Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/21829/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 August 2017	**On 15 August 2017**

Before

UPPER TRIBUNAL JUDGE GILL

Between

DAVID NDAGIJIMANA
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

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

Respondent

Representation:

For the Appellant: Mr Z Nasim, of Counsel, instructed by Legal Rights Partnership.
For the Respondent: Mr. P Nath, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a national of Rwanda born on 10 July 1972, has been granted permission to appeal to the Upper Tribunal against a decision of Judge of the First-tier Tribunal Hosie who (following a hearing on 26 September 2016) dismissed his appeal against the respondent's decision of 20 May 2015 to refuse his application of 24 September 2014 for indefinite leave to remain ("ILR") in the United Kingdom on the basis of ten year's continuous lawful residence in the United Kingdom. The respondent also refused the application on human rights grounds, having considered

para 276ADE(1) of the Statement of Changes in the Immigration Rules HC 395 (as amended) (hereafter referred to individually as a "Rule" and collectively the "Rules") and Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) outside the Rules.

Immigration history and relevant background

2. The appellant arrived in the United Kingdom on 1 October 2004 with entry clearance as a student. His leave was subsequently extended as follows: He had leave as a student until 31 January 2010 and as a Tier 1 (Post-Study) Migrant until 24 February 2012. He then submitted an in-time application for leave to remain on the basis of his human rights which was refused on 17 April 2013. He appealed. His appeal was dismissed and he exhausted his appeal rights on 24 April 2014.

3. The relevant immigration history after he exhausted his appeal rights is as follows:

16 May 2014	The appellant lodged judicial review proceedings
16 Sep 2014	The judicial review claim was dismissed
24 Sep 2014	The appellant made the application for ILR which is the subject of this appeal. As at the date of the application and as stated above, the appellant had lived in the United Kingdom for a total period of 9 years 11 months.
20 May 2015	The decision that is the subject of this appeal was made. At this date, the Appellant had lived in the United Kingdom for a total period of 10 years 8 months.
25 Sep 2016	Date of hearing before Judge Hosie. As this date, the appellant had lived in the UK for a total period of 12 years 5 months.

4. In his witness statement dated 13 September 2016, the appellant said that he was born in Uganda and lived with his family there from his birth until 1994 when he went to Rwanda, aged 22 years. He stayed in Rwanda for a period of 9 years, from 1994 until 2003 when he went to Holland for studies. He stayed in Holland for one year and then applied to study in the United Kingdom, arriving in the United Kingdom on 1 October 2004. He also said that he was not aware that his leave was not extended under s.3C of the Immigration Act 1971 (the "1971 Act") during the course of the judicial review proceedings and genuinely believed that he had s.3C leave.

The judge's decision

5. One issue before the judge under para 276B was whether the appellant's leave was extended under s.3C whilst his judicial review proceedings were pending. Mr Nasim, who appeared for the appellant before the judge, contended that it did. The respondent's representative contended it did not. Having considered s.3C of the 1971 Act, the judge agreed with the respondent that the appellant's leave was not extended under s.3C of the 1971 Act whilst his judicial review proceedings were pending. The judge therefore concluded that the appellant had 9 years 7 months' of lawful residence as at the date of his application of 24 September 2014 and therefore

that he could not satisfy para 276B of the Rules which required 10 years' of lawful residence.

6. It was also argued before the judge that the respondent had failed to consider the exercise of her discretion in relation to the gap in the appellant's leave since he exhausted his appeal rights. The relevant section of the decision letter reads:

