Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07731/2018**

THE IMMIGRATION ACTS

Heard at Field House
On 14 February 2019

Decision Promulgated
On 20 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SAMUEL OLUWASEUN OLAYIWOLA
(No Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs H Gore (counsel) instructed by the appellant
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lucas promulgated on 26 November 2018, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 11 November 1994 and is a national of Nigeria. On 10 February 2018 the Secretary of State refused the Appellant's application for leave to remain in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lucas ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 27 December 2018 Judge Hollingworth gave permission to appeal stating

> It is arguable that an insufficient analysis has been set out of the application of the criteria pursuant to section 117. It is arguable that insufficient weight has been attached by the Judge to the age of the appellant when the appellant was brought to the United Kingdom or arrived in the United Kingdom. It is arguable that a full analysis was required in relation to the question of the engagement of article 8, the extent to which the immigration rules are not met if that was so and the totality of the factors falling for consideration in relation to the proportionality exercise.

The Hearing

5. For the appellant, Mrs Gore moved the grounds of appeal. She referred me to the appellant's witness statement and reminded me that the appellant's father died when the appellant was a child and that the appellant has no network of family support to return to in the Nigeria. She emphasised that the appellant has no home, no family, no friends & no employment in Nigeria. She told me that the Judge did not make express findings on any of those important factors in the appellant's case. She told me that the Judge has not properly considered the difficulties that the appellant would face on return to Nigeria. She urged me to allow the appeal and set the decision aside.

6. (a) For the respondent, Mr Wilding relied on the respondent's rule 24 response, dated 30 January 2019. He told me that the decision does not contain errors of law. He told me that the Judge found that returning the appellant to Nigeria is not a disproportionate interference with his article 8 private life, and that was a finding well within the range of reasonable findings available to the Judge.

(b) Mr Wilding told me that [19] of the decision might be brief, but it contains a succinct explanation of the factors which led the Judge to his

decision. He urged me to dismiss the appeal and allow the decision to stand.

The Facts

7. Parties agents agree that there is no challenge to the appellant's credibility. The appellant's witness statement dated 29 October 2018 sets out the following relevant facts of this case.

8. The appellant was 15 when he entered the UK on 17 February 2010. His mother and his stepmother arranged his travel to the UK. He entered the UK in possession of a visit visa which expired on 7 June 2010. He has not had leave to remain in the UK since 7 June 2010.

9. The appellant had secondary and tertiary education in the UK. He has now obtained a BTEC in mechanical engineering. He would like to pursue further studies in engineering and become an engineer. The appellant is a popular, athletic, young man.

10. The appellant's mother is still in the UK and does not have leave to be in the UK. The appellant is 24 years old. He will 25 in November this year. The appellant relies on the generosity of friends and his church because his immigration status means that he cannot work.

The Immigration Rules

11. The appellant is single and has no dependents. He cannot meet the requirements of appendix FM of the immigration rules.

12. Because of a combination of his age and the length of time he has been in the UK, the appellant cannot meet the requirements of paragraph 276 ADE (1)(i) to (v) of the immigration rules.

13. To meet the requirements of paragraph 276 ADE(1)(vi) of the rules the appellant would have to establish that there are very significant obstacles to integration in Nigeria. Understandably, the appellant is reluctant to go to a country where he has no family, no friends, no home and no job; but that is not all there is to this case.

14. The appellant is a healthy, young, intelligent, well-educated and charming man. He would return to Nigeria, where he spent most of his childhood, with education & skills which make him employable. He is a resourceful young man who, at the moment, is living on the charity of others.

15. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It

would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.

16. In the case of Sanambar v SSHD [2017] EWCA Civ 1284 the Court of Appeal said that consideration of the issue of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. Factors such as intelligence, employability and general robustness of character could clearly be relevant to that issue. The broad evaluation required could also include the extent to which a parent's ties might assist with integration.

17. There are no insurmountable obstacles to integration in Nigeria. The appellant's childhood immersed him in Nigerian culture. His time in the UK has given him an education which is the gateway to employment. The fact that he would leave his home & his friends behind is not the test. The appellant cannot meet the immigration rules.

18. GEN 3.2 of appendix FM to the rules requires evidence of unjustifiably harsh consequences on return to Nigeria. There was no evidence before the First-tier Judge which could have brought him to the conclusion that there are any exceptional circumstances in the appellant's case which would make return result in unjustifiably harsh consequences.

Article 8 ECHR

19. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was made clear that (even in a deport case) the Rules are not a complete code. Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality (to be found in Razgar) and said "what has now become the established method of analysis can therefore continue to be followed…"

20. In Agyarko [2017] UKSC 11**,** Lord Reed (when explaining how a court or tribunal should consider whether a refusal of leave to remain was compatible with Article 8) made clear that the critical issue was generally whether, giving due weight to the strength of the public interest in removal, the article 8 claim was sufficiently strong to outweigh it. There is no suggestion of any threshold to be overcome before proportionality can be fully considered.

21. The appellants private life consists of his home, his circle of friends and his desire for further education in the UK.

22. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

Analysis

23. I consider whether there is something in the appellant's private life which displaces the public interest in immigration control. I must remind myself that the appellant's private life was established when his presence in the UK was illegal. S.117B(4) and (5) tells me that I can only give little weight to the appellant's private life.

24. The private life that the appellant has established in the UK can be recreated in Nigeria. He does not have to lose contact with his friends. What he does not have in the UK is employment and further education opportunities. What he can have in Nigeria is employment, a home, & further education opportunities.

25. The only reasonable conclusion to reach is that the respondent's decision is not a disproportionate interference with article 8 private life.

26. A more detailed analysis of the facts in this case brought me to the same conclusion that the Judge reached. The Judge's findings are brief. Even though the Judge does not cite s.117B of the 2002 Act, He clearly (and correctly) considers S.117B in his proportionality assessment.

27. In Green (Article 8 – new rules) [2013] UKUT 254 (IAC) the Tribunal said that

> Giving weight to a factor one way or another is for the fact-finding Tribunal and the assignment of weight will rarely give rise to an error of law.

28. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account,

unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

29. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

30. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

31. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 26 November 2018, stands.

Signed Date 18 February 2019

Deputy Upper Tribunal Judge Doyle