dismiss his appeal brought on Article 8 human rights grounds.

2. Despite naming the appellant in the heading of the decision, the judge purported to make an anonymity order. The rationale for making the order is set out at [19]-[20] and relies on a previous protection claim. The appellant applied for asylum as long ago as 2003 (see [5] of the judge's decision). Notwithstanding the historic nature of the asylum claim and the fact that these factual claims played no part in the challenge to his deportation on human rights grounds, the dated asylum claim was the foundation for the making of the anonymity order. The respondent's representative did not object to the appellant's application.

3. I am not satisfied that there is any justification to maintain the anonymity order which was made in the First-tier Tribunal. Such an order cuts across the fundamental principle of open justice and is a significant restriction on the ability of the press to report on matters of legitimate public interest in judicial proceedings. The principle of open justice which should weigh heavily on any judge asked to conceal from public view material facts such as the name of an appellant. It is to be further noted that there is nothing to indicate that the criminal proceedings for sexual offending, which operated as the catalyst for the challenged deportation decision, were not conducted in public. I was not made aware of an anonymity order made in the criminal courts.

4. In fairness to Mr Ahmed, who represented the appellant in the Upper Tribunal, he did not seek an anonymity order and instead invited me not to name the appellant's children in my decision. While the interests of the appellant's children are of central importance to the issues to be determined in these proceedings, there is no necessity to name them. I will refer to the youngest children as 'A' and 'B'. However, a historic asylum claim which had no bearing on the human rights appeal is not a sufficient justification to depart from the fundamental principle of open justice and I therefore decline to maintain the order which was previously made.

Background

5. The broad factual background and immigration history is not in dispute between the parties. In summary, the appellant was automatically subject to a process of deportation upon being sentenced to a period of 12 months' imprisonment for repeatedly, and out of spite, live-streaming a private video of a female acquaintance showering naked. He sought to resist deportation on the basis that his removal would have an unduly harsh impact on A and B as well as his wife, all of whom are British citizens. He further contended that there were very compelling circumstances which outweighed the public interest in his removal.

Appeal to the First-tier Tribunal

6. The appellant appealed against the refusal of his human rights claim. The appeal was heard by the judge on 28 June 2024 before dismissing the appeal on human rights grounds in a decision dated 5 August 2024. For the purposes of the present proceedings, the following key matters emerge from the decision:

- The principal controversial issues to be decided were recorded as whether the second exception under s.117C(5) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') was made out and, in the alternative, whether there were very compelling circumstances to outweigh the public interest in deportation [18]. The appellant's representative acknowledged that his case could not succeed on the strength of the first exception under the 2002 Act because he had not lawfully resided in the UK for most of his life [19].

- The judge discussed the qualifications of independent social worker, Ms Okonji, and accepted that she was qualified to provide expert opinion evidence [34]. He summarised and relied upon her key

observations and conclusions between [36] to [37] to find that it would be unduly harsh for A and B to live with their father in Nigeria.

- Between [38] and [43], the judge turned his mind to whether it would be unduly harsh for the children to remain in the UK without the appellant. As this part of the decision was the focus of the oral submissions I heard, I set out these paragraphs in full:

> *I turn to the question of whether it would be unduly harsh for* [A] *and* [B] *to remain in the UK without the appellant.*
>
> *At paragraph 19 of her report Ms Okonji states that* [A] *and* [B] *have a secure attachment to the appellant and an enforced separation is likely to cause significant harm to their welfare and development with the attendant emotional scars being difficult to heal. Ms Okonji cites Every Child Matters policy 2009 and research from the Diversity Research Network 2019, on the need for a father to be involved in the development of their children. At paragraph 6 of her report Ms Okonji states the removal of the appellant would create psychological issues for* [A] *and* [B] *as the family structure would change. The finances would decline due to the absence of the appellant. There would be a lack of quality time with the appellant which would compromise* [A]*'s and* [B]*'s psychological and emotional development.*
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> *The evidence of the appellant, his wife and his son Peter during the hearing was that the family situation was extremely difficult when the appellant went to prison. Prior to being sentenced the appellant worked nights as a heavy goods vehicle driver and assisted in taking and collecting the children from school whilst Ms Muyatwa worked as a nurse. When the appellant was imprisoned Ms Muyatwa had to change her work hours so she could look after* [A] *and* [B]. *She fell ill during this period and was hospitalized with pneumonia in January 2024. Ms Muyatwa attributed her illness to the strain of managing the family without the support of the appellant. Ms Muyatwa discharged herself from hospital early as her children were missing her. Peter stated he had to travel from University to look after* [A] *and* [B] *whilst their mother as at work. This adversely affected his studies and he had to give up a part time job.*
>
> *I accept that the appellant's separation will have a negative emotional impact on* [A] *and* [B]*, but I disagree with the conclusion of Ms Okonji about the extent of the impact on* [A] *and* [B]*. At paragraph 6 of her report, Ms Okonji confirms that neither* [A] *nor* [B] *have any psychological issues. I note her report was completed after the appellant's release from prison, demonstrating that the mental health of* [A] *and* [B] *was not adversely affected whilst he was in custody. There is also no medical evidence that this was the case. As Ms Okonji observed at paragraph 19 of her report,* [A] *and* [B] *are thriving at school and again there is no evidence from their school that their behaviour or their academic progress deteriorated whilst the appellant was imprisoned.*