> **"Discretion for breaks in lawful residence**
>
> … You must be satisfied that the applicant has acted lawfully throughout the whole 10 year period and has made every effort to obey the Immigration Rules.
>
> …
>
> Gap(s) in lawful residence
>
> …
>
> You can use your judgment and use discretion in cases where there may be exceptional reasons why a single application was made m ore than 28 days out of time. For example, exceptional reasons can be used for cases where there is:
>
> a postal strike,
> hospitalisation, or
> an administrative error by the Home Office
>
> Your current application of 24 September 2014 was submitted 153 days out-of time, after your appeal rights exhausted on 24 April 2014.
>
> It is noted that prior to submitting this application you filed for Judicial Review in May 2014. Your Judicial Review was dismissed at a Substantive Hearing on 16 September 2014.
>
> It must be pointed out that filing for Judicial Review does not extend your leave by the provision of Section 3C of the Immigration Rules. Further, you did not have any leave when you filed for Judicial Review and the decisions in relation to your immigration history where *[sic]* maintained.
>
> No exceptional reasons have been provided for submitting the currently application in excess of 28 days out-of-time. With this in mind, it is considered not appropriate to exercise discretion in your circumstances."

7. Mr Nasim confirmed at the hearing before me that he advanced the submission before the judge that she should allow the appellant's appeal under s.86(3) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") on the ground that the respondent's discretion should have been exercised differently. It was argued before the judge that the appellant had provided exceptional reasons. In this respect, his witness statement dated 13 September 2016 stated that he believed that his leave was extended under s.3C whilst his judicial review proceedings were pending, that he genuinely believed he had lawful leave during this period, that he had developed strong private life ties in the United Kingdom and was integrated into the United Kingdom whereas he had no ties or limited ties in Rwanda.

8. The judge dealt with the submission in relation to the respondent's discretion at para 27 where she stated:

> "27. … In relation to the alleged failure to appropriately exercise discretion by the Respondent or the fettering of its discretion applies to gaps in lawful residence. As indicated the period of judicial review, albeit he was entitled to make this application, was not part of lawful

residence. The argument that the Respondent has somehow failed to properly exercise discretion cannot be sustained."

9. In relation to the appellant's Article 8 claim under the Rules, specifically para 276ADE(1), the judge said, at para 28, as follows:

> "28. I accept that in fact the Appellant has been in the UK at the time of the hearing for a period of 9 years and 7 months. Given that not all of this was lawful leave I am unable to find that he meets the terms of paragraph 276ADE (1)(iv) in relation to his private life. He does not claim to have a partner or family in the UK. His appeal under the Immigration Rules cannot be sustained."

10. Having decided that the appellant could not succeed under the Rules, the judge considered the appellant's Article 8 claim outside the Rules at paras 29-37, making it clear that she followed the five-step approach explained in R (Razgar) v SSHD [2004] UKHL 27. The judge acknowledged at para 29 that the fact that a case is a '*near miss'* may be a relevant consideration. She accepted that the appellant had established private life in the United Kingdom and that removal would interfere with his private life. In relation to the third step, she found that any interference would be in accordance with the law because she considered that the appellant was not entitled to remain in the United Kingdom under the Rules. In relation to the fourth and fifth steps, she considered proportionality at paras 36 and 37, which read:

> "36. Under the fifth test in ***Razgar*** the Respondent's wish to maintain effective immigration control is declared to be a public interest consideration in terms of section 117B (1) of the 2002 Act, as amended by the 2014 Act. In assessing public interest under Article 8(2) I am required to be mindful of the provisions of Section 117 of the Nationality, Immigration and Asylum Act 2002, as amended. I note that these provisions are a starting point and are not exhaustive. The Appellant has not committed any criminal offences and is not liable to deportation. The Appellant can speak English and has attained qualifications whilst in the UK. Little weight is to be given to a private life which is established when the person is in the UK unlawfully and also at a time when the person's immigration status is precarious. Precariousness occurs when a person's continued presence in the UK will be dependent upon their obtaining a further grant of leave. This Appellant's immigration status has always been dependent upon a further grant of leave. He came to study in the UK and there is an expectation that once his studies have been completed he should return to his country of origin. He became unlawful when his section 3C leave expired.
>
> 37. The Respondent's position is that the Appellant has a mother, brother and sisters in Rwanda and that he has spent his developmental and formative years in Rwanda. This is not disputed by the Appellant. The Appellant's position is that he lived apart from his family in Uganda and elsewhere for a large part of his life and that as an adult he would have to start again and would not be able to live with any of his family. The fact that the Appellant may have lived apart from his family and would need to set up in his own house if returned to Rwanda does not detract from the fact that he has family there who could assist this process and lend support. He maintains some contact with his family and knows where they are. The Appellant would be in a position to maintain contact with his friends and acquaintances from the UK by modern means of communication if living elsewhere. The Appellant is familiar with the language and culture in Rwanda. These factors tend to indicate that he ought to be able to reintegrate. The Appellant has gained qualifications and experience in the UK. He therefore ought to be able to seek employment and provide for the means to support himself in Rwanda. I accept that this would involve some disruption to his private life and this must be balanced against the legitimate aim of the effective maintenance of immigration control. Taking all of the evidence in the round it would not be unduly harsh to refuse the Appellant's appeal."

