**Upper Tribunal**

**(Immigration and Asylum Chamber)** **Appeal number: HU/00579/2020 (P)**

**THE IMMIGRATION ACTS**

**Decided Under Rule 34**

**On 24 August 2020**

**Decision & Reasons Promulgated**

**On 26 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**ALBA DAVID OGUNSAKIN**

**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS (P)**

1. The appellant, a citizen of Nigeria with date of birth given as 8.3.58, has appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 24.3.20, dismissing his appeal against the decision of the Secretary of State, dated 24.12.19, to refuse his application for leave to remain in the UK on human rights grounds.

2. I have had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal,* to the *UTIAC Presidential Guidance Note No 1 of 2020*, *Arrangements during the COVID-19 pandemic,* and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).

3. Permission was granted on 24.4.20. The Upper Tribunal subsequently issued directions proposing that the error of law issue be decided without a hearing, providing for written submissions. These were sent to the parties by email on 17.6.20, to the addresses provided, warning that on expiry of the deadline the matter would be referred back to an Upper Tribunal Judge, whether or not the parties have complied with the directions. On 6.7.20 the appellant's representatives emailed, confirming receipt of the directions but stating that they had not received a copy of the decision granting permission. This was forwarded to them by response within a few minutes. There has been no further response either within the deadline or in fact at all from either Aminu Aminu Solicitors, the appellant's listed representatives, and no response at all from the Home Office. The matter has, therefore, been referred to me for consideration.

4. I have taken account of any view expressed by the parties as to whether to hold a hearing and the form of such a hearing. In fact, neither party has opposed the error of law issue being resolved on the papers without a hearing. In the circumstances I am satisfied the the parties have each had ample opportunity to make any relevant submissions and conclude that it is consistent with the Tribunal's overriding duty to deal with cases fairly and justly to proceed to determine this appeal on the papers without a hearing.

5. I have carefully considered the decision of the First-tier Tribunal, dismissing the appeal in the light of the grounds of application for permission, the grant of permission, and the original grounds of appeal to the First-tier Tribunal.

6. In the circumstances and for the reasons set out below, I find no error of law in the decision of the First-tier Tribunal.

7. The appellant relied on private and family life in the UK. He arrived in the UK as a student in 2004, with leave subsequently extended to 2010. Since then, he has made three out of time applications for further leave to remain, once in 2015, and twice in 2019, all of which have been refused. It follows that he is an illegal overstayer. He has no partner or child in the UK but relied on private life developed in the UK, to include family life with his second cousin, with whom he lives. His health is deteriorating and he is partially sighted, relying on his

cousin's support. He has a complex eye condition and asserts that treatment would not be accessible to him in Nigeria. With poor eyesight and aged over 60, he fears he would be unlikely to find employment.

8. From [11] of the decision it appears that the appellant's representative at the appeal hearing argued that there were insurmountable obstacles to his return to Nigeria, given the poor standard of health care available in Nigeria and that his cousin would not be able to continue to financially assist him there. It was submitted that the case fell within article 3 ECHR and the appeal should be allowed.

9. As is clear from [12] of the decision, there was nothing within the evidence put before the First-tier Tribunal to demonstrate that, although accommodation and financial support was provided by his cousin, the appellant's relationship with her amounted to more than the normal emotional ties to be expected between adult relatives. It follows that article 8 ECHR could not be engaged in respect of family life.

10. The judge went on to address private life from [13] onwards, pointing out the appellant's unlawful immigration status for over 10 years. At [14] the judge found, for the reasons cogently set out, that he could not meet the requirement of very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules.

11. As the judge noted at [15] of the decision, the main focus of the appeal and the submissions on the appellant's behalf was on article 3 ECHR and the appellant's medical condition. Despite the adoption of the Paposhvili threshold by the Supreme Court in AM (Zimbabwe), [2020] UKSC 17, it is beyond argument that the appellant's condition comes nowhere near the high threshold required for a medical article 3 claim. The judge found at [16] that even though access to healthcare in Nigeria was inferior to that available in the UK, the appellant had not shown that he was in imminent danger of a serious decline in his health on return to Nigeria. The respondent had demonstrated that medical treatment for the appellant's condition was available in Nigeria.

12. The grounds complain that the judge failed to address the proportionality of the refusal decision by applying the R (Razgar) v Secretary of State for the Home Department [2004] UKHKL 27 stepped approach. It is correct that the judge concentrated on article 3 but that was because article 3 was the main focus of the appellant's case. As the judge found that there was no family life sufficient to engage article 8 ECHR, it follows that the appeal would necessarily have failed at the first Razgar test.

13. In relation to private life, the appellant failed to demonstrate that he met the requirements of the Rules to show very significant obstacles to his integration in Nigeria, and adequate reasoning is provided for this conclusion. Even if the judge had gone on to consider private life outside the Rules pursuant to article 8 ECHR, I am satisfied that the appeal would inevitably still have been dismissed. As the judge pointed out, the appellant's immigration status is unlawful. It follows by section 117B of the Nationality, Immigration and Asylum Act 2002 that little weight is to be given to such private life in the proportionality balancing exercise. Given that the appellant could not meet the Rules, it would only be where there were compelling circumstances sufficient, exceptionally, to justify granting leave to remain outside the Rules on the basis that otherwise the decision would be unjustifiably harsh. It would be a rare case where article 8 could succeed on medical grounds where it failed on article 3 grounds; this is not such a rare case. In reality, even taking the appellant's case at its highest, there were insufficient compelling reasons to outweigh the public interest in enforcing immigration control.

14. In VW (Sri Lanka) [2013] EWCA Civ 522 at [12], LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." This is such a case. Although the appellant's case was focused on article 3, the grounds of appeal attempt to challenge the decision on an issue that was not actively addressed because it was not actively pursued. In this regard, I note that the grounds of appeal to the First-tier Tribunal are of a generic and entirely unparticularised type often seen in the Upper Tribunal. Other than a bare pleading of reliance on articles 3 and 8 ECHR, there is no detail of the claim. The appellant's witness statement of 21.2.20 focused on his medical condition and also argued that there were very significant obstacles to integration and that these amounted to exceptional circumstances. Outside of those issues, the statement is virtually silent on any private life circumstances.

15. In the circumstances, whilst I accept that the First-tier Tribunal should have formally addressed the article 8 balancing exercise, on the particular facts of this case there are no factors relied on by the appellant that were not in fact considered and addressed by the First-tier Tribunal Judge in relation to the article 8 family life claim and the very significant obstacles to integration claim in respect of private life. It follows that any error was not material to the outcome of the appeal.

Even if I had found an error and set the decision aside, it is inevitable that it would have been remade by dismissing the appeal.

## Decision

There is no error of law in the decision of the First-tier Tribunal;

The appellant's appeal to the Upper Tribunal is dismissed;

It follows that the decision of the First-tier Tribunal dismissing the appellant's appeal must stand as made.

I make no order for costs.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 24 August 2020

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email**