IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002512

First-tier Tribunal No: HU/50946/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of October 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

JOHN AKIN OKE
(By his Litigation Friend SARAH SHUNGU)
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, Counsel instructed by Duncan Lewis Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 23 September 2024

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Brannan promulgated on 06 March 2024 ("the decision"). I shall refer to the parties as they were in the First-tier Tribunal for ease of understanding and to avoid confusion.

2. By the decision, the First-tier Tribunal allowed the appellant's human rights appeal against the respondent's decision dated 12 January 2023, to refuse to revoke a Deportation Order in his name. The appellant is a Nigerian national who was convicted on 23 February 2006, at Chelmsford Crown Court for using a false instrument with intent for which he was sentenced to 12 months imprisonment. He was convicted in the identity/alias of 'Peter Temidayo Adigun'. A Deportation Order was signed in his name on 04 May 2006. He was

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deported from the UK on 09 August 2006. It appears the appellant re-entered the UK illegally in breach of the Deportation Order at some point after being deported, and he subsequently submitted an application for an EEA Residence Card as the spouse of an EEA national. His application was submitted in his true identity and it was not therefore linked to his previous records in his alias of Peter Temidayo Adigun. It was therefore not known that he had a previous criminal conviction when his EEA application was being considered.

3. The appellant's immigration history is lengthy and complex. I shall attempt to summarise it here (even though there was no dispute between the parties on the chronology). The appellant was issued with an EEA Residence Card on 26 November 2010. A subsequent application for an EEA Permanent Residence Card was refused on 24 November 2015. On 27 November 2015, a further application for an EEA Permanent Residence Card as the spouse of an EEA national was made. In considering this application the respondent established that the appellant had previously claimed to be Peter Temidayo Adigun, and that he had a criminal record. On 31 March 2017, the appellant was refused the EEA Permanent Residence Card.

4. The appellant then submitted further representations in April 2017. These were refused on the 9th of June 2017. Then on 9 August 2017 the appellant's representatives submitted another application for leave to remain on his behalf. This was rejected and the decision was served on 16 November 2017, whilst the appellant was being held in immigration detention. Removal directions were set for 29 November 2017, although these were cancelled on the grounds that the appellant stated he feared being returned to Nigeria. On 17 December 2017, another application for further leave to remain was made on the appellant's behalf. On 02 January 2018, the appellant was released on immigration bail and on 08 January 2018, he was interviewed in connection with his claim for asylum.

5. On 27 February 2018, it is noted that the appellant submitted another application for leave to remain. The appellant's appeal against the decision to refuse his application for an EEA permanent residence card was dismissed on 21 June 2018. On 24 July 2018, the appellant's protection and human rights claim was refused and certified under section 94 of the NIAA 2002. On 05 November 2018, the appellant submitted a further application and that application was rejected on 05 February 2019. on 12 February 2019 the appellant submitted further representations and these were refused on 03 June 2019. On 06 June 2019, the appellant stated he wished to make a voluntary departure to Nigeria although he was not deemed eligible to be considered under the respondent's Facilitated Return Scheme on the basis that he was present in the UK in breach of a Deportation Order. The appellant then lodged an appeal on 24 June 2019, against the rejection of his further submissions. Removal directions were set for 10 August 2019, although these were deferred due to the outstanding appeal. The appeal was struck out on 14 August 2019. The appellant was granted bail on 25 September 2019. Further representations were submitted again by the appellant's representatives on 21 January 2021. These were refused on the 28th July 2022. On 23 September 2022, the appellant sent a letter before action in relation to pursuing judicial review. The respondent considered the submissions again and rejected these on 12 January 2023. This decision attracted a statutory right of appeal. This appeal relates to the refusal of those submissions.

6. The appellant is noted to be suffering from severe mental illness hence a Litigation Friend was appointed for him. The same

