Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16963/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th April 2019	**On 10th May 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

N O L T-I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Ojo instructed by C W Law Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 6 August 2018 refusing his human rights claim.

2. Subsequent to a hearing on 1 February 2019 at Cardiff Civil Justice Centre I found material errors of law in the judge's decision and set it aside, directing that it should be relisted for hearing before the Upper Tribunal.

3. The appellant gave evidence, identifying his witness statement and his signature on it. He had nothing to add except that he was in contact with his son now and that was fixed and things were looking up. Dates had been arranged with his son's mother and he was seeing him three or four days a week.

4. The next witness was OH who was the appellant's partner. She identified her signature on her witness statement and adopted it as her evidence-in-chief. There was no cross-examination.

5. The third witness was IT-I who is the appellant's mother. She identified her signature on the statement and adopted it as her evidence-in-chief. There was no cross-examination.

6. In his submissions Mr Avery relied on the refusal letter. The appellant was a foreign criminal and had committed a number of offences including possession of a class A drug with intention to supply. This was a serious offence and warranted conducive grounds for deportation. There was the previous offending in any event. He had family in the United Kingdom including children with his former partner and his mother. He did not meet the unduly harshness test set out in KO (Nigeria) [2018] UKSC 53. There was no real argument to show that he would be unable to adapt to life in Nigeria. He was a young healthy male who could integrate there and there were no real obstacles to that and no very compelling circumstances for succeeding. The appeal should be dismissed.

7. In his submissions Mr Ojo relied on and developed points made in his skeleton argument.

8. The appellant has a biological son and a stepdaughter. Family life was to be looked at as a unit. He had regular contact with his son and he looked after his stepdaughter when his partner could not. He was involved in her school life in that he took her to school and brought her back. She was a British citizen as were the other parties, other than the appellant. The appellant's mother gave him financial support and their relationship went beyond the Kugathas test.

9. If the appellant were removed to Nigeria he had no special skills and had been educated only to secondary school level. Evidence had been provided previously about the employment situation in Nigeria which showed that there was almost no likelihood of him getting work there due to his lack of education and lack of special skills. He had left Nigeria at the age of 11 in 2004 and been in the United Kingdom subsequently. He had been back once for a short visit but not since then. His grandmother whom he had visited then had died. He had no relatives who could support him there and there was no social services support and he had no money to take with him.

10. It was the case that his crimes are very serious, but it should be noted that they were committed when he was a minor and the matter should be considered from that angle and also the most recent offence had been committed in 2004.

11. The evidence of family life could be seen, for example, in the photographs at pages 77 to 81 of the bundle and this showed very strong family life in the United Kingdom. The family would be seriously affected. The impact on his partner would also be harsh. She had come to the United Kingdom when very young, with her parents, fleeing the war in Sudan. She was currently in education. If she had to follow the appellant to Nigeria her education would cease. Also there was a public investment in her education which could not be recouped. Further, she had never visited Nigeria and had no ties there. Relocation would be very difficult.

12. Also, with regard to her daughter (the appellant's stepdaughter), at present the child's father had contact with her and that would be denied if she went to Nigeria. There would be nobody to look after her if she were left behind. She saw the appellant as her father. He was always there for her. It was clear from KO (Nigeria) and from Zoumbas that children were not to be made to bear the brunt of parents' misdemeanours. Undue harshness in her case was made out.

13. With regard to the appellant's son, he had contact with him. The child's mother would not let him take the child to Nigeria and likewise with regard to financial ability to support it would not be life as it was in the United Kingdom. Both children were British citizens. Also it would be psychologically harmful for them and very difficult for them to understand why they had to leave the United Kingdom or be separated from the appellant who played a significant role in their lives. They would be devastated.

14. The relationship the appellant had with his mother and sister was not necessarily one that gave rise to Article 8 protection, but in fact it went beyond ordinary emotional ties. His mother gave him support. She was working full-time but was not in good health, suffering from hypertension. He was her only son and separation would be very difficult for her. She was a single mother and paying a mortgage and the only help she gave was to top up whatever his partner was able to provide, so it would be almost impossible for her to continue support and pay for his accommodation in Nigeria.

