



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01556/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 27 April 2018

Decision & Reasons Promulgated  
On 5 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AL-AMEEN ABIODUN OLUWATOBI ABDULLAI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer  
For the Respondent: Mr N Khan (hearing) and Ms Pearl Yong (written submissions),  
instructed by Greenland Lawyers LLP

DECISION AND REASONS

1. This is an appeal by the Secretary of State from a decision of First-tier Tribunal Judge Sweet promulgated on 9 February 2018. The appellant (as he was in the First-tier Tribunal and as I shall designate him hereafter) is a citizen of Nigeria, born on 14 June 1985. He appealed from the Secretary of State's decision of January 2017 refusing his application for leave to remain in the United Kingdom. The appeal was allowed under paragraph 276 ADE of the Immigration Rules, the judge adding, in the alternative, that he would also have allowed the appeal under Article 8 of the European Convention of Human Rights outside the Rules.
3. The principal ground of appeal concerned the basis upon which the appeal had been allowed under paragraph 276 ADE, which for convenience I set out in full:

**276ADE: Requirements to be met by an applicant for leave to remain on the grounds of private life**

- (1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
    - (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3 and S-LTR.3.1 to S-LTR.4.5 in Appendix FM; and
    - (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
    - (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
    - (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
    - (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
    - (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.
  - (2) Sub-paragraph (1)(vi) does not apply, and may not be relied upon, in circumstances in which it is proposed to return a person to a third country pursuant to Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. [emphasis added]
4. At the hearing of the appeal on 27 April 2018, Counsel for the respondent, at my invitation, conceded that there had been an error of law by the First-tier Judge in that, on the clear findings of fact, the appellant had not been living in the United Kingdom continuously for more than 20 years, thus could not satisfy the provisions of 276ADE(1)(iii). Accordingly I did not hear further argument on the point. I set aside the decision of the First-tier Tribunal and remade it, dismissing the appeal under Article 8 outside the Rules.
  5. In the course of approving the transcript of my *ex tempore* decision, I became aware that the matter had in fact been dealt with by the judge under a different provision, namely, ADE276(1)(vi), which requires a period of residence of less than 20 years, coupled with very significant obstacles to integration. Since the appeal had proceeded under a misapprehension, I made an Order under rule 43(2)(d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 setting aside my earlier decision. This Order was promulgated on 10 May 2018.
  6. I did not consider that I needed any additional material in order to conclude the matter, and indicated that my provisional view inclined in favour of dismissing the appeal. I afforded the parties 14 days in which to make written representations should they wish. On behalf of the appellant, written submissions were lodged. These were dated

23 May 2018 and settled by Ms Pearl Yong of counsel. No representations have been received from the Secretary of State.

7. Ms Yong formally withdraws the concession which had been made at the hearing on 27 April 2018. I have no hesitation in allowing her to do so. The interests of justice compel it, and there is no prejudice to the Secretary of State.
8. The Secretary of State's appeal, compounded by the basis on which permission to appeal was granted, is predicated on an entirely false premise. It is said that various breaks in the appellant's residence in the United Kingdom render him ineligible under the 20 year continuous residence provision prescribed in sub-paragraph (iii). However, the appellant's case was advanced - and determined by the judge - not under sub-paragraph (iii) but under sub-paragraph (vi). Ms Yong is correct to point to a typographical error in my Order which wrongly identifies the provision as (iv).
9. Under sub-paragraph (vi), which is recited in full above, the criteria are: (a) that the appellant is aged 18 or older which self-evidently he is; (b) that he has lived in the United Kingdom for less than 20 years, which is undisputed; and (c) that there would be very significant obstacles to the his integration were he to be returned to Nigeria.
10. The judge's findings on very significant obstacles are to be found at paragraph [23] of his decision. They are clear, soundly based in the evidence, and not amenable to criticism or challenge.
11. There is no error of law in the judge's disposal of the matter under the Immigration Rules, and it is therefore unnecessary to consider the alternative disposal under Article 8 outside the rules.

### **Notice of Decision**

- (1) The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal affirmed;
- (2) No anonymity direction is made.

Signed

*Mark Hill*

Date

4 June 2018

Deputy Upper Tribunal Judge Hill QC