Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03097/2014

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 8th December 2014	**On 11th December 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JOMILOJU SIMI ISAAC ODEYEMI
(Anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr A McVeety – Senior Home Office Presenting Officer
For the Respondent: Mr J Braier instructed by Mitchell Simmonds Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination of First-tier Tribunal Judge Somal, promulgated on the 2nd September 2014, in which the Judge allowed Mr Odeyemi's appeal against the refusal of his application for leave to remain in the United Kingdom and direction for his removal to Nigeria made pursuant to section 10 Immigration and Asylum Act 1999.

2. The Judge records in paragraph 5 of the determination that the case was advanced solely on the basis of Article 8 ECHR as the requirements of the Immigration Rules could not be met. In paragraph 18 the Judge recognises the fact that the interests of a private or family life would not prevail over the interests of immigration control and that Article 8 does not entail a general obligation for a State to respect an immigrants choice of the county of residence in its territory.

3. The Judge refers to the fact Mr Odeyemi entered the United Kingdom as a child aged twelve on a temporary basis and did not realise he had no status until he applied for a national insurance number at the age of seventeen in 2010. His evidence was that as soon as he was aware of his lack of status he made the application which lead to the refusal under appeal.

4. The Judge sets out the key findings in paragraphs 19 and 20 of the determination as follows:

> 19. In determining the issue of proportionality in such cases, it will always be important to evaluate the extent of the individual's social ties and relationships in the UK. The Appellant entered the UK on a temporary basis with no expectation he could stay indefinitely. He was a child of 12 at the time and decisions were made for him by his father who left him in the care of an aunt in the UK and it was always his intention his son would never return to Nigeria. The Appellant was not privy to the plan and was duped by his father. As soon as the Appellant and his sister learnt what had happened at a time when he needed a national insurance number he made application to regularise his status. He has lived in the UK 10 years since a child, has been educated here without reliance upon public funds, been a model student at university and achieved exceptional results, has not been in trouble with the police and has a close emotional bond with his sister and nephew with whom he had lived for several years. He has lived with his sister in the UK as siblings without parents and as a result their emotional bond goes beyond normal ties between adults. The Appellant expresses contrition for his immigration history but was adamant he knew nothing about it as he was a child but has sought to rectify it since he discovered the problem.
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> 20. This Appellants circumstances are unfortunate and entirely down to his father who he trusted as a child duping him into thinking he was coming for a holiday only. The Appellant has acted in good faith and been badly let down by his father. His sister corroborates the account he has given. The Appellant is a genuine and exceptional student who has nearly completed his bachelor's course and it would be unfair for him to be penalised due to the conduct of his father who has badly let him down. Whilst it is clear he has family in Nigeria, aside from providing financial support the relationship with his mother has not been good and the relationship with his father non-existent now. I find the combination of the

tender age at which he entered the UK, the 10 years he has lived here, his exceptional academic record, his strong emotional ties with his sister and nephew and the fact he tried to regularise his status when he found out what his father had done all leads me to conclude he should be allowed to remain and the decision of the Respondent to be disproportionate. I have had regard to section 117 of the 2002 Act in assessing the public interest in my proportionality exercise.

5. The Secretary of State challenges this finding on a number of grounds. Permission to appeal was granted on the 9th October 2014.

Error of law finding

6. When a judge undertakes a proportionality exercise it is necessary to ensure the positions of both parties are taken into account and analysed as otherwise there cannot be a proper assessment of the competing interests. Mr Braier was asked at the outset to refer the Tribunal to the analysis of the Secretary of States case and the facts relied upon by her in opposing the appeal in the determination, which he accepted he could not. The reason for this is that they do not appear in sufficient detail, if at all, in that document.

