Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/18961/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 September 2015	**On 30 September 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr H A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr P Turner, Counsel
(instructed by Farani Javid Taylor Solicitors LLP)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Parkes on 17 June 2015 against the decision and reasons of First-tier Tribunal Judge Farmer who had allowed the Respondent's appeal against the Appellant's decision dated 10 April 2014

to refuse to grant the Respondent leave to remain under Appendix FM and paragraph 276ADE of the Immigration Rules and/or under Article 8 ECHR and to remove him from the United Kingdom. The decision and reasons was promulgated on 23 April 2015.

2. The Respondent is a national of Nigeria, born there on 23 September 1965. He became an overstayer in 2005, subsequently forming a relationship with his British Citizen wife whom he married on 18 December 2012 and with whom he lives. His wife has an adult daughter whose circumstances are set out at [6] of Judge Farmer's decision and which in view of the anonymity order made need not be repeated here. The judge found that there were insurmountable obstacles to the continuation of family life in Nigeria. Paragraph EX.1(b) of Appendix FM applied and accordingly allowed the appeal. Judge Farmer considered section 117B of the Nationality, Immigration and Asylum Act 2002 when reaching her findings and decision.

3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Parkes because he considered that it was arguable that the judge had conflated broader Article 8 ECHR issues with those applicable under paragraph EX.1(b), had given excessive weight to the social worker's report relied upon by the Respondent as well as insufficient weight to the Respondent's overstay.

4. Standard directions were made by the Upper Tribunal, indicating that the appeal would be reheard and remade immediately in the event that a material error of law were found. A rule 24 notice opposing the appeal was filed on behalf of the Respondent, dated 19 June 2015.

Submissions – error of law

5. Mr Bramble for the Secretary of State relied on the grounds of onwards appeal served earlier and the grant of permission to appeal, where a material misdirection of law had been asserted. The findings the judge reached had been inadequate. The issues had been conflated, an inadequate analysis had been performed and the reasoning was inadequate. There was a brief and helpful dialogue with the tribunal.

6. Mr Turner for the Respondent submitted in summary that there was no error of law in the decision and reasons. Contrary to the onwards grounds, the judge had conducted a careful analysis of the evidence, and had for example been critical of the social worker's report. Clearly that had been factored in by the judge when reaching her findings. The appeal had been fact sensitive and the grounds were only a disagreement with the judge's decision.

The error of law finding

7. At the conclusion of submissions, the tribunal indicated that it found that the judge had not fallen into material error of law. It is important to recognise that the Upper Tribunal cannot lightly interfere with decisions made by the First-tier Tribunal. There is no scope for a mere difference of opinion in areas where a range of reasonable opinions consistent with the current law exists, which can so easily be seen in appeals raising Article 8 ECHR issues which are invariably fact sensitive: Razgar [2004] UKHL 27, at [20]. Here, however, it is a question of the substance of the First-tier Tribunal's reasoning and the application of the text of the relevant Immigration Rules, i.e., Appendix FM and paragraph EX.1 thereof. At [9] of her decision Judge Farmer recorded that the Secretary of State accepted that the Appellant met the Suitability requirements and also the Eligibility requirements (in part). There were no maintenance or accommodation issues. Those findings were not challenged.

8. The analysis of the Appellant's evidence which the judge conducted was thorough. The judge identified significant sections of his evidence relating to his Nigerian connections and his immigration history which she could not accept. Nevertheless, the judge accepted the United Kingdom relationships on which he relied, finding that they were genuine but not parental in character: see [14] of the decision. The Appellant's marital relationship was not in dispute. As Mr Turner pointed out, the judge had been critical of the social worker's report, which had informed her decision. In the tribunal's judgment, following that careful sifting of the evidence, Judge Farmer went on to give proper and sustainable reasons for finding that there were insurmountable obstacles to the continuation of family life in Nigeria. The reasons given in the decision and reasons amounted to far more than temporary

inconvenience or very serious hardship, as of course they needed to do.

9. The Judge set out paragraph EX.1(b) of Appendix FM of the Immigration Rules, which is in the following terms, (with emphasis supplied by the tribunal):

> **Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent**
>
> EX.1 This paragraph applies if …
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.
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> EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

10. In the tribunal's judgment, Judge Farmer applied the text correctly. There was no conflation with Article 8 ECHR as consideration of Article 8 ECHR on a free-standing basis as a second stage (see, e.g. SS (Congo) [2015] EWCA Civ 387) was never reached. The judge's focus was not on the Appellant, whose evidence she discounted, but on the particular situation and circumstances of the Appellant's partner, his British Citizen wife, who had lived and worked in the United Kingdom for some 25 years, and had an adult daughter and grandchild here.

11. The tribunal finds no error of law and dismisses the Secretary of State's appeal.

DECISION

The making of the previous decision did not involve the making of an error on a point of law. The original decision stands unchanged.

Signed **Dated**

Deputy Upper Tribunal Judge Manuell