Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08099/2012

THE IMMIGRATION ACTS

Heard at Field House	**Date sent**
On 31 May 2013	**On 25 June 2013**
Prepared 31 May 2013	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

DAVID OSEREME OJEME

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: His uncle, Charles Omoeighe
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Nigeria born on 10 September 1994 appeals, with permission, against a decision of Judge of the First-tier Tribunal Goldmeier who in a determination promulgated on 10 December 2012 dismissed the appellant's appeal against a decision of the Secretary of

State to refuse his application for asylum and for leave to remain on human rights grounds.

2. The appellant's claim was that he entered Britain as a visitor with his mother on 10 September 2008 but that his mother had abandoned him in a church in Chatham on 21 September, the church being a church of which the husband of Mrs Hodge-Okafor, a friend of his mother, was the pastor. Despite the appellant having an uncle in Britain, Mr Omoeighe, with whom he was in contact it was claimed by the appellant and by Mrs Hodge-Okafor that they had been unable to trace the appellant's mother who had, it was believed, returned to Nigeria.

3. The appellant was granted leave to remain as an unaccompanied minor and was given leave to remain until 9 March 2012. He remained living with Mrs Hodge-Okafor and her family although he was, it appears, under the care of Kent Social Services.

4. On 5 March 2012 the appellant applied for further leave to remain on general grounds relating to his progress in his education and the uncertainty that would face him if he were returned to Nigeria.

5. The respondent considered that he was making a claim for asylum as well as a claim for leave to remain under the ECHR. His application was refused and he appealed.

6. The appeal was heard by Judge of the First-tier Tribunal Goldmeier who heard evidence from the appellant and Mrs Hodge-Okafor. Somewhat surprisingly despite the evidence of Mrs Hodge-Okafor that she had known the appellant's mother in Nigeria, had been a good friend of hers and that contact had been made with the appellant's uncle here, let alone the fact that the appellant had travelled to America with his Mother, they appeared to come from a middle class family and there was no evidence of abuse of the appellant by his Mother, Judge Goldmeier accepted the assertions of the appellant and Mrs Hodge-Okafor that the appellant had been abandoned completely by his mother and that it had been impossible to trace her.

7. Judge Goldmeier accepted that the appellant had done well at school here and that he was popular with his peers and those in the church.

8. He dealt with a number of matters raised by the appellant's then representative. The first referred to Article 2 of the first Protocol to the ECHR – the right to education. He pointed out that there was no denial of the right to education as the appellant, if removed would be able to continue his education both at school and university in Nigeria. He also considered an allegation made that the procedure used was unfair and that the appellant had not been asked to clarify his application before it was refused by the Secretary of State. Judge Goldmeier referred to the

fact that there was an appeal against the decision at which the appellant had been able to put forward all relevant arguments.

9. The appellant's representative appeared to argue at the hearing (but not in the grounds of appeal) that there was a breach of Section 55 of the Borders, Citizenship and Immigration Act 2009 and that the decision was unreasonable. Judge Goldmeier found that Section 55 did not apply in this case as the appellant was not a child. HE considered that the decision had been made fairly and that it was not unreasonable. He also found that the appellant could not succeed under the Immigration Rules relating to an applicant's private life.

10. He then considered the rights of the appellant under Article 8 of the ECHR applying the relevant structured approach and finding that the appellant had established private life here, there would be an interference with that private life but that was interference in accordance with the law and that the appeal therefore turned on the issue of proportionality. He dealt with the issue of proportionality in paragraphs 207 onwards of the determination. He set out relevant factors accepting that the appellant might be unable to continue his studies in Britain if he applied for entry as an overseas student. He thought also that the appellant would, in the short-term, be unable to continue his studies in Nigeria. He however placed weight on the fact that the appellant was no longer a child but a young adult, that he had been brought up in Nigeria for the first thirteen years of his life and was not a stranger to Nigeria, its culture and customs. He found that English was a commonly spoken language in the Lagos area to which the appellant would be returned, that the appellant had accepted that he would probably be able to secure employment and that he was not suffering from any physical, medical or psychological conditions which would prevent a successful reintegration into Nigerian society. He stated that he found on the balance of probabilities that having regard to the appellant's education, intelligence, character and outgoing personality he would be able to make new friends in Nigeria.