7. I note Mr Braier's submission that the Judge was aware of the key issue as noted in paragraph 5 of the determination and that the Judge referred to basic principles of Article 8 in paragraph 18. I accept the Judge also referred to section 117 of the 2002 Act in paragraph 20 but appears to have done no more than this. Mr McVeety's suggestion that the decision is based upon the sympathy the Judge felt for Mr Odeyemi may have arguable merit, but mere sympathy is insufficient as a good decision is one that is in accordance with the law and nothing less, even if at times appearing to be unfair to some.

8. The first head of challenge is to the failure of the Judge to properly consider section 117 of the 2002 Act. This ground has arguable merit as it is not sufficient just to say that regard has been had for these provisions without more. The issue in this case is whether, when the provisions are properly analysed and the balancing exercise conducted, the result is the same. If so the error is not material.

9. Sections 117A-D provide:

117A *Application of this Part*

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B *Article 8: public interest considerations applicable in all cases*

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C *Article 8 additional considerations in cases involving foreign criminals.*

(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.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—
(a) is a British citizen, or
(b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who—
(a) is a British citizen, or
(b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, "foreign criminal" means a person—
(a) who is not a British citizen,
(b) who has been convicted in the United Kingdom of an offence, and
(c) who –
(i) has been sentenced to a period of imprisonment of at least 12 months,
(ii) has been convicted of an offence that has caused serious harm, or
(iii) is a persistent offender.

(3) For the purposes of subsection (2)(b), a person subject to an order under—
(a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
(b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or
(c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc), has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—
(a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

> (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it."

10. This is not a deportation appeal and so the provisions referring to foreign criminals have no application.

11. Section 117B (1) is said to have been recognised by the Judge in paragraph 15 of the determination but the analyses of the same is not sufficient. The statement in the section reflects the view of Parliament as to the public interest.

12. Section 117B (2) is met as Mr Odeyemi has been in the United kingdom since the age of twelve and has been educated here. He is an English speaker.

13. Section 117B (3) requires the person seeking entry or to remain to be financial independent. The wording of the section is important as it specifically refers to the applicant being financially independent but does not suggest that such cannot be achieved by reliance on third party funds, although in such a case it will have to be proved that such funding is realistic and sustainable to the required level to prevent any reliance upon public funds, to avoid becoming a burden upon the taxpayer, and in assisting in integration. The appropriate level of funds may be that used to assess independence in the Immigration Rules which can be variable. In this respect Mr Odeyemi is not independent as he has been engaged in studies although these are not being undertaken at the present time whilst his immigration status is being resolved. He and his sister have been visited almost annually in the UK by their mother who has funded his studies. Mr Odeyemi is dependant upon such support and upon his sister for accommodation. There was no evidence before the First-tier to establish the level of assets available or of a commitment to ongoing support at the required level. It was submitted on Mr Odeyemi's behalf that he wished to complete his studies in the UK and thereafter gain employment at which time he will be self sufficient, which was said to be a realistic proposal in light of his academic achievement. The difficulty for Mr Odeyemi is that he is unable to work or settle in the UK unless his immigration status permits and the wording of the section is in the present tense, i.e. the applicant for leaves <u>is</u> financially independent, not that they may become so in the future. At this point in time it has not been established that this requirement of the section can be met on the available evidence.

14. Section 117(4) states that little weight should be given to private life or a relationship with a qualifying partner established during the time the applicant has been in the UK unlawfully. Mr Odeyemi has formed a private life and even if he was not responsible for what happened in the

past he is an overstayer and has been in the country illegally for the majority of the time he has been here. It was argued by Mr Braier that this sub-section is of little relevance as Mr Odeyemi has lived with his sister and the Judge found the relationship between them to be one with the required degree of dependency such as to engage Article 8 family life. The submission that as this is family life and not private life the sub-section is not applicable is of interest although of debatable merit. Section 117A specifically states that these provisions apply to all situations in which the Tribunal is asked to determine an issue of private and family act and in 117A(3) it is stated that "the public interest question" means the question of whether an interference with a persons right to respect for private and family life. Whist there can be excluded classes in legislative provisions, if this what Mr Braier submits, the weight to be given to the private life element of his relationship with family members is regulated by statute whereas the weight to be given to family life with family members who are not "qualifying partners" is not. If this was the intention of Parliament it appears somewhat strange although of no great consequence overall as Strasbourg jurisprudence makes it clear that the weigh to be given to relationships formed when a person has no leave and it is known their immigration status is precarious is reduced in any event.

