Upper Tribunal **Appeal number: HU/03106/2019 (V)**

(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard Remotely	**Decision & Reasons Promulgated**
On 20 January 2021	**On 2 February 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

TA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr J Oliveira-Agnew, instructed by Kitty Falls Immigration Law

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Nigerian national with date of birth given as 9.1.75, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 4.9.20 (Judge Aziz), dismissing on all grounds his appeal against the decisions of the Secretary of State, dated 21.1.19 and 13.2.20, to refuse his application for further leave to remain in the UK on human rights grounds.

2. The background is that following an unsuccessful asylum claim in 2009, the appellant was eventually granted discretionary leave to remain, extended to 24.4.18. He then sought further leave to remain, which application was refused on 21.1.19. The subsequent appeal was dismissed by the First-tier Tribunal on 11.6.19 (Judge Broe). However, that determination was set aside by the decision of the Upper Tribunal (Deputy Upper Tribunal Judge Lewis) on 10.1.20, for failure to apply the Discretionary Leave Policy. This resulted in the respondent's supplementary decision of 13.2.20, refusing leave to remain under the Transitional Arrangements, the decision against which the appellant appealed to the First-tier Tribunal and which is now the subject of this appeal to the Upper Tribunal.

3. First-tier Tribunal Judge Aziz recorded that the appeal was pursued on three grounds: the Discretionary Leave Policy; Very significant obstacles to integration pursuant to paragraph 276ADE(1)(vi); and Article 8 ECHR outside the Rules. On the evidence, Judge Azis found that the appellant's claimed relationship with his partner DS had ended, so that he no longer qualified for discretionary leave as there had been a material change of circumstances from when he was originally granted discretionary leave. Although it was accepted that the appellant had been in the UK since 2004 and that he was suffering from depression and anxiety, the judge also found no very significant obstacles to the appellant's integration in Nigeria. At [102] the judge noted the submission of the appellant's representative that he met the 10 years' continuous lawful leave, long-residence requirements under paragraph 276B of the Rules. However, whilst it was accepted that he been lawfully resident in the UK for 10 years, the appellant was unable to demonstrate that he met the 'Life in the UK' test and the English language requirement. For that reason, the judge concluded that the long-residence requirement under the Rules could not be met.

4. The judge then went on from [105] of the decision to consider the article 8 ECHR claim outside the Rules, applying the public interest considerations under s117B of the 2002 Act, which required little weight to be given to the appellant's private life developed in the UK whilst his immigration status was precarious. He has only ever had limited leave to remain and his relationship with his partner had ended. In the premises, the judge concluded that the refusal decision was not disproportionate to the appellant's right to respect for private life. In consequence, the human rights appeal was dismissed.

5. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Martin, acting as a judge of the First-tier Tribunal, on 21.9.20, on the basis that it was arguable "*that while the appellant could not meet the Immigration Rules for indefinite leave to remain on the basis of long residence he may have met the requirements of para 276A for further limited leave to remain on that basis, although the judge however was not take to this by the appellant's representative at the hearing*."

6. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions made to me and the grounds of application for permission to appeal to the Upper Tribunal. Mr McVeety informed me that there is a Rule 24 response, which I have not seen, apparently conceding the appeal on 276A grounds.

7. 276A04 provides that where a person who has made an application for indefinite leave to remain on long residence grounds but falls to be granted *limited* leave to remain on the basis of long residence under the Rules, the Secretary of State will treat that application for indefinite leave to remain as an application for limited leave to remain. 276A1-A2 provides for an extension of stay on the ground of long residence for a period not exceeding 2 years, where each of the requirements in paragraph 276B(i)-(ii) and (v) are met. These are the 10 years' continuous lawful residence requirement; the absence of public interest reasons why it would be undesirable for indefinite leave to be given; and that the applicant must not be in the UK in breach of immigration laws (subject to paragraph 39E). In effect, the knowledge of life in the UK and the English language qualifications are not required for such limited leave to remain.

8. The judge granting permission was not clear whether qualification under this limited scope for extended leave to remain was canvassed by the appellant's representative at the First-tier Tribunal appeal hearing, although Mr Oliveira-Agnew stated that it was. In any event, it is raised in the grounds and I am satisfied that whether or not raised at the hearing, it should have been considered. All parties are satisfied that the appellant does qualify. In this regard, I note that the refusal decision specifically accepted that the appellant met 276B(i) and (ii), and there has been no suggestion that he has been in the UK in breach of immigration law.

9. In the premises, I find that the First-tier Tribunal materially erred in law in not considering the appellant's entitlement to limited leave to remain and in dismissing the appeal.

10. The appropriate course of action is to set aside the decision of the First-tier Tribunal and remake the decision immediately by allowing the appeal on human rights grounds, with the expectation that the respondent will grant the appellant further limited leave to remain pursuant to paragraph 276A of the Rules. This will provide the appellant the opportunity to make good the absent Life in the UK test and English language requirements.

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

I set aside the decision of the First-tier Tribunal in its entirety.

I remake the decision in the appeal by allowing it on human rights grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 January 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 January 2021