Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02368/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 September 2014	**On 17 September 2014**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR SI
(Anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Okunowu a solicitor from Toltops Solicitors
For the Respondent: Mr I Jarvis a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 6 October 1981. He has been given permission to appeal the determination of a panel consisting of First-Tier Tribunal Judge Mitchell ("the FTTJ") and non-legal member Ms C St Clair ("together "the panel") who dismissed his appeal against the respondent's decision of 8 November 2013 to make a deportation order against him under

section 3(5)(a) of the Immigration Act 1971 on the basis that his deportation was conducive to the public good and to remove him to Nigeria.

2. The appellant has a lengthy immigration history which is set out in the determination. On 22 April 2013, at Southwark Crown Court, he was convicted of the offence of possession and control of a false identity document with intent. This was a false passport used in connection with a sham marriage. He was sentenced to 15 months imprisonment.

3. The appellant appealed against the respondent's decision and his appeal came before the panel on 3 June 2014. Neither he nor his partner were present at the hearing. Mr Okunowu attended and applied for an adjournment. The reasons for the application, the evidence in support, the assessment of this and the decision to refuse an adjournment are set out in paragraphs 1 to 10 of the determination.

4. The appellant had been suffering from schizophrenia and receiving appropriate medication since at least August 2013. In an email sent to his solicitors just after 4pm on 2nd June the appellant's partner said; "Good day Sir. Tried calling but unable to reach you. Just want to inform you that Mr SI is very unwell and is unlikely to make it to the court hearing tomorrow, 3rd June. He has been very ill this past week since his medication was changed (reduced) and by the weekend became very unsettled. This morning I had to call in for emergency and took him to his GP and he has been seen to. I would keep you updated of his progress. Please find attached a copy of the sick note (sick certificate) from his doctor if ok. I would try to drop off the original copy at your Woolwich office later today if I am able to find somebody to look after him temporarily. Please bear with me. Thank you". The sick note from the appellant's GP dated 2 June 2014 was on a standard form of "statement of fitness for work for social security or statutory sick pay". After various alternatives had been deleted it stated that he was assessed on 2 June 2014 and because he was suffering from schizophrenia he was "not fit for work" which would be the case for three months.

5. Having refused an adjournment the FTTJ set out the issues under appeal, the burden and standard of proof, the appellant's and the respondent's cases and the findings of credibility and fact before dismissing both the appeal against the deportation order and the appeal on Article 8 human rights grounds.

6. The appellant applied for and was granted permission to appeal arguing that the panel had erred in law; firstly, by failing to deal with the question of the revocation of the appellant's Residence card. Secondly, by denying the appellant a fair hearing because of the refusal of an adjournment. Thirdly, by failing properly to assess whether the appellant would be able to access appropriate medical

treatment in Nigeria. Fourthly and finally, by failing properly to assess the appellant's exceptional circumstances.

7. At the beginning of the hearing Mr Okunowu produced the original of a marriage certificate showing that the appellant had married his partner on 30 August 2014. He submitted that it was an error of law for the panel not to grant an adjournment. The appellant's health had deteriorated only very shortly before the hearing. He said that after the adjournment was refused he remained in the hearing room to hear what was said but did not make any submissions. In reply to my question, he said that no medical or psychiatric evidence had been applied for or obtained since the hearing before the panel. There was no such evidence to show the appellant's state of health at the time of the hearing or at any time since then. He also confirmed that the appellant's bundle before the panel had been submitted with a letter from his firm dated 28 May 2014 and consisted of an index, chronology and witness statements from the appellant and his partner. In the course of searching through his file of papers in order to tell me what had been before the panel Mr Okunowu discovered a psychiatric report dated 17 April 2014 from the South London and Maudsley Hospital. However, he could find no evidence that this had ever been sent to the Tribunal or that it had been before the panel. He accepted that it had not. He said that there was other evidence before the panel which demonstrated that the appellant suffered from mental ill-health. I was asked to find that the panel erred in law, to set aside the decision and to order a fresh hearing in the First-Tier Tribunal.

8. Mr Okunowu informed me that the appellant no longer pursued the ground of appeal which alleged that the appellant still had a Residence Card which had not been revoked.

9. Mr Jarvis submitted that the main point in the appeal was the refusal of an adjournment. The appellant had not shown that this would have made any difference. The email from the appellant's partner did not show that she could not have attended the hearing. There was no post decision medical evidence to show the state of the appellant's health at the time of the hearing. The GP said no more than that he was not fit for work, which had been the case probably for the preceding two years. There had been no application for a short adjournment in order to obtain further evidence as to the appellant's state of health. The marriage certificate showed that the appellant's partner, now his wife, was a State Registered Nurse. There was no evidence from her as to the appellant's mental health.