15. The Secretary of State also challenges the finding of the existence of family life recognised by Article 8 between Mr Odeyemi and his sister. The grounds assert that although Mr Odeyemi may have been living with his sister he has been living an independent life through his university studies supported by his mother and sister and that the evidence demonstrated nothing other than normal emotional ties.

16. In Kugathas v SSHD [2003] INLR 170**,** the case referred to by the Judge, the Court of Appeal said that in order to establish family life it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough.

17. Judge Somal found a close emotional bond between Mr Odeyemi and his sister and nephew with whom he had lived for several years and that as a result their emotional bond went beyond that of normal sibling ties. In Nadarajah Senthuran [2004] EWCA Civ 950 the Court of Appeal said that Advic v UK was not authority for the proposition that Article 8 could never be engaged when the family concerned adult children living together. The Court remitted the appeal to the Tribunal to reconsider the issue of family life in the light of the fact that the appellant was aged 17 on arrival; he had lived with his siblings consistently since arrival; more than 4 years had elapsed between the application and the refusal letter (an unreasonable period); he lived in a close family with siblings and his

mother; and he had no family in Sri Lanka where he had been tortured in the past.

18. Also, in Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC) the Tribunal said that a review of the jurisprudence discloses that there is no general proposition that Article 8 can never be engaged when the family life it is sought to establish is between adult siblings living together. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1). Whilst some generalisations are possible, each case is fact-sensitive.

19. Mr McVeety challenges the finding of the Judge by reference to the fact the evidence showed the ties between Mr Odeyemi and his sister are not exceptional or beyond the norm. Some support is gained for this proposition by the failure of Judge Somal to provide adequate reasons to support her conclusions other than by reference to the fact they lived in the same household and their immigration history. There is a need to prove there is an exceptional relationship between siblings. The finding by Judge Somal in paragraph 19 that the emotional bonds goes beyond normal ties as adults is noted but that is expected when there is a sibling relationship. It has not been found the relationship as siblings contains the additional elements of dependency required to satisfy the test. In **Etti-Adegbola v SSHD (2009) EWCA Civ 1319** the claimant, a citizen of Nigeria, came to the UK in 1997 as a minor. In 2005 he applied to remain on human rights grounds as the over age dependent of his mother who had been here since 1987. She had high blood pressure and it was argued that his removal would be detrimental to her health. The claimant and his mother lived in one household with the claimant young adult brother. The boys were not financially dependant on their mother, but were helpful and supportive as members of a family living together usually were and emotional ties undoubtedly existed. Although in some respects the situation appeared to be covered by expressions used in Strasbourg jurisprudence such as "real and effective family ties" and "committed relationship" the Strasbourg jurisprudence did not all point in that direction. The relevant test was that applied by the Tribunal; namely that the behaviour was "no way exceptional or beyond the norm". The Court upheld the Tribunal's finding that there was no Article 8(1) family life.

20. Mr Odeyemi has remained dependant financially on his mother who supports him and who visits. There is no evidence she abandoned her children when they were brought to the UK or has not taken any interest or active role in their lives whilst they were growing up.

21. In any event, the relationship between Mr Odeyemi and his sister is a strong element of their respective private lives and as found in AA v United Kingdom (Application no. 8000/08) ECtHR (Fourth Section) (2011) the test is the same when assessing the proportionality of any interference with a protected right, whether of family or private life.

