Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00110/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 August 2013	**On 30 August 2013**
Prepared 23 August 2013	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

WALTER EMMANUEL OSEJINDU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, who is believed to be a citizen of Nigeria, born on 20 April 1984 appeals, with permission, against a determination of the First-tier Tribunal (Judge of the First-tier Tribunal Brenells and Mr G H Getlevog (Lay Member)) who in a determination promulgated on 16 May 2013 dismissed the appellant's appeal against

a decision of the Secretary of State to make a deportation order under the provisions of Section 32(5) of the UK Borders Act 2007.

2. The appellant had been convicted on 17 May 2012 of possession/control of identity documents with intent. He was sentenced to fifteen months' imprisonment, the sentencing judge His Honour Judge Jones stating:-

> "You have pleaded guilty to possessing false identity documents. You were endeavouring to get a national insurance number with the document you were using. I give you full credit for admitting your guilt in relation to that matter at an early stage. You have antecedents which declare that you were born in 1984 and I am told that your details are not known to the Nigerian or French authorities. You have been before the courts on several occasions, some of those in relation to motoring offences, no insurance, driving whilst disqualified and the like but on one occasion on 16th July 2010 you were before Maidstone Crown Court for possessing a false identity document when you received, following a prompt guilty plea, six months' imprisonment. I am told that the document involved is the same or a copy of the same document that is involved on this occasion. My hesitation in relation to sentence was whether on a guilty plea the sentence that I should impose should be one of eighteen months' imprisonment or a little less. The sentence I am going to pass is one of fifteen months' imprisonment having regard to that previous conviction, it is reduced from two years, the starting point on a contested matter to fifteen months' imprisonment. You don't serve all of that time in custody, you will serve no more than half of that time, seventy seven days I'm told by my clerk have been served on remand and count towards that sentence in any event."

3. Thereafter on 20 December 2012 the Secretary of State made a decision that Section 32(5) of the UK Borders Act 2007 applied.

4. Having referred to the appellant's various offences and the relevant Immigration Rules the notice stated that it was noted that the appellant had a daughter with an ex-girlfriend, Jodie Grimshaw, but that there was no evidence that that relationship was subsisting or that the appellant had any relationship with his daughter.

5. It was accepted that the appellant had a partner, Miss Dominique Richardson who had visited him in prison. It was considered that she would be able to accompany the appellant to Nigeria. It was emphasised, however, that the appellant had not put forward any evidence that his partner was a British citizen or that she was in the United Kingdom legally. In any event it was stated that the appellant had provided no documentary evidence that would demonstrate the relationship was subsisting. If it were, however, there was no reason why Miss Richardson could not follow the appellant to Nigeria.

6. Grounds of appeal lodged on behalf of the appellant stated the appellant was of unconfirmed nationality but he believed that he had been brought to Britain by his mother whom he believed was French-Portuguese as a young child and that his mother had told him that he had been born in France. It was claimed in the grounds that the appellant had never known his father. The grounds stated he had had a

number of relations in Britain of Nigerian origin. It was claimed that the appellant had endeavoured to establish his identity without success.

7. The appellant sent various letters to the UKBA asserting that he had lived in Britain for many years and referring to his studies here. He referred to visiting the French Embassy and expressing anger that there was no record of his birth in France. He said that he had visited the Home Office to "dig for records on my parents". He asserted his honesty.

8. The appellant had also referred to an application which he had made for a British passport and to his studies here. He gave evidence of some work which he had undertaken.

9. The appellant's appeal was heard by the First-tier Tribunal on 2 May 2013. Much of the determination is a recitation of relevant Immigration Rules but it is noted that the Tribunal recorded receiving oral evidence from the appellant, Miss Dominique Richardson and Mrs Tracy Richardson. They also noted various statements from friends of the appellant and his uncle, Benson Osejindu.

10. In paragraphs 14 onwards they set out their findings of fact. They emphasised that there was no documentary evidence to establish the appellant's claim that he had lived in Britain continuously for twenty years. They gave clear reasons for that decision referring to the various statements produced by the appellant's friends. They noted that the respondent submitted documentary evidence which showed the appellant had registered with a GP practice in 2002 and had stated on that occasion that he had entered Britain in 2001.

11. In paragraph 19 onwards they referred to the issue of the appellant's Article 8 rights. They accepted the appellant had formed a relationship with Miss Richardson. They stated there was no evidence to show that she would be unable to accompany the appellant to Nigeria and that at the hearing she had indicated that she would go with the appellant to Nigeria as she wanted her relationship with the appellant to continue. They found that Article 8 was engaged, that the proposed interference would be in accordance with the law and would be for a permissible reason.

12. In paragraph 24 they stated:-

> "The Appellant has not established that he has ever had the legal right to be in the United Kingdom. He has a history of motoring offences including repeatedly driving whilst uninsured and without having a licence. There has been no evidence showing that he has ever passed a driving test or had a driving licence. On two occasions he has been convicted of using false identity documents, namely a French identity card or a copy of a French identity card. He clearly wishes to remain and work in the United Kingdom, but having no right to do so is prepared to commit crimes in order to remain and work here. He has said nothing which indicates that he is prepared to cease offending. Given his lack of immigration status he can only remain here by committing further offences in order to do so – save in the extremely unlikely event

> that the Secretary of State has a change of mind. Given these findings we have concluded that the respondent's decision is a proportionate response in all the circumstances considered in the round."

