



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003554**  
**First-tier Tribunal Nos:**  
**HU/52163/2021**  
**IA/08248/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**OPEYEMI SINA OYEWOLE**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, Counsel instructed by Devine Legal Practice  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 13 April 2023**

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria. His date of birth is 13 May 1984.
2. The Appellant was granted permission to appeal by the First-tier Tribunal (Judge Buchanan) on 20 July 2022 against the decision of the First-tier Tribunal (Judge Manuell) to dismiss his appeal against the decision of the Secretary of State on 13 May 2021 to refuse his application for leave to remain (LTR) on the basis that the decision breached his rights under Article 8 ECHR.
3. The Appellant came to the UK as a Tier 4 (General) Student on 18 September 2002. He has not had leave since 2011. He has made a number of unsuccessful

applications. The SSHD refused the Appellant's latest application which gave rise to the decision under appeal concluding that the Appellant did not meet the requirements of the Immigration Rules (IR) and that there were no exceptional circumstances. It was accepted that the Appellant met the suitability requirements of Appendix FM.

4. At the hearing the Appellant gave evidence and he relied on his witness statement. The judge heard submissions from the parties representatives.

5. Having heard the Appellant's evidence the judge said as follows:-

"[he] was an unimpressive witness and his evidence was thin. He was reluctant to answer questions put to him in the course of a courteous cross examination, which detracted further from his credibility".

6. The judge at paragraph 14 said that despite the Appellant not having leave to remain since 2011, "he has persisted in making hopeless applications". The judge noted that the Appellant had come to the United Kingdom to study, knowing that he would have to leave. The judge stated at paragraph 14 as follows:-

"Tellingly, the Appellant said in his witness statement that he made established himself in the United Kingdom from the first day, which indicates (as his subsequent conduct has shown) that he had no intention of leaving. That is dishonest".

7. The judge went onto make findings that the Appellant was reluctant to admit that his family had paid for his studies in the UK. The judge found that the Appellant had close family in Nigeria including his mother and that he could continue his friendship with Mr Sadiku with whom the Appellant lives in the UK. The judge found that there would not be very significant obstacles to the continuation of private life in Nigeria.

8. The single ground of appeal concerns the judge's finding of dishonesty. It is said that it is "based on surmises and conjectures". The ground submits that the finding of dishonesty has an "effect of a stigma on the Appellant and as such, are not sustainable in the eyes of the law without cogent evidence".

9. I heard oral submissions from the parties. The thrust of Mr Dhanji's oral submissions was that the judge was not entitled to find that the Appellant was dishonest. It was not an issue that was raised by the SSHD at any stage in the proceedings. It is a material error because it affected the assessment of proportionality weighing against the Appellant. However, Mr Dhanji accepted there was not a great deal of evidence before the judge although he did not accept that it was so thin on the ground that the appeal would inevitably have been dismissed.

10. Mr Avery submitted that the judge was entitled to draw an inference of dishonesty from the evidence. However, notwithstanding this, there can be no material error of law because there was a lack of evidence of family an or private life before the judge. The Appellant has family life in Nigeria. There was before the judge no evidence that could amount to very significant obstacles to integration.

11. The Appellant submitted further evidence. It was sent to the Tribunal by email on 11 April 2023. There was no formal application under Rule 15(2A) of the Tribunal Procedure ( Upper Tribunal) Rules 2008. Mr Dhanji did not seek to admit this evidence at the error of law stage but asked that it be taken into account if it came to the decision having to be remade. Mr Avery did not have the opportunity to properly consider the further evidence; however he indicated that he could not see how it could make a difference to the outcome had that evidence been before the judge or on remaking.
12. The parties agreed that should I find a material error of law I could go on and remake the decision without the need for a further hearing save that Mr Avery would want the opportunity to consider the further evidence relied on by the Appellant, if it were to be admitted.
13. I reserved my decision

