



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

**Appeal Number: HU/02131/2016**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 24 November 2017**

**Decision & Reasons Promulgated  
On 6 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**AFEEZ [O]  
(I DO NOT DIRECT ANONYMITY)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr W Adelokun (Solicitor)

For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal ("the tribunal") which was sent to the parties on 9 January 2017 whereupon it dismissed his appeal against the Secretary of State's decision of 12 January 2016 refusing to grant him leave to remain on human rights grounds under Article 8 of the European Convention on Human Rights (ECHR).

2. By way of background, the claimant is a national of Nigeria and he was born on 16 October 1989. He entered the UK on 5 May 2011 with leave to enter as a student. That leave had been due to expire on 30 July 2013 but was, in fact, curtailed on 31 May 2012 due to withdrawal of sponsorship. He was subsequently granted leave to remain on the basis of family and

private life until 29 May 2013. That was because of a claimed parental relationship with a British Citizen child who had been born on [ ] 2012. However, it appears that he no longer has any contact with that child. But he entered into a relationship with one [JO] (as she now is), a British citizen, and the couple married on 17 November 2015. It was on the basis of that relationship that the claimant made the application which has ultimately led to this appeal. The claimant's wife has a child from a previous relationship and it is said the father has contact with that child. Further, a child was born to the couple on [ ] 2016.

3. The Secretary of State refused the application because it was thought that the relationship the claimant was now relying upon was not a genuine and subsisting one. It was considered that the requirements of the Immigration Rules were not met and that there were no exceptional circumstances which would justify a grant of leave to remain on Article 8 grounds outside the Immigration Rules.

4. The tribunal considered the claimant's appeal at a hearing which took place on 14 December 2016. Both parties were represented and the tribunal heard oral evidence from the appellant and his wife.

5. The tribunal noted in its decision that it was not contended that the requirements of the Immigration Rules were met. It did (unlike the Secretary of State) accept that the relationship was a genuine one but thought there was nothing exceptional such as to cause it to allow the appeal outside the rules. In particular, it seems that the tribunal was persuaded that it was reasonable to expect the claimant to return to Nigeria and seek entry clearance bearing in mind that information before it suggested that it would only take some 120 days for such an application to be dealt with. The tribunal ended up concluding that whilst Article 8 was engaged any interference brought about by the claimant's removal, in the circumstances described above, would not have consequences of such gravity as to engage that Article.

6. Permission to appeal to the Upper Tribunal was sought. Permission was granted because it was thought that the tribunal might have failed to conduct an adequate Article 8 assessment and might also have failed to properly consider the interests of the child of the marriage. Permission having been granted the Secretary of State supplied a "rule 24 reply" in which it was said:

"The respondent does not oppose the appellant's application for permission to appeal and invites the tribunal to determine the appeal with a fresh oral (continuance) hearing to consider the appellant's human rights claim."

7. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that it could be considered whether or not the tribunal had erred in law. However, before me Mrs Pettersen acknowledged that the intention in the rule 24 reply must have been to say that the respondent did not oppose the setting aside of the decision. That is obviously right since permission had already been granted prior to then rule 24 reply being prepared. She also said that she would stand by the rule 24 reply as it is properly to be understood. Accordingly, and with the agreement of the parties, I set aside the tribunal's decision.

8. The next matter to consider was whether or not I should re-make the decision in the Upper Tribunal or whether the case should be remitted. Mr Adelakun told me that he did not have with him all the paperwork relating to the appeal. He did not explain why. He did say that the appellant had only expected the hearing to cover the error of law issue. He asked me to remit. Mrs Pettersen took a neutral stance as to that.

9. It does seem to me that the tribunal's decision contained an inadequate analysis. Very few material findings of fact have been made other than that the relationship is a genuine one. I am of the view that whether the appeal is to be kept within the Upper Tribunal or whether it is to be remitted, there will be a need for further evidence and for quite extensive fact-finding.

10. In light of the above and bearing in mind the First-tier Tribunal's status as an expert fact-finding body, I have concluded that the appropriate course of action is remittal. So, there will be a rehearing before the First-tier Tribunal. The rehearing will consider the claimant's arguments under Article 8 of the ECHR. He has not offered any arguments based on any other legal provisions. I have set out, below, some directions which will hopefully aid the rehearing process.

### **Directions**

- A. This case is remitted to the First-tier Tribunal for a complete rehearing. Nothing shall be preserved from the previous decision of the tribunal which was sent to the parties on 9 January 2017.
- B. The rehearing shall take place at Manchester before a judge of the First-tier Tribunal other than Judge M Davies.
- C. If either party wishes to rely upon any documentary evidence not previously sent to the First-tier Tribunal or the Upper Tribunal, such material must be sent to the First-tier Tribunal at Manchester in sufficient time for it to be received at least 10 working days prior to the date which will be fixed for the rehearing. Copies of any such material must simultaneously be sent to the sending party's opponent.
- D. These directions may be replaced, varied or supplemented at any time by any salaried judge of the Upper Tribunal.

### **Decision**

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The case is remitted for rehearing before the First-tier Tribunal in accordance with the directions set out above.

I make no anonymity direction. None was sought before me.

Signed:

Date: 6 December 2017

Upper Tribunal Judge Hemingway