11. He went on to state that he found the Pentecostal churches welcoming places and that Pastor Hodge-Okafor was in contact with the pastor of the Lagos sister church. He considered that on the balance of probabilities that some short-term temporary support was likely to be available to the appellant from the Lagos congregation while he re-established himself. He stated that the same admirable sense of charity and responsibility which the church and congregation had demonstrated here was in his judgment likely to be replicated in Nigeria at least for a short-term period particularly as the appellant was likely on the balance of probabilities to arrive with a highly positive recommendation from Pastor Hodge-Okafor and his wife both of whom were known to the Lagos congregation. He was sure that the church and congregation would also wish to support the appellant in the short-term. He stated that there was nothing to indicate, as claimed by the appellant's representative that he would be at serious risk of being unable to practise religion or enjoy sport.

12. Having referred to the ties which the appellant had made over the past four years Judge Goldmeier noted that the appellant's private life had been fostered in the context and knowledge of having limited right to remain in Britain. There could have been no legitimate expectation of being allowed to remain indefinitely.

13. He stated that in his view the appellant's private life could reasonably be continued in Nigeria. He therefore found that the appellant's application under Article 8 of the ECHR could not succeed.

14. Having dismissed the appeal Judge Goldmeier stated that he recommended that the respondent take no action to remove the appellant until he had sat his A level examinations which he was studying at the date of the hearing.

15. Grounds of appeal were then lodged by the appellant's solicitors. The application was refused by Judge of the First-tier Tribunal Saffer.

16. The grounds were then renewed in the Upper Tribunal. They referred to the fact that the Immigration Judge had noted that the Secretary of State had made a typographical error in the letter of refusal which referred to the appellant being returned to Sudan or Iraq and stated that the judge was not entitled to state that that was not proposed as it was clear the appellant's view proposed to Nigeria. The grounds appeared to suggest the respondent's submission that there was a typographical error in the letter of refusal should have amounted to a new decision.

17. The grounds went on to assert that the judge had been wrong to find that the removal of the appellant would be proportionate asserting that that decision was unreasonable.

18. The grounds were considered by Upper Tribunal Judge Chalkley who in the second paragraph of the decision found that the grounds had no merit apart from his concern that "on the one hand the judge purported to dismiss the human rights appeal and then on the other made a recommendation." He stated that it was only for that reason that he had granted permission to appeal.

19. At the hearing of the appeal before me the appellant's uncle stated on behalf of the appellant that he had not been involved with the appellant because it was not convenient and Mrs Hodge-Okafor had been willing to look after him. He had not contributed to the appellant's maintenance. He said that he had not had contact with the appellant's mother for some time before she had left the appellant here. He confirmed that he had an aunt and two sisters in Nigeria – one in Abuja and one on the outskirts of Lagos. They, he claimed, considered that it was not convenient to look after the appellant. Indeed one of them had relocated to America at Christmas.

20. I pressed him as to what error of law there was in the determination. He stated that the issue was one of compassionate grounds as it was not in the best interests of the appellant to go to Nigeria. He would have difficulty in starting over there. He said that although he had not played any part in the appellant's upbringing now that two of his children had left home he would be willing to help the appellant. He again stated that he emphasised "compassionate factors." He said that it was not fair to remove the appellant when he planned to go to university.

21. In response Mr Deller stated that the judge had taken all relevant factors into account and reached a properly reasoned decision on the rights of the appellant under Article 8 of the ECHR. He stated that it was simply an act of kindness at the end of the determination for the judge to have made the recommendation that he did.

22. The appellant's uncle and Mrs Hodge-Okafor who had by this time arrived at court both stated that the decision was unfair and without compassion and the appellant's uncle asserted that the representation by the appellant's previous solicitors had been inadequate.

23. I consider that there is no merit whatsoever in the grounds of appeal and that there is no error of law in the determination.

24. The determination was reached with particular care and the findings of fact of the judge were generous. His approach to the rights of the appellant under Article 8 of the ECHR was properly structured and detailed and it is clear that the judge weighed up all relevant factors before reaching his conclusions. These were entirely open to him and were obviously correct. It is completely wrong to suggest that there is any lack of compassion whatsoever in the decision. The decision to dismiss this appeal on human rights grounds was reached after a thorough examination of the facts and indeed, of course, it has now come to light that the appellant does have relatives in Nigeria with whom his uncle who was interested enough in the appellant's welfare to attend the hearing, is in contact.

25. I can see no contradiction whatsoever in the fact that the judge dismissed the appeal on human rights grounds but went on to make a recommendation. Indeed I consider that all that that shows is the kindness and compassion with which the judge approached the issues in this appeal. There is nothing illogical in the decision of the judge to dismiss the appeal on human rights grounds but then to make a recommendation that the appellant not be removed pending his sitting his A levels.

26. I therefore find that there is no error of law in the determination of the Immigration Judge and that his decision dismissing his appeal on both immigration and human rights grounds shall stand.

Signed Date

Upper Tribunal Judge McGeachy