### Conclusions

14. The Appellant's case before the First-tier Tribunal was that his appeal should be allowed on the basis that the decision of the SSHD breached his rights under Article 8 ECHR; specifically because he met the requirements of paragraph 276ADE(1)(iv) of the IR which says that leave should be granted in certain circumstances where an applicant has established that there are very significant obstacles to integration (in this Appellant's case into Nigeria). The judge made a sustainable and unchallenged finding that this Appellant could not meet the requirements of the IR.
15. The Appellant's appeal was based on his private life. In submissions his representative before the First-tier Tribunal said that his appeal should be allowed because the Appellant has been here for a long time. The Appellant came here in 2008 and he has had no lawful leave since 2011. He was married to a Polish national at a period during this time but the evidence before the First-tier Tribunal was that this relationship had ended. He had not lived in Nigeria for twelve years and his evidence was that he was fully integrated into British society. The Appellant's skeleton argument before the First-tier Tribunal relied on very significant obstacles but failed to identify what these were or to identify what factors the Appellant was relying on under the wider Article 8 ground. At the hearing before the First-tier Tribunal the Appellant relied on his friendship with Mr Sadiku whom the judge found retained connections with Nigeria. The judge found that the Appellant had family in Nigeria including his mother.
16. The Appellant does not challenge the findings of the judge (save the finding in relation to dishonesty on the basis that it was not open to the judge to make such a finding). There is no suggestion that the judge failed to take into account evidence that was before him or that he failed to resolve matters of conflict.
17. In my view the judge was entitled to find that the Appellant had not been clear about his intentions when he came to the United Kingdom. However, I accept that the judge put this too highly. Dishonesty was not an issue that was raised by the SSHD and it is difficult to see how the judge reached this conclusion from the Appellant's evidence. However, the dishonesty finding had no impact on the decision under the IR.

18. In respect of the wider Article 8 assessment which requires a balancing exercise, whether or not there is a material error of law depends on what the judge made of the finding of dishonesty when assessing proportionality and how, if at all, he weighed it into the balance.
19. I do not find that the judge assessed proportionality on the basis that this was a case where the Appellant's dishonesty was a matter in favour of the SSHD. He did not find that it was in the public interest to discourage fraud or deception. I find that there is no support for the judge having found that the Appellant had deliberately breached the law of the United Kingdom and that this counted as a public interest consideration that weighed in favour of the SSHD.
20. I find that the judge did not dismiss the appeal because the Appellant had not been straight forward about his intentions. The appeal was dismissed under Article 8 because there was a lack of evidence before the judge that the decision of the SSHD would amount to a disproportionate interference with the Appellant's Article 8 rights. The decision does not disclose that when assessing proportionality the judge attached weight to dishonesty or his findings relating to the Appellant's credibility. The judge properly applied s.117B (5) of the 2002 Act (see [17]). Moreover, on the basis of the evidence before the judge, whatever the judge made of the Appellant's intentions when he came to the United Kingdom, the outcome of this appeal was inevitable. The Appellant could not meet the IR. He does not have family life here. The evidence of his private life beyond the length of time he has been here was thin on the ground and he had not had leave since 2011. There is no material error of law in the decision of the First-tier Tribunal.
21. The Appellant in his recent witness statement raised fairness issues. He stated that there were technical difficulties at the hearing before the First-tier Tribunal. Fairness was not raised in the grounds of appeal and Mr Dhanji did not seek to rely on it. The Appellant now states that he has no contact with his mother. His evidence is that Mr Sadiku is now deceased and therefore he will not be able to make contact with his family in Nigeria. The Appellant has also given additional information in relation to the errors of various legal representatives to give an account for having remained here for so long without leave. There is no proper application made to admit the new evidence. The Appellant has not sought to explain why certain matters in his witness statement were not properly raised or detailed in his evidence before the First-tier Tribunal (I appreciate that the Appellant's evidence relating to Mr Sadiku is that he has since the hearing deceased). While it is difficult not to view the new evidence of the Appellant with a level of scepticism, it is not relevant when determining whether the First-tier Tribunal erred.
22. There is no material error of law. The decision of the First-tier Tribunal is maintained.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

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**24 May 2023**