The issues

11. The grounds of appeal advanced three grounds. Ground 1 concerned the judge's treatment of the submissions before her concerning the exercise of the respondent's discretion. It relied upon the versions of ss.82, 84 and 86(3) of the 2002 Act that were in force immediately before they were amended by s.15 of the Immigration Act 2014 with effect from 20 October 2014. In essence, it was suggested that the respondent had not properly exercised her discretion to overlook the fact that the gap in the appellant's leave exceeded 28 days and therefore the appeal should be allowed on the ground that the discretion should have been exercised differently.

12. The amendment of s.86 with effect from 20 October 2014 removed the Tribunal's power to allow an appeal "*in so far as it thinks that …. (a) a decision …. was not in accordance with the law (including immigration rules") or (b) a discretion exercised in making a decision ….. should have been exercised differently*. At the same time, s.84 of the 2002 Act was amended so as to remove the ground of appeal, that the decision was not in accordance with the law.

13. Accordingly, at the commencement of the hearing before me, Mr Nasim accepted that ground 1 was misconceived.

14. Mr Nasim then advanced ground 1 in the context of Article 8, i.e. that the respondent had erred in the exercise of her discretion and this rendered the decision not "*in accordance with the law*" for the purposes of Article 8(2). He confirmed that this had not been argued before the judge.

15. I shall now summarise the issues before me, as advanced at the hearing before me. They may be summarised as follows:

    i) Ground (a): The judge erred in her consideration of para 276ADE(1), in that, she erroneously considered para 276ADE(1)(iv), instead of para 276ADE(1)(vi) which required consideration of whether there were insurmountable obstacles to the appellant's reintegration in Rwanda.

    ii) Ground (b): The judge erred in her assessment of the Article 8 claim outside the Rules, in that:

        x) (hereafter the "discretion ground") She erred in law in concluding that the decision was in accordance with the law. Although this issue was not argued before her, Mr Nasim submitted that it was a Robinson obvious point, a reference to the principle in R. v. SSHD, IAT ex parte Anthonypillai Francis Robinson [1997] EWCA Civ 2089).

        y) (hereafter the "proportionality ground") She erred in law in reaching her decision on proportionality.

Assessment

16. In relation to ground (a), Mr Nasim submitted that the judge had made a significant error in her assessment of para 276ADE. She should have considered 276ADE(1)(vi) and whether there were very significant obstacles the appellant's reintegration in Rwanda. However, at para 28 of her decision, she incorrectly referred to para

276ADE(1)(iv) which did not apply. He submitted that this was not a typographical error. He submitted that she may have had in mind para 276B of the Rules or 276ADE(1)(iii) but it is clear that she did not consider 276ADE(1)(vi).

