



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

Appeal Number: HU/12279/2019

THE IMMIGRATION ACTS

Heard at Field House

On 21 October 2021

**Decision & Reasons
Promulgated**

On 30 December 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**ADOKIYE SELEMA BENEBO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Onyeari, Solicitor from Charles Hill & Co Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. He was born the United Kingdom in October 1986 and returned to Nigeria as a child. He entered the United Kingdom in October 2016 as a Tier 4 (General) Student with leave until 24 August 2021. On 6 March 2019 he applied on human rights grounds for leave to remain in the United Kingdom relying on the private life aspect of his private and family life. The application was refused by the Secretary of State but an appeal allowed by the First-tier Tribunal. That decision was found to be wrong in law by Upper Tribunal Judge Rintoul who set it aside and directed the case be heard again in the Upper Tribunal. The case came before me, an appropriate transfer order having been signed by Upper Tribunal Judge Kopieczek.
2. I begin by considering the Secretary of State's reasons for refusing the application.

3. The Secretary of State began by rehearsing the claimant's immigration history. It is a feature of the case the claimant says he entered the United Kingdom in September 2010. He made an in-time and successful application for that leave to be extended and it was extended until 25 January 2016. On 20 January 2016 he applied for leave to remain outside the Rules, but the application was withdrawn in March 2016 and he claims to have returned to Nigeria about three weeks later on 20 March 2016.
4. On 21 October 2016 he applied for entry clearance to the United Kingdom as a Tier 4 (General) Student. The application was successful and he had leave from 24 October 2016 until 24 August 2021. He entered the United Kingdom on 26 October 2016 and on 6 March 2019 when he still had leave to remain he applied for leave to remain on human rights grounds outside the Rules.
5. He did not rely on a life partner or relationship with children.
6. The Secretary of State noted the appellant's claim to have lived in the United Kingdom for more than ten years in total but said that the stay was interrupted by a period of approximately seven months in Nigeria. There is no question of the appellant having attained ten years' continuous residence in the United Kingdom. The Secretary of State, appropriately, turned her mind to paragraph 276ADE(1)(vi) of HC 395. This provides that it is a requirement to be met by a person seeking leave to remain in the United Kingdom on grounds of his private life, who is over 18 years old but who has lived in the United Kingdom for less than twenty years, to show that:

"there would be very significant obstacles to the appellant's integration into the country to which he would have to go if required to leave the UK."
7. The letter then explained that it was not accepted there would be "very significant obstacles" in the way of the claimant establishing himself in Nigeria". He had lived in Nigeria for 23 years including most of his childhood and formative years and for part of his adult life. He also returned to Nigeria in 2016 for seven months and it was considered:

"Entirely reasonable to conclude that an individual who has spent the majority of his life in Nigeria, including all of his childhood, would have been thoroughly exposed to the cultural norms of that society in a significant manner and that these would not dissolve over the period of time you have spent in the UK."
8. The letter went on to say that his parents still lived in Nigeria and there was no reason to think his family would become unwilling or unable to help him re-establish himself in his country of nationality.
9. The Secretary of State nevertheless looked for possible exceptional circumstances. It is the appellant's case that he has exceptional circumstances in the form of his autism and that they are sufficient. The Secretary of State considered this. The Secretary of State noted that the appellant had failed to meet the requirements to progress to the degree of MPhil in education. He claimed that the University of Northampton had not been properly supportive even though they knew that he had Asperger's syndrome. He claimed that being required to withdraw from the course was a form of discrimination and he needed more than 60 days and to organise his affairs.