13. They therefore dismissed the appellant's appeal on human rights grounds as well as dismissing his appeal under the Immigration Rules. The appellant appealed, stating that he had known Miss Richardson since 2009 and denying that Miss Richardson's daughter had said that she had met him on her 19th birthday. He said that he accepted the fact that he had never had the right to be in Britain and said that he had stated the reasons for his criminal history "was simply because I have never had a passport or an identity card that I can call mine and lay claim and ownership to". He emphasised that he had "never been one to just wake up one morning and decide to break the law" and set out a lengthy list of serious crimes which he had not committed.

14. Although his application was refused in the First-tier, on renewal in the Upper Tier permission to appeal was granted by Upper Tribunal Judge Dawson.

15. In granting permission to appeal Upper Tribunal Judge Dawson stated:-

> "The grounds settled by the appellant refer to aspects of his private and family life in the UK and his concerns about what he might face in Nigeria. Whilst no arguable error can be found in the Tribunal's treatment of the case under the Immigration Rules, the same cannot be said of its sparse discrete treatment of the Art 8 grounds. There is no evaluation of the private life the appellant refers to in his grounds nor is it apparent from the determination what was said about this at the hearing when the appellant appeared in person. The absence of clear findings indicates arguable error. It is arguable that the treatment of proportionality does not include the balancing exercise required of the Tribunal which focuses principally on the appellant's criminality. It is arguable that the Tribunal erred in predicating a continuation of private life on the basis that the appellant can only remain by committing further offences."

16. The grounds of appeal to which Upper Tribunal Judge Dawson referred did make various assertions that the appellant would not be safe in Nigeria, that he had nobody there, that his future was realistic and achievable in Britain, that just because he had a Nigerian name he was not necessarily a Nigerian, asked "how can the Secretary of State actually prove I am Nigerian?" and asserted that he had never owned a Nigerian passport and he had always believed that he was British or born in France prior to 2010. He appeared to suggest that because he was the eldest child in the family his uncles might not wish to support him although he pointed out that the rest of the family were all in Britain. He did say however that he had been to colleges and to several universities and "meant to be studying for my MBA". He was also in a band, had a gig and kept an online blog site. He preferred to have a "very creative life".

17. At the hearing of the appeal before me the appellant appeared in person. I emphasised to him that he had to show that there was a material error of law in the determination of the Tribunal.

18. The appellant stated that firstly his partner was now pregnant (she had not been pregnant at the time of the hearing) and that he had no future in Nigeria. He denied that he had ever indicated to the surgery that he had come to Britain in 2001 as alleged by the respondent and said that he had visited the surgery on many occasions. He said he never claimed benefits and he had merely attempted to use the identity card to obtain a national insurance number so he could work here. He said he tried to regularise his stay in Britain by applying for a British passport. He referred to the letters from his various friends here. The appellant referred to a letter dated 18 July 2013 which he had written to the Upper Tribunal in which he made reference to the Magna Carta. He claimed that he had placed "a judiciary review request" and emphasised that he considers that he was stateless as he did not have a Nigerian passport and that taking him away from his home in the United Kingdom "would be a breach of Article 4". In the letter he referred to his application for naturalisation in 2010 and to an application for a British passport. That letter referred to the fact that his girlfriend was pregnant and stated that he believed that his father lived in Canada. The letter did not advance his claim there was an error of law in the determination.

19. Mr Tufan argued that the Tribunal had reached conclusions which were open to them on the evidence. He referred to the appellant's criminal convictions and stated the appellant could not regularise his stay here – he did not qualify for a passport. He referred to the determination of the Tribunal in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC)** arguing that it was not necessary for the Tribunal to give each and every reason for their decision.

20. In reply the appellant stated that there were reasons as to why he had been convicted for the motoring offences but he had not meant to drive without insurance.

21. I find that there are no material errors of law in the determination of the Tribunal. While I consider that it is odd that, in paragraph 24, when they deal with the issue of the proportionality of removal the Tribunal did not refer to the appellant's relationship with Miss Richardson the reality is that, in paragraph 20 when they had considered whether or not Article 8 was engaged, they had accepted that relationship and noted that Miss Richardson had said that she would go with the appellant to Nigeria and they had found that there was nothing to suggest that she would be unable to accompany him.

22. They were correct to place weight on the appellant's use of false identity documents and their comment that given that the appellant had no right to work here he is prepared to commit crimes in order to remain and work here is actually a statement of fact. He used the false documents in order to obtain a national insurance number which would enable him to work here.

23. I accept that they did not mention the appellant's studies here or the fact that he has worked but the reality is that the appellant has never been entitled to work here and that those who come here to study are expected to return to their own countries at the end of their studies. It was obviously not an error of law for the Tribunal not to have anticipated that, after the hearing, Miss Richardson might find that she was pregnant.

24. It has not been argued that there was no power in law to make the decision and, taking into account the fact that this is a deportation under Section 32 of the UK Borders Act 2007.

25. In all I consider that the conclusions of the Tribunal were open to them and that they are fully comprehensible. I note the head note of the determination in **Shizad** which reads as follows:-

> "(1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.
>
> (2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant… unless the conclusions the judge draws from the primary data were not reasonably open to him or her."

26. I consider that the determination is intelligible and that relevant factors have been taken into account and the law properly applied. Nothing the appellant said pointed to any error of law and the reality is that the grounds of appeal, the correspondence form the appellant, and his assertions before me, particularly with regard to his family and internally inconsistent to the extent that it would be difficult to believe anything that the appellant said.

27. Having concluded that the determination of the Tribunal contains no material error of law I find that the decision dismissing this appeal on immigration and human rights grounds shall stand.

Signed Date

Upper Tribunal Judge McGeachy