



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

Appeal Numbers: HU/11423/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**On 31 July 2019**

**Promulgated  
On 12 August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**WASIU ADEBOLA AZEEZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M Uwe-Ezeoke, Counsel instructed by JDS Solicitors  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge Talbot in which he dismissed the appeal of the Appellant against the decision of the Secretary of State to refuse his application for leave to remain in the United Kingdom on human rights grounds.
2. The application under appeal was refused on 10 May 2018. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Talbot on 8 April 2019 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. His application

was granted by First-tier Tribunal Judge Parkes on 27 June 2019 in the following terms

“It was accepted that the Appellant did not rely on Appendix FM. The Judge found the Appellant could not meet paragraph 276ADE, the Appellant’s credibility was accepted but it could not be said that there were very significant obstacles to his reintegration to Nigeria. The Appellant’s son is nearly 21 and, in the circumstances, removal would not entail a breach of Article 8.

The grounds argue that the Judge erred in respect of the obstacles to the Appellant’s integration into Nigeria, erred in respect of Article 8 and overlooked compelling circumstances.

It is arguable that as matters stand there are more than the usual ties between the Appellant and his son and on the basis the decision may be flawed. I am less persuaded with regard to the circumstances the Appellant would face in Nigeria and his ability to return there but permission is granted on all grounds.”

## **Background**

3. The history of this appeal is detailed above. The Appellant is a citizen of Nigeria born on 31 May 1969. He arrived in the United Kingdom for the first time on 25 July 2007 as a dependent spouse with leave valid to 30 November 2009 and the couple’s son Hassan (born on 4 June 1998) joined them in the United Kingdom in 2008. At the time Hassan was 10 years old. The family lived together in Scotland. The Appellant’s wife died on 12 November 2009. The Appellant’s application for leave to remain on compassionate grounds was refused in April 2010 and the same year Hassan moved to live with his aunt in London and the Appellant, living and working in Scotland, would travel every month to see his son. Having been served with notice of removal in 2014 the Appellant was granted leave to remain outside the rules on 22 May 2015 expiring on 22 November 2017. His application to extend this leave on human rights grounds was refused resulting in this appeal.
4. The basis of the Secretary of State’s refusal was that he did not meet the requirements of the Immigration Rules as his son was over the age of 18 and living with his aunt in London. He did not meet the private life provisions of the rules because he had not been living in the United Kingdom for 10 years and there were no significant obstacles to his reintegration in Nigeria. There were no exceptional circumstances justifying consideration of Article 8 outside the terms of the Immigration Rules.
5. In dismissing the appeal, the Judge found that the Appellant was an honest and credible witness but was unable to conclude that there were very significant obstacles to his integration in Nigeria. He found that the most compassionate factor before him in terms of exceptional or compelling circumstances was the Appellant’s relationship with his son who was

approaching 21 years of age. He accepted that there was a close relationship but found that as the son was an adult this relationship did not fall within the ambit of family life rather it was an extremely important element of his private life. In finding that the Secretary of State's decision was proportionate to the legitimate aim of immigration control the Judge took account of the fact that the Appellant's stay in the United Kingdom had been 'highly precarious' since the expiry of his initial period of leave in 2009 and he can have had no expectation that his leave would be extended beyond 2017 when Hassan became adult.

## **Submissions**

6. At the hearing before me Mr Uwe-Ezeoke appeared for the Appellant. Referring to the grounds he said that everything centres on the family life between the Appellant and his son noting that credibility was not challenged by the Respondent and was accepted by the Judge. Even though the Appellant's son is now over 18 he is not leading an independent life. He is living with him. He is in full time education. The Appellant lives in London and works in Manchester and comes back to London on his off days. Mr Uwe-Ezeoke submitted that the son is not living an independent life. Kugathas says a child over 18 years is not necessarily living an independent life. Hassan has a severe speech impediment (see paragraph 4 of his statement at page 5 of the Appellant's bundle). Hassan says ever since he was a boy, he has fought a psychological battle due to this impediment. His father, the Appellant, is a great support helping him to practice his fluency techniques. The Judge failed to take this into consideration or to attach adequate weight. Contrary to the assertion of the Judge Hassan is not financially independent. The student loan is for studies. There are other expenses. Both the Appellant and Hassan confirmed that he was financially dependent. The Appellant says that he was struggling to support his son so took the job in Manchester. The Judge wrongly holds negatively in the balance that he was "eventually granted leave" and that his continuing residence was "highly precarious".
7. For the Respondent Mr Walker said that reading the evidence, particularly the statement of the Appellant concerning his working arrangements, it is difficult to see how the Judge has balanced that evidence in terms of continuing family life. The Appellant works away five days every week returning to be with his son at the weekends. These are very exceptional circumstances and it is a very unusual case. Both representatives asked me to remake the decision on the evidence before the First-tier Tribunal.
8. I gave an extempore decision allowing the appeal and setting aside the decision of the First-tier Tribunal. I remade the decision allowing the Appellant's appeal against refusal of leave to remain on human rights grounds. My reasons are given below.