10. There was clear evidence that the Residence Card had been revoked and no evidence that it was still in force. The panel could not be criticised if the appellant's representative declined to take any further part in the proceedings. The panel did consider all the evidence including the witness statements from the appellant and his partner. The appellant could not rely on a psychiatric report

which had never been before the panel. There was no evidence from the sham "wife" in relation to the marriage which led to the appellant's conviction. The appellant and his partner relied on their witness statements which were before the panel and there was nothing to indicate that they would have given any further evidence had they been present at the hearing before the panel. I was asked to find that there were no errors of law and to dismiss the appeal.

11. In his reply Mr Okunowu argued that there was no proper assessment as to whether the appellant could have access to the medical treatment he required in Nigeria.

12. I reserved my determination.

13. As appears from paragraph 8 of the determination the panel accepted that the appellant suffered from mental ill-health, having been diagnosed with schizophrenia. This had been known for a considerable time and he appeared to have been receiving appropriate medication since about August 2013. I note that the respondent's bundle includes a lengthy report from the Mental Health Inreach Team at Wandsworth prison covering events and observations for a period which appears to end in July 2013 together with a note of medication and an assessment of risk factors. Whilst at paragraph 77 the FTTJ refers to this as a report dated 6 September 2013 it is not clear whether this is the date of the report or the date on which it was sent to the respondent.

14. Whilst it is alleged that the appellant's mental health had deteriorated only shortly prior to the hearing before the panel, it was said because of a change in his medication, the panel had no evidence of the state of his mental health prior to that since at least about July/August/September 2013. The only evidence of the claimed deterioration was in the email from his partner and the medical certificate from his GP. As the panel pointed out the standard form certificate from the GP was uninformative and unhelpful. Whilst it revealed what was known already, that the appellant was suffering from schizophrenia, it said nothing about any change in his medication or deterioration in his condition. It would be reasonable to expect that the appellant's GP would have been aware of any variations in the appellant's mental health and his medication either from his visits to the surgery or reports from other medical sources.

15. The panel make the valid point that the appellant was well enough to sign his witness statement on 27 May 2014. Whilst I accept that the appellant's partner said in her email that she needed to find somebody to look after the appellant temporarily there was no clear evidence either that she had not been able to do so or that she could not have left him whilst she attended the hearing.

16. It is in my judgement significant that since the hearing before the panel the appellant has produced no medical evidence to show the state of his mental health either at the date of the hearing or since. I do not accept that the appellant "dismissed" his representative, Mr Okunowu, as is alleged in the grounds of appeal. I accept that both representatives indicated that they were ready to proceed, as stated in paragraph 16 but that oral submissions were made only by the respondent's representatives. The record of proceedings states that Mr Okunowu did not want to make any representations.

17. The first ground of appeal, relating to the revocation of the appellant's Residence card has fallen away. The appellant no longer relies on it. I find no merit in the third ground, that the panel erred in law by failing properly to assess whether the appellant would be able to access appropriate medical treatment in Nigeria. In paragraph 113 the FTTJ said that there appeared to be adequate medical facilities and medication available to the appellant in Nigeria. This was a conclusion open to the panel on the basis of the evidence referred to by the respondent in the refusal letter as to the availability of medical and psychiatric treatment in Nigeria. There has been no evidence from the appellant which might point towards a different conclusion. Similarly, I can find no merit in the fourth ground that the panel failed properly to assess the appellant's exceptional circumstances. The ground alleges that he has no family to look after him, presumably in Nigeria, which flies in the face of the conclusion in paragraph 124 that he has all his family in Nigeria. The whole tenor of the findings and reasoning in paragraphs 67 to 142 lead inexorably to the conclusion that the appellant has not shown that there are exceptional circumstances.

18. I find that the appellant has failed to show that the grant of an adjournment would have resulted in any different outcome. Those representing the appellant had submitted all the evidence on which he intended to rely including witness statements from him and his partner, which the panel took into account. It has not been suggested that there was any further evidence, including oral evidence, which would have made any difference.

19. The panel made an anonymity direction which I continue in force.

20. I find that there is no error of law and I uphold the determination

.....
Signed Date 5 September 2014

Upper Tribunal Judge Moulden