Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/31863/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 October 2015	**On 29 October 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr PAUL BABABUNMI OWODUNNI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Plowright, Counsel (instructed by Perera & Co)
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed to the Upper Tribunal with permission granted by Upper Tribunal Judge Taylor on 23 July 2015 against the decision and reasons of First-tier Tribunal Judge Grice who had dismissed the Appellant's appeal against the refusal on 21 July 2014 of his application for leave to remain pursuant to paragraph 276B of the Immigration Rules and on Article 8 ECHR grounds. The decision and reasons was promulgated on 27 March 2014.

2. The Appellant is a national of Nigeria, born on 16 June 1974. The Appellant claimed to have entered the United Kingdom as a visitor on 16 September 1996, with leave valid for 6 months. He overstayed. On 6 December 2010 he applied for ILR which was refused without right of appeal on 29 January 2011. The Appellant requested reconsideration of the decision, which was finally refused on 4 April 2013. On 14 May 2014 the Appellant was served with form IS.151A notifying him of his liability to detention and removal as an illegal entrant. The Appellant failed to report as required. On 21 July 2014 the Secretary of State refused the application which is the subject of the present appeal. The appeal was certified under section 94 of the Nationality, Immigration and Asylum Act 2002.

3. The judge found that the certification of the appeal was invalid. The judge found against the Appellant on his family life claim, recently raised. The judge went on to find that the Appellant was unable to satisfy the requirements of paragraph 276ADE of the Immigration Rules and that there were no compelling circumstances requiring an Article 8 ECHR assessment outside the Immigration Rules. The judge nevertheless considered the claim on Razgar [2004] UKHL 27 principles in conjunction with sections 117A-D of the Nationality, Immigration and Asylum Act 2002. The judge found that the Appellant had not lost his ties to Nigeria and that his removal was proportionate.

4. Permission to appeal was refused by First-tier Tribunal Judge Chambers but was granted by Upper Tribunal Judge Taylor on the renewed application because she considered that the argument that the judge should have considered the pre 9 July 2012 Immigration Rules in relation to paragraph 276B deserved further exploration.

5. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately in the event that a material error of law was found.

6. The Respondent filed a rule 24 notice in the form of a letter dated 21 August 2015 indicating that the onwards appeal was opposed because the issue had been settled by Singh [2015] EWCA Civ 74.

Submissions

7. Mr Plowright for the Appellant relied on the sole point on which grant of permission to appeal had been granted by Upper Tribunal Judge Taylor. He submitted that on a close reading of Singh [2015] EWCA Civ 74, in particular by reference to the submissions recorded as made on behalf of the Secretary of State at [44] to [47], the issue with which the court had grappled was the application of the post 9 July 2012 Immigration Rules to Article 8 ECHR issues. The facts of the present appeal where the Appellant relied on the “14 year” rule were significantly different. The right approach and the one which the first instance judge should have taken was to consider the application under the “old” rules. She failed to have done so, which was a

material error of law which warranted the setting aside and remaking of the decision.

8. Ms Fijiwala for the Respondent relied on the rule 24 notice. She submitted that there was no error of law and the determination should stand. The "old" rules were inapplicable. In any event the Appellant had produced insufficient evidence to have succeeded under the "old" rules. The onwards appeal should be dismissed.

9. The tribunal indicated at the conclusion of submissions that it found that there was no material error of law and reserved its determination, which now follows.

No error of law finding

10. Despite the attractive way in which it was presented by Mr Plowright, in the tribunal's judgment Singh (above) laid to rest any possibility of arguing that the "old" Immigration Rules applied to post 9 July 2012 decisions, save within the two-month window open between 9 July and 6 September 2012: see [56(2)] of Singh. The principles familiar from Alvi [2012] UKSC 33 and Odelola [2009] UKHL 25 applied, i.e., the Secretary of State's decision must be made in accordance with the Immigration Rules in force at that time. The goal posts can be moved.

11. If that view were for any reason mistaken, from a review of the evidence set out in Judge Grice's decision and reasons, it is plain that the Appellant could not have succeeded under paragraph 276B in any event. The judge gave a number of secure reasons for finding that he was an unreliable witness. The judge did not accept that the Appellant had entered the United Kingdom on visit visa: see [61] of the decision. The judge was unable to establish how long the Appellant had resided in the United Kingdom. The onus was, of course, on the Appellant to prove 14 years' continuous residence. There was no independent documentary evidence deserving of weight produced by the Appellant at the hearing which was capable of showing his continuous presence in the United Kingdom for 14 years prior to 14 May 2014 when enforcement action commenced. Thus no judge properly considering the evidence could have allowed the claim of 14 years' continuous residence. It would thus have made no difference if the "old" rules had been applied, since the result would have been the same. The Appellant's claims had no real merit.

12. The tribunal accordingly finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell