Upper Tribunal (Immigration and Asylum Chamber) Appeal Number: PA/04725/2019

THE IMMIGRATION ACTS

Heard at Field House (via Skype)	**Decision & Reasons Promulgated**
On 22 January 2021	**On 12 February 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

OLUWATOSIN OLUSOLA ALONGE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sultan, instructed by Regal Law
For the Respondent: Mr Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who was born on 29 October 1990. He appeals, with permission granted by Upper Tribunal Judge Kamara, against a decision which was issued by First-tier Tribunal Judge Welsh on 13 March 2020, dismissing his appeal against the respondent's refusal of his protection and human rights claims.

Background

2. The appellant entered the United Kingdom as a student in December 2008. He extended his student visa on a number of occasions and also returned to Nigeria twice, re-entering the UK as a student thereafter. His leave expired on 30 April 2016. The appellant was notified that he was liable to removal as an overstayer on 7 October 2016. On the 25th of that month, he made an application for leave to remain as the

partner of a British citizen, SR. They married whilst that application was pending, on 1 November 2016.

3. In the meantime, on 19 October 2016 the appellant had been arrested by North Kent Police on suspicion of fraud by false representation. Then, on 3 November 2017, the appellant was convicted of false representation and two counts of concealing criminal property. On 22 December 2017, he was sentenced by HHJ Davies QC to three years' imprisonment.

4. On 22 January 2018, the respondent made a decision to deport the appellant and asked him to state any reasons (beyond those in his pending application) why he should not be deported. Representations, including a protection claim, were made on 26 March 2018. The applicant was duly interviewed in connection with that claim. An exchange of correspondence about the application of section 72 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") followed, after which the respondent decided to refuse the asylum and human rights claims which the applicant had made. Her decision was served on 9 April 2019.

The Decision of the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. His appeal was heard by the judge, sitting at Taylor House, on 7 January 2020. In her reserved decision, the judge concluded, in summary, as follows.

6. Turning firstly to the certificate under section 72 of the 2002 Act, the judge concluded that the appellant had successfully rebutted the presumption that he was a danger to the community: [23]-[30]. She noted at [31] that the protection claim had not really been pursued before her but she did not consider the appellant to be at risk in Nigeria, whether from Boko Haram or as a result of his marriage to SR, who is British but of Sierra Leonean origin: [31]-[33] and [34]-[44] respectively.

7. The judge then addressed Article 8 ECHR with reference, firstly, to the statutory exceptions to deportation in s117C(4) and (5) of the 2002 Act. In considering the tripartite test in exception 1, she concluded that the appellant had not been lawfully resident in the UK for most of his life; that he was socially and culturally integrated; and that there were no very significant obstacles to his re-integration to Nigeria: [45]-[56]. In relation to exception 2, the judge concluded that it would not be unduly harsh for SR to relocate to Nigeria with the appellant and that it would not be unduly harsh for her to remain in the UK without him: [57]-[63].

8. The judge did not accept that there were very compelling circumstances which outweighed the public interest in the appellant's deportation: [64]-[68]. The appeal was dismissed accordingly.

The Appeal to the Upper Tribunal

9. There are said to be three grounds of appeal against the judge's decision: that the judge made irrational findings; that she misdirected herself in law; and that she failed to consider Article 8 ECHR.

10. In developing these points in his skeleton argument and his lengthy oral submissions, I understood Mr Sultan to contend as follows:

Ground One

(i) The judge had made positive findings under s72 (regarding danger to the community) and had erred in concluding thereafter that the appeal fell to be dismissed.

(ii) The judge had merely assumed – without any evidential foundation – that the appellant had profited from his offending.

(iii) The judge had reached self-contradictory findings in concluding that the appellant would have no family support in Nigeria and then that there would not be very significant obstacles to re-integration.

(iv) The judge had failed to consider matters which militated in the appellant's favour, including his positive conduct in prison.

Ground Two

(i) The judge had failed to consider SR's particular circumstances in deciding whether it would be unduly harsh for her to relocate to Nigeria.

Ground Three

(i) The judge had failed to consider Article 8 ECHR.

11. I did not need to call on Mr Jarvis to respond to Mr Sultan's submissions. I was able to indicate at the hearing that I would find there to be no legal error in the judge's decision, and that it would stand.

Analysis

12. The judge's decision is logically structured and carefully reasoned. I find that her decision contains no legal error, for the following reasons.

13. Mr Sultan maintained that the judge had made contradictory findings but there is no such contradiction. As I understand the first point in the grounds, it was contended that the judge's finding that the appellant did not represent a danger to the community of the United Kingdom was determinative of the appeal in the appellant's favour, and that the judge erred in concluding otherwise. But that was a finding made in relation to s72 of the 2002 Act and the judge understood that her consideration of whether the appellant's deportation was contrary to Article 8 ECHR was to be undertaken within the statutory framework in Part 5A of the 2002 Act, as explained in NA (Pakistan) v SSHD [2016] EWCA Civ 662; [2017] 1 WLR 207 and a host of other authorities. The fact that a foreign criminal does not represent a danger of the community of the United Kingdom has never, outside the EEA context, been determinative of such an appeal.