## **Decision**

9. As Mr Walker very helpfully conceded this is an unusual case displaying exceptional circumstances. The Appellant and his wife met in 1991, their son was born in Nigeria in 1998. In 2008 the family came to live in the United Kingdom. The Appellant was granted leave to remain as the dependent of his wife who had a Tier 4 student visa and as was usual this leave was for a 2-year period. Unfortunately, his wife died just before the end of that period and the Appellant's application for leave to remain on compassionate grounds was refused. After the refusal the Appellant's son went to live with his maternal aunt in London whilst the Appellant remained in Scotland, where the family had been living until the death of his wife, but contact between the Appellant and his son was maintained and it is accepted that a strong parental bond remained. The Appellant remained working in Scotland to enable him to support his son and this is confirmed by the witness statement of Mutiat Oladimeji Kuku, the Appellant's sister in law, that was before the First-tier Tribunal. She says

*"Me and my family are very close to the Appellant and I have been assisting the Appellant to look after his son since (the death of his mother). He has been supporting with his son's maintenance and also assisting to bring him up.*

*"The Appellant's son is still so dependent on his dad. ... The Appellant has been a good father and has cared for and supports his son financially, this is the reason he lives away from us during the week and returns on weekends. He also supports Hassan with regards to his speech issues..."*

10. Having heard oral evidence from the Appellant, his son and Ms Kuku the Judge records that he finds the Appellant an honest and credible witness and he does not suggest that he doubts the evidence of the Appellant's son or Ms Kuku. Going on to deal with family life and based upon this evidence the Judge finds that

*"although there is no bright line when a child reaches the age of 18 years, I am not satisfied on the evidence before me that the degree of emotional or other dependency brings the relationship within the ambit of Article 8 'family life' as that expression has been judicially interpreted."*

He goes on to find that it is nevertheless an extremely important element of the Appellant's private life.

11. In my judgment the Judge falls into clear error and indeed creates an artificial separation between family and private life a concept that is not separated at all by the Convention. In doing so he fails to take account of the established caselaw including, inter alia, Ghising v SSHD [2012] UKUT 00160 and Singh v SSHD [2015] EWCA Civ 63 both referred to in the grounds of appeal. The Judge was right to say that there is no bright line when a child reaches the age of 18 years and in my judgement when a close parental relationship exists, where both child and parent are still

living in the family home and where the parent is providing financial and emotional support particularly to a child combatting a significant impediment family life continues to exist. The Judge erred in law in finding that there was no family life and his error was material to his decision to dismiss the appeal.

12. I would add to the above that when dealing with private life the Judge fell into further error when dealing with the proportionality balance in finding, or at least implying, that the service of a removal notice and a previous failed attempt to extend leave should be held against negatively in that balance. The later grant of leave because of his parental relationship with his son shows that, in all likelihood, the Appellant should have had leave throughout because he was caring for his son throughout. Further the finding that the Appellant's continuing residence was 'highly precarious' and that

*"he can have had no expectation that leave would be extended beyond ... (2017)"*

is a misunderstanding and consequent misdirection. The Appellant's leave to remain may have been 'precarious' in accordance with recent jurisprudence but it is also necessary, as KO (Nigeria) v SSHD [2018] UKSC 53 reminds us in another context, to consider the real-world situation. A widowed father bringing up and looking after his British citizen son will almost certainly have not only the hope but also the reasonable expectation that in the absence of countervailing factors this situation will be allowed to continue.

13. There are material errors of law in the decision of the First-tier Tribunal. I allow the Appellant's appeal and I set aside that decision.
14. In remaking the decision, I take into account my conclusions above. This is an Appellant who has brought up his son in the United Kingdom for the last 10 years as a single parent following the tragic death of his wife. He has been assisted by his sister in law. He has worked away from home during the week firstly in Scotland and latterly in Manchester to enable him to support his son financially. He has given strong emotional support and continues to do so. Such support is more important than in a normal father son relationship firstly because of the absence of his mother in the child's life and secondly because of the significant speech impediment from which he suffers. The child (now a 21-year-old adult) is a British citizen and the fact that he is studying at university and hopes to go on to do master's and PhD degrees is a massive credit to both the Appellant and the Appellant's sister in law.
15. Taking the balance sheet approach to proportionality these are all very significant and weighty positive matters. It is difficult to find any negative matters in the balance, indeed there are none except for the need to maintain effective immigration control. It is not in my judgement an effective use of immigration control to separate a father from his 21 year old financially and emotionally dependent son, who came to the United

Kingdom lawfully and who has previously been granted leave to remain in the United Kingdom to enable him to continue his paternal relationship with his son.

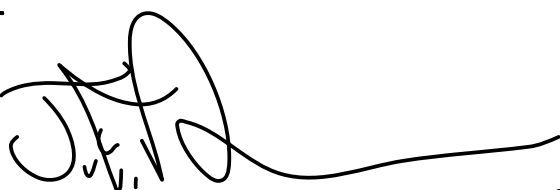
16. The balance falls heavily in favour of the Appellant and on that basis the appeal against the decision to refuse leave to remain is allowed.

**Summary of decision**

17. Appeal allowed. The decision of the First-tier Tribunal is set aside.

18. I remake the decision and I allow the appeal on human rights grounds.

Signed

A handwritten signature in black ink, appearing to be 'J F W Phillips', written over a horizontal line.

Date: 2 August 2019

J F W Phillips  
Deputy Judge of the Upper Tribunal