10. He claimed that in the event of his return to Nigeria he would be the victim of violent crime or bullying because of his condition. He said he had been called names in the street and he had been attacked. He would not get paid work in Nigeria.
11. The Secretary of State also found that the claimant could look to the health service in Nigeria to help him and there were organisations that supported autistic people. All in all there were no exceptional circumstances.
12. Before me it is for the appellant to show, on the balance of probabilities, any facts on which he relies to establish his case. I must then conduct a balancing exercise measuring the public interest in enforcing ordinary immigration control against the particular circumstances of the appellant and having regard to the requirements of Part 5A of the Immigration, Nationality and Asylum Act 2002 and also the Immigration Rules because they illuminate the public interest.
13. The appellant gave evidence before me. He adopted a statement dated 23 August 2019 appearing at pages AW1-AW5 in the bundle. I summarise that statement now.
14. He began by identifying himself as a Nigerian citizen with Asperger's syndrome, which he described as a type of autistic spectrum disorder.
15. He said that he wanted the Tribunal to take account of the fact that at the time of making the statement he had been lawfully resident in the United Kingdom for nine years but the same paragraph made plain that he had not been continuously in residence for nine years because in 2016 he had spent seven months in Nigeria. He said that this was to do with a late issue of a Confirmation for Acceptance for Studies but I do not understand what point is being made here. This is not a case where there is ten years' lawful residence.
16. He had explained that his ASD was diagnosed while he was in the United Kingdom.
17. He said he had a very good immigration history but as far as I can see this simply means that he abided by the Rules and although not discreditable in any way it is hardly a virtue to enter a country with the necessary leave and to abide by the Rules during his stay.
18. He did explain that his former lawyer advised him to withdraw an application he had made because he had already achieved the purpose of completing his education. He wanted the Tribunal to take that into account but as far as I can see that is wholly appropriate advice based on what the appellant's case.
19. He then explained about his experience as a PhD student at the University of Northampton. He said his registration was terminated in May 2018 and he was appealing that decision. He had appealed using the internal procedures but had been unsuccessful. He then explained his concerns about returning to Nigeria. He said he would be a victim of violent crime and abuse because people do not understand his condition. As he grew up people started to discriminate against him in horrible ways in Nigeria. He would get into fights with other children and was often injured.
20. His parents arranged for him to change schools but he continued to be bullied and assaulted by other children. He said in paragraph 9:

“Though I could not and did not report the cases as I had speech impairment and also had no idea why I was treated that way and why my condition was like that. My parents were unable to watch over me for 24 hours. Even the adults attacked me as well in brutal ways and bruises and marks were left on my body. One incident was when I was hit with a thick piece of wood by an adult but could not and did not tell my parents about it. Also another incident was when I was thrown off from my floater in the swimming pool and almost got drowned but was saved by a relative who was there to watch over me.”

21. He then talked about his experience in secondary school where he was called names such as “retard”, “mad person” and “psycho”. He said he had been bullied by other students and it was usual for his food to be taken. He was not helped by teachers. Indeed, he was flogged by teachers as well as attacked by other students.
22. He then talked about his time at the University of Nigeria. He said while he was at university he was attacked by dangerous cult gang members who again robbed him of his valuables. He said there were “horrible incidents/conditions” and people such as him with ASD were denied their right to move about freely.
23. He could not lead a normal life.
24. He had explained how when he came to study at Coventry University in September 2010 he struggled academically and his ASD condition was diagnosed in October 2012. He was given support and proceeded with further study at master’s level at Bath Spa University where he wrote a project on the support of university students with autism spectrum disorders.
25. In March 2016 he applied to the University of Northampton to study for a PhD in education. His research topic was “the inclusion of pre-school and primary school age children with autistic spectrum disorders”. He was registered as an advanced student. He prepared a presentation and a viva voce examination where his performance was unsatisfactory. He was given the option of withdrawing from the course or continuing to study for the degree of MPhil which is the choice he made. However, his application to transfer to an MPhil was not accepted and he was told his registration as a student at the university was terminated. He was aggrieved with this decision, which he appealed to the university authorities.
26. I set out below the concluding passage in his statement at paragraph 17 because it seems to encapsulate the gist of the case:

“I also believe the UK is the right place for me to stay due to the fact that the Autism Act of 2009 allows people living with the condition to move about and live freely as part of meeting their needs. It is well-implemented and practised in the UK whereas in Nigeria no such thing or equivalent is practised. A person living with ASD like me can be prone to violent crimes in Nigeria like on 02 September 2010, when I was threatened with violence by someone and narrowly escaped being attacked. I was actually attacked violently and hit by someone in 2008 and was lucky to escape being seriously battered or killed. Also, the level of insecurity is higher now than when I left Nigeria as people are on a daily basis being kidnapped for ransom; in other cases being killed, and people like me with ASD are particularly vulnerable. This is why I appreciate being given leave to remain in the UK.”

