Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number IA/40413/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25th September 2015

Decision and Reasons Promulgated
On 20th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ADEKANMI OLUWASEUN ADEBOWALE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Babarinde (Legal Representative, Hatten Wyatt Solicitors)
For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Nigeria, having entered illegally in 2003 he made a number of applications to remain lastly on the 31st of May 2011 outside the rules which was refused and on reconsideration the decision was maintained, that was on the 30th of September 2014. The Appellant's appeal to the First-tier Tribunal was heard by First-tier Tribunal Judge Brown on the 26th of January 2015 and the appeal dismissed in a decision promulgated on the 9th of February 2015.

2. The Judge found that the Appellant could not meet the Immigration Rules which had been conceded. In considering article 8 outside the rules the Judge found that the removal of the Appellant to Nigeria would be proportionate in the circumstances.

3. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 20th of February 2015. It was argued that the Judge had made a number of errors, he had described one brother as a sister and that mistake affected the Judge's reasoning. With regard to article 8 the Judge had not considered that the Appellant and his wife had been married since 2008 and relied on Chikwamba to suggest it was not reasonable to expect him to return to Nigeria to re-apply. His wife could not relocate as her health would place her in jeopardy. The First-tier Tribunal rejected the application.

4. The Appellant submitted further grounds to the Upper Tribunal on the 5th of May 2015. The Sponsor made a number of statements about their circumstances that he would struggle if he returned to Nigeria, her health was deteriorating and that she was bordering on the suicidal.

5. Permission was granted as it appeared that it was not conceded that the rules could not be met and that the case was argued under EX.1 of Appendix FM. It was arguable that the Sponsor's deteriorating health could amount to insurmountable obstacles to relocation.

6. In submissions the Appellant's representative relied on the grounds that had been put forward, the Appellant would now meet the provisions of Appendix FM including the financial requirements. For the Home Office reliance was placed on the Refusal Letter and that it had been conceded that the Appellant could not meet the requirement of the rules. The evidence would not have been sufficient to show that the Appellant met the rules. Ekinci and Dela did not assist the Appellant, his presence was unlawful and not simply precarious. All the evidence had been considered.

7. In reply it was argued that EX.1 could be considered. The Appellant just missed the 10 year family route. Medical evidence had been ignored and that went beyond psychiatric evidence, it would affect his wife and she would not be able to get treatment.

8. Having entered the UK illegally and remaining without leave the Judge was wrong to characterise his presence as precarious, it has always been illegal and under section 117 in relation to article 8 would attract little weight. On that point it appears that the Judge was more generous to the Appellant than the facts or the legal framework required.

9. The reliance placed on the report of Dr Pena by the Appellant does not address the limitations of the report. Dated the 15th of June 2012 it was out of date by the time of the hearing by well over a year and there was no support for the more serious concerns raised by the Sponsor about her declining health. It did not support the assertions made about the ability of

the Sponsor to obtain the medication she receives. She remained able to work and was earning a sum which would meet the financial requirements of appendix FM.

10. The Judge clearly referred to insurmountable obstacles, this had been raised in the skeleton argument. It was unfortunate that the Appellant's representative did not refer the Judge to the case of Chen (Appendix FM – Chikwamba - temporary separation - proportionality) IJR [2015] UKUT 00189 (IAC). As that case makes clear, although appendix FM does not cover the situation of a person returning to make an entry clearance application in all cases it is for the Appellant to provide evidence that temporary separation would interfere disproportionately with article 8 rights and simply relying on Chikwamba is not sufficient.

11. It is clear that the Judge did consider the Appellant's history in the UK, albeit more generously to the Appellant than required in that he referred to his being in the UK precariously rather than illegally and accorded his position greater weight. The error, being to his advantage, is not material.

12. In paragraphs 31 to 35 the Judge clearly considered the practicalities of the Appellant returning to Nigeria whether to make an application for entry clearance or to be joined by the Sponsor. The Judge set out the relevant factors in that section of the decision and noted that the Appellant had not been honest with his wife to begin with and they had created the situation that they found themselves in. The alternative position of the Appellant being unable to apply for entry clearance was canvassed.

13. The Judge could have referred to the case of Ekinci in which Simon Brown LJ observed that it would be bizarre if the less a person could meet the requirements of an out of country application their in country article 8 rights would improve.

14. The important point in a decision is not that a Judge sets out all the law but whether the relevant evidence and legal principles have been considered and applied. The decision shows that the Judge did that, including approaching the case in a manner consistent with Chen even when that case had not been cited. The decision read properly shows that the decision was open to the Judge and for the reasons given. The Appellant's case amounts to a disagreement with findings properly made on the evidence presented and the facts disclosed.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing the appeal I make no fee award.

Signed:
Deputy Judge of the Upper Tribunal (IAC)

Dated: 19th October 2015