



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

Appeal Number: IA/13160/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 April 2015**

**Decision & Reasons  
Promulgated  
On 6 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE PINKERTON**

**Between**

**MR MICHAEL BABATUNDE ODAMO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr T Melvin

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria who was born on 26 June 1981. The respondent refused to vary his leave to remain in the United Kingdom and decided to remove him under s.47 of the Immigration, Asylum and Nationality Act 2006.
2. The appellant appealed that decision and the matter came before Judge A Khawar of the First-tier Tribunal. In a decision promulgated on 17

December 2014 the judge dismissed the appeal under the Immigration Rules and under Article 8 of the ECHR.

3. The appellant sought permission to appeal that decision. This was granted on the basis that the judge doing so was satisfied that it is an arguable error of law that following the finding by the judge that the appellant did not enjoy family life with his parents and siblings he did not then go on to consider the relationship between them as a part of the appellant's private life. It was said that the judge's consideration of the appellant's private life is cursory given the appellant has been in the United Kingdom for a number of years.
4. The respondent filed a response to the grounds of appeal in accordance with Rule 24 of the 2008 Upper Tribunal Rules. The response is to the effect that the First-tier Tribunal Judge directed himself appropriately and that the findings were entirely sustainable, adequately reasoned and not perverse. There was also a sufficient consideration of the appellant's private life.

### **The Hearing before me**

5. The appellant appeared in person and produced typed grounds in support of his application. His oral submissions essentially relied upon those grounds to argue that the First-tier Tribunal Judge had made a material error of law. He blamed his legal representative for not including his son's birth certificate as part of the bundle produced to the First-tier Judge. The appellant's mother and all his siblings live in the UK as well as nephews, nieces and a cousin. They had written in support to the Tribunal explaining the devastating effect of his absence and appealing that he should be allowed to return to rejoin the family. Furthermore the appellant's social and cultural life for fourteen years has been in the UK and is now in jeopardy making him extremely depressed as a result of ignoring all his emotional or meaningful needs in relation to his family with whom he has contact on a regular basis. He has no one to fall back on if he is returned to Nigeria. He has been living and working in the UK for over fourteen years and has sustained himself without recourse to public funds. He has achieved a high level of integration into British society.

### **My Deliberations**

6. I note from looking at the immigration decision that the appellant was granted limited leave to enter the United Kingdom on 1 April 2011 until 23 June 2013 in the category of a spouse of settled person. Essentially the respondent refused the application on the basis that the appellant was not legally married to his spouse but also that he did not have a genuine and subsisting relationship with her and did not intend to cohabit together permanently in the UK at any point in the future. For this and other reasons the appellant was unable to meet the requirements of the Immigration Rules and relied purely on Article 8 ECHR. In the Reasons for

Refusal Letter the appellant was noted to have entered the UK in 2005 using a British passport. He again entered the UK using the same passport in 2007.

7. The judge at paragraphs 11, 12 and 13 set out details regarding two criminal convictions against the appellant for fraud involving the use of a false British passport and further for using a “disingenuous” electricity bill in order to attempt to collect a mobile telephone for someone.
8. The judge found that the appellant’s appeal had to fail by virtue of the mandatory grounds of refusal under paragraph 322(1C) and the appeal was therefore dismissed.
9. The judge accepted at paragraph 16 that the appellant was lawfully married to his sponsor and this was the reason why the appellant was granted leave to enter the UK. The judge gave proper and adequate reasons for concluding that the appellant was not living with the sponsor any longer (see paragraphs 17 and 18) and indeed at paragraph 21 notes that the appellant concedes that the relationship is no longer subsisting. The appellant gave evidence that he started having arguments with his wife in 2011 and it was in that year that he entered the United Kingdom. The relationship broke down in 2013, according to the appellant, which was a month before he made his application for indefinite leave to remain on the basis of his marriage.
10. The judge then considered the position regarding the appellant’s son. The judge did not believe the appellant for reasons that were open to him that the appellant was telling the truth about how often he saw his son. The judge noted that the appellant failed to produce any evidence whatsoever in the form of a birth certificate to corroborate his claim that in fact he has a child in the UK and noted further that as at the date of the appellant’s application he made no reference to having a child.
11. The judge noted and considered the witness statements from various other members of the family. He also referred to the appellant’s private life in paragraph 29 and at paragraph 19 found that there is no reliable evidence proffered by the appellant to challenge the assertions, analysis and conclusions of the respondent as set out in the refusal letter in relation to Article 8 as incorporated into Appendix FM and paragraph 276ADE of the Rules. It would have been helpful if the judge had set this out in more detail in his own decision but it is not a material error that he did not do so. The refusal letter deals with the Article 8 position and the Immigration Rules and the judge agreed with what was put there.

### **My Decision**

12. Before me the appellant attempted to produce some more evidence in relation to his Article 8 position but I explained to him that such evidence as he may now have should have been produced to the First-tier Judge, but it was not. As I further explained to him the Upper Tribunal is not able

to interfere with the original determination unless a material error of law has been made. The judge was entitled to conclude as he did on the evidence that was put before him. It would have been very difficult for the appellant in any event to succeed under Article 8 where he could not succeed under the Immigration Rules.

13. There is no material error of law in the First-tier Tribunal Judge's decision and therefore the decision to dismiss the appeal under the Immigration Rules and under Article 8 of the ECHR stands.
14. I see no need for an anonymity direction in this appeal and therefore I do not direct one.

Signed

Date **6 May 2015**

Upper Tribunal Judge Pinkerton