IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00765/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination and Reasons Promulgated**
On 5 August 2015	**On 24 August 2015**

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE KOPIECZEK

Between

OLUWATOSIN OMONIYI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D. Hart, Solicitor, Terence Ray Solicitors
For the Respondent: Mr D. Clark, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 14 February 1993. He is said to have arrived in the UK in December 2002 with his father. In due course he was granted indefinite leave to remain, on 22 February 2011.

2. The appellant's criminal offending has brought him before the criminal courts on a number of occasions, the latest being on 15 March 2013 when he was convicted of offences of possession with intent to supply class A drugs which resulted in a total sentence of two years' imprisonment. Following those convictions, the respondent made a decision to make a

deportation order against the appellant under the automatic deportation provisions of the UK Borders Act 2007.

3. The appellant appealed against that decision and his appeal came before the First-tier Tribunal on 1 July 2014, whereby a Panel consisting of First-tier Tribunal Judge Colyer and non-legal member Mr G. F. Sandall dismissed the appeal, which was advanced on human right grounds with reference to Article 8 of the ECHR.

The grounds of appeal and submissions

4. In summary, the grounds of appeal before the Upper Tribunal contend that the Panel of the First-tier Tribunal misapplied the relevant Article 8 Immigration Rules ("the Rules") and furthermore, failed to make a finding in relation to a particular feature of the Immigration Rules that did apply. More specifically, the First-tier Tribunal was required to assess under paragraph 399A(b), whether the appellant, being under the age of 25 years, had lived at least half his life continuously in the UK immediately preceding the date of the immigration decision, discounting any period of imprisonment, and has "no ties", including social, cultural or family with Nigeria. The decision letter at [48] conceded the 'length of time' issue, and the First-tier Tribunal was required to decide the 'no ties' issue.

5. It is argued that there is no conclusive finding on that issue. Furthermore, at [52] of the determination it appears that in concluding that the appellant had not lived in the UK with valid leave continuously for at least 15 years immediately preceding the decision, he had not met paragraph 399(b) which was not a part of the Rules that applied to him.

6. Other issues in the grounds concern the Tribunal's consideration of Article 8 proper, the appellant's relationship with his foster family, and the Tribunal's refusal to adjourn the hearing.

7. In submissions Mr Hart essentially relied on the written grounds. We were referred to evidence in the appellant's bundle that was before the First-tier Tribunal in terms of his relationship with his foster family. It was conceded however, that the grounds in relation to Article 8 proper, and concerning the Tribunal's failure to adjourn, were not the strongest grounds.

8. Mr Clark argued that any error of law was not material. We were referred to [48]-[51] of the determination whereby the Tribunal adopted what was said in the decision letter about the appellant's residence, connections with the UK and connections with Nigeria. The decision letter also rejected the suggestion that the appellant's relationship with his foster parents constituted family life. It was submitted that the Tribunal was entitled to adopt those assessments.

9. It was further argued that under the Rules as they now are the appellant would have to satisfy the 'integration test' as well as establishing that there would be very significant obstacles to his integration into Ghana.

10. Although there is no express reference in the determination to the evidence in the appellant's bundle about his relationship with his foster

parents, nothing in that evidence established a relationship that extended beyond ordinary emotional ties.

11. So far as the failure to adjourn is concerned, it is not explained how that prejudiced the appellant in his appeal.

Our conclusions

12. One of the issues that the First-tier Tribunal had to determine concerns paragraph 399A(b) of the Rules. That paragraph applies where a person is under the age of 25 years, has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment), and has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

13. That aspect of the Rules was set out at [25] of the determination. At [46] and [47] the Tribunal referred to paragraph 399(a) and (b), which deal with parental relationships with a child and a subsisting relationship with a spouse or partner, respectively. It was correctly concluded that neither of those paragraphs applied to the appellant. Paragraph 399(b) contains the more specific requirement that apart from establishing a genuine and subsisting relationship with a partner, the person has to have lived in the UK with valid leave continuously for at least 15 years immediately preceding the date of the immigration decision. This is relevant because at [52] of the determination the Tribunal stated as follows:

> "We find that the Appellant has not been living in the United Kingdom with valid leave continuously for at least the fifteen years immediately preceding the date of the immigration decision (discounting any periods of imprisonment). We find that the Appellant has not established that he falls to be regarded as exempt from deportation under paragraph 399(b) of the Immigration Rules."

14. It is evident that in this respect the Tribunal fell into error. Paragraph 399(b) had no application to this appellant, as the Tribunal appeared to have recognised at [47] of the determination. It is not clear why at [52] the Tribunal considered that it was required to make the assessment that it did.

15. At [48] it is noted that in the decision letter the respondent accepted that the appellant had spent at least half his life in the UK, immediately preceding the date of the immigration decision. In that same paragraph part of the decision letter is quoted in terms of the appellant's exposure to Nigerian culture, the formative years of his life having been spent there and with reference to the appellant's knowledge of the language and culture which would assist with his resettlement there. In succeeding paragraphs other passages of the decision letter are quoted. At [51] the Panel stated as follows:

> "We agree with the Respondent's submissions and adopt those as part of our findings."

