



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/10581/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21st April 2015**

**Decision & Reasons Promulgated
On 18th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MS MARIAM AYODELE IKPEFURAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bustani - Counsel

For the Respondent: Mr Walker - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mariam Ayodele Ikpefuran, a citizen of Nigeria born 19th January 1969. She appeals against the decision of the Respondent made on 7th February 2014 to refuse further leave to remain in the United Kingdom on human rights grounds and to remove her under Section 10 of the Immigration and Asylum Act 1999.

2. The Appellant's appeal against that decision was heard by First-tier Tribunal Judge Beach on 24th September 2014. Judge Beach dismissed the appeal under the Immigration Rules and on human rights grounds. Permission to appeal was granted and on 25th February 2015, having heard submissions, I found that there was a material error of law in the determination of Judge Beach and I set that decision aside with no preserved findings of fact.
3. The Respondent had initially issued a decision to remove the Appellant on 22nd July 2013 and did not grant the Appellant an in-country right of appeal. The Appellant appealed and an Immigration Judge found that the Respondent's decision was not in accordance with the law since the Appellant should have been granted an in-country right of appeal. As a result of this the Appellant's human rights application remained outstanding before the Respondent who eventually made the decision that is the subject of this appeal.
4. I have a statement from the Appellant in which she states that she entered the UK on 25th December 2003 and has been living here continuously since then. She says that she was living with a friend and they had made contact with her older sister Margaret Opeyemi Bello, a British citizen. She moved in with her sister in 2004 for two years and then in 2006 moved in with another friend because there was not enough space in her sister's apartment as she has four children. She would help her sister with the care of the children and taking them to and from school. She developed a very strong bond with the children and still spends as much time with them as possible although she no longer lives there. Their mother died in 2006. Her sister is very protective of her. She visits her sister once or twice a week and they speak on the phone every day. She has a partner, Harrison Olusegun Olubayo, whom she met in 2005. The relationship became serious around 2009 and they started living together in December 2013. Her partner can support her financially. He is a security officer. He has children from a previous relationship and they both spend time with them. She has studied during her time in the UK and was awarded an NVQ Level 2 in Health and Social Care in November 2006. She has also completed training in Food Hygiene. She cannot take up a job because of her immigration status. She hopes to get a good job once her status is regularised. She is a member of the church. There are three statements from the Appellant all in similar terms.
5. I have a statement from Mr Olubayo who was born on 13th May 1958. He works as a security officer and has a salary of in excess of £35,000 a year. He says he has a genuine and committed relationship with the Appellant who is also close to his three children who are all settled in the UK. They want to get married once her immigration status is regularised. I have confirmation of his employment and his bank statements.
6. I have a further statement from him which is undated but which was apparently prepared for the hearing in the Upper Tribunal. He said that he has been in the UK since August 1980 and is established and settled here. He does voluntary work in the local community. He works full-time and has ample funds to take care of himself

and his family. Leaving the UK to go and live with his fiancée in a different country is not a feasible choice for him. He has very little link to Nigeria. All his family are in the UK. He only visits Nigeria for remembrance ceremonies of his deceased parents. He said that he sees his relationship with the Appellant as the best thing that has happened to him in a long time and he knows that it will affect the stability of his life if she is separated from him. He cannot relocate to Nigeria.

7. There is a third statement from him dated 27th January 2014 in which he states that his family is very important to him and he has his own network of friends. He has no connections whatsoever to Nigeria.
8. I have letters from the Appellant's sister Ms Margaret Bello. The first is dated 1st November 2013 and says that her sister is faithful, honest and hardworking and has been of great assistance to her. I also have a letter from her which is undated and is in the Respondent's bundle. She states that she has known the Appellant "for over four years" and she has been supporting her financially and materially.
9. I have other letters from friends and some from the church, supporting the Appellant's appeal.

Evidence at the Hearing

10. I heard oral evidence from the Appellant who adopted her statement and confirmed the training and education that she has done in the UK.
11. In cross-examination she confirmed in response to a question from Mr Walker that she had made an application under EEA law in 2008. Mr Walker provided written confirmation of this application which appeared to indicate that the application had been made along with two other people for leave to remain as an extended family member of an EEA national exercising Treaty Rights in the UK. He provided a letter dated 28th September 2009 from the UK Border Agency to a firm of solicitors in Camberwell Road in London refusing the application. The application was accompanied by a letter from a man called Daini confirming that the Appellant and the other two people are his relatives and living with him as his dependants at an address in London SE20. The names of the other two people named on this letter were put to the Appellant. She said that they are both her friends. She denied that she had provided any birth certificates for that application or that she had ever lived at the address in SE20. She denied that she had made the application saying that her solicitor had done it. I asked her if she had paid the solicitor and she said that she had not. She named one of the other two people named on the application as having paid the solicitor. Mr Walker asked her if it is the case that she agreed to take part in this application. She responded that she wanted the Home Office to know that she was here. She wanted official residence in the UK.
12. The Appellant said that she has never worked in the UK. She was asked whether, when she came here, she lived with her sister. She responded "For a while". She was at her sister's until December 2013. She confirmed her partner's employment. He sometimes goes to church with her. She said they decided to live together after

his last child left home to go to university. There was not enough space for her prior to that. She was asked when her partner last visited Nigeria and said it was about three years ago. He went for his mother's funeral.