The Grounds

7. The respondent's grounds of appeal to the First-tier Tribunal were as follows:

> "Background
>
> 1. On 23 February 2006 at Chelmsford Crown Court the appellant was convicted of using a false document with intent and was sentenced to 12 months imprisonment.
>
> He was made the subject of a deportation order by virtue of section 32(5) of the UK Borders Act 2007 and on 09 August 2006 he was deported to Nigeria. He re-entered the UK in breach of the deportation order in 2010.
>
> The appellant has raised a human rights appeal on the basis of his family life in the UK and against the refusal to revoke the deportation order. His appeal was allowed by the First Tier Judge Brannan on 06 March 2024, which is the subject of this appeal.
>
> Making a material misdirection of law – very compelling circumstances
>
> 2. It is respectfully submitted that Judge Brannan having established that the appellant does not meet Exceptions 1 and 2 of section 117C, has found that there are very compelling circumstances in his case owing to his family ties, social and cultural integration, and lack of re-offending.
>
> 3. However, there is a lack of substance in Judge Brannan's reasoning in explaining how the appellant's article 8 claim amounts to a 'very strong claim indeed' (as per Hesham Ali v SSHD [2016] UKSC 60 at [38]).
>
> 4. Furthermore, the assessment is not in line with CI (Nigeria) [2019] [39], as other than the emotional bond he has with his partner and children, no other details have been provided regarding his life given that he has been living in the UK unlawfully for a substantial number of years. Judge Brannan has even stated at [40] that there is no evidence of 'social and cultural affiliations' yet has concluded that he is socially and culturally integrated [42].
>
> 5. There has been no proper acknowledgement in the overall proportionality balancing exercise that the appellant re-entered the UK in breach of a deportation order and obtained leave to remain as a family member of an EEA national by deception. The entirety of his residence has been unlawful. An important part of social and cultural integration is being law abiding and respectful of the laws of the land, neither of which the appellant has shown to be.
>
> 6. Furthermore, given the appellant and his partner have been less than truthful witnesses in the evidence regarding the children's birth certificates, it should not be assumed that the appellant would face significant difficulties on return to Nigeria because of

his mental health given the evidence in his application form for Leave to Remain in the UK dated 12 February 2019 where he declared that he had visited Nigeria on 4 separate occasions between 2013 and 2015 during. the currency of his residence document, which was valid from 26/11/2010 – 26/11/2015.

7. It is submitted that in the absence of adequate reasoning or detail to show the depth of the appellant's relationships, given he does not meet exceptions 1 and 2, or evidence of the impact of separation on his family or indeed on the appellant, Judge Brannan has failed to adequately reason how the appellant meets the very high threshold of a very strong article 8 claim amounting to very compelling circumstances, which has not been made out.

8. Permission to appeal is respectfully sought.

9. An oral hearing is requested."

8. Permission to appeal was granted by Deputy Upper Tribunal Judge Murray in the following terms:

"1. The Respondent seeks permission to appeal against the decision of First-tier Tribunal Judge Brannan (the FTTJ). The grounds of appeal assert that the FTTJ erred in failing to adequately reason the conclusion that the Appellant's article 8 claim amounted to a 'very strong claim indeed' and that the reasoning is not in line with CI (Nigeria) [2019] EWCA Civ 2027. The grounds assert that there has been no proper acknowledgement in the overall proportionality balancing exercise that he re-entered the UK in breach of deportation order and obtained leave as a family member of an EEA national by deception. It is further submitted that it should not be assumed that he would face significant difficulties on return to Nigeria because of his mental health given his visits on 4 separate occasions from 2013 to 2015. It is further submitted that there is inadequate reasoning in relation to the depths of his relationships and as he does not meet the requirements of exceptions 1 and 2 the FTTJ has failed to adequately reason how the Appellant meets the very high threshold of very compelling circumstances.

2. The FTTJ correctly addressed himself in relation to the issues and the law. The Appellant had no capacity to conduct litigation the Respondent accepted that he was a seriously ill person because he had a severe depressive disorder with psychotic symptoms. The Respondent also accepted that it was unduly harsh for the Appellant's wife and four children to live in Nigeria. The findings that the Appellant is socially and culturally integrated and that there would be very significant obstacles to his integration are adequately reasoned and take all relevant factors into account. The FTTJ found that it would not be unduly harsh on the Appellant's partner and children if he were to be removed to Nigeria. The FTTJ directed himself correctly in relation to the test for very compelling circumstances. However, although the FTTJ refers to the Appellant's re-entry in breach of a deportation order at para 11, it is arguable that the Appellant's adverse immigration history is not given proper weight in the balancing exercise and inadequate reasons are provided for the conclusion that there are very compelling circumstances relating to his family life in light of the

finding that it would not be unduly harsh on his family for him to be removed."

9. A detailed Rule 24 response was filed by the appellant's representatives drafted by Ms Patyna.

10. That is the basis on which this appeal came before the Upper Tribunal.

Documents

11. I had before me a composite bundle containing all necessary documents. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Preliminary Issue

12. I raised with the parties a preliminary point on whether there was agreement that the permission granted by Judge Murray was limited to the First-tier Tribunal's consideration of 'Very Compelling Circumstances' as per Section 117C(6) of the NIAA 2002. The respondent's grounds are framed challenging the Judge's findings on 'Very Compelling Circumstances' and this noted in the underlined heading of the renewed grounds where the substance of the grounds are concomitant to this at [2] where it is correctly stated that the Judge did not find the appellant succeeded on either Exceptions 1 or 2 under section 117C (4) and (5), and the challenge raised was therefore specific to the Judge's finding in favour of the appellant based on 'Very Compelling Circumstances' arguing that the Judge had made a material misdirection in law here.

