Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01291/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 12 February 2014	**On 27 February 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR CHRISTIAN IGBANIBO

Respondent

Representation:

For the Appellant: Mr T Wilding, HOPO
For the Respondent: Ms B Asanovic, Counsel

DETERMINATION AND REASONS

1. The appellant (the Secretary of State) has been granted permission to appeal the decision of First-tier Tribunal Judge Mayall allowing the respondent's appeal against the decision taken on 18 June 2013 to make a deportation order by virtue of Section 32(5) of the UK Borders Act 2007.

2. The decision to make the deportation order against the respondent was as a result of his conviction for one count of possession with intent to supply a controlled drug, class B – cannabis; and one count of possession of a controlled drug of class A with intent to supply for which he was sentenced to two years and six months' imprisonment on 9 October 2012 at Wood Green Crown Court.

3. Records showed that between January 2002 and July 2009, the respondent had received seven convictions for fifteen offences including possession of an offensive weapon, numerous driving offences and possession of class A and B drugs.

4. The respondent, who claims to have entered the UK in 1986, aged 4, along with his mother and siblings, made an application for naturalisation as a British citizen on 10 February 2011, which was refused on 19 May 2011 due to his criminal convictions.

5. I was told that there was another member of the panel, Sir Geoffrey James, whose name unfortunately did not appear on the determination although there is throughout the determination a reference to "we". The Tribunal heard evidence from the respondent, his mother, Rose Igbanibo, his sister, Daisy Igbanibo and fiancée, Naomi Wynter. Following consideration of all the evidence and the relevant case law, the Tribunal found as follows:

> "56. Overall we found the witnesses to be credible witnesses. We considered their evidence very carefully and the manner in which they gave their evidence. None of them were shaken in cross-examination and they all gave their evidence in a calm confident manner.
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> 57. Their evidence was supported by the documents. In particular we take great note of the photographs. There can be no doubt that the photographs show the appellant and his siblings in school uniforms. There can be no doubt that these are taken in the UK. There can be no doubt that the earliest photographs show the appellant and his siblings in a school uniform which they are all wearing and in which he is aged no more than about 5 or so. We consider that this gives great support to the claim by the witnesses that he had been in school from the age of about 5 or so.
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> 58. We take note of the registration with the GP. It is not suggested that the registration certificate is a forgery. It is unfortunate that the original passport upon which the appellant entered the UK is not available. We cannot be sure why that is the case but its absence does not cause us to doubt the credibility of the witnesses.
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> 59. Thus we accept that the appellant has lived in the UK since 1986 or very shortly thereafter. We accept that he has lived here continuously.

60. We accept the evidence that he has no close family in Nigeria with whom he has any relationship whatsoever. We accept that his mother may have siblings in Nigeria but she is not in contact with them and they have had no contact with the appellant since, presumably, he left Nigeria. We accept that he has never visited Nigeria since he was a very young child. We accept that he regards himself as British even though his application for naturalisation was refused. His siblings are all British. Since a very young age he has known no life other than in the UK.

61. We accept that his mother has been back to Nigeria infrequently and that her reason for doing so was to see her mother. Unfortunately her mother passed away in December 2010.

62. In these circumstances we do not consider that it could reasonably be said that this appellant has any ties in Nigeria within the meaning of the Immigration Rules. In the circumstances we consider that he does meet the requirements as set out in paragraph 399A of the Immigration Rules. It was conceded on behalf of the respondent that, in these circumstances, the appeal would have to be allowed.

63. We consider that this appeal must be allowed because to remove him would be a disproportionate interference with his right to a private life pursuant to Article 8. Thus one of the exceptions to the 2007 Act applies."

6. The respondent was granted permission in respect of grounds which argued that the judge failed to consider whether the respondent had any cultural ties to Nigeria. This was arguable as the judge appeared to deal only with family ties in his consideration of paragraph 339A of HC 395.

7. Mr Wilding submitted that the determination was very brief, it was made in seven short paragraphs. The judge found that the appellant had no family in Nigeria and therefore no ties to Nigeria. This was the wrong approach. He cited paragraph 1 to 3 of **Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC)** where the Upper Tribunal held that "the natural and ordinary meaning of the word "ties" imports, they thought, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin." Mr Wilding also relied on paragraph 122 where the Tribunal said the use of the phrase "no ties (including social, cultural or family) with the country to which he would have to go to if required to leave the UK" is not exclusive to paragraph 339A of the Rules. Mr Wilding argued that the Tribunal limited itself solely to consideration of the family circumstances in the UK. The grounds took the point made in the Reasons for Refusal Letter that English is one of the national official languages spoken in Nigeria. This was a relevant consideration which the judge failed to take into account. There was no assessment as to family ties socially or culturally with Nigeria. There was no consideration as to whether

there were insurmountable obstacles to his partner joining him in Nigeria if he has a genuine relationship with her.

8. Mr Wilding drew an analogy with **Balogun**, a judgment of the European Court of Human Rights in 2012. He submitted that this case is helpful as it distinguishes between the offences committed as a juvenile and offences committed as an adult while living in the UK and ties with his home country. It is not enough to consider only family circumstances in the UK and consequently the judge erred in law.

9. Ms Asanovic relied on her skeleton argument. She argued that permission was obtained on erroneous grounds. The grounds said that the judge failed to consider that the respondent's mother maintained her links to Nigeria by making frequent visits. She said this was contrary to the finding at paragraph 61 which said his mother had been back to Nigeria infrequently. The second error said the respondent could speak a Nigerian language yet in his evidence he said he did not. She submitted that permission would not have been granted if these two facts had been accurately presented.

10. Ms Asanovic argued that although the judge's determination was brief the findings can be gleaned from the evidence of the four witnesses who were found credible by the judge. Furthermore, the evidence given by the witnesses, and accepted by the judge, was similar to the factual evidence in **Ogundimu,** such as the claimant had no close family ties in Nigeria and his mother went back infrequently. She relied on the head notes in **Ogundimu**. They are

> "1. The expectation is that it will be an exceptional case in which permission to appeal to the Upper Tribunal should be granted where the lodging of the application for permission is more than 28 days out of time. Where, in such a case, a judge is minded to grant permission, the preferable course is to provide an opportunity to the respondent to make representations. This might be achieved by listing the permission application for oral hearing.
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> 2. The introduction of the new Immigration Rules (HC 194) does not affect the circumstance that when considering Article 8 of the Human Rights Convention 'for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify expulsion.' The principles derived from Maslov v Austria [2008] ECHR 546 are still be applied.
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> 3. Paragraph 399(a) of the Immigration Rules conflicts with the Secretary of State's duties under Article 3 of the UN Convention on the Rights of the Child 1989 and section 55 of the Borders, Citizenship and Immigration Act 2009. Little weight should be attached to this Rule when consideration is being given to the assessment of proportionality under Article 8 of the Human Rights Convention.

4. The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances."

11. Ms Asanovic also relied on paragraph 125 which says

> "Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which they would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

12. She submitted that the respondent's relationship with his partner is not necessary or relevant to his ties in Nigeria.

13. Ms Asanovic also submitted that the seriousness of the respondent's offending is not relevant to ties in Nigeria. Balogun's mother lived in Nigeria and he had contact with his mother. It was against that background that the European Court held he could forge a relationship with his mother even though he had not lived in Nigeria for a long time. In **Balogun** it was not accepted that the claimant had ties in the UK or a genuine relationship with his girlfriend. In reply Mr Wilding said that **Balogun** was looking at the human rights of the claimant under Article 8 and not within the Immigration Rules. The European Court held that **Balogun** had ties that could be pursued in Nigeria. In this case there was no analysis of family members in Nigeria or whether he could pursue these relationships.

14. I accept that the judge's findings were made in seven brief paragraphs. However, the findings have to be set against the evidence given by the four witnesses who were found credible and whose entire evidence was accepted by the judge. Whilst the judgment gives the appearance of an analysis of family ties in the UK, the judge did find that the respondent had no close family in Nigeria with whom he has any relationship whatsoever. His mother may have siblings in Nigeria but she is not in contact with them and they have not had any contact with the claimant since he left Nigeria when he was 4 years old. It is therefore difficult to see how in the circumstances it can be argued that the claimant could pursue a relationship with these family members. The findings in paragraph 60 are relevant. They imply that

the respondent has no ties with Nigeria and has not had such ties since he was 4 years old. I find that whilst **Balogun** was found to have a mother in Nigeria and therefore could pursue a relationship with her, in view of the findings made by the judge, the respondent in this case has no family relationships which he could pursue. Therefore I find that failure to analyse any links he could have with relatives in Nigeria was not material in light of the facts found by the judge.

15. I agree with Counsel's argument that the circumstances of this respondent are similar to the circumstances in **Ogundimu**. Whilst the judge has not specifically referred to **Ogundimu** I find that he has applied the assessment set out in paragraph 125.

16. Indeed the grounds misrepresented two of the facts found by the judge. These facts played a part in the grant of permission. Had the judge who granted permission been aware that the facts had been misstated, it is reasonably likely that she would not have granted permission.

17. I find no error of law in the judge's decision. His decision allowing the respondent's appeal shall stand.

Signed Date

Upper Tribunal Judge Eshun