



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2024-001652

First-tier Tribunal Nos:  
HU/53998/2023  
LH/00585/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 25<sup>th</sup> of October 2024

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**ADAM AJEWOLE ADEYANJU  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Litigant in Person

For the Respondent: Ms S Simbi, Senior Presenting Officer

**Heard at Birmingham Civil Justice Centre on 14 October 2024**

**DECISION AND REASONS**

1. This is my oral decision which I delivered at the hearing today.

**Introduction**

2. The Appellant appeals with permission against a decision of First-tier Tribunal Judge Anthony (“the Judge”), following a hearing on 15 February 2024. The decision is dated 26 February 2024. On that occasion the

Appellant appeared as a litigant in person and the Secretary of State was not represented.

### **Permission to Appeal**

3. Grounds of appeal against the Judge's decision were drafted by Counsel. Those grounds were submitted to the First-tier Tribunal. The First-tier Tribunal refused permission to appeal. There were then renewed grounds of appeal to the Upper Tribunal, and it appears that the Appellant drafted those renewed grounds himself.
4. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan by way of a decision dated 14 May 2024.
5. In his grant of permission, the learned Judge noted in part as follows:
  - “3. I am satisfied that ground 1 arguably identifies a material error of law.
  4. I consider grounds 2 and 3 are arguable.
  5. Ground 4 appears, on initial consideration, to enjoy less merit than the other grounds. However, I consider it appropriate to grant permission on all four grounds. It will be for the appellant to consider whether he wishes to advance ground 4 at the error of law hearing.”

### **The Hearing Before Me**

6. At the hearing before me today, the Appellant wanted Ms Simbi to make her submissions first. I thought that was a reasonable request and I am grateful to Ms Simbi for agreeing to that suggestion.
7. I then suggested that the Appellant take some time to prepare his responses to Ms Simbi's submissions and so I adjourned the matter to give him time to do that.
8. On his return and some way into his submissions, the Appellant was reading out the grounds of appeal drafted by Counsel, which I had already read. He was referring to case law and reading out chunks of judgments. I did not think that it was appropriate for him to have to do that and to go through the trouble of doing so. But the Appellant had the opportunity to say whatever he wanted.
9. Ms Simbi in her submissions had said as follows. Firstly, that although there are a number of errors, the Respondent submitted that they were not material, and they did not assist the Appellant. The Judge was referring to satisfaction of the Rules but that was a material error of law because this appeal was based on paragraph 276ADE in respect of private life and the alternative on Article 8. It was not for the Judge to make a definition of partner for the purpose of Appendix FM. In any event it was not in the refusal letter, the Judge was erroneously putting herself forward as a primary decision maker. Ms Simbi said that notwithstanding those

errors, there were adequate findings in respect of paragraph 276ADE. There were no significant obstacles to reintegration for the relationship to continue outside of the United Kingdom.

10. Ms Simbi referred me to various parts of the Judge's decision. She also highlighted that the application was made in May 2022 but as the Judge noted in paragraph 22 of her decision, the relationship had only commenced in October 2022. Therefore, the Appellant only started living with his partner in October 2022. That was after the application had been made. Ms Simbi said that paragraphs 21 to 30 therefore, where the Judge became the primary decision maker, for which consent had not been provided by the Secretary of State for new matters to be considered, was an error of law. She submitted that this was not material because in any event the Judge correctly dismissed the matter on paragraph 276ADE and Article 8 grounds.
11. After granting a period of adjournment for the Appellant to reflect on those submissions, I then heard from him.
12. The Appellant said in summary that his relationship with his partner was such that they had been together since October 2022. His partner had attended the hearing before the Judge and a witness statement had been provided. Oral evidence was provided. The Judge thought it was a genuine and subsisting relationship. He said there was a previous error of law.
13. The Appellant read out certain parts of the grounds of appeal with reference to case law. For example, he referred to *Secretary of State for the Home Department v Maheshwaran* [2002] EWCA Civ 173. He said it was grossly unfair and led to injustice. He referred to other parts of case law. He said the previous Judge did not give him an opportunity to address the refusal and how he could relocate to Nigeria. He said his partner had never been to Africa, that she was living here.
14. The Judge did not give an option to say in relation to when he, the Appellant, left Nigeria at a young age. He referred to his mother and said his father was killed in 2002 from a gunshot, in relation to rival political opponents. The Appellant said that luckily for him, he was in a boarding school, and he was not in the vicinity, and he was shielded from what was going on. His mother sent him to the United Kingdom to start to study and the position was going back to Nigeria will mean it will be mentally draining and a huge punishment on his life.
15. The Appellant said he had paid taxes, and his life has been here. It had caused significant stress in terms of the emotional and financial wellbeing. He is unrepresented. He said no one else can tell the story better than he can. He said the relationship had begun in October 2022. It is now October 2024 and therefore the two years' criterion are met. He referred to Appendix FM and he then read out quite a lot of the grounds from his iPad. He referred to the *Surendran* guidelines, with some ability, if I may

say so. He said the emotional toll was significant, they had lost a baby in February 2024.

16. I invited the Appellant to consider whether he understood that the Judge was assessing whether he should be permitted to remain in the UK or return to Nigeria and why in those circumstances the burden of proof should not continue to apply on him to set out why he was not able to return to Nigeria and/or for him to go with his partner to Estonia. His submission was it was for the Judge to have asked about these things.
17. Ms Simbi said she had no submissions to make in reply.

