



IAC-HX-MH/11-V1

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

Appeal Number: IA/16047/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13 August 2014**

**Decision & Reasons
Promulgated
On 7 November 2014**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NWABUEZE PETER OGU
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Bramble
For the Respondent: Mr Onipede

DECISION AND REASONS

1. Mr Ogu is a citizen of Nigeria born in 1966. On 25 January 2010 he was granted discretionary leave to remain in the UK under Article 8 ECHR on the basis of family life. On 22 February 2013 he sought a further grant of discretionary leave which was refused in a decision made on 22 April 2013, the Secretary of State indicating that Mr Ogu had failed to provide sufficient evidence to show that he was still enjoying a family life with Helen Ogu and their children. Indeed, he had stated that he was no longer living as a family unit.

2. He appealed, claiming that he is the father of two minor children who were both born in the UK and are lawfully residing in this country. He is still exercising his family life. He and his wife had gone through a crisis which led to their separation. They had undergone serious financial problems which led to them losing their family home through eviction and the financial stress had affected their relationship. They have now reconciled and the local council from whom his wife had sought help have supported them. There is a rental/tenancy agreement in the name of his wife and payments in respect of rent are made from Mr Ogu's bank account.
3. Mr Ogu's appeal was heard at Hatton Cross on 3 January 2014 by Judge of the First-tier Tribunal Abebrese who, in a determination promulgated on 25 January 2014, allowed the appeal.
4. His findings are at paragraphs [23] to [28]. He found that Mr Ogu had established family life in the UK with his partner and two children, that *'they are now living as a family unit and his wife and children were in attendance at the hearing'*. The judge noted that Mr Ogu's wife gave oral evidence and was *'in full support of the Appellant and his appeal. More fundamentally she gave evidence that despite difficulties that they might have had the relationship is genuine and subsisting'* [23].
5. The judge went on at [24]) to find that *'the removal of Mr Ogu from the UK would bring about severe and grave consequences for the other members of the family bearing in mind the fact that they have reunited and that even during the period between November 2011 and December 2012 (he) continued to visit his partner and children in the family home'*. While there had been inconsistencies about the number of times he had visited them the judge, however, *'overall found it to be credible that he did continue to play an important part in the children's life'*.
6. He went on to find that Mr Ogu's *'partner and children would suffer adversely if he were to be removed'*. He also found that *'it would not be in their interest for them to be asked to continue their family life in Nigeria, certainly for the children they are unfamiliar with Nigeria'* [25].
7. Returning, in considering proportionality, to the issue of inconsistencies in relation to when he had moved back into the family home the judge noted a letter from Mr Ogu's representatives stating that he had not moved back into the family home. However, the judge found Mr Ogu and his partner *'to be credible overall because of the fact that they both say that at that particular time (he) was residing at the property on an ad hoc basis but that he most certainly was there during the weekends when she was at work and when he would take the children to church'*. The judge concluded that Mr Ogu *'continued to play an important part in the family and that his wife and himself were at that particular time going through a difficult period which they have managed to overcome and which took some time for them to do so but the role of the Appellant within the family did not cease'* [26].

- 8.** The Secretary of State sought permission to appeal which was refused by a judge on 1 May 2014. On reapplication to the Upper Tribunal permission was granted on 25 June 2014.
- 9.** At the error of law hearing at which Mr Ogu, his partner and two children were present, Mr Bramble did not seek to argue one of the grounds, namely, that the judge failed adequately to give reasons for accepting the inconsistencies in the account. He accepted that the fact that discretionary leave had previously been granted on the basis of family life did not assist the Secretary of State. His sole, brief, point was to question whether the judge's reasoning was adequate on the issue of family life in Nigeria.
- 10.** Mr Bramble acknowledged that if error of law was found and the decision had to be remade the family's position would be strong as the children would be 'qualifying children' under paragraph 117B(6)(a) and (b) of the Immigration Rules having lived here for seven years continuously.
- 11.** Mr Onipede's position was simply that the judge's reasoning was adequate.
- 12.** I can deal with this in brief. It is not disputed that the judge was entitled on the evidence before him to find that Mr Ogu had, following a period of separation, re-established family life with his partner and two children and that he was playing an important part in the children's lives. As was noted discretionary leave had been granted in 2010 on the basis of family life in the same family unit. They are all Nigerian citizens and have been lawfully in the UK. His two children were born here in 2004 and 2007.
- 13.** The judge clearly did consider family life in Nigeria. He correctly considered the impact of Mr Ogu's removal on third parties, namely his family members, finding as indicated at [24] that his removal would bring about '*severe and grave consequences*' for the rest of the family and that particularly for the children it would not be in their interests for them to continue their family life in Nigeria as they are '*unfamiliar with Nigeria*'.
- 14.** As both children were born in the UK and have lived their lives here and his partner has lived here for over ten years such conclusion was one which on the evidence was properly open to him. His reasoning is adequate. He properly identified compelling circumstances that outweigh public interest considerations.
- 15.** I see no material error in the judge's findings and conclusions.

Notice of Decision

The decision of the First-tier Tribunal shows no material error of law and that decision allowing the appeal shall stand.

Signed

Date

Upper Tribunal Judge Conway

13 August 2014