Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000920
[IA/03352/2021] [PA/51470/2021]

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 21 July 2022	**On 11 November 2022**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

AMARA KOROMA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr De Silva, of Fountain Solicitors.
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Sierra Leone. He arrived in the United Kingdom in late 2005 and claimed asylum. His asylum claim was refused and was not appealed. He was granted discretionary leave by reason of his age until 6 August 2008. He has been in the United Kingdom without leave, since that date.

2. He has made a number of applications for further leave on a variety of grounds. Most recently he applied as a stateless person in 2015, and in October 2017 as a national of Sri Lanka with a well-founded fear of

persecution there. Both those applications were refused. The refusal of the latter application, made as late as 1 March 2021, is the subject of the present proceedings.

3. Although the appellant asserted in his application that he was a refuge, with a well-founded fear of persecution, or at some other risk of ill-treatment in Sierra Leone, he has simply accepted the refusal of that application. Although he has appealed, he concedes now that his return to Sri Lanka would carry no risk requiring international protection. Instead, he relies wholly on private and family life considerations, based on his long presence in the United Kingdom, and his relationship with his fiancée.

4. In the First-tier Tribunal, Judge Mathews dismissed his appeal. He now appeals, with permission, to this Tribunal.

5. Judge Mathews considered all material before him. He examined the relationship between the appellant and his fiancée with great care. The couple do not live together, for reasons which the judge accepted. He regarded the discrepancies in their account of their relationship as minor. He accepted that the relationship had subsisted in September 2016 and that the appellant and his fiancée were fully committed to each other and intend to get married at such time as the appellant's immigration status should be secure. The judge also accepted that the appellant's fiancée has children and a wider family in the United Kingdom who support her in her health difficulties. He further accepted that, because of those difficulties, and because of her strong ties here, the appellant's fiancée would not travel to Sierra Leone.

6. The judge also found that the appellant and his fiancée have known from the beginning of their relationship that the appellant was always at risk of having to return to Sierra Leone. The judge had before him a folder of letters supporting the appellant, although we note that none of the authors appear to have been aware that the appellant had been breaking the law of the United Kingdom for a very long time.

7. The judge found that the appellant could not meet the requirements of the Immigration Rules for a grant of leave as a partner, given his lack of status in the United Kingdom. He would, under paragraph 276ADE, have to show very significant obstacles to his reintegration on return to Sierra Leone. Given the appellant's youth, education, linguistic ability and evident resilience, the judge found that there was no basis for saying that the appellant met the requirements of the Immigration Rules. He therefore proceeded to consider article 8 outside the Rules. He summarised the question before him at paragraph 54 of his decision as follows:

> "The article 8 claim in this case is in the form of the community links and ties that I accept he will have developed since arriving in the UK, and in particular his committed relationship to [his fiancée] their wish to marry and remain together in the UK. I must take account of the pressing public interest in the fair application of immigration control."

8. He reminded himself of the requirement to take into account ss.117A-117D of the Nationality, Immigration and Asylum Act 2002. He cited Razgar

[2004] UKHL 27, Agyarko [2017] UKSC 11, Chikwamba v SSHD [2008] UKHL 40, AQ and others [2015] EWCA Civ 250, and Dube [2015] UKUT 0090. He said that he was "prepared to accept" that the appellant might well succeed in a visa application from Sierra Leone. Nevertheless, balancing all the facts that he regarded as appropriate to take into account, he concluded that the appellant's article 8 right did not outweigh the public interest requiring the fair application of immigration control. As he said:

> "59. … I reach that conclusion because I find no bar to him continuing to maintain contact with [his fiancée] and any friends in the United Kingdom, though he will be parted from his fiancée, that impact is limited by the fact they have never cohabited as a couple in any event. He can seek to return with this immigration position regularised in due course, and they can remain in contact during that period."

He concluded that it would not be disproportionate, therefore, to require the appellant to comply with the requirements of immigration law and make any appropriate application from Sierra Leone.