14. Another contradiction which was said to exist by Mr Sultan was between the judge's finding that the appellant would have no family support in Nigeria and the later finding that there would not be very significant obstacles to his re-integration. There is no contradiction here. The judge cited SSHD v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152 at [53] of her decision. Whilst she understood and accepted that the appellant would have some difficulty in returning to Nigeria, she did not accept that the difficulty would reach the threshold considered by Sales LJ (as he then was) in Kamara. In reaching that conclusion, the judge was clearly cognisant of the fact that the appellant had been in the UK for many years and that he would have difficulty in re-integrating into Nigeria. She simply concluded, as she was entitled to, that the difficulties would not be very significant.

15. Mr Sultan also sought to contend that the judge had contradicted herself in finding, at [46], that the appellant was socially and culturally integrated into the United Kingdom and then, at [54]-[55], that there were no very significant obstacles to his re-integration to Nigeria. The point was somewhat difficult to follow, with respect to Mr Sultan, but there is obviously no merit in it. Even if the appellant is integrated into this country, he might not encounter very significant obstacles to his reintegration into the country of his nationality. The judge gave perfectly logical and sustainable reasons for reaching that conclusion and, as I have noted above, she did so with the correct threshold firmly in mind.

16. The point which I have summarised at [10](ii) above did not feature in Mr Sultan's oral submissions and can be disposed of shortly. The judge did not merely assume that the appellant had made financial gain from his offences. She took that conclusion from what had been said by the sentencing judge and she obviously did not fall into legal error by doing so.

17. The judge did not fail to consider matters which militated in the appellant's favour. She was plainly aware that he has continued his education after prison [48]; that he has been working as an event manager [49]; that he is active with his local church [50]; and that the index offence was his only offence [51]. There is no reason to think that the judge lost sight of these facts in any part of the detailed analysis she conducted.

18. Mr Sultan sought to dedicate some time in his oral submissions to the circumstances of SR and the judge's consideration of this relationship. He sought to read extensively from what had been said by Lord Carnwath in KO (Nigeria) v SSHD [2018] UKSC 53; [2018] 1 WLR 5273 and by Underhill LJ in HA (Iraq) v SSHD [2020 EWCA Civ 1176 but there is nothing in the judge's decision which suggests that she misunderstood the test of undue harshness.

19. Nor is there any reason to think that the judge left relevant matters out of account in concluding that the appellant's deportation would not be unduly harsh on SR. She was demonstrably aware of the fact that SR is British; that her family live in the UK; and that she has a job, nursing, which she enjoys: [58]. The judge considered the medical evidence which had been placed before her and the availability of

relevant medication in Nigeria: [59]-[60]. Earlier in her decision, the judge had referred to the basis of the appellant's asylum claim, based as it was on the claimed risk arising from the appellant's refusal to enter into an arranged marriage in favour of marrying SR. The judge noted, in that section of her decision, that SR was of Sierra Leonean heritage and that her mother remains in Sierra Leone. There is no basis for supposing that the judge lost sight of that fact when she concluded, taking all matters into account, that it would not be unduly harsh for SR to relocate to Nigeria.

20. Although I pressed Mr Sultan to identify what he said was wrong in law with the judge's assessment of undue harshness, he failed to identify anything which could properly be labelled as such. He reiterated that SR is a nurse who is settled in this country and that she and the appellant have nothing in Nigeria. He submitted that it would be unduly harsh for them to relocate, or for her to remain in the United Kingdom without him. As I explained to him at the hearing, however, I am unable to consider those submissions for myself until it is established that the decision of the FtT was vitiated by legal error. Nothing in Mr Sultan's written or oral submissions began to establish an error on the bases set out in grounds one and two. The judge clearly took all relevant matters into account. She clearly applied the tests set out in s117C and considered in the authorities. And she clearly reached sustainable conclusions on the statutory exceptions to deportation.

21. The judge considered whether there were very compelling circumstances such that the public interest in the appellant's deportation as a foreign criminal was outweighed by his particular circumstances. As I understood him, Mr Sultan submitted in ground three that this was to adopt a legally erroneous approach because the judge should have considered Article 8 ECHR outside the framework provided by Part 5A of the 2002 Act. It is the submission, and not the judge's approach which is wrong in law. It has been clear since at least NA (Pakistan) that the statutory structure is a complete code in the sense that the entirety of the proportionality assessment required by Article 8 ECHR can and must be conducted within it: NA (Pakistan) refers at [35]-[36], the ongoing correctness and application of which was underlined in HA (Iraq), at [27]. This was evidently the approach adopted by the judge and it was correct in law. As with the submissions Mr Sultan made under grounds one and two, his argument under this ground amounted to nothing more than an attempt to re-argue the case on its merits. He failed by some margin to establish – or even to identify – a legal error on the part of the judge.

22. I should make reference to one further matter. There was a request at [20] of the skeleton argument to admit evidence which was not before the First-tier Tribunal. Mr Sultan made no reference to this request in his oral submissions. Had he done so, I would have refused the application. The submission made at [20] of the skeleton is made pursuant to the wrong provision in the UT Rules. Mr Sultan cited rule 15(2)(a)(ii) of those Rules, whereas the relevant rule is obviously rule 15(2A). Be that as it may, the additional evidence did not bear on the question with which I was concerned, of whether the judge erred

materially in law in her decision. In those circumstances, I would have declined to admit the material if I had been pressed to do so.

23. In the circumstances, therefore, the appeal against the judge's decision is dismissed.

Notice of Decision

The appellant's appeal against the decision of the First-tier Tribunal is dismissed and that decision shall stand.

The anonymity direction made by the FtT is discharged. The protection aspect of the appellant's claim is accepted to have fallen away and there is no need for anonymity.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 January 2021