



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09047/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 June 2018

Decision & Reasons Promulgated  
On 02 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR BEDOLPH UWAEZE ABANDY  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr D Clarke, HOPO

**DECISION AND REASONS**

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Gribble, in which he allowed the appeal of the respondent on Article 8 grounds.
2. The respondent from now on will be referred to as the applicant for ease of reference.
3. The applicant is a citizen of Nigeria born on 12 June 1984. He entered the United Kingdom on 2 November 2001 on a visit visa until 13 April 2001. On 20 September 2013 he applied for leave to remain on the basis of his relationship with a British citizen, Ms Beulah Nyasha Gurupira. The application was refused because it was considered that there were no insurmountable obstacles to his relationship continuing in Nigeria.

4. The judge heard evidence from the applicant, his partner, Ms Gurupira and his cousin, Mr. John Inokoba.
5. The judge accepted that the applicant and his partner have been in a committed relationship since 2005 and have had a customary marriage ceremony. They have lived together in their current address since June 2013. The judge said it was difficult to escape the conclusion that the delay in regularising the appellant's status was not simply due to fear that they would be separated and perhaps, being young, they had put their heads in the sand to some extent. Neither can the applicant be blamed for following the legal advice he had, which was to pursue a complaint to the ombudsman and then taking advice to make a fresh application.
6. The judge said it was difficult to reconcile the Reasons for Refusal Letter of 2015 with the ombudsman's report, which indicated that a reconsideration by the respondent in 2014 accepted that they were found to be in a genuine and subsisting relationship.
7. The judge said she had no reason to doubt the applicant's wife's evidence. She is from Zimbabwe, is a radiographer and she earns comfortably over the threshold required to satisfy the Rules. She owns her own home.
8. The judge fully accepted that the applicant has made efforts to trace his parents, and found that it is likely they have moved to Benin. Whether they expected their son ever to return or not is moot. The applicant presumably had little choice but to follow his family's direction upon his arrival in the UK aged 16, and naturally made the assumption he was there to be educated. The judge was satisfied that he retains very few links in Nigeria, and the link he has is to his second cousin, a UK resident who visits his own elderly parents every year.
9. The judge then considered the public interest considerations as outlined in Section 117B of the 2002 Act. She had regard to the case of **Agyarko v SSHD [2017] UKSC 11**.
10. The judge accepted that the applicant and his wife speak English, a language of Nigeria. She accepted that the appellant has not lived in Nigeria since he was 16 or so, however, it was inevitable he would retain some, albeit limited, familiarity with the culture and customs. That his wife was born and raised in Zimbabwe, and is now a British citizen, is not in doubt. She is a highly qualified medical professional. Their relationship has endured for twelve years, despite the evident difficulties in terms of immigration status and employment etc., is a testament to the strength of their relationship.
11. The judge said she was unable to find that the appellant's wife would face a significant disadvantage in the job market, especially given her high level of skill in Nigeria. She appreciated that the appellant has no formal qualifications or training, however, he is a highly motivated individual.

12. The judge accepted that the couple would have no accommodation in Nigeria. However, there is some extended family in Nigeria and it is perhaps an option for them to live for a short while with the appellant's cousin's family. She did not think that the obstacles they would face could not be overcome, and which would entail very serious hardship. She found therefore at paragraph 43 that the requirements of the Immigration Rules are not met in this respect.
13. The judge then went on to consider the applicant's private life in respect of the Immigration Rules. She found that he has lived in the UK for over sixteen years. He arrived as a 16-year old and she had no reason to doubt the account he has consistently given, which is that his parents moved shortly thereafter to Benin. The account was supported by his cousin and the lengthy documentary evidence from the Nigerian High Commission in respect of the appellant's requests for information. It is accepted that he has not been in Nigeria since he arrived in the UK. He has therefore spent almost half of his life in the UK, and has spent all of his adult life here.
14. The judge considered the deportation case of **SSHD v Kamara [2016] EWCA Civ 813**. She said in this case that the applicant would be returning to a country he left sixteen years ago. He has no immediate family; no qualifications obtained in Nigeria and only basic UK qualifications. She had no reason to doubt his account that he has no property, no friends left, and no significant supportive network to assist him. It was the judge's view that the applicant would struggle significantly to find work, or to pay for the education he would require.
15. The judge considered that the applicant would find it very difficult, in the context of the relationships he has built up in the UK with his wife and her family, to begin again in Nigeria. She did not find that the applicant would have a reasonable opportunity to operate on a day-to-day basis in Nigerian society within a reasonable time, and therefore considered that he would face very significant obstacles to integration. This part of the Immigration Rules is therefore met.
16. The judge moved on to consider the provisions of Section 117B (2) and (3). The judge said the appellant gave his evidence in excellent English and to that extent is able to integrate into society. He is not financially independent in the sense that he is working and has his own income, however, his partner certainly earns enough to support them without recourse to any public funds. She had no evidence that the applicant had been a burden on the taxpayer. However, these can be seen as "neutral" factors.
17. The judge moved on to consider the provisions of Section 117B(4) and (5). She noted that the applicant began his relationship at the time when he was unlawfully in the UK. She said she is directed to attach little weight to his relationship as a result. His lengthy unlawful presence in the UK must weigh against him significantly and fortify the public interest in removal. Similarly, in respect of his private life, she is directed to attach little weight to it, as it has all been established at the time his relationship was precarious.