22. As demonstrated by the discussion in relation to section 117 at the hearing and as set out above there is more to this case than the determination suggests. The fact Mr Odeyemi may not be able to meet all the requirements of 117 is, however, not determinative as this section only sets out Parliament's view of how the public interest should be assessed and there is still the need to conduct a balancing exercise to assess the proportionality of the decision.

23. Judge Somal set out Mr Odeyemi's immigration history which is not disputed. The fact he has been in the United Kingdom for some time is not of itself determinative. He lived in Nigeria for twelve years and it is conceded he is unable to satisfy the requirements of the Immigration Rules. These include paragraph 276ADE which permits a person to remain on private life grounds if they have twenty years residence or a lesser period if there are very significant obstacles to his integration. Mr Odeyemi has family in Nigeria including his mother who provides support. Although he will have to re-adjust it has not been shown this is not possible or that the effect of the same is such as to be determinative.

24. Mr Braier referred in his submissions to the basic principles of Article 8 considered by Judge Somal. It is worth reminding ourselves of these as the European Court of Human Rights recently did in the case of Biao v Denmark [2014] ECHR 304 on 25th March 2014. At paragraphs 52 and 53 of that judgment the Court found:

> 52. The Court notes that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be a positive obligation inherent in effective "respect" for private and family life (see, for example, *Söderman v. Sweden* [GC], no. 5786/08, § 78, 12 November 2013). In the context of both positive and negative obligations the State must strike a fair balance between the competing interests of the individual and of the community as a whole. However, in both contexts the State enjoys a certain margin of appreciation (see, *inter alia*, *Osman v. Denmark*, no. 38058/09, § 53, 14 June 2011). The present case concerns the refusal to grant the second applicant family reunion in Denmark. Therefore, this case is to be seen as one involving an allegation of failure on the part of the respondent State to comply with a positive obligation (*Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 38, ECHR 2006-I).
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> 53. The Court reiterates that a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of

> aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, § 67, Series A no. 94, *Boujlifa v. France*, judgment of 21 October 1997, *§* 42, Reports *of Judgments and Decisions* 1997-VI). Moreover, Article 8 does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (see, for example, *Butt v. Norway*, no. 47017/09, § 70, 4 December 2012; *Antwi and Others v. Norway*, no. 26940/10, §§ 88-89, 14 February 2012; *Nunez v. Norway*, no. 55597/09, §§ 66-70, 28 June 2011; *Darren Omoregie and Others v. Norway*, no. 265/07, § 64, 31 July 2008; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, cited above, § 39 and § 43, ECHR 2006-I; *Priya v. Denmark* (dec.), 13549/03, 6 July 2006 and *Gül v. Switzerland*, judgment of 19 February 1996, *Reports* 1996-I). Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (see *Rodrigues da Silva and Hoogkamer*, cited above; *Ajayi and Others v. the United Kingdom* (dec.), no. 27663/95, 22 June 1999; *Solomon v. the Netherlands* (dec.), no. 44328/98, 5 September 2000). Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (see *Jerry Olajide Sarumi v. the United Kingdom* (dec.), no. 43279/98, 26 January 1999 and *Andrey Sheabashov v. Latvia* (dec.), no. 50065/99, 22 May 1999). Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances (see *Abdulaziz, Cabales and Balkandali*, cited above, § 68; *Mitchell v. the United Kingdom* (dec.), no. 40447/98, 24 November 1998, and *Ajayi and Others*, cited above; and *Rodrigues da Silva and Hoogkamer*, cited above).

25. It is accordance with the margin of appreciation that the Secretary of State has introduced into UK domestic provisions the revised Immigration Rules from July 2012 and now section 117. The Rules have been held to be legal and all challenges to them suggesting otherwise have failed. They require appropriate weight to be accordingly attached to them.

26. I accept Mr Odeyemi has been a law abiding citizen but that is expected of him. The reward of bad behaviour such as acts of criminality is deportation. The expectation of society for those living in the UK is that they will behave in a civilised and lawful manner as Mr Odeyemi has.

