



IAC-AH- -V1

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

Appeal Number: HU/07081/2019  
HU/07083/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 14 September 2020**

**Decision & Reasons Promulgated  
On: 29 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

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

Appellant

**and**

**MISS CHRISTEN [J]  
MR AJIBOSOLA [J]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Ms K Joshi, Joshi Advocates

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge KR Moore, promulgated on 6 November 2019. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 20 March 2020.

**Anonymity**

2. No direction has been made previously, and there is no reason for one now.

### Background

3. The respondents are siblings, currently aged 28 and 26. They arrived in the United Kingdom together on 11 July 2008, as minors, with leave to enter as family visitors. They applied for leave to remain outside the Rules on 27 January 2014, that application being refused with no right of appeal, on 10 February 2014. On 24 July 2018, the respondents each made a human rights application. It is the decisions to refuse those applications, dated 2 April 2019, which are the subject of these appeals.
4. The reasons for refusal were identical. In summary, Secretary of State did not accept that the respondents had spent at least half their lives living continuously in the United Kingdom as required by paragraph 276ADE(1) (v) of the Rules. Nor was it accepted that there would be very significant obstacles to the respondents' integration in Nigeria, where they had resided until the ages of 15 and 14, respectively. There were said to be no exceptional circumstances.

### The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge heard evidence from the respondents as well as Doctor [O], who knew the respondents from church. In addition, the judge took into consideration a National Referral Mechanism (NRM) decision dated 26 June 2019, in which it was decided that the first respondent was subjected to an act of recruitment in respect of human trafficking, albeit a negative grounds decision was ultimately arrived at. The First-tier Tribunal concluded that there would be very significant obstacles to the respondents' reintegration in Nigeria. The judge further found that the respondents' circumstances were exceptional to the extent that they warranted a grant of leave to remain outside the Rules.

### The grounds of appeal

6. The Secretary of State's grounds of appeal were as follows:

#### **"Failure to give adequate reasoning"**

1. The Tribunal found that there are very significant obstacles to the appellants returning to Nigeria citing the lack of family home and knowledge of the whereabouts of their father as the rationale (23)
2. It is respectfully submitted that the two appellants are adults who have a close bond and would be returned together. They have had the benefit of a college education received here in the UK. It is respectfully submitted that on return they could utilise their education and skills gained here in order to secure employment and establish a life in their home country where they have lived for more than half of their lives. On return the siblings could elect to continue with their close bond. It is submitted that there is no evidence in this case that the appellants would face obstacles on return on that basis.

3. In making that finding the Tribunal has erred in law.”

7. Permission to appeal was granted on the basis that “*the judge may have given inadequate reasons for finding that there would be very significant obstacles to return. The matter must be explored further.*”

#### The hearing

8. The hearing took place partially remotely, in that the representatives attended via Skype. I heard brief submissions from each. Mr Whitwell argued that the judge had focused on the United Kingdom, contrary to *Kamara* [2016] EWCA Civ 813; that there was limited reasoning and that the judge’s treatment of section 117B (5) was erroneous. In terms of materiality, Mr Whitwell acknowledged that the grounds could only carry him so far given that there was a finding of exceptional circumstances which went unaddressed in those grounds. In response, Ms Joshi argued that the judge looked at the circumstances in Nigeria, accepted the evidence before him and that there was no challenge to Article 8 in substance in the grounds. Mr Whitwell added that the siblings would be removed together and therefore there would be no breach of their family life. He argued that the reasons given by the judge were insufficient to amount to exceptional circumstances.
9. At the end of the hearing, I reserved my decision.

#### Decision on error of law

10. The Secretary of State defines the right to private and family life within the parameters of the Immigration Rules, in this case under paragraph 276ADE. There is no express exceptional circumstances provision in the private life Rules, which instead envisage leave to remain being granted outside the Rules on Article 8 grounds where the requirements of paragraph 276ADE are not met and Article 8 would otherwise be breached. At [23], the First-tier Tribunal judge stated that he was “*satisfied that there would be very significant obstacles to the (respondents’) reintegration in Nigeria if now required to leave.*” With this finding, he was entitled to simply allow the appeal on human rights grounds without consideration of whether there were exceptional circumstances.
11. Had the First-tier Tribunal judge allowed the appeals solely on the basis that the respondents met the requirements of paragraph 276ADE(1)(v), there may have been some merit in the Secretary of State’s grounds, however Judge Moore did not do so. It is apparent from the final (unnumbered) paragraph that the appeals were allowed because the judge was “*satisfied that there would be exceptional circumstances which would warrant a grant of leave to remain if the Immigration Rules could not be satisfied.*” Nowhere is it said that the appeals were allowed as the requirements of paragraph 276ADE (1)(v) were met. In short, the circumstances considered by the judge included that the respondents

were brought to the United Kingdom as children, that their mother continued to live in the United Kingdom and their father's whereabouts were unknown. Furthermore, the judge took into consideration that the first respondent had been subjected to an act of recruitment in relation to being pressurised to work "*exceptionally long hours*" for a pastor and was vulnerable owing to have nowhere else to live nor any real support from her mother.

12. In addition, the judge noted that the respondents were educated in the United Kingdom and had spent their entire adult lives here. The judge further considered that the respondents had no home, familial support nor financial assistance available to them in Nigeria.

13. I should add that the judge paid regard to the public interest considerations in section 117B of the 2002 Act. The grounds of appeal take no issue with the judge's assessment of exceptional circumstances and consequently the Secretary of State's appeal must fail.

## **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is upheld.**

Signed:  
October 2020  
Upper Tribunal Judge Kamara

Date: 26

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent’ is that appearing on the covering letter or covering email**