18. However, given the passage of over sixteen years' residence she considered his private life rights to carry some weight.
19. In coming to the balancing exercise, the judge said she needed to consider the competing arguments. The public interest in maintaining immigration control in the particular circumstances of the applicant's lengthy unlawful residence and past unsuccessful attempts to remain in the UK, and his failure to leave the UK on the failure of such efforts, must weigh against him, as must the fact his relationship began when he had no lawful leave to remain. There would not be any insurmountable obstacles to his wife joining him and them continuing their family life in Nigeria and the requirements of the Rules not being met in respect of his family life must also weigh against him.
20. The judge said weighing in the applicant's favour, was the fact that he has been in a genuine relationship with a British citizen for twelve years. She is working and a homeowner and the financial requirements of the Immigration Rules appear to be met. His wife was clear that she would support any application he would make to enter the United Kingdom from Nigeria. The test in respect of the applicant's private life is a low one and the judge found that the requirement of the Immigration Rules was met, which weighed in his favour.
21. The judge considered the impact of a temporary separation. She said the strong impression from each was that their relationship, having survived so much, would survive a separation, although it was not something they would wish to happen. The judge applied the decision in **Chen v SSHD (Appendix FM - Chikwamba - temporary separation - proportionality) IJR [2015] UKUT 00189 (IAC)** as highly relevant. She did not consider that in this case there would be a significant interference. The applicant's wife was clear that she relied on her husband for support due to her working long hours. The judge said she had no written evidence of the visa processing times for Nigeria but accepted that 60 to 90 days was the potential wait. She factored this into the balancing exercise. She said this is a long time to be separated from a spouse. It would be an expensive undertaking and one that would involve emotional distress on each side. It would serve no purpose and cannot be proportionate.
22. The judge weighed into the balance the length and expense of a potential separation, coupled with the emotional upheaval that would ensue and the fact that the applicant would meet the requirements for an entry clearance application to be an exceptional circumstance, such as to reduce the wait otherwise to be given to the public interest in maintaining immigration control. Having regard to all the evidence in this particular case, the judge found on balance that the factors identified in favour of the applicant outweighed the public interest.
23. The judge concluded that the Secretary of State's decision was disproportionate in all of the circumstances and allowed the applicant's appeal.

24. The Secretary of State's grounds of appeal argued that the judge failed to identify any exceptional factors in the applicant's case, which may allow him to take advantage of the provisions of EX.1, nor any insurmountable obstacles to the applicant returning to Nigeria, his country of origin. The second ground argued that a balancing exercise has not been properly performed as the judge has failed to adequately consider Section 117B and the public interest in maintaining immigration control. The grounds noted that the applicant's relationship has been established during his lengthy unlawful stay and that the judge failed to identify exceptionalities arising in this case.
25. Mr Clarke submitted that the grounds submitted on behalf of the Secretary of State were wholly misconceived and completely unarguable.
26. He said that at paragraph 38 the judge looked at EX.2 which defines "insurmountable obstacles" as 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 would not be overcome or would entail very serious hardship for the applicant and their spouse. The judge gave her reasons at paragraphs 40 to 43. The judge did not think that there were obstacles that could not be overcome and which would entail very serious hardship. Therefore, she concluded that the requirements of the Immigration Rules were not met in that respect. Mr Clarke was therefore baffled with the argument in ground 1.
27. Mr Clarke said the judge at paragraph 45 considered paragraph 276ADE(vi) of the Immigration Rules in respect of the applicant's private life and whether he would face very significant obstacles integrating back to life in Nigeria. At paragraph 48 the judge concluded for the reasons set out at paragraphs 47 and that the applicant would face very significant obstacles to reintegration in Nigeria. Therefore, this part of the Immigration Rules was met. Mr. Clarke submitted that the grounds do not challenge this finding.
28. In the light of the submissions made by Mr Clarke, I found that the grounds, as lodged by the Secretary of State, did not disclose an arguable error of law in the judge's decision.

### **Notice of Decision**

29. The judge's decision allowing the applicant's appeal will stand.
30. No anonymity direction is made.

Signed

Date: 29 June 2018

Deputy Upper Tribunal Judge Eshun