



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12764/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 9<sup>th</sup> October 2017

Decision and Reasons Promulgated  
On 19<sup>th</sup> October 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

JOHNSON OLUWOLE FADIRE  
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim instructed by Chris Alexander Solicitors  
For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the refusal of the Secretary of State to grant him further leave to remain on family and private life grounds. The appellant's claim relied on his relationship with his two daughters, both of whom were over 18 at the date of hearing. The appellant is a Nigerian citizen.

**Background**

2. The appellant came to the United Kingdom in 1983 as a visitor, age 27, and overstayed when his visa ran out. He was deported to Nigeria in 1994. He claims to have re-entered the United Kingdom illegally in 1998, in breach of his deportation

order, and remained without leave. His case is that he came back to resume involvement with his daughters because he was concerned about them.

3. In 2013, the appellant was granted 3 years' discretionary leave to remain on the basis of his relationship with his daughters. On 25 January 2016, before that leave expired, he applied for further discretionary leave, again based on his relationship with his daughters. His younger daughter was still a minor when the application was made, but his elder daughter was then an adult.
4. The appellant could not provide any evidence of his involvement in his younger daughter's life because his relationship with his ex-partner was very strained and he told the respondent that 'it has therefore been difficult for him to be as involved in his younger daughter's life'. The appellant produced no residence or contact order from a United Kingdom Court, and no other evidence of direct access to the younger daughter.
5. On 3 May 2016, by which time both of the appellant's daughters were over 18, the respondent refused to extend his discretionary leave on the basis that the appellant's elder daughter was living independently and there was no credible evidence of any ongoing relationship between him and his younger daughter. The appellant appealed to the First-tier Tribunal.

#### **First-tier Tribunal decision**

6. The appellant told the First-tier Tribunal Judge that he was educated to secondary school level in Nigeria and had worked there in the late 1970s, doing surveying for a construction company. The appellant's 90-year old father still lives in Nigeria: the appellant's case is that he is not in contact with any other family members there.
7. The appellant's evidence was that he had been working in the United Kingdom as a care assistant, and that he had obtained HND and financial qualifications during his time here. He said that he had heard that it was difficult to find employment in Nigeria, but produced no evidence to support that assertion.
8. The appellant's elder daughter gave evidence at the hearing. She is at Birmingham City University, and the appellant helps to support her financially there. In her witness statement, the elder daughter said this:-

- "3. I am currently studying accounting at Birmingham City University.
4. I see him regularly and he has always been supporting me financially.
5. My dad will also be supporting me to fund my Master's once I graduate.
6. I love my father very much and I want him to stay in the United Kingdom. As he hold [sic] a very important position in my life. It would be devastating for me should he not be allowed to remain in this country as I would not be able to see him regularly. He has always been there for me both physically and mentally since I was small. He has always given me every support any father would give

his child. He has financially supported throughout my studies and his support has been invaluable.

7. This is a crucial time for me and we will need his ongoing support.
8. For this reason I beg the judge to let our father stay in the United Kingdom.”
9. The appellant produced bank evidence of regular payments to his elder daughter to support her in her University studies. In oral evidence, the elder daughter said that the appellant funded her University accommodation and topped up her student loan, and that she regarded him as a role model. Her evidence was that they were very close. She had also written a letter of support, which she asked to be treated as coming from both sisters. If the appellant was returned to Nigeria, she would be reluctant to visit him there, as ‘it is not a stable place’ and although she would continue communication with the appellant, it would not be the same as having him in the United Kingdom.
10. The evidence concerning the appellant’s relationship with his younger daughter is much weaker. The appellant’s former partner and his younger daughter refused to provide any witness statement, oral evidence, or medical evidence to support the appeal. There was no letter from the younger daughter and the appellant’s evidence was that he did not see her much. The elder daughter explained in cross-examination that her sister was aware of today’s hearing but was unable to attend because she was in the middle of examinations: there was no direct confirmation of that from the younger daughter or her mother. The elder daughter said that from the money which she received from her father, he sometimes told her to pass some on to her younger sister. The elder daughter said in her evidence that she was unsure how often the appellant saw her sister but that she “thought that they spoke once in a while”.
11. The entirety of the First-tier Tribunal’s reasoning is contained in 4 paragraphs at [35]-[39]:

“35. I find that the Respondent was right to conclude that the Appellant did not meet the requirements of the Immigration Rules through the parent route. He has a good relationship with his elder daughter but she is over 18 and lives independently. He was unable to show any relationship with his younger daughter and his explanation for the difficulties in getting documentation would not explain why she did not write a letter of support, which would have required minimal effort. He does not qualify, therefore, under the parent route.

