Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/11307/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 17th March 2016

Determination Promulgated
On 31st May 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

VICTOR OLUWASEYI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Nnamani, Counsel, instructed by Ilas Immigrations
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant appeals against the decision of the First-tier Tribunal (Judge Aujla) dismissing the appellant's appeal against a decision taken on 18

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February 2014 to refuse the appellant's application for leave to remain under Article 8 and to remove the appellant from the UK.

Introduction

3. The appellant is a citizen of Nigeria born in 1975. He is the husband of LA, a citizen of Nigeria with indefinite leave to remain in the UK. They were married in the UK in September 2011. The appellant states that he entered the UK in August 2005 in possession of a visitor's visa arranged by an agent in Nigeria. He overstayed and on 14 December 2010 applied for a certificate of approval for marriage. That was refused on 1 February 2011. He applied again on 25 February 2011 and the respondent issued the certificate on 20 April 2011. The appellant applied for leave to remain as the spouse of LA on 3 September 2012 but that was refused on 4 March 2013 without a right of appeal. The appellant made further unsuccessful representations on 23 April 2013 and then made the current application on 9 September 2013.

4. The Secretary of State accepted the appellant's identity and nationality and concluded that he did meet the eligibility requirements as a partner on the basis that he had lived with LA since at least 2010. However, there were no insurmountable obstacles to family life with LA continuing outside the UK. There were adequate medical services in Nigeria, including IVF treatment. Another option was to apply for entry clearance from Nigeria. The appellant did not meet the requirements of paragraph 276ADE of the Rules and any interference in his right to private life was proportionate.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Hendon on 17 August 2015. He was represented by Ms Wawrzynczak of Counsel. The First-tier Tribunal found that the appellant had been in the UK unlawfully and did not meet the requirements of paragraph EX.1.(b) of Appendix FM. LA had failed to provide up to date medical evidence or a detailed medical report. There was no evidence that she could not access the requisite medical treatment in Nigeria. There were no insurmountable obstacles. Article 8 was not engaged. The granting of a certificate of approval did not give the appellant a legitimate expectation and the relationship had commenced when the appellant was in the UK unlawfully. Considering section 117B of the 2002 Act, the judge gave little weight to the relationship under Article 8.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. There are nine grounds of appeal.

7. Permission to appeal was granted by First-tier Judge Hollingsworth on 28 January 2015 on the basis that an arguable error of law had arisen in relation to construction of LA's medical records and it was further arguable that the judge should have explained the degree of weight which he attached to the certificate of approval granted by the respondent. Permission was not refused on any ground.

8. In a rule 24 response dated 12 February 2016 the respondent submitted that the medical evidence did not establish a breach of Article 3 or demonstrate insurmountable obstacles to the return of both parties. The judge was not obliged to detail all of the evidence. The respondent was obliged to issue the certificate of approval. The judge had provided more than adequate reasoning.

9. Thus, the appeal came before me

Discussion

10. It is common ground between the parties that the judge considered the wrong version of paragraph 276ADE of the Rules. The correct version was in force from 9 July 2012 to 27 July 2014 and was referred to in the refusal letter. The judge found that there would not be very significant obstacles to the appellant's integration into Nigeria but did not consider whether he had any ties to Nigeria. I find that is a material error of law because appellants can reasonably expect their claims to be considered under the correct legislation and the judge might have reached a different conclusion if the correct test had been applied.

11. Mr Kotas submitted that the medical evidence was dealt with succinctly but the findings were open to the judge in the absence of an updated medical report. Ms Nnamani submitted that the extensive medical evidence was not addressed by the judge. I find that the judge did not give adequate consideration to the medical evidence in relation to LA which appears at AB2 (pages 1-28) of the appellant's bundle before the First-tier Tribunal. That evidence is reasonably extensive and I agree with Ms Nnamani's submission that the complexity and extent of LA's medical condition is not adequately addressed in the decision. The medical evidence was plainly capable of impacting upon decision both under Appendix FM and Article 8. That is a further material error of law.

12. I have not found it necessary to decide the remaining grounds of appeal which all concern matters that can be fully argued at the rehearing.

13. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

14. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2

of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

15. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed

Judge Archer
Deputy Judge of the Upper Tribunal Date
17 March 2016