



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006534
First-tier Tribunal No:
HU/57566/2021
LH/00286/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HENRY WILLIAMS
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, instructed by Paul John & Co Solicitors
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 30 June 2023

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 13 December 1970. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights application for leave to remain on the basis of his private life in the UK under Appendix FM of the immigration rules.

2. The appellant claims to have entered the UK on 15 October 2005 with a visit visa. He submitted an application, on 20 November 2020, for leave to remain on the basis of his private life in the UK. In his solicitors' letter dated 20 October 2020 accompanying his application it was stated on his behalf that he had been continuously resident in the UK since entering on 15 October 2005 and had spent more than half his life here, that he had integrated into society, that he was unable to return to Nigeria and that his removal to Nigeria would breach his Article 8 rights. In a

statement produced subsequently, dated 26 August 2021, the appellant again stressed his strong connections to the UK and stated, in addition, that he was homosexual and as such faced huge discrimination and humiliation in Nigeria where homosexuals were not accepted in society. He stated that he was afraid of returning to Nigeria and had no connections to that country any more. He also submitted his medical records from his GP which confirmed that he suffered from Glaucoma and had had operations in both eyes.

3. The respondent refused the appellant's application and human rights claim in a decision of 20 November 2021, concluding that he had failed to show that there were any very significant obstacles to his integration in Nigeria for the purposes of paragraph 276ADE(1)(vi) of the immigration rules and that there were no exceptional or compelling circumstances justifying a grant of leave outside the immigration rules on wider Article 8 grounds. The respondent noted that the appellant had been invited to make an asylum claim on the grounds of his sexuality but had confirmed that he did not wish to do so. The respondent had regard to the appellant's medical condition but considered that he could access relevant medical treatment in Nigeria and had not provided any evidence to suggest that he was unable to travel.

4. The appellant appealed against that decision to the First-tier Tribunal, producing a further witness statement, dated 11 February 2022, his medical records as previously submitted to the respondent and some letters of support from friends. In his witness statement he again referred to his ties to the UK in terms of the friendships he had made here and his involvement with his church, and stated again that he could not return to Nigeria because he would not be able to keep up with his medical treatment there due to the costs and because he would face discrimination due to his sexuality. He also referred to having siblings and adult children in Nigeria but stated that they would not be able to support him.

5. The appellant's appeal was heard by First-tier Tribunal Judge Richardson on 5 July 2022. The judge considered that the appellant's three adult children would be able to offer him some support in Nigeria and noted that he was vague about their circumstances and it was therefore uncertain if they would be unable to assist him in terms of paying for his medication. The judge considered in any event that the appellant's medical condition did not prevent him from returning to Nigeria and integrating there and that there was no suggestion that his condition supported a claim under Article 3 of the ECHR. The judge accepted that the appellant may face some minor hurdles upon his return to Nigeria but did not find that that would amount to very significant obstacles for the purposes of paragraph 276ADE(1)(vi). The judge found that the respondent's decision was proportionate and did not breach the appellant's Article 8 rights. He accordingly dismissed the appeal, in a decision dated 15 July 2022.

6. The appellant sought permission to appeal against the judge's decision, asserting that the brevity of the decision had given rise to material errors of law. That was for three reasons: firstly, because the judge had failed to give reasons why he rejected the appellant's evidence that he would not receive any support from his adult children in Nigeria and had speculated that they would provide some level of support; secondly because the judge had failed to reason how the appellant's health condition did not prevent him from returning to Nigeria and reintegrating; and thirdly, because the judge had failed to give even a minimum level of reasoning in relation to proportionality under Article 8.

7. Permission was granted in the First-tier Tribunal on 16 August 2022. The respondent did not file a rule 24 response. The matter then came before me at a hearing.

8. At the hearing Ms Gilmour conceded that the judge's decision was materially flawed as he had not addressed the appellant's sexuality at all, whereas that would have been a relevant consideration in relation to the question of very significant obstacles to integration in Nigeria. Both parties agreed that the judge's decision needed to be set aside and the decision re-made *de novo* so that findings of fact could be made in regard to the appellant's sexuality and the impact of that on his human rights. Ms Gilmour stressed that there was no concession by the respondent that the appellant was homosexual, but she agreed that proper findings of fact had to be made in that regard on the basis of the evidence before the First-tier Tribunal.

9. In the circumstances I set aside Judge Richardson's decision. It was agreed that the most appropriate course would be for the case to be remitted to the First-tier Tribunal since there were no preserved findings and this was to be a *de novo* hearing.

Notice of Decision

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Richardson.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 June 2023