15. The criteria for very compelling circumstances were made out. Everything should be looked at cumulatively. The impact on the other people involved was to be considered, including the fact that the children's parents would not allow them to be taken to Nigeria and the stepdaughter could not be left behind. It was in the best interests of the children to remain in the United Kingdom and important for the appellant to continue to be involved in their lives. It would be difficult for him to integrate into

Nigeria. The relevant tests were made out, both within and outside the Rules.

16. I reserved my decision.

17. I will not repeat the detail of the judge's decision which I set out in my error of law decision, since the judge's decision has been set aside. In sum, the judge did not accept that the appellant was a "foreign criminal" as defined, but considered the matter in the alternative and found that it would be unduly harsh for his partner to live without him in the United Kingdom or live with him in Nigeria, and also it would be unduly harsh for his stepdaughter to live in Nigeria or remain in the United Kingdom without the appellant. The evidence at the time was that he did not have contact with his son but he had met his son's mother and was hoping to re-establish contact. His partner had suffered from anxiety when he was in prison for five or six months and his stepdaughter was also very upset.

18. It seems that the "foreign criminal" issue is not of any continuing materiality. I was satisfied that the appellant is a foreign criminal, bearing in mind that he was detained in an institution for young offenders for the relevant length of time, and in the alternative he can properly be regarded as a foreign criminal since he has a conviction for supplying a class A drug.

19. I noted at paragraph 16 of my error of law decision that as regards the judge's findings on undue harshness, there was no evidence of the impact the appellant's deportation would have on his stepdaughter or his son, nor of such adverse impact on his wife as to come close to crossing the relevant threshold. Nor had the judge made any findings on the very significant obstacles to integration point. This is one of the requirements of paragraph 399A of HC 395, and the judge accepted that the appellant was lawfully resident in the United Kingdom and was socially and culturally integrated into the United Kingdom but made no findings on whether there would be very significant obstacles to his integration into Nigeria.

20. As regards the undue harshness point, there is little further evidence on this. There is the appellant's oral evidence that he now has a degree of contact with his son, though there is no witness statement from his former partner in that regard and no evidence other than his own assertion. There is no evidence as to the impact on the child.

21. As regards the impact on the appellant's partner, there is the evidence in her witness statement which she adopted today, but that statement was, I think, before the judge, since its date is the same as the date of the hearing before the judge. The same is the case with the appellant's mother's witness statement and the appellant's statement.

22. It is a sad but inevitable fact of deportation that it splits up families. The test in this case is that of whether there would be undue harshness to the appellant's children and his partner and indeed his mother and sister were

he to be deported to Nigeria. As was said in KO (Nigeria) it seems clearly intended to induce a higher hurdle than that of "reasonableness" and assumes that there is a "due" level of "harshness", that being a level which it may be acceptable or justifiable in the relevant context, but "unduly" implies something going beyond that level. As was said at paragraph 23 of the Supreme Court's judgment, one is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent.

23. In my judgement that has not been shown in this case. I accept that the consequences of the appellant's removal on his children, partner, mother and sister will be severe. But that is not the test. The level of harshness involved goes beyond, as was said by the Supreme Court, what can normally be expected to happen where family members are separated. That is not made out in this case and consequently it cannot be said that the undue harshness test is met.

24. Also, with regard to paragraph 399A(c), I do not consider it as being shown that there would be very significant obstacles to the appellant's integration into Nigeria. He lived there as a child, he is a young man in good health who has experience of work, and although I note the evidence provided and the difficulties he would face in obtaining work in Nigeria, it does not seem to me that that very high threshold of very significant obstacles is met. No doubt there will be obstacles, and it is possible that they will be significant, but very significant obstacles are as the phrase implies, obstacles of a very high order indeed. That is not shown in this case. Accordingly, the appellant's appeal against the Secretary of State's decision falls to be dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 08 May 2019
Upper Tribunal Judge Allen

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed Date: 08 May 2019
Upper Tribunal Judge Allen