17. I asked Mr Nasim whether the error was material in view of the judge's assessment of proportionality outside the Rules at paras 36 and 37. Mr Nasim submitted that the error was material for the following reasons:

    i) As at the date of the hearing, the appellant had been in the United Kingdom for 12 years, and not 9 years 7 months as stated by the judge at para 28 of her decision.

    ii) In an assessment of whether there would be very significant obstacles to reintegrate, the guidance given by the Court of Appeal as to meaning of integration at para 14 of SSHD v Kamara [2016] EWCA Civ 813 applies. Para 37 of the judge's decision does not engage with the issues that should have been considered and as explained at para 14 of Kamara.

    iii) An assessment of proportionality outside the Rules cannot take the place of an assessment under para 276ADE(1)(vi). It is possible for a judge to find that there were no very significant obstacles to an individual's reintegration for the purposes of para 276ADE(1)(vi) and yet find that the decision is disproportionate.

    iv) The appellant had given details in his witness statement as to the reasons why there would be very significant obstacles to his reintegration in Rwanda. The judge had failed to deal with his evidence.

    v) The judge erred in her assessment of proportionality, as contended under the proportionality ground in ground (b), and as further explained below.

18. I shall deal with the proportionality ground in ground (b) below. As will be seen, I have concluded that the judge did not materially err in law in her assessment of proportionality. At this juncture, I shall deal with the remainder of the submissions summarised at my para 17 above.

19. The following is a slightly more detailed summary of the appellant's witness statement: The appellant was born in Uganda and lived there until 1994, when at the age of 22 years he went to Rwanda in order to pursue his studies. He went to study at the National University of Rwanda and graduated in 1997. He then secured employment in Rwanda as an Assistant Engineer at the American Refugee Committee, working in Nyagatare. He then secured work with the Catholic Relief Services in Butare. As stated above, he lived in Rwanda for 9 years until 2003. In 2003, he went to Holland to study. Whilst it is correct to say that the judge made a mistake when she said, at para 37, that his mother, brother and sisters are in Rwanda, the fact is that, according to his witness statement, he does have relatives in Rwanda, i.e. his mother and three sisters. His sisters are married and have lived in Rwanda since settling there in the early 1990s.

20. With this background, it is useful to recall that the Court of Appeal said at para 14 of its judgment in Kamara as follows:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a

> broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

(my emphasis)

21. I accept that para 28 of the judge's decision does not make sense. She referred incorrectly to 276ADE(1)(iv) which did not apply. She said that the appellant had lived in the United Kingdom for 9 years 7 months whereas it is clear from elsewhere in her decision that she found that this was the total period of his lawful leave. She was aware that he had continued to live in the United Kingdom after he exhausted his appeal rights in April 2014. There is nothing to indicate that she considered the question of whether there were very significant obstacles to the appellant's reintegration in Rwanda at para 28.

22. However, the judge did consider the question of reintegration in Rwanda at para 37, as part of her assessment of proportionality outside the Rules. At para 37, she said that the appellant had spent his developmental and formative years in Rwanda. This observation is not out of place, given the summary above of his life in Rwanda from 1994 to 2003. She said that, whilst he would need to set up his own house if returned to Rwanda, this does not detract from the fact that he has family there who could assist with the process and lend support. I acknowledge that, at para 37, she incorrectly said that the appellant has a brother in Rwanda. However, this is a minor slip, given that it is a fact that she correctly said that the appellant's mother and sisters live in Rwanda. She said he was familiar with the language and culture in Rwanda, that he has gained qualifications and experience in the United Kingdom and ought to be able to seek employment in Rwanda.

23. In essence, at para 37, the judge did consider the salient matters that need to be considered in relation to the question of whether there would be very significant obstacles to reintegration in an assessment under para 276ADE(1)(vi). She was plainly aware when assessing proportionality that the appellant had been resident in the United Kingdom since October 2004.

24. Accordingly, whilst I accept that it appears that the judge did overlook considering whether there would be very significant obstacles to the appellant's reintegration in Rwanda in the context of para 276ADE(1)(vi), this is not material given her assessment at para 37 in the context of proportionality outside the Rules.