16. There then followed the conclusion at [52], to which we have referred. Aside from the inapplicability of paragraph 399(b), [52] does not in any event follow from the preceding paragraphs.

17. At [59] the Tribunal referred to the appellant's family as being from Nigeria and that he has given information as to his father, mother, two sisters and a half brother there. It was concluded that there appeared to be family to which the appellant "may have access" on his return to Nigeria. However, the appellant's grounds argue that this appears to be information taken from the screening interview completed on the appellant's behalf when he claimed asylum as a minor when he first entered the care system. Furthermore, the appellant's oral evidence, recorded at [5]-[7] of the determination as to his lack of contact with family in Nigeria does not appear to have been taken into account by the Tribunal in its conclusions at [59].

18. The tribunal was required to make a distinct assessment of whether the appellant had 'no ties' to Nigeria. Such a distinct assessment is not evident in the determination with reference to any structured analysis of paragraph 399A(b). Whilst we do not necessarily suggest that an analysis of the expression 'no ties' was necessary, with reference for example to the decision in *Ogundimu (Article 8 – new rules) Nigeria* [2013] UKUT 00060 (IAC), we cannot be satisfied that the Tribunal applied itself correctly to a fundamental issue that it was required to determine, namely whether the appellant had established that he had 'no ties' to Nigeria. Aside from the misapplication of the Rules at [52], the reasoning on this issue we consider to be inadequate and divorced from any focused or structured assessment.

19. We are satisfied that in these respects the First-tier Tribunal erred in law.

20. We also consider that there is merit in the argument in relation to the Tribunal's failure to have engaged with evidence in terms of the appellant's relationship with his foster family. The determination at [51] simply adopted what was said in the refusal letter about the respondent's assessment of the appellant's relationship with those foster parents as not amounting to family life. There is no reasoned analysis on the part of the Tribunal.

21. Whilst it may sometimes be permissible simply to adopt an aspect of a decision letter which is either uncontroversial or is not contradicted by other evidence, in this case there was evidence advanced on behalf of the appellant which it was argued established family life between the appellant and his foster parents. Thus, one sees in the witness statements in the appellant's bundle, both from the appellant and his foster parents, evidence as to their relationship. We also note the appellant's evidence, in particular from his witness statements, of his background and his circumstances on arrival in the UK. These, it seems to us, are potentially relevant as regards his relationship with his foster parents. None of this evidence was the subject of any assessment by the First-tier Tribunal.

22. We do not express any view in relation to whether the evidence does or does not establish a relationship between the appellant and his foster family which extends beyond ordinary emotional ties. We do however, consider that the First-tier Tribunal's assessment of this issue was inadequate. It was not sufficient for the Tribunal simply to adopt what was said in the refusal letter, without any independent assessment of its own of the evidence advanced on behalf of the appellant on this issue. In this respect we are also satisfied that the First-tier Tribunal erred in law.

23. We do not accept the submissions made on behalf of the respondent with reference to the error in terms of the Immigration Rules, to the effect that the error is not material because an assessment under the Rules as they now apply would not result in a decision in the appellant's favour. Apart from anything else, we have already indicated that in our judgment the First-tier Tribunal failed to make an adequate assessment of the issue of 'no ties'. The findings of the First-tier Tribunal cannot be used to support the conclusion that the appellant had not established that there would be very significant obstacles to his integration into Ghana.

24. Without a reasoned analysis, we do not consider that it could be said at this stage that the appellant is not able to establish 'very significant obstacles'.

25. That is aside from the fact that we consider that the First-tier Tribunal also erred in law in its assessment of the issue of the appellant's relationship with his foster family.

26. In these circumstances, the decision of the First-tier Tribunal is to be set aside. We canvassed the views of the parties as to whether, if we set aside the decision, the appeal should be remitted to the First-tier Tribunal or retained for re-making in the Upper Tribunal. Mr Hart expressed a preference for the former, Mr Clark for the latter. Mr Clark highlighted the fact that the appellant was in detention and that that detention would be prolonged in the case of a listing delay of the hearing before the Upper Tribunal. He also suggested that if the appellant was released on bail, he might be at risk of absconsion.

27. Ultimately, this is a matter for our discretion. In the light of the errors of law we have identified, and the fact that significant fact-finding is required, we consider it appropriate for the matter to be remitted to the First-tier Tribunal, pursuant to paragraph 7.2. of the Practice Statement.

28. The appeal is therefore remitted to the First-tier Tribunal to be heard by a panel other than First-tier Tribunal Judge Colyer and Mr G. F. Sandall.

29. Except as agreed between the parties, no findings of fact are to be preserved. The hearing is to be a hearing *de novo*.

Decision

30. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo*.

Upper Tribunal Judge Kopieczek 20 August 2015