9. The grounds of the appeal against Judge Mathews' decision are twofold. The first is expressed by Mr De Silva as follows: "failure to follow a binding decision of a Higher Court". He asserts that the decisions in Chikwamba and Agyarko, to which the judge referred, nevertheless mean that the judge was not entitled to reach the decision that he did. His argument is that if the appellant could obtain a visa from Sierra Leone, it cannot be in the public interest to require him to return there to get it. In his written submissions, he referred to paragraph 40 of Chikwamba, where Lord Brown stated that it would be "only comparatively rarely, certainly in family cases involving children", where such a requirement would be imposed on an appellant. He referred also to paragraph 51 of Agyarko, where Lord Reed said that, in those circumstances, "there might be no public interest" in the appellant's removal (our emphasis). Both in his written submissions and in his oral submissions, Mr De Silva relied firmly on Younas [2020] UKUT 00129. But when we pointed out to him that that decision says the contrary of what he was arguing, he simply said that it was "one of the factors to take into account", and that the appellant had been in the United Kingdom a long time. The first paragraph of the headnote in Younas, a decision of a Presidential panel of this Tribunal, reads as follows:

> "An appellant in an article 8 human rights appeal who argues that there is no public interest in removal because after leaving the UK he or she will be granted entry clearance must, in all cases, address the relevant considerations in Part 5A of the Nationality, Immigration and Asylum Act 2002, including s 117B(1), which stipulates that "the maintenance of effective immigration controls is in the public interest". Reliance on Chikwamba does not obviate the need to do this."

10. The second ground of appeal is that the appellant has now produced evidence dated 2015 which is said to show that he might have some difficulty in establishing his nationality of Sierra Leone. That evidence was not before the First-tier Tribunal.

11. In the circumstances, Ms Cunha's submissions were limited to taking us through the decision and asking us to endorse it.

12. Mr De Silva's prime submission, that the decision of the First-tier Tribunal runs counter to the binding decisions of Higher Courts is simply wrong. Neither Chikwamba nor, in particular, Agyarko, rule out a decision of the sort Judge Mathews made. In this case the appellant has, over a long period of time, long after he became an adult, simply declined to comply with the requirements of immigration law, but, instead, remained in the United Kingdom without leave, making applications which appear to have been without foundation. The public interest in requiring him to comply with the requirements of the law before enabling him to have leave is, in his case, very strong. Further, the relationships upon which he relies have wholly been formed at a time when he had no lawful basis for his presence in the United Kingdom. Accordingly, under s 117B(5) means that, in the balancing process, whilst the appellant's immigration history weighs heavily against him, the aspects of his private and family life upon which he relies are entitled to only little weight.

13. In our judgment, Judge Mathews was amply entitled to reach the view he did for the reasons he gave. The assessment of the competing factors was a matter for him. The answer was not prescribed by authority binding upon him, but, on the contrary, was for his assessment, an assessment that he made, so far as we can see, faultlessly.

14. So far as concerns the second issue, the document upon which the appellant now seeks to rely is very old. He says it is important to him but he failed to produce it earlier. Despite what Mr De Silva asserts, it does not pass the Ladd v Marshall [1954] 1WLR 1489 test: there is no basis for a finding that "it could not have been obtained with reasonable diligence for use at the trial". The First-tier Tribunal Judge did not err in law by failing to take into account evidence that was not before him; and there is no good reason to admit it now. In any event, it is difficult to see how it could assist the appellant: he has failed to demonstrate any risk of ill-treatment in Sri Lanka, and the basis of Mr De Silva's argument that he would obtain entry clearance without trouble falls away if what is now being said is that that is not the case.

15. For the forgoing reasons our decision is that Judge Mathews' decision contains no error of law. We therefore dismiss this appeal, and order that the decision of the First-tier Tribunal shall stand.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 28 September 2022