25. It is correct to say that it is possible for a judge to find that there were no very significant obstacles to an individual's reintegration for the purposes of para 276ADE(1)(vi) and yet find that the decision is disproportionate. I cannot see how this submission helps the appellant in connection with para 276ADE(1)(vi) since it is his case that there *are* very significant obstacles to his reintegration in Rwanda under para 276ADE(1)(vi). Mr Nasim did not suggest that it would have been open to the judge, if she had considered para 276ADE(1)(vi), to find that there were very significant obstacles to the appellant's reintegration in Rwanda notwithstanding her conclusion that the decision was disproportionate when assessing the Article 8 claim

outside the Rules. In any event, such a suggestion would have been untenable because a positive finding under para 276ADE(1)(vi) should lead to the conclusion that the decision is disproportionate even if Article 8 is also considered outside the Rules.

26. Finally, in my view, on the evidence in the appellant's witness statement (summarised at para 19 above), the suggestion that the appellant lacks ties in Rwanda is simply untenable. Given that he was able, as a young man aged 22 years with less experience of life than he had as a 44-year old man at the date of the hearing, not only to complete his university studies in Rwanda but go on to find employment, the suggestion that there would be very significant obstacles to his reintegration in Rwanda is untenable. Indeed, his own experience in Rwanda over a period of 9 years, during which time he undertook and completed university studies from 1994 until 1997 and found two different jobs over a period of 5 years from 1997/1998 until 2003, shows that, although he had had no prior experience of living in Rwanda at that time, he was able to integrate in that society. His circumstances had improved by the date of the hearing before the judge when compared with his circumstances when he first went to Rwanda in 1994. As at the date of the hearing before the judge, he had the benefit of having had his previous experience of having lived, studied and worked in Rwanda, whereas in 1994 he went to Rwanda without any prior experience of living there. In addition, he has had the benefit and experience of living in two other countries that were new to him when he first arrived, i.e. Holland and the United Kingdom. He has received further education in both of those countries. In addition, and as the judge said, his mother and three sisters who live in Rwanda can help him to settle down.

27. On this evidence, no Judge of the First-tier Tribunal can reasonably conclude that there are very significant obstacles to the appellant's reintegration in Rwanda.

28. For all of these reasons, the judge's error in relation to para 276ADE(1)(vi) is not material. I therefore reject ground (a).

29. I turn to the discretion ground in ground (b). As explained at para 11 above, the argument advanced before the judge was that she should allow the appeal under s.86(3)(b) of the 2002 Act on the ground that the decision was not in accordance with the law. I accept that the judge did not deal with this argument at para 27 of her decision. I accept that she instead merely stated, at para 27, that s.3C does not cover judicial review proceedings.

30. However, the judge's failure to deal with s.86(3)(b) of the 2002 Act is wholly immaterial, given that it was accepted by Mr Nasim before me that the submissions were made in reliance upon the versions of s.84 and s.86 that were obsolete because they were deleted with effect from 20 October 2014.

31. I do not accept that it was a Robinson obvious point that the respondent's exercise of discretion was unlawful and so the decision was not in accordance with the law for the purposes of Article 8(2) in the assessment of the appellant's Article 8 claim outside the Rules. It must be remembered that the discretion in question is the discretion to disregard a period of overstay that is in excess of 28 days. This argument did not strike me as a Robinson obvious point when Mr Nasim advanced his submission. It follows that the judge cannot be said to have erred in law for failing to deal with an argument that was not advanced before her.

32. In any event, I reject the submission that the decision was not in accordance with the law for the purposes of Article 8(2), for the reasons given at paras 35 and 36 below. Before giving my reasons, I shall summarise Mr Nasim's submissions in this regard.

33. Mr Nasim submitted that the judge failed to consider the reasons given for requesting the exercise of discretion in the appellant's favour in a letter which accompanied the application for ILR. This letter stated that the appellant did not have ties in Rwanda; he had lawful residence for 9 years 7 months; and he did not know that his leave had expired. The decision letter states, under the heading: *"Discretion for breaks in lawful residence"* that: *"You must be satisfied that the applicant has acted lawfully throughout the whole 10 year period and has made every effort to obey the Immigration Rules."* Mr Nasim submitted that the respondent had failed to consider that the appellant was someone who had made every effort to obey the Immigration Rules. Whilst he accepted that the respondent had considered the exercise of discretion, he submitted that she had not done so adequately and that therefore the decision was not in accordance with the law for the purposes of Article 8(2).

34. My reasons for rejecting the submission that the decision is not in accordance with the law for the purposes of Article 8(2) for the following reasons:

35. A decision is "*in accordance with the law*" for the purposes of Article 8(2) if the decision is empowered by a provision of the law which is accessible, i.e. if there is in place a legislative framework for the decision which gives rise to the interference with the rights protected under Article 8(1) and such legislative framework is published in a form which is accessible to those likely to be affected. I did not hear full argument in this issue and I acknowledge that there has been development in the law on this issue. However, any such development is not relevant in this particular case, given that the nature of the argument advanced in this case is that the respondent did not *properly* consider the exercise of her discretion. It is not suggested that she did not consider the exercise of her discretion at all. To put the submission another way, it is said that the respondent's consideration of the exercise of her discretion was inadequate. In my judgement, inadequacy of reasoning cannot render a decision not "*in accordance with the law*" for the purposes of Article 8(2).

36. Even if the discretion ground was a Robinson obvious point (which I do not accept) in relation to the second step of the five-step approach in Razgar so that the judge was obliged to consider whether the respondent's exercise of her discretion rendered the decision not in accordance with the law for the purposes of Article 8(2), it is inevitable, on any reasonable view, that she would have been bound to conclude that the decision *was* in accordance with the law for the following reasons:

    i) The existence or otherwise of any ties in Rwanda is irrelevant to the exercise of discretion in this particular case for the simple reason that the discretion in question concerns whether a period of overstay in excess of 28 days before an application was made should be disregarded. Likewise, the fact that the appellant had had leave for a period of 9 years 7 months and was only 5 months short of qualifying for ILR under the long residence Rule is irrelevant to the question whether the discretion should be exercised to disregard a period of overstay in excess of 28 days before an application was made. These matters may be relevant to the proportionality exercise but they are wholly irrelevant, on any reasonable view, to the question whether the decision was in accordance with the law for the purposes of Article 8(2).

ii) This is because the discretion in question concerned whether the fact that the appellant's application for ILR was made 153 days out of time should be a bar to being granted ILR. The decision letter set out examples of the circumstances in which exceptional reasons may exist. It will be seen from those examples that the focus is on the reasons why an application was not lodged within 28 days of an individual's leave expiring. The existence of any ties in Rwanda and the fact that the appellant was only 5 months short of having 10 years' lawful residence are plainly irrelevant.

iii) As for the fact that it is said that the appellant did not to know that his leave expired when he exhausted his appeal rights in April 2014 and that he genuinely believed his leave was extended whilst his judicial review proceedings were pending, ignorance of the law is not an exceptional reason. It is reasonable to expect individuals to comply with the law, if necessary by taking legal advice. It cannot therefore be said that the appellant had made every effort to follow the law. In any event, it is plain that the phrase "*made every effort to obey the Immigration Rules"* in the decision letter did not set the test for the exercise of discretion.

iv) There was therefore nothing exceptional in the reasons that were advanced on the appellant's behalf in support of his request for the exercise of discretion in his favour. The respondent's decision, that there were no exceptional reasons, was entirely lawful, on any reasonable view.