13. The Appellant was then asked some questions about where she had lived since coming to the UK. She confirmed that her sister had always lived at the address given on her statement. Mr Walker asked the Appellant if she knew an address in Albert Road, London. She was asked if she had lived there. She responded that she had. She said she was not there long – a couple of months. She had moved out of her sister's flat. When she was pressed for a date she said initially that it was 2000 then said she could not remember. When she was asked how long she had lived at Albert Road she said about two years. When she was asked who paid for that flat she said she does not know. She did not pay rent. She was seeing her partner at that point. Mr Walker asked her where she was when she was arrested by the Home Office. She said she was at her aunt's. Mr Walker pointed out to her that the document confirming her arrest shows the address in Albert Road. The Appellant said that she had been at Albert Road for about two years prior to her arrest. She was supported by the family she lived with at that address. That family have no relationship with the people mentioned on the EEA application.
14. In re-examination Ms Bustani put it to the Appellant that she had given conflicting dates. She suggested that she could not have moved out of her sister's house in 2000 because she did not come to the UK till 2003. She had said in her statement that she lived with her sister between 2004 and 2006. The Appellant confirmed that to be the case. She said that in 2006 she moved to live with a friend then went back to her sister's. Prior to moving in with her partner she lived with her sister. She confirmed that the last time her partner went to Nigeria was before they moved in together.
15. I asked the Appellant how long she had lived at the address in Albert Road. She did not answer the question other than to say she could not remember but said that when she came out of detention she went to her aunt's then to her partner's house. She was coming and going between the two. I asked her where she was when she was detained and she said she was at the address in Albert Road.
16. I note that when the Appellant completed an immigration status questionnaire on 17th July 2013 she put down her address as that in Albert Road. That address was also on a letter of authority to her solicitors dated 8th October 2013.
17. I then heard evidence from Mr Olubayo who adopted his statements. His three children are aged 18, 20 and 22. They have lived with their mother since she and their father separated but he saw them nearly all the time before they all went off to Nottingham University. He sees them when they are on vacation and as often as he can otherwise. He has lived at the same address since 2002. He last visited Nigeria in November 2014. He was asked where the Appellant was living when he first met her and said she was living with her sister. They broke up for a while and she then lived at Queen's Park (Albert Road). He thought it was around early 2009 that she started to live there because that was when they started to see each other again but

he was unable to remember how long she had been there. He first met her sister around 2011 although they had spoken a couple of times prior to that on the phone. He does not belong to the same church because he is Catholic but he has attended her church. He was asked if he had visited her at the address in Albert Road and said that he had. It was a one bedroom flat in a house. He believed it to be owned by a friend and he understood that she paid no rent. His house has only one bedroom. The Appellant moved in when the last of his children went off to university in 2013. He knew nothing about the Appellant's immigration history until around 2013.

18. In re-examination he said that the Appellant had moved into his house from the address in Albert Road.
19. I then heard evidence from the Appellant's sister Margaret Bello. She adopted her statement. She said she does not know why her letter says that she has known her sister for four years because she is her sister and she has known her all her life.
20. In cross-examination she confirmed that the Appellant had lived with her from the start. Mr Walker asked her if her sister had always lived with her and she responded that she had. She said she moved out in 2013. He asked her if her sister had ever lived anywhere else and she said that she is an adult and she would sometimes stay over with a boyfriend. Mr Walker asked Ms Bello if her sister had ever lived at the flat at Albert Road. She responded "She doesn't live there. She lived with me from 2003 to 2013". She said the Appellant has a family friend who lives there and gave the same name as that given by the Appellant. She said she does not know why the Appellant uses that address. She was unable to remember when she first met the Appellant's partner. She appeared to know nothing about the EEA application and had never heard of the people named thereon. She was asked if her sister had ever tried to regularise her immigration status here. She responded that she had said something about it some years ago but she herself had no idea what her sister was doing. She supported the Appellant financially until 2013. She said there is always food in the house and it does not cost much. It was put to her that the Appellant had said that she did not live with her sister but at the address in Albert Road. She responded that her sister's stuff was always at her house.
21. She said that when her sister was released from detention she came to live with her. When she was asked if it was not the case that she had gone to Albert Road she responded that she had not gone there. She pointed out in re-examination that the Appellant had been arrested when she went to sign on. She was not arrested at Albert Road. She went to that address to help the woman who lived there with her child. She said that the Appellant's mail is not sent to her house.
22. In his submissions Mr Walker said he would rely on the refusal letter. He said that conflicting evidence had been given at the hearing about addresses where the Appellant had lived. The evidence of her and her sister was totally contradictory. The evidence of when her partner last visited Nigeria was inconsistent. He said that there is little evidence of a relationship. It has to be taken into account that she made a completely false EEA application in 2008. The genuineness of the relationship is