27. The claimant adopted the statement as his evidence. He was cross-examined but at the end of the cross-examination it was apparent that things should have been asked that were not asked and I consider the oral evidence given by the appellant in answer to questions from his own representative. The appellant confirmed that he had been out of the United Kingdom for seven months after leaving in 2016 and that he returned intending to start a PhD.
28. He commented too on how he had not had friends but there were people who identified as friends but who proved to be bullies when he was in Nigeria. He said that he had talked to his parents sometimes about being bullied, but not every time that he was bullied. He confirmed his parents had supported him studying in the United Kingdom and had provided some finance but they would not support him in Nigeria. He needed more than financial support and they could not help him. He said he would be killed or abducted and all his parents can do is keep him safe inside the house by locking him up.
29. In cross-examination he confirmed that his autism was not diagnosed until 2012 and he had struggled academically before that. He was given extra support in his studies and worked with a mentor and this improved his performance. Most of the support was academic rather than helping with social skills.
30. He confirmed that most of his time at university he was living with his aunt. He had lived in halls of residence for a time. He had developed some loose links with other students but mostly he was on his own. He confirmed that he had a bachelor's degree in geography and a Master of Arts in international education. He confirmed he had studied for a BA in Lagos, and also that he had been robbed in Lagos. He was awarded a degree in Lagos. He was asked if he could agree that his autism did not prevent him studying for a degree. Plainly it did not because he said he graduated but he said his parents had supported him. He said that he worked as a cleaner in the United Kingdom. He did not believe he could get a job in Nigeria. He had not looked for an academic job in Nigeria. He said how the Autism Society had helped him and he had attended some meetings that he found beneficial. He said he had been kidnapped by thugs in Nigeria. His father was qualified as a doctor and his mother worked as a trader.
31. He said he had not thought about claiming asylum.
32. The papers include a witness statement from Mrs Ngo Miebaka who identified herself as a British citizen and the "grand aunt" of the appellant. It is dated 6 September 2019. She said how the appellant had worked hard to overcome the difficulties identified by his diagnosis of Asperger's syndrome. She said how his education had improved with more mentoring and the advice of the National Autistic Society and its support had "contributed immensely to motivating and inspiring him as well as improving his life".
33. He was also involved in a church in the United Kingdom. She said that the appellant likes helping others particularly those with disability. He has done work with certain charities. She also believed he was on good terms with the staff at the place where he worked. He would regress if he returned to Nigeria. She said the appellant "panics at the thought of returning to Nigeria". He looked to her and others for reassurance. He is doing well in the United

Kingdom in a way he could not do in Nigeria. She believed he was a good person, with a good character and determined to succeed.

34. The appellant's father, Dr Asokiye Senibo Benebo had provided an affidavit dated 6 September 2019.
35. Dr Benebo said that he was a consultant anatomic pathologist in Nigeria.
36. His son had suffered "numerous forms of discrimination, abuse and brutal attacks" in Nigeria particularly because of his slow speech and slow response to questions. He knew his son was bullied at school and had treated him for injuries at home. He was attacked when he was at the University of Lagos and abducted by cult gang members and robbed. The university security did nothing useful.
37. He told of an incident in 2016 when an "estate security guard" saw him in front of his father's house in Lagos and grabbed hold of him apparently because he was slow in answering questions.
38. Dr Benebo said that he and his wife sent the appellant to the United Kingdom to get a better education and how he had improved while he was in the United Kingdom and had not complained about being bullied. He repeated his concern that there is some risk of the appellant being kidnapped or otherwise ill-treated in Nigeria.
39. I have seen background evidence confirming the appellant's diagnosis of autism and his difficulties at university. I have also seen a letter from the church that he attends commending his general character and commenting on his involvement and his particular interest in helping others with disorders such as his own.
40. There is a letter dated 26 February 2019 from the appellant's sibling Dawuta D Benebo. I assume that the writer is male. He describes the appellant as his younger brother. They grew up together in Nigeria. The appellant's development was slow and his milestones were delayed. It was difficult to find a school willing to accept him but eventually the school attended by the writer and his sister agreed to take the appellant and their parents put a lot of effort into supporting him and helping him. He was able to complete his undergraduate studies at the University of Lagos but there was no recognition of his disability or special support for it.
41. The family decided to send the appellant to the United Kingdom particularly the University of Coventry where his Asperger's syndrome was diagnosed. He said how the appellant finds life easier in the United Kingdom compared with Nigeria.
42. I have particularly taken note of the section headed: "23. Disability" in the Country of Origin Information Report on Nigeria dated 6 April 2011. This confirms there are no anti-discrimination legislation and that Nigeria had not ratified the UN Convention on the Rights of Persons with Disabilities. The report says how disabled people "continue to face stigmatisation in society, with social and economic barriers forcing many to resort to begging".
43. In March 2009 the Senate had passed the Discrimination against Persons with Disabilities (Prohibition) Bill, intending to ban discrimination against the

disabled, and at the time of writing it was awaiting approval by the Nigerian Parliament as a whole.

