**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/08331/2013

**THE IMMIGRATION ACTS**

**Heard at Field House** **Determination Sent**
**On 10 March 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**VIRGINIA ONYINYE OGADI**

Respondent

**Representation:**

For the Appellant: Ms Pal, a Senior Home Office Presenting Officer
For the Respondent: Miss P I Kiai, instructed by Southwark Law Centre

**DETERMINATION AND REASONS**

1. The respondent, Virginia Onyinye Ogadi was born on 4 June 1995 and is a citizen of Nigeria. I shall hereafter refer to the respondent as "the appellant" and to the Secretary of State at the "respondent" (as they were before the First-tier Tribunal). The appellant had appealed to the First-tier Tribunal against a decision of the respondent dated 16 August 2013

refusing her claim for asylum and making directions to remove her from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999. The First-tier Tribunal (Judge Jones QC) dismissed the appeal on asylum and Article 3 ECHR grounds but allowed it under Article 8 ECHR.

2. The judge allowed the appeal under Article 8 ECHR [79] *et seq*. Following *MF* [2013] EWCA Civ 1192 and also *Nagre* [2013] EWHC 720 (Admin), the judge considered whether the appellant could succeed under the Immigration Rules to obtain leave to remain on account of private life in the United Kingdom (see,in particular, paragraph 276ADE). He concluded [79] that she could not. However, he went on [80] to consider that this is

> One of those rare cases where, due to a combination of unusual circumstances, I consider it disproportionate, applying the five – steps set out by Lord Bingham at paragraph 17 of his opinion in *Razgar* [2004] UKHL 27, to remove the appellant to Nigeria.

He then set out in six sub-paragraphs his reasons for reaching that conclusion. There were psychological reports before the Tribunal indicating the appellant was a vulnerable young adult suffering from moderate depression with a history of domestic violence and possible sexual abuse. She had only recently turned 18 years old, having entered the United Kingdom shortly after her 14th birthday. She would be returning to Nigeria as a "single intact female". The expert evidence (to which the judge gave weight) indicated that returning to Nigeria might expose the appellant to some hardship living with the Igbo community. He found that she would "receive little support from any family members in Nigeria." [80(4)]. He found that the appellant had, "against the odds," built up a substantial private life in the United Kingdom and he found also that the fact that Nigeria "may have facilities to treat those with mental health is...somewhat beside the point given that the onset of serious mental health problems can be avoided by not returning [the appellant] to Nigeria." It was on that basis and "giving appropriate weight to the public interest and immigration control" that the judge went on to allow the appeal under Article 8 ECHR.

3. The grounds of appeal are narrow in scope. The grounds assert that the "Tribunal allowed this appeal on Article 8 grounds on the basis that the appellant has no ties to her home country." The grounds assert that the judge misinterpreted the "tests to assess 'no ties' and it has therefore misdirected itself in law". The grounds state that the "no ties" wording is intended to "set the benchmark for when the individual's rights outweigh the public interests at a very high level as is legitimate and justified." It refers to the UK residence test of "no less than twenty years". It is submitted that

> The Tribunal had failed to provide any reasons as to why the appellant has no ties in Nigeria…she would have been raised in the knowledge and culture and customs there and English is spoken in Nigeria. It is submitted the appellant is an adult who is fully capable of living an independent life and could do so in Nigeria.

4. In my opinion, there are problems with parts of the analysis of the First-tier Tribunal. The suggestion (see above) that the appellant's access to medical facilities in Nigeria need not concern the Tribunal because her health problems might be avoided altogether by not sending her there in the first place arguably amounts to a circular argument rather than a proper apportionment of weight in a proportionality assessment. Further, the fact that the appellant may have "a great many friends and supporters in the UK" is unlikely to be determinative of or influential in determining her appeal under Article 8 ECHR. However, having read the determination as a whole carefully, I am satisfied that neither of those matters is so serious in the context of the reasoning as a whole as to warrant setting aside the determination. In any event, they have not been cited as errors by the Secretary of State in the grounds of appeal, which concentrate exclusively on the question of "no ties" and do so from the perspective of the "Article 8 provisions of the Immigration Rules." This is strange given that the judge had found [79] that the appellant could not qualify under those provisions. No attempt is made in the grounds to relate the "no ties" principle to the wider Article 8 ECHR jurisprudence relevant to the consideration of Article 8 outside the Rules. On the evidence before him, the judge's finding that the appellant would "receive little support from any family members in Nigeria" is, in my opinion, adequate for the purposes of the Article 8 assessment; a greater concentration on the question of what ties the appellant might have to Nigeria may have been necessary under the Immigration Rules appeal. There was nothing in the judge's careful analysis of the factual matrix and his application of the relevant jurisprudence (for example, *Razgar*) which leads me to conclude that his analysis is flawed by error of law for the reasons asserted in the grounds of appeal. The judge has properly adopted a two stage process and, having rejected the Immigration Rules appeal, has moved on to consider Article 8. He reached a conclusion which was available to him on the evidence. The relevance of the single argument contained in the grounds ("no ties") to that analysis has not been established. It is not for this Tribunal (and it was not for the judge who granted permission in the First-tier Tribunal) to make the Secretary of State's case for her or to add grounds of appeal which do not appear in the written application. In the circumstances, I see no reason to disturb the determination of the First-tier Tribunal Judge.

**DECISION**

5. This appeal is dismissed.

Signed Date 10 April 2014

Upper Tribunal Judge Clive Lane