13. Mr Parvar wished to argue beyond the premise of the grant of permission. He duly made reference to **Safi and others** **[2018] UKUT 388**. I have in this regard also considered **Secretary of State for the Home Department v Rodriguez; Mandalia and Patel v SSHD** **[2014] EWCA Civ 2**, **Isufaj (PTA decisions/reasons; EEA reg. 37 appeals)** **[2019] UKUT 283 (IAC)**, **TC (PS Compliance "issues based reasoning) Zimbabwe** **[2023] UKUT 164** and **Joseph (permission to appeal requirements)** **[2022] UKUT 217**.

14. Accordingly, although Judge Murray does not specify or make reference to distinguish between the '*Background*' heading in the respondent's grounds contained at section 6.1 of the IAUT1 form, and that which is stated in substance at [2] onwards, it is abundantly clear that she was dealing with the sole ground of challenge pleaded in the grounds before her as was set out by the respondent under the heading "*Making a material misdirection of law – very compelling circumstances".*

15. Therefore, in other words, only one ground was raised, and so Judge Murray considered that ground and proceeded to grant permission on the basis of it being arguable that the First-tier Judge arguably erred in relation to his assessment on that singular issue. The respondent had already noted in her grounds of challenge that the First-tier Judge had established the appellant did not benefit from either of the Exceptions to deportation noting the appeal had been allowed on a finding that there were 'Very Compelling Circumstances'. Consequently, this is what the grounds sought to challenge. There is no ambiguity in what Judge Murray said as being the basis of the grant. Ms Patyna also argued this in the Rule 24 response she drafted for this appeal.

16. I therefore find that what I am considering is the sole ground that was pleaded by the respondent in her grounds of challenge, and on the basis that the appeal was allowed on a finding that the appellant's case involved 'Very Compelling Circumstances', and, importantly, on the basis that the Judge had not found that the appellant was able to show that he came under Exceptions 1 or 2.

Hearing and Submissions

17. Both representatives proceeded to make their submissions which I have taken into account and these are set out in the Record of Proceedings hence need not be repeated here. Mr Parvar relied on the respondent's original grounds upon which he expanded and he also addressed me on Exceptions 1 and 2 as per section 117C of the NIAA 2002. Ms Patyna relied on the Rule 24 response and then expanded on its contents in her submissions. This included reiterating, in the light of Mr Parvar's submissions on Exceptions 1 and 2, that the only real matter in contention was whether the Judge had erred in his assessment of 'Very Compelling Circumstances' in his consideration of section 117C(6).

Discussion and Analysis

18. Turning now to the ground that was pleaded by the respondent, I am unpersuaded that there was any error of law in the First-tier Tribunal's decision for the following reasons.

19. The First-tier Judge sets out the 'background' to the appeal at [8]-[23]. He sets out specifically at [20]-[21] the previous appeal decision and he self-directed in the light of **Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702**, alongside that fact the appellant had used a different identity in the previous appeal. He then identifies the 'issues' that needed resolving at [24]-[28]. He stated at [25] that Exception 1 could not be satisfied although it was "*sensible to consider both exceptions to inform the overall proportionality assessment if this needs to be made in relation to very compelling circumstances*". The 'legal framework' is set out [30] and the Judge then noted also at [30], following agreement with the parties, that "*The Appellant relies on Exception 2 and on very compelling circumstances*". He then considered 'unduly harsh' at [32], properly self-directing here as to his approach in the light of **HA (Iraq) (Respondent) v Secretary of State for the Home Department (Appellant) [2022] UKSC 22**. He then deals with 'Social and Cultural Integration' at [39] with further self-directions citing **CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027**. The Judge then considers 'obstacles to reintegration' at [43]-[44]. Finally, 'Very Compelling Circumstances' is dealt with at [48]-[62].