### **Decision and Analysis**

18. In assessing the submissions and the grounds of appeal, I shall summarise both the original grounds of appeal and the renewed grounds of appeal. The first set of grounds of appeal were the had been an erroneous consideration of Appendix FM and that was a failure to consider the evidence. Secondly, there was procedural unfairness, and thirdly there was a failure to consider material matters in respect of paragraph EX.1 and Appendix FM.
19. The renewed grounds in summary state as follows. Firstly, there was erroneous consideration of the financial requirements, a failure to consider the evidence. Ground 2 contends that there was procedural unfairness. Ground 3 contends there was a failure to consider material matters. Ground 4 contends that there was inadequate self-direction on the law and personal circumstances and additional evidence. I will take each in turn.
20. Ground 1 contends that there was an erroneous consideration of the financial requirements. It is said the Judge erred in the assessment of financial requirements under Appendix FM by failing to recognise that the entirety of the lawfully derived income was from employment, and it was therefore wrong to say that the financial requirement was not met. This ground can be appropriately dealt with speedily because Ms Simbi is entirely right, Appendix FM was not before the Judge. Therefore, Appendix FM did not need to be considered. Although this is an error of law it is not material because it makes no difference to the outcome. In any event, this was a new matter for which the Respondent had not given consent for consideration.
21. Ground 2 contends that it was procedurally unfair to follow and to address the exception under paragraph EX.1 of Appendix FM. Again, there is no material error of law because Appendix FM was not a relevant consideration for the Judge. In any event, the Secretary of State had not given consent for a new matter to be considered. Additionally, it is obvious and demonstrably clear that the burden of proof remained on the Appellant to explain why he could not return to Nigeria and/or why his partner could not live in Nigeria, or why the couple could not live in

Estonia. It is too late to raise this after the hearing. The burden of proof remained on the Appellant.

22. Ground 3 contends that there was a failure to consider material matters and that included emotional distress from the loss of the baby, the financial and mental strain of the legal proceedings, and the partner's studies and shared life in the UK. There is also a reference to the death of the Appellant's father in 2012. In my judgment the Judge adequately dealt with these matters, and they are set out within the decision including where the Judge said in her decision at paragraph 6 that she has considered the witness statement, and she had set out why the Appellant did not wish to return to Nigeria. The Judge had considered the partner's (Johanna K) witness statement and the impact that this will have upon them. The Judge did not need to set out every single line of witness statement and every part of the oral evidence. In my judgment the written and oral evidence was adequately considered.
23. I express my condolences to the Appellant for the loss of his father and the loss of the baby. I appreciate it must be very difficult for him.
24. Ground 4 contends that there was inadequate self-direction of law in respect of Article 8 ECHR. This is not itemised specifically but in my judgment the Judge fully and accurately dealt with Article 8 ECHR both in terms of law and the factual matrix at paragraphs 21 to 30 of the decision. The Judge's decision is extensive and detailed in respect of Article 8 ECHR and the law is correctly cited and applied by the Judge.
25. The next subheading is in respect of the Appellant's grounds relating to personal circumstances. Namely that the loss of losing a baby was overwhelming and 'casting a shadow of grief' over their lives and 'intensifying the financial and mental strain of the legal proceedings'. I do not doubt, and I am sad to read, about the loss of the Appellant and his partner's baby but the Judge took adequate consideration of these matters. Ultimately the test for succeeding under paragraph 27(6)ADE and/or Article 8 is an exacting one which needs to be met. It was not met. There were adequate reasons provided by the Judge why the test was not met.
26. Then there is a further subheading of 'additional evidence'. It said that since the initial decision the Appellant and his partner have gathered additional evidence including a tenancy agreement to support their case and it is contended that it presents a complete picture in relation to the validity of the appeal. I reject this ground of appeal because it is not an error of law for the Judge to fail to take into account evidence which was not before the Judge at first instance. Therefore, no error of law is identified in this ground either.
27. There is also a subheading with reference to the case of *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11 and other case law but the Judge in my judgment completely, fully and correctly

applied the law and also the facts to the assessment of paragraph 276ADE and Article 8 ECHR.

28. Therefore, despite the helpful and detailed submissions by the Appellant today with clear reference to case law and fact, I have to remind myself that the task which I have is to consider whether there is a material error of law for the purposes of *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.
29. Even though I might not agree with the decision of the First-tier Tribunal Judge, the test for me to consider is whether there is an identifiable material error of law in the Judge's decision. The Court of Appeal's decision in *Volpi v Volpi* [2022] EWCA Civ 464 makes very clear that I must hesitate before I seek to substitute my own decision. A hearing at first instance is not a dress rehearsal, it is the hearing. As difficult as the decision appears to be to for Appellant, I must ensure that I do not dilute the test which has to be applied in identifying a material error of law.
30. In my judgment no material error of law is identified despite the assistance of the Appellant in advancing his case. The written grounds and the oral submissions identify mere disagreement with the Judge's decision and seek to re-argue matters but that is not sufficient for me to find that there is a material error of law in the Judge's decision.

### **Notice of decision**

31. The First-tier Tribunal's decision does not contain a material error of law.
32. Therefore, the decision of the First-tier Tribunal which had dismissed the appeal stands.

**Abid Mahmood**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2024**

**14 October**