Upper Tribunal
(Immigration and Asylum Chamber)

Anoliefo (permission to appeal) [2013] UKUT 00345 (IAC)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh **Determination Promulgated**

On 12 June 2013

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Before

THE PRESIDENT, THE HONOURABLE MR JUSTICE BLAKE

Between

EKENE ANOLIEFO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: B Criggie, of Hamilton Burns and Co. Solicitors

For the Respondent: A Mullin, Home Office Presenting Officer

Where there is no reasonable prospect that any error of law alleged in the grounds of appeal could have made a difference to the outcome, permission to appeal should not normally be granted in the absence of some point of public importance that it is otherwise in the public interest to determine.

DETERMINATION AND REASONS

1.
This is an appeal from a decision of a panel of the First-tier Tribunal, Judge Reid presiding, dated 11 March 2013. In that decision the panel dismissed the appellant's appeal from a deportation decision made against him on 18 December 2012.

2.
The material facts are as follows. The appellant is a national of Nigeria born in November 1974. He arrived in the United Kingdom in October 2004 when he was nearly 30 years of age. He arrived with a student visa valid until January 2006 that was subsequently extended until October 2008. In July 2008

the appellant was arrested by Police and charged with serious sexual offences and has remained in custody ever since.

3.
On 28 May 2009, following a trial, he was convicted of a number of counts of assault and breach of the peace and one count of rape for which he was given a custodial sentence of twelve years in June 2009. He subsequently appealed to the High Court of Judiciary and, on 3 December 2012, he was successful in part in that the assault and breach of the peace convictions were quashed and he was re-sentenced on the single rape count to nine years imprisonment.

4.
I was informed at the hearing of the case today that the basis on which he challenged each of his convictions was that he had been improperly denied access to a solicitor before his police interview. Although decisions of the High Court of Judiciary are final in a criminal cause or matter, the appellant sought permission to appeal to the Supreme Court on the basis of a devolution issue, namely the compatibility of the admission of his police interview on the rape charge with Article 6 of the European Convention on Human Rights. The High Court refused that application on the 19 December 2012 and I was informed no application has subsequently been made to the Supreme Court for permission to appeal.

5.
When this appeal came before a panel in February 2013 there was a preliminary application that the case be adjourned to enable an application to be lodged for permission to appeal to the Supreme Court. The panel refused that application and although this formed the first ground for permission to appeal to the Upper Tribunal, the First-tier judge correctly rejected it and it has not been renewed before me today. Whether a deportation hearing should be adjourned pending further proceedings in relation to a conviction by which the detrimental conduct is sought to be proved, depends upon all material circumstances of the case, and the facts that are in issue. There was no want of fairness by the panel in refusing this application where no application for permission had been made and otherwise the decision of the High Court was final with regard to this criminal conviction.

6.
Having refused the application for an adjournment the panel then considered all the evidence. This was a case of automatic deportation subject to any human rights claim that the appellant could make out. He could only point to three features upon which he relied to support such a claim:-

i.
He had lawfully resided for four years as a student and had entertained hopes of being allowed to remain indefinitely in this country if he had completed his studies and moved on to post-study employment.

ii.
During the course of his studies he had a girl-friend; the relationship had now broken down and she had not visited him in detention since July 2008.

iii.
He had a cousin resident in the United Kingdom with whom he had maintained contact.

7.

The panel at paragraph 46 of its decision correctly identified the fact that there were no family or personal relationships that could be relied upon to show family life. It continued, “there was no evidence before us of any particular feature of a private life that would suffice to engage Article 8”. The panel nevertheless went on to balance deportation with Article 8 rights at paragraphs 47 and 50 of its decision and noted the sentencing remark of Lord Pentland that the rape was particularly brutal and degrading involving false imprisonment of the victim in a car who was then subjected to pornography. The judge concluded that the appellant was a dangerous and determined sexual predator who has not the slightest respect for women. In the circumstances the panel found that deportation would not be disproportionate.

8.
On the 28 March 2013 the First-tier Tribunal Judge Sharp granted permission to appeal on the ground that the panel had not referred to the new rules promulgated in July 2012 or the decision in MF (Article 8 - new rules) Nigeria [2012] UKUT 393 (IAC) and did not consider any case law in respect of their Article 8 conclusions. The judge noted however that the prospects of success were slim having regard to the strength of the public interest in deporting.

9.
Mr Criggie submits that the features identified above meant that there was a private life that engaged Article 8. Having heard the submission developed I indicated that there was no substance in it and this appeal would be dismissed. I now give my reasons for doing so.

10.
The panel was right to conclude that there was no family life in this case. The question was whether there was private life of sufficient seriousness to require justification for any interference. I am satisfied that this was what the panel intended by the reference to no private life that engages Article 8.

11.
If the panel at paragraph 47 had said that there was no private life that deserved respect or would be interfered with by the immigration decision, in my judgment, it would have been perfectly entitled to have reached that conclusion applying the structured approach identified by Lord Bingham in Razgar . If the panel had spelt out that conclusion then there would be no factor at all to be weighed in the balance against deportation. As it is, it did go on to perform a balance between the public interest and the case for the claimant, and, as was inevitable, found against him.

12.
It is unfortunate that permission to appeal was granted since this appeal is wholly without merit.

13.
First, something much more substantial by way of private life is required in the case of a person who arrived in the United Kingdom as an adult with limited leave as student and who was never granted indefinite leave to remain before it could be said that removal or deportation was an interference with private life that required justification.

14.
Second, any failure to have regard to the July 2012 rules and the two- stage process identified in MF would have been wholly immaterial to the appellant as the new rules make the task of identifying an Article 8 private life that much more onerous where a person has not spent half his life or twenty

years here. It is rightly accepted that any private life that has developed whilst he has been in custody is of no consequence.

15.
Third, it is obvious that where a claimant has been convicted of rape and the conviction upheld on appeal, and certainly any rape with the aggravating features identified by the sentencing judge, even if there were private life to be weighed in the balance, no properly self-directing judge could have done other than to have dismissed the appeal on the basis that the public interest manifestly outweighed it.

16.
Where there is no reasonable prospect that any error of law alleged in the grounds of appeal could have made a difference to the outcome, permission to appeal should not normally be granted in the absence of some point of public importance that it is otherwise in the public interest to determine.

17.
There was no material error of law made by the panel. For all these reasons this appeal is dismissed.

Signed

Date 26 June 2013

Chamber President of the Upper Tribunal