> *I accept that Ms Muyatwa's NHS employer changed her shift pattern on receipt of a request from her to do so for childcare reasons. This is stated in a letter form the NHS trust dated 20 July 2023, (AB/126). However, given her profession there is no reason Ms Muyatwa cannot find another position as a nurse that will give her sufficiently flexible hours to look after the children. She will also have support from her stepson Peter when he is on holiday as he lives in the family home during these times. As a British citizen, Ms Muyatwa can claim benefits to assist her with the financial impact of the appellant's deportation. Whilst the family may not have the benefit of the appellant's salary, the factors I have referred to would reduce the financial impact of his deportation and the subsequent harm to his children.*
>
> *Within the supplementary bundle, there is evidence of regular video and telephone calls between the appellant whilst he was in prison and his family. There is no reason communication by modern means of communication cannot continue with the appellant and his children whilst he is in Nigeria. This is not as ideal as a face-to-face relationship, but it reduces the level of harshness* [A] *and* [B] *would experience from the appellant's absence. For the reasons I have set out, I find exception 2 does not apply to the appellant in relation to his children as it would not be unduly harsh for them to remain in the UK without him.*

- The judge assessed whether the appellant's deportation would be unduly harsh on his wife between [44] and [47]. It was accepted that it would be unduly harsh for her to join the appellant in Nigeria because she could not do so without their children suffering an unduly harsh impact. She was found to have weathered his absence while he served his prison sentence and the conditions she would experience in the UK without her husband would be difficult, but she could seek benefits to assist her with the adjustment. Her recent medical history was considered before the overall conclusion was reached that it would not be unduly harsh for her to remain in the UK without the appellant.

- The judge summarised the circumstances of the appellant's offending, the harm he had caused and his culpability between [51] and [61]. The offending was regarded as serious by the judge and increased the public interest in his deportation [63].

- It was noted that the appellant only had a limited opportunity to establish his rehabilitation in the 6 months between his release from prison and the hearing, but the judge referred to the steps he had taken to distance himself from social media at [64] and [68].

- Between [69] and [73], the judge returned to the topic of how the appellant's deportation would bear on his children when considering their best interests. He ultimately found that while it was in their best interests to remain in the UK with their father, this was outweighed by the public interest in his deportation.

- Between [74] and [76], the judge rejected the proposition that there were very compelling circumstances arising out of the interests of the appellant's wife or his adult son remaining in the UK without him nor that he would encounter very significant obstacles to integration on return to Nigeria.

- At [77], the overall conclusion was reached that there were no very compelling circumstances to outweigh the public interest in his deportation.

Appeal to the Upper Tribunal

7. The appellant applied for permission to appeal in reliance on the following grounds:

   a) Ground 1 – the judge unlawfully assessed the evidence going to the issue of whether it would be unduly harsh for the appellant's children to remain in the UK once he had been deported. In particular, the judge was said to have attached too much weight to the ability of the children to cope without their father while he was imprisoned for a relatively short duration and that his adult son might be able to fill some of the gaps he would leave behind.

   b) Ground 2 – the judge did not clearly articulate why the evidence of the appellant's rehabilitation and negative impact on his family did not amount to very compelling circumstances such that the public interest in his removal was outweighed in the balancing exercise.

   c) Ground 3 – the judge unlawfully assessed the appellant's ability to integrate on return by failing to properly consider the extent of his integration in the UK, the length of time he has lived outside of Nigeria, his rehabilitation and family ties.

8. In a decision dated 13 September 2024, First-tier Tribunal Judge Adio refused permission to appeal. The appellant renewed his application for permission to the Upper Tribunal. In a decision dated 21 October 2024, Upper Tribunal Judge Pinder granted permission for all grounds to be argued but noted that grounds two and three were weaker than ground one. In granting permission, it was noted that it was arguable that the judge had not fully assessed the relatively brief duration of the period of separation while the appellant was in custody and ought to have factored in the expert evidence in the assessment of whether the children would be likely to suffer harm flowing from his permanent removal from the UK.

9. At the error of law hearing, I heard oral submissions from both parties. Mr Ahmed indicated that only ground one would be pursued. He advanced no submissions on grounds two and three while recognising that the only material issue related to whether it would be unduly harsh for the children to remain in the UK without their father. I address any submissions of significance in the discussion section below.

Discussion

10. The central thrust of the appellant's argument that the judge erred in law is that he over-relied on the relatively brief period of separation from his family while he

was in custody and under-relied on the expert opinion of Ms Okonji about the likely impact of a permanent separation. This suggested flawed analysis was said to have materially tainted the critical assessment of whether the children would suffer an unduly harsh impact from the deportation of their father while they remained in the UK with their mother.

11. Dealing first with the judge's treatment of the previous separation brought about by a period of seven-months' served imprisonment, there is nothing to indicate that this was improperly equated with a more permanent separation which would follow his deportation. I must bear in mind that I should not read the judge's reasoning hypercritically and readily infer that an obvious point, not explicitly articulated, was in some way overlooked. The judge was manifestly aware that the family were separated until his release from custody approximately six months before the hearing on 28 June 2024 (see [64]) and that he was sentenced on 12 July 2023 (see [1] and [12]). Reading his reasons with the required fairness, I am not persuaded that the judge did not have well-in-mind that the previous period of separation was relatively brief when compared to the indefinite period which is likely to follow his deportation.

12. The judge was perfectly entitled to look to the events of the recent past to inform his assessment of the prospects for the future as to whether it would be unduly harsh for the children to remain in the UK without their father. At [40], it is clear that this period was expressly relied upon by the appellant to show that a more permanent separation would reach the statutory threshold. In the circumstances, the judge was bound to assess the impact the period of imprisonment had on the family, and he properly relied on part of the expert evidence that there were no signs of psychological harm arising after this period ([41] of the decision). Importantly, the judge referred to the absence of medical evidence going to psychological harm in this context. This was not a search for corroboration as characterised in the appellant's submissions, but naturally flowed from a point made by the expert.

13. It was argued in the hearing before me that once the judge accepted the expert evidence about the unduly harsh effect of the children joining their father in Nigeria, he was bound to accept her overall opinion about the same ultimate effect they would suffer if they remained in the UK without him. This strikes me as misconceived for two reasons. First, the judge was considering two different factual scenarios of whether it would be unduly harsh for the children to leave the UK with their father or remain in the UK without their father. The evidence, including the opinion of the expert independent social worker permitted of different answers to these distinct questions. Second, the judge was required to exercise his own judgement on these fundamental and distinct matters. It would be wrong for him to simply defer to her overall conclusion on the 'stay' scenario simply because he agreed with her on the 'go' scenario. Instead, the judge properly and lawfully found that it would be a considerably harsher proposition for the children to be extracted from the only society and culture they had ever known in Britain to join their father in the entirely unfamiliar environment of Nigeria where their settled lives would become precarious and financially unstable.

14. In addition to the above challenges, it was argued that the judge wrongly relied on the role which might be played by the appellant's adult son in assisting the youngest children and their mother cope without him. At [40], it was noted that the appellant's eldest son had to give up a part-time job to assist while his father

was in prison and that his studies had been adversely affected. It is difficult to conclude that the judge was not mindful of the potential impact on the appellant's eldest son if he played a greater role in supporting his stepmother and the youngest children in the event of his deportation and, in turn, whether this might produce unduly harsh implications for the children.

15. Overall, the challenges to the judge's findings on whether it would be unduly harsh for the children to remain in the UK without their father resonate more with a factual disagreement than an error of law. The judge demonstrably and carefully assessed the full evidential picture and attached due weight to the expert report and the evidence going to a previous period of separation while he was in custody.

16. Given the stance adopted by the appellant's representative during the error of law hearing, it is unnecessary for me to say more than a few words about grounds two and three. Ground two involves the suggestion that the judge did not clearly explain why various factors did not establish the existence of very compelling circumstances. In particular, it was argued in the grounds that the evidence of the appellant's detachment from social media served to underscore his rehabilitation. This is a simplistic analysis and does not engage with the judge's comprehensive and nuanced reasoning which went to this very issue. Contrary to the grounds, it is abundantly clear why the judge did not find that the appellant's personal circumstances reached the high statutory threshold. Ground three is little more than an abbreviated re-argument of the submissions advanced at first instance about the appellant's private life claim which was agreed to fall short of the first statutory exception. It is difficult to see how the judge could have reached any other conclusion when considering the same matters under the even higher test of very compelling circumstances and it is not difficult to see why this point was not pursued in the error of law hearing.

Notice of Decision

The decision of Judge Chinweze did not involve an error of law. I dismiss the appeal.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 January 2025