Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01247/2021
UI-2021-001396
PA/51896/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 May 2022	**On 13 July 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ADE AKINOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Adjarho, Solicitor from Chancery CS Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge Swinnerton ("the judge"), dated 1 November 2021 following a hearing on 29 October of that year. By that decision, the judge dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims.

2. The Appellant, a citizen of Nigeria born in 1978, had asserted that he was at risk in Nigeria by virtue of (i) familial connections to the Sango religious community and (ii) mental health conditions and the perception of these by Nigerian society. He also claimed that his mental health conditions and a renal condition were such that his removal would breach Article 3 ECHR and that his removal would breach Article 8 ECHR, given his circumstances and his relationship with his wife.

The decision of the First-tier Tribunal

3. The judge rejected all aspects of the Appellant's case. In summary he found that the Appellant had not been truthful in respect of the religion aspect of his protection claim [16]-[21]; that the Appellant did not suffer from any active mental health conditions [26][28]; that the renal condition was managed and stable [24]; and that the Appellant could go back to Nigeria and be accompanied by his wife, who herself had connections to that country [33].

The grounds of appeal

4. The grounds of appeal raise four issues:

   (a) first, that the judge had misapplied the principles set out in Devaseelan;

   (b) second, that the judge had failed to adequately consider medical evidence;

   (c) third, that the judge had failed to consider whether the Appellant would be at risk in Nigeria because of his mental health condition; and

   (d) fourth, that the judge had erred in his assessment of exceptional circumstances outside the context of the Immigration Rules.

   Permission to appeal was granted on all grounds.

The hearing

5. At the hearing before me, Mr Adjarho relied on the grounds of appeal and briefly expanded thereon. Mr Kotas submitted that there were no errors of law, that the evidence relating to the medical issues and the Appellant's wife was inadequate, and the judge had been entitled to conclude as he did.

6. I announced at the end of the hearing my conclusion that there were no errors of law in the judge's decision. I now give my explanation for that conclusion.

Analysis

7. The ground of appeal relating to the Devaseelan principles was misconceived. It was said that the judge was bound to have taken account of "findings" made by an Upper Tribunal Judge in the context of a permission decision in judicial review proceedings relating to the certification of the Appellant's claim some years ago. It is quite obvious that any observations made by the Upper Tribunal Judge did not constitute "findings" in any way whatsoever. They would at most have amounted to observations as part of the grant of permission which did no more than state that the Appellant had an arguable case in respect of a challenge which itself involved a low threshold. The Upper Tribunal Judge's comments could have had no material bearing at all on the judge's consideration of the evidence. Indeed, the judge would have committed an error if he had taken those comments into account.

8. In respect of the second ground of appeal, and having seen for myself the underlying medical evidence, I agree with Mr Kotas' submission that the evidential base was simply inadequate to come anywhere close to establishing a *prima facie* case in light of AM (Zimbabwe) [2020] Imm AR 203 and other relevant authorities. As the judge noted, there was no medico-legal report and he was entitled to find that the question and answer document from Dr Basheer did not carry any significant weight. Further, the GP notes were in fact adverse to the Appellant's claimed mental health difficulties. The judge was entitled to conclude that the Appellant was not suffering from any significant mental health issues.

9. My conclusion on the second ground of appeal effectively deals with the third, which relies on an application of DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC). It was open to the judge to conclude that the Appellant did not suffer from any significant mental health problems and on the facts of this case no question of any risk from societal violence in Nigeria needed to be addressed.

10. Turning to the Appellant's renal condition, the judge was entitled to conclude that the condition was stable and managed. It was at stage 3 and not at the point of renal failure. On the evidence before the judge the Appellant's case could not conceivably have met the AM Zimbabwe threshold.

11. As to Article 8 and in particular the wife's position, the judge was fully entitled to take account of her absence from the hearing and the fact that she had not provided even a witness statement in support of her husband's appeal. Whether or not her inability to attend the hearing was

down to a medical procedure at the time was beside the point: no explanation to that effect was provided to the judge and the grounds of appeal raise no issues of procedural fairness. There is no suggestion that the Appellant's wife was, or is now, unfit to travel to Nigeria in the foreseeable future. The judge was fully entitled to regard the evidence relating to the wife's circumstances as being extremely thin. It might well have been that she would experience some difficulties in relocating, but on any rational view that could not have met the threshold of unjustifiably harsh consequences.

12. Mr Adjarho's reliance on FCDO travel advice to British citizens takes the Appellant's challenge no further. There may be a potential risk to anyone going to live in Nigeria from a European country, but that comes nowhere near establishing an error of law on the judge's part.

13. Overall, there is clearly no error in the judge's overall assessment of the wife's circumstances.

14. In summary, the judge was entitled to conclude as he did in respect of all material issues.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of errors of law. That decision shall stand.

The appeal to the Upper Tribunal is accordingly dismissed.

No anonymity direction is made.

Signed H Norton-Taylor Date: 24 May 2022

Upper Tribunal Judge Norton-Taylor