Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08835/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 March 2019	**On 04 April 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AJAKAIYE [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr C McWatters instructed via Direct Access

DECISION AND REASONS

1. The Secretary of State appeals with permission to the Upper Tribunal against the decision of the Judge of the First-tier Tribunal who allowed Mr [A]'s appeal against the Secretary of State's decision on 2 August 2017 refusing his human rights claim. I shall refer hereafter to the Secretary of State as the respondent, as he was before the judge, and to Mr [A] as the appellant as he was before the judge.

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2. The judge noted what he described in conclusion at paragraph 37 of the decision as an appalling criminal history of the appellant, comprising some 74 appearances before the criminal courts including a conviction on 2 June 2016 for conspiracy to steal and a subsequent sentence of 43 months' imprisonment and a further term of four weeks consecutive for his breach of bail.

3. The judge also noted that the appellant has three children, the eldest L born in 2003 from a relationship with CD and two other children, A and O born respectively in January 2005 and December 2009 as a result of his relationship with RW-J.

4. The judge considered the evidence with regard to the relationships with the children and was satisfied that the relationship with CD was over and over the years he had had no meaningful involvement in L's life. As regards his relationship with RW-J and the children A and O, the judge was satisfied that they both had their own homes to stay in throughout the relationship but he would stay with her and attend when required by the schools but they lived separate lives. The judge was satisfied that he had a limited involvement to the lives of the two children, commenting that at best he saw them infrequently and had not seen them since December 2015 and when he was at large he lived at a separate address and would see them infrequently. However the judge did not accept he had played any role as a parent in their upbringing.

5. The judge allowed the appeal first on the basis that he was satisfied that the appellant had spent most of his life lawfully resident in the United Kingdom and was socially and culturally integrated into the United Kingdom. He had arrived in the United Kingdom aged 9 in 1991 and was taken into care in 1993 and in 1995 was made a ward of court. An application was made on his behalf for leave to remain in the United Kingdom on the basis that he was an abandoned child on 4 May 1995 and granted on 29 November 1996. He has therefore had indefinite leave to remain since the age of 14.

6. The judge was satisfied that the appellant had no contact with any relatives in Nigeria. Efforts had been made by the local authority in 1995 to see if there was a place available in Nigeria for him to live but the local authorities were unable to find any relatives or a place of safety. His brothers and sister live in the United Kingdom. The judge noted what was said by the Court of Appeal in Kamara [2016] EWCA Civ 813 with regard to integration into the country into which it was proposed that a person will be deported, and concluded that since the appellant lived in the United Kingdom for 27 years having been educated in the United Kingdom, having no ties to Nigeria there would be very significant obstacles to his integration into Nigeria and he was culturally and socially integrated into the United Kingdom.

7. The Secretary of State sought and was granted permission to appeal this decision, on the basis, taking this from the order of Judge Kebede who granted permission, that there was arguable merit in the assertion that the judge had failed fully and properly to address the relevant question when considering whether the appellant had met the test of demonstrating very significant obstacles to integration in Nigeria. She found less arguable merit in the first ground but did not exclude it.

8. In his submissions Mr Melvin argued that the judge had failed to address properly the relevant questions as to very significant obstacles to integration into Nigeria. He adopted the grounds. It was for the appellant to show why he could not return to Nigeria and make a life for himself. The decision was materially in error of law. It is also arguable that the appellant could not properly be found to have integrated in the United Kingdom given his extensive criminal activities. The main point was with regard to return to Nigeria and very significant obstacles however. He referred also to the decision of the Court of Appeal in Mwesezi [2018] EWCA Civ 1104.

9. It was said that Kamara was a decision on its own facts and in Kamara the appellant had been found to be credible and had committed a one-off offence and had no knowledge of the local languages in the country of return and had shown remorse and good conduct in prison. This contrasted with the situation of the appellant.

10. Mr McWatters relied on his Rule 24 response. It was clear from what had been said by the Upper Tribunal in MK [2013] UKUT 641 (IAC) that there was no need to provide extensive reasons if the decision under challenge made sense. The judge had set out a lot of detail about the appellant’s background. He had noted that he had no ties in Nigeria. He was entitled to include that he had truly and socially integrated into the United Kingdom.

11. It was clear that with regard to very significant obstacles the judge had the test set out in Kamara in mind. It was inevitable to conclude as he did. He had stated the obvious and there was no need for further reasons. There had been no challenge to the credibility findings so it was irrelevant and the judge was entitled to find that there were no ties.

12. As regards outcome, if the Tribunal found an error of law it was asked to remit the matter to the First-tier Tribunal since there was now evidence from his partner and child and also medical evidence. This was relevant to change of circumstances.

13. I reserved my determination.

14. The first point to consider is whether the judge erred in law in concluding that the appellant is socially and culturally integrated into the United Kingdom. He has, as noted above, been in the United Kingdom since the

age of 9. His offending behaviour began in 1994 when he would have been around 12, and the list of offences as set out in the decision letter is a depressing litany of serial offending, and it is relevant to note in passing the comment of Judge Carroll in the sentencing remarks of 16 June 2016 that the appellant is somebody who in his judgment was incapable of telling the truth. All the First-tier Judge said with regard to the paragraph 399A social and cultural integration point was by reference to the fact that the appellant had been in the United Kingdom since the age of 9 and remained in the care of the local authority for the next nine years as a ward of court. It does not seem to me that it was open to the judge in light of the appellant's offending history to find that he is socially and culturally integrated into the United Kingdom. The point as it seems to me is well made in the grounds that not only is he a persistent offender but his offending pattern is not that of juvenile delinquency and there is a strong indication that he is not prepared to adhere to the norms of expected values of society. Accordingly I consider the judge erred in law in finding that he is socially and culturally integrated into the United Kingdom.

15. I note that the judge of course took account of what was said by the Court of Appeal in Kamara. All the judge said by way of conclusion having set out the quotation to be found at paragraph 36 of his decision was that the appellant has no ties to Nigeria and found as a consequence that there would be very significant obstacles to his integration into Nigeria. I do not consider the decision in this regard to be properly reasoned. The appellant lived in Nigeria until the age of 9 and although he has thereafter been in the United Kingdom for 27 years, I agree with Mr Melvin that more needs to be shown and as a consequence determined, as to the difficulties that he would face in returning to Nigeria. The fact that he has no ties there was not in my view a sufficient basis to conclude that as a consequence very significant obstacles to his integration into Nigeria had been shown.

16. Accordingly I find material errors of law in the judge's decision such that it falls to be set aside.

17. I note that there is now evidence produced in the form of a letter from RW-J and A. It is also said to be the case that there is medical evidence to be provided concerning the appellant's mental health. These matters will require to be considered as part of the necessary evaluation of the remaking of the human rights appeal. On consideration it seems to me that there are matters of sufficient substance as to go potentially to the heart of relevant parts of the decision such that it is appropriate for the matter to be reheard for a full remaking of the decision in the First-tier Tribunal. That will be listed to take place as previously in Birmingham.

Notice of Decision

The appeal is allowed to the extent set out above.

No anonymity direction is made.

Signed Date 03 Apr. 19
Upper Tribunal Judge Allen