



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/43216/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2015**

**Decision & Reasons Promulgated
On 3 August 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

VICTOR IFEANYI OMATSOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Islam, Legal Representative

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal R G Handley promulgated on 17 December 2014 in which the judge dismissed the appeal of the appellant against a refusal by the Secretary of State to grant him leave to remain outside the Immigration Rules.
2. The appellant was born on 29 September 1975 and is a national of Nigeria. He entered the United Kingdom on 9 January 2009 as a Tier 4 (Student) Migrant. He was granted further periods of leave to remain and his last period of leave expired on 24 March 2013.

3. The appellant put in an application for leave to remain on a form FLR(O) outside the Immigration Rules on the basis that he had discovered he would be at risk of being killed or tortured if returned to Nigeria. The application to the Secretary of State was accompanied by a number of letters some of which were handwritten, some typed and some of which came from a firm of lawyers in Nigeria. The gist of these letters suggested that the appellant was bisexual and would be at risk on return to Nigeria as a result of his sexual orientation, and as the result of threats against him by the family of a person killed, that family believes, as a result of the appellant's influence on that person's sexual orientation.
4. The documents served by the appellant also include a Nigerian Police Force Station Diary extract relating to threats the appellant claims he received from members of the deceased person's family. I have also seen a letter from the Deputy Inspector General of Police, dated 30 July 2013, relating to the complaint lodged on behalf of the appellant by the lawyer.
5. The Secretary of State refused the application having regard to the Immigration Rules giving effect to private life considerations contained in paragraph 276ADE of the Immigration Rules.
6. The appellant had originally opted for an oral hearing before the First-tier Tribunal. However, shortly before the appeal was due to be heard, his representatives requested that it be considered on the papers. No explanation was provided for this move.
7. In his determination the First-tier Judge considered the fact that the appellant had only been in the United Kingdom since 2009. The judge was not satisfied that the appellant met the requirements of paragraph 276ADE. The judge then considered the alternative freestanding Article 8 claim and took into account a number of factors including the statutory considerations contained in Section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). Whilst the judge made reference to the appellant's fear that he would be at risk of ill-treatment on his return to Nigeria, the judge entirely failed to engage in any meaningful way with this aspect of the appellant's claim.
8. I am entirely satisfied that, in failing to engage with the appellant's Article 3/asylum claim, the judge erred in law. I place reliance on the authority of **Haque (Section 86(2): adjournment not required) Bangladesh [2011] UKUT 00481**, which indicates that, pursuant to Section 86(2) of the 2002 Act, a Judge is obliged to determine any matter raised as a ground of appeal. The appellant specifically raised his fear of ill-treatment in Nigeria as a ground of appeal. The judge was therefore obliged to consider this ground. The judge's failure to do so constitutes an error of law.
9. I did consider the possibility that the judge would have inevitably concluded, having regard to the nature of the documents before him and the absence of any oral evidence, that the asylum/Article 3 grounds were

doomed to failure. The judge would clearly have been entitled to place only limited weight on the documents given the appellant's absence, and the absence of the authors of the documents, and without any other opportunity to test or probe the various facets of the appellant's account. However, I cannot safely say that any judge properly directing themselves to the appropriate standard of proof and having properly considered the evidence before them with the required degree of anxious scrutiny would inevitably have rejected the asylum/Article 3 ground.

10. Therefore, in circumstances where no consideration at all has been given to the appellant's asylum/Article 3 ground, I regard it as appropriate to remit it back to the First-tier Tribunal to enable full consideration to be given to the asylum/Article 3 ground and the extent that this bears on the appellant's private life grounds.

Notice of Decision and Directions

The determination of the First-tier Tribunal contains a material error of law.

The appeal will be remitted back to the First-tier Tribunal for consideration of the appellant's asylum/Article 3 ground of appeal and the extent that this bears on his private life.

No anonymity direction is made.



Signed

31 July 2015

Date

Upper Tribunal Judge Blum