36. I find that there are no special elements of dependency beyond normal emotional ties with his elder daughter.

37. I find that removal from the United Kingdom would not be in breach of paragraph 276ADE of the Immigration Rules as the only route which applies to him under that provision is that there would be very significant obstacles to his integration into Nigeria. I find that there would not be such obstacles. He is familiar with Nigeria, has previously worked and studied there, and has the benefit of the qualifications he obtained while in the United Kingdom.

38. I go on to consider whether removal from the United Kingdom would constitute an interference with his right to a private and family life under Article 8. I find that it would be a breach of this right. I must then consider whether the interruption with this right is proportionate, taking into account the respondent's legitimate interest to maintain immigration controls. I find that it would be proportionate to remove the appellant, as he would be able to maintain the relationship with his children from Nigeria and carry on his private and family life in Nigeria."

### Upper Tribunal appeal

12. The appellant appealed to the Upper Tribunal, arguing that the First-tier Tribunal Judge's reasoning was inadequate and the Article 8 ECHR assessment flawed thereby. The grounds of appeal challenged the finding of fact that the elder daughter was not *Kugathas* dependent on the appellant, arguing that the finding at He relied on *MK v Secretary of State for the Home Department* (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC). Permission to appeal was granted on that basis.

### Rule 24 Reply

13. The respondent in her Rule 24 reply says this:

"...3. The findings have to be read in the context of the evidence presented and it is submitted that the basis for the determination has been clearly set out in that the detail in the evidence was insufficient to establish family life as the eldest daughter was living independently and there was insufficient evidence (on the evidence presented) to establish family life with the youngest daughter, bearing in mind the limited level of contact."

14. That is the basis on which the appeal came before me in the Upper Tribunal.

### Discussion

15. I had the benefit of oral submissions from Mr Karim for the appellant, and Mr Melvin for the respondent. I have had regard to all of the material and arguments before me. I accept that it is not necessary for a First-tier Tribunal Judge to address every argument or every factor which weighed in their decision. The correct approach to questions of fact remains that set out in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.

16. As regards reasons generally, I have had regard to the guidance of the Upper Tribunal in *MK* (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), summarised in the judicial headnote thus:

"(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.

(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

17. It is not always necessary for there to be extensive reasons, in a plain case, but the reasons given must always be adequate. I am guided by the recent decision of the Court of Appeal in *AS (Iran) v The Secretary of State for the Home Department* [2017] EWCA Civ 1539 at [26] in the judgment of Lord Justice Irwin, with whom Lord Justice Moylan and Lady Justice Rafferty agreed:

“26. In approaching criticism of reasons given by a First-tier Tribunal, the Respondent correctly reminds us to avoid a requirement of perfection. As Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded. In respect of each of these grounds of complaint, the Secretary of State submits that perfectly acceptable reasoning was set out in the First-tier Tribunal decision.”

18. In this appeal, however, there is no proper reasoning for the Judge’s rejection of the claimed *Kugathas* dependency between the elder daughter and the appellant. I do not find myself able to assume, on the evidence before the First-tier Tribunal, that the Judge properly considered the evidence about the support received and dependency of the elder daughter on her father. On the contrary, having regard to that evidence and in particular given the previous grant of leave to remain by reason of the appellant’s relationship with both his daughters while they were not yet adults, a *Kugathas* analysis of the evidence relating to the elder daughter was essential and the failure properly to reason that part of the First-tier Tribunal’s decision is a material error of law.
19. I therefore set aside the First-tier Tribunal decision, with no finding of fact or credibility to be preserved, and remit the appeal to the First-tier Tribunal for hearing afresh.

## DECISION

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: *Judith A J C Gleeson*  
Upper Tribunal Judge Gleeson

Dated: 18 October 2017