20. The decision is well structured and the Judge's self-directions are all lawful and correct in terms of the approach he adopted in dealing with the issues identified by the parties, and in applying the law correctly to the facts as they were presented to him. He sets out at [4] the issues in dispute that needed resolving. This included two reviews conducted by the respondent dated 15 June 2023, and a further undated review uploaded onto the HMCTS Case Management System (CCD) on 11 February 2024. The later review stated under the 'Counter Schedule Heading' at (ii) that:

> "The factual matrix of this case is important to note, as the appellant re-entered the UK in breach of a deportation order. The fact that the Appellant remained unlawfully in the UK would not itself undermine his claim to have

> become rehabilitated in regard to criminal conduct. However, it would affect the weight to be afforded to that factor when balancing it against the public interest in deportation."

21. The Judge had this, alongside the first review, before him when deciding this appeal. He was therefore aware of the respondent's latest position on matters, including the respondent's acknowledgment here that the appellant's unlawful stay would not of itself undermine any claim to rehabilitation, yet despite this, Mr Parvar made much about the Judge's findings at [56]. However, the Judge acknowledged here that "*While normally rehabilitation has little weight, this is an unusual case where there is an extended period of consistent non-offending. I find that the Appellant is rehabilitated and this counts in his favour, but does not have significant weight*". This demonstrates the Judge was fully conversant with this and all the other relevant facts arising, and the issue that he was required to address his mind to. Consequently, there are no errors in the Judge's recitation of the appellant's background including his immigration history in the UK. None of this was disputed.

22. On the Judge's findings on 'Very Compelling Circumstances' he properly self-directs again at [48] referring to paragraph 51 of **HA Iraq**. Contrary to Mr Parvar's submissions that the decision was particularly one-sided in favour of the appellant, the Judge considered the arguments in favour of the public interest under a bespoke sub-heading in his decision where he sets these out at [51]-[54]. The Judge then turns his attention to factors arising in favour on the appellant's side which he sets out at [55]-[61], including attaching significant weight to the appellant having lived in the UK for around 20 years which was a long time. He also considered that 18 years had lapsed since the appellant's offence, no further offences had been committed, that he had a partner and two British citizen children, and two older children aged 15 and 17 years. It was therefore in the children's best interests for the family unit in which they had grown up to be preserved. He therefore also attached weight to this factor, as he did to the claim that the appellant would face very significant obstacles to integration in Nigeria owing to his poor state of health. The Judge was aided in this regard, and specifically on the appellant's mental health prognosis, by substantial medical evidence which included, but was not limited to a medico-legal report and a psychiatric report, alongside other medical evidence as listed in the index to the appellant's bundle. Therefore, having correctly directed himself on the relevant applicable law and test, it was then for the Judge to assess the evidence and to reach an informed decision on all the issues arising before him.

23. This was precisely what the Judge did. He undertook a full and careful assessment of all the evidence making findings in the appellant's favour as well as against him. It is important to distinguish between what may appear or be perceived to be a generous decision which may well have been decided differently by another judge, and one which is legally flawed. Ms Patyna argued that the Secretary of State's grounds of appeal were simply a disagreement with the Judge's decision, and that there were no material errors of law in the Judge's decision, despite the respondent attempting to argue that it was legally flawed. I find myself in agreement with Ms Patyna and conclude that this case falls within the first category. The grounds assert that there was an inadequacy of reasoning by the Judge in making his findings. However, in my view that is not the case. Rather, as stated above, the respondent's grounds are little more than an expression of disagreement with the Judge's reasoning. The Judge took

into account a variety of factors which led him to conclude that there were 'Very Compelling Circumstances' mitigating against the appellant's deportation.

24. The grounds are therefore not made out. The Judge's decision is comprehensive, with consideration being given to all relevant issues. The Judge undertook a careful analysis of the evidence and applied the relevant legal provisions. He provided full and cogent reasons for the findings made and he reached a decision which was properly open to him on the basis of the evidence before him, albeit one that may have been made differently by another Judge. The grounds do not identify any material error/s of law in the Judge's decision.

25. In **Volpi & Anor v Volpi [2022] EWCA Civ 464**, Lewison LJ at [2] emphasised the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges:

> *"i). An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*
>
> *ii). The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*
>
> *iii). An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*
>
> *iv). The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*
>
> *v). An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.*
>
> *v). Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."*

26. Accordingly, the Upper Tribunal interferes only with caution in the findings of fact by a First-tier Tribunal which has heard and seen the parties give their evidence and made proper findings of fact. An appellate Court or Tribunal may not interfere with findings unless they are 'plainly wrong' or 'rationally insupportable' as per **Volpi & Anor v Volpi** . That high standard is not reached here. The Secretary of State's appeal must therefore fail.

Notice of Decision

27. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside.

28. The Secretary of State's appeal is dismissed and Judge Brannan's decision to allow the appellant's appeal stands.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

02 October 2024