37. I therefore reject the discretion ground in ground (b).

38. I turn to the proportionality ground in ground (b). I shall first summarise the reasons advanced in the grounds and at the hearing in support of the submission that the judge had erred in her assessment of proportionality:

i) At para 37, the judge said that the appellant had his mother, brother and sisters in Rwanda. This was incorrect. His mother and three sisters are in Rwanda. His brother is not.

ii) The judge incorrectly stated that his family could assist him because most of his family members do not live in Rwanda: he only had three sisters who are married and live in Rwanda. The appellant gave evidence that he rarely talked to his sisters and they would be unable to help him as his sisters were married and living with their husbands.

iii) The judge was incorrect to say that the appellant had spent his "*developmental and formative years in Rwanda*" because he had only lived in Rwanda for 9 years from 1994.

iv) She failed to consider the fact that the appellant had lived in the United Kingdom for 12 years as at the date of the hearing. Of this period, he had lawful residence for a period of 9 years 7 months.

v) She failed to take into account the reasons why the appellant did not meet the requirements for indefinite leave to remain under para 276B of the Immigration Rules.

vi) She applied the "*unduly harsh*" test when deciding whether the decision was disproportionate.

vii) She failed to consider the appellant's evidence of his lack of ties to Rwanda as set out in his witness statement. She failed to grapple with his evidence about his circumstances in Rwanda upon his return. Although Rwanda was the country of his nationality, it was the place to which he had the least ties. He spent the majority of his life in Uganda (22 years). As at the date of the hearing, he had lived in the United Kingdom for 12 years, whereas he had only lived in Uganda for 9 years.

39. Although I accept that the judge made a mistake in stating that the appellant has a brother in Rwanda, she was correct in stating that his mother and sisters live in Rwanda. The essential point she was making is that he has family in Rwanda. Thus, the mistake in referring to the brother being in Rwanda is wholly immaterial.

40. The appellant gave oral evidence to the judge (para 11 of the judge's decision) that he does not have much contact with his mother and sisters in Rwanda and that he would be unable to seek the help of his family if returned to Rwanda because his sisters are married and are living with their husbands. The judge dealt with that evidence at para 37 where she said that he had some contact with his family in Rwanda and knows where they are. That was consistent with his oral evidence. Plainly, she did not accept his evidence that his mother and sisters would not be able to assist him to set up his own house and lend support. I agree with Mr Nath that the appellant is simply disagreeing with the judge's decision.

41. The same applies in relation to the submission at para 38 iii) above. As I said (at para 22 above), the judge's finding that the appellant had spent his developmental and formative years in Rwanda is not out of place given the summary above of his life in Rwanda from 1994 to 2003.

42. In relation to para 38 iv) and v) above, the judge was plainly aware that the appellant arrived in the United Kingdom in 2004 and that he had had leave for 9 years 7 months. She was plainly aware that he did not satisfy para 276B because the period of his lawful residence was 5 months short of the minimum period of 10 years. She specifically said, at para 29, that the fact that a case is a 'near miss' is a relevant consideration in the proportionality exercise. She did not need to repeat this at paras 36 or 37 of her decision.

43. In relation to para 38 vi) above, the mere fact that the judge used the phrase "*unduly harsh*" does not mean that she applied the wrong test. It is clear from para 29 onwards that she was aware that the question in relation to the balancing exercise was whether the decision was proportionate. She used the words "*proportionate*" and "*disproportionate*" and "*proportionality*" several times. When her decision is read as a whole, it is simply untenable to suggest that the use of the phrase "*unduly harsh*" on one single occasion at para 37 is sufficient to displace her use of the correct word on several other occasions elsewhere in the decision so as to lead to the conclusion that she applied the wrong test.

44. There is no express reference in the judge's decision to the fact that, as at the date of the hearing, the appellant had lived in the United Kingdom for 12 years whereas he had only lived in Rwanda for 9 years. It does not follow that she did not have it in mind. Judges are not obliged to refer to every piece of the evidence.

45. I therefore reject the proportionality ground in ground (b).

46. I have therefore concluded that there is no material error of law in the judge's decision.

Decision

The decision of Judge of the First-tier Tribunal Hosie did not involve the making of any material errors of law.

Upper Tribunal Judge Gill Date: 14 August 2017