27. Mr Odeyemi is now 22 years of age. He no longer lives with his aunt as his sister has moved to Northamptonshire and he currently lives with her in her house. His sister had one child at the date of the previous hearing and her husband worked away although Mr Braier's submitted that she now has another child and is a single parent as she and her husband have separated. It is also submitted that Mr Odeyemi also fulfils the role of a father figure to his sister's children. If this is the case it must be accepted Mr Odeyemi plays an additional role in his sister's family of providing additional support and assistance although insufficient evidence has been provided to demonstrate that his sister is unable to care for the children in his absence. His not being present to the same extent as currently will be the case if he returned to education in Nottingham or elsewhere to complete his degree course. The best interests of the children have not been shown to be other than to remain with their mother and it has not been shown they will not receive the standard of case required to meet their basic needs if Mr Odeyemi is removed or the children suffer consequences that will make his removal disproportionate. Other family members remain in the UK and statutory services are no doubt available if required.

28. In relation to the desire to continue his studies, Mr Odeyemi is not a British citizen and has no right to be educated in the United Kingdom. Whilst I accept that the case is not advanced on the basis of an implied right to education, the reality is that he cannot study unless he has permission to do so, which he does not. The application is an attempt to secure such status through Article 8 to allow him to remain to complete his studies and beyond. One issue he faces in relation to this element is that Article 8 does not allow a person to choose where they wish to live. There was also discussion during the hearing in relation to the ability of Mr Odeyemi to return to Nigeria and apply for entry clearance to re-enter as a Tier 4 Student if this was his wish. He is funded by his mother who has paid his fees to date, he has the support of his university, and the Tribunal was not referred to any provision that would prevent such an application being made. It has also not been shown that if Mr Odeyemi wishes to study he cannot do so in Nigeria although I accept he may have to start a course again unless a dispensation is granted.

29. Mr Braier referred to the case of CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC) in which the Tribunal acknowledged that "people who have been admitted on a course of study at a recognised UK institution for higher education, are likely to build up a relevant connection with the course, the institution, an educational sequence for the ultimate professional qualification sought, as well as social ties during the period of study. Cumulatively this may amount to private life that deserves respect because the person has been admitted for this purpose, the purpose remains unfilled, and discretionary factors such as

mis-representation or criminal conduct have not provided grounds for refusal of extension or curtailment of stay."

30. CDS is a case in which the Appellants had leave to remain but had to apply for further leave as the period of existing leave ended before her course. It was found in that case that as there was only a relatively short period of time remaining it was disproportionate on a private life basis not to enable CDS to remain to complete the course. Following the introduction of section 117B the problem for Mr Odeyemi is that he has never had leave to study and the course he has completed is part of his private life on which little weight can be placed. He has also only completed two years and has at least another year to go.

31. It was accepted before the Upper Tribunal that Mr Odeyemi has:

    (a) a voluntary return option

    (b) an option to return to Nigeria and apply for leave to enter as a Tier 4 student migrant.

    (c) there is no proven adverse funding issue in relation to such an application

    (d) there is no evidence his university will not support him in such an application

    (e) he is able to explain his presence in the UK illegally to date by reference to the actions of his father as accepted by Judge Somal

32. Mr Odeyemi is clearly an intelligent individual who may not be responsible for his father's actions but that does not entitle him to bypass the law. If he returns and succeeds with an application his absence will be relatively short. If he does not succeed that does not make the decision disproportionate.

33. This is not a case in which it has been shown removal will result in unjustifiable harsh consequences for any member of this family such as to enable the Upper Tribunal to find this is one of those exceptional cases where the decision is not proportionate. When considering whether the United Kingdom authorities have struck a fair balance between the competing interests of Mr Odeyemi and his family in the UK and the community as a whole, I find they have. The decision is proportionate.

Decision

34. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

35. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….

Upper Tribunal Judge Hanson

Dated the 9th December 2014