44. My own research suggest that the Act was brought into law in 2018 but I have no basis to assess its effectiveness. I have considered the evidence as a whole including items that I have not considered expressly above and the submissions of both representatives.
45. I am satisfied that I have, broadly, been told the truth. The appellant clearly has Asperger's syndrome and I find it wholly unremarkable that this has made it harder for him to thrive in university. I also accept that he has benefited from focused support. I am confident that the management of autism is being understood more and more and I find it wholly unsurprising that the appellant was able, with appropriate guidance, to improve his academic performance and take advantages of the opportunities given although not necessarily able to work at doctoral standard.
46. I accept that his appeal against exclusion has been allowed by the university authorities although it is not clear where that leaves him and it certainly does not bear directly on this decision except possibly to say there would be something for him to do if he were allowed to remain in the United Kingdom.
47. I accept too that the appellant has suffered very unpleasant experiences indeed in his education in Nigeria. I accept the evidence that people have been reluctant to offer him anything at all because autism is not understood and is found to be embarrassing, or at least was when the appellant was younger. I accept that he has been bullied. Bullying is rife and young people are often the worst offenders possibly because they have not learned how cruel their behaviour can be. I accept as well that in the case of the appellant this has extended to kidnap. The evidence as a whole does not indicate the appellant being spirited away for long periods of time and kept in a secure place but rather being taken to a quiet part of the campus against his will and abandoned. This is all too believable.
48. I have little doubt that the appellant would be more settled in the United Kingdom. There is clear evidence that he has been able to make a go of establishing himself there. I accept the evidence that he has obtained a job, albeit of a rather modest kind, and that he has a genuine concern for people with disabilities similar to his own and a kindly nature. This was picked up by the letter from the church, there is no reason for me not to accept this at face value.
49. I remind myself that this is a human rights claim claimed with reference to Article 8. Clearly the decision complained of interferes with the appellant's private and family life. He wants to remain in the United Kingdom and the decision is that he cannot. However, all the matters on which he relies are at the "private life" end of the "private and family life" continuum and not entitled to great weight. He is not relying on close relationships with children or a life partner. Part 5A of the 2002 Act applies and I remind myself that following Section 117B(5) "little weight should be given to a private life established by a person at a time when the person's immigration status is precarious".

50. The appellant has never been in the United Kingdom without permission but he has never had a status that is other than precarious, that is to say one that needed to be renewed. He has never had leave to remain. It follows that I am required by statute to give little weight to the very core of his case.
51. The best illumination I can get of the requirements is to look at the Immigration Rule and particularly paragraph 276ADE(1)(vi) which provides as a requirement for a grant on grounds of private life that there would be “very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK”. I have also been reminded, entirely appropriately, several times of the decision of the Court of Appeal in **Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813**. There Sales LJ, famously, at paragraph 14 explained the meaning of “integration” which he said:
- “Calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that country and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life”.
52. It is a question that I unhesitatingly answer in the affirmative. The fact is the appellant has lived most of his life in Nigeria and he has succeeded there in obtaining a degree. He has had some bad experiences which have been for him horrid but he has the support of an educated family. He has greater insights into his condition now and I do not accept that he could not establish himself in Nigeria as he has done in the past. It may well be that societal attitudes make it harder for him to establish himself in Nigeria that he would find in the United Kingdom but that is not the point. The appellant is somebody who has entered the United Kingdom as a student. That is not seen as a route to settlement. He has not been able to succeed in his studies, albeit for reasons that are not clearly his fault. There is very little in favour of allowing the appeal given the private life has been built up at a time when his status is precarious and I can only give little weight to it.
53. I have reflected very carefully on Mr Onyeari’s submissions but the simple truth is that the appellant can cope in Nigeria and the difficulties he would face are not sufficiently severe to show that refusing him leave to remain in the United Kingdom where he came on a temporary basis to study contravenes his human rights.
54. I am happy to record that nothing has happened in these proceedings that puts the appellant in a discreditable light other than an inability to cope with study at PhD level. That is not a moral failing. He has had permission to be in the United Kingdom throughout his stay by the operation of Section 3 of the Immigration Act 1971 Act if not otherwise. He has not been found to have been untruthful at any stage. Although I am confident that he would be happier in the United Kingdom and his family would be happier if they remained there, and he would be provided for in the United Kingdom and would fit in there speaking English and gain some sort of work when he could, and that work would be rather better than the cleaning job that he has been able to find, these are not reasons to say he has a right to remain.

55. He does not and I dismiss the appeal.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 16 December 2021