still not made out and the conflicting evidence given at the hearing goes against the Appellant's credibility. He asked that the appeal be dismissed on the grounds that there is inadequate evidence of a genuine and subsisting relationship.

23. Ms Bustani conceded that there were inconsistencies in the evidence. It is accepted that some time was spent at the address in Albert Road. With regard to the EEA application, she accepted that it has to be taken into account. The Appellant has a relationship with her sister and with her sister's children. She conceded that the Appellant does not qualify as a partner under Appendix FM. She said it is unreasonable that she be expected to return to Nigeria given that she has been here for eleven and a half years. Her partner has been here for 34 years. He has a good job and three children. She asked me to take into account that when this issue was last considered in 2010 it was not conceded or accepted that there was a relationship but it is now accepted that there is.

My Findings

24. Permission to appeal was granted in this case because the Respondent had conceded that there was a relationship between the Appellant and Mr Olubayo but the Judge had not taken that into account and had not put any questions to the Appellant about the genuineness of the relationship. The genuineness of the relationship was not accepted by the Respondent. As Mr Walker said there is little documentary evidence of the relationship. I did of course hear oral evidence from Mr Olubayo. I have a few letters addressed to the Appellant at his address. I accept that the couple have a relationship but I have serious doubts about the genuineness of it and about the credibility of the Appellant and consequentially of Mr Olubayo.
25. The submission in this case is that the Appellant and her partner have been in a serious relationship since 2009, having met in 2005 but only moved in together in December 2013 after Mr Olubayo's children had all gone off to university. It is very difficult to make any sense of the account given of the relationship since 2009, especially the question of where the Appellant was living. Her sister was clear and adamant that the Appellant had lived with her constantly until she moved in with Mr Olubayo apart from odd nights that she may have spent with a boyfriend. The Appellant gave a different account. There was conflicting evidence about where she lived at the time she moved in with her partner. The Appellant said she was with an aunt, her sister that she was at her house and Mr Olubayo that she was at Albert Road. The Appellant's evidence about how long she lived at Albert Road was contradictory. She said she went to help a friend there with her child. She was clearly using it as her address for signing on and it was the address the Home Office had for her. Her mail was not going to her sister's and was presumably, from the various pieces of correspondence produced by the Home Office, going to Albert Road. She paid no rent there but there is no explanation why. When her partner was asked about Albert Road his evidence did not indicate that she had been living there permanently and that he had visited her there all the time. He said she could not move in with him because of his children but they lived with their mother and spent limited time with him. He only had a one bedroom flat. There was nothing in the

evidence of the Appellant's sister to suggest that he was a regular visitor to her house and in any event the evidence of the Appellant was that she was not at her sister's. Her sister said she financially supported her until she moved in with Mr Olubayo. It is not at all clear where the Appellant was living or where the couple were spending the time they were together developing and conducting a close and committed relationship. Mr Olubayo's evidence about where she was living was vague to say the least given that he had been having a relationship with her since 2009 and had known her since 2005. It is also not plausible that he was unaware until 2013 of her immigration status given that there must have been issues arising from the fact that she could not work to support herself and was being supported by her sister who has a large family to support.

26. With regard to the application as an EEA extended family member I do not accept that this was lodged with UKBA without the Appellant's full consent and involvement. Even taking the view that there are solicitors who would do such a thing for money, I do not accept that anyone would make such an application without her consent. She denied any knowledge of an appeal being granted in that case. It seems to me that if three friends decided to go down the route of making a false application with the assistance of a third person - the Sponsor - the Appellant would be well aware of everything that was going on and of the outcome. It was a false application made without any basis in reality. It was an attempt to deceive the immigration authorities in this country.
27. I am unable to find that the Appellant is a witness of truth. I do not accept that she and Mr Olubayo are in a genuine and subsisting relationship. I am not satisfied that the Appellant has established that on the balance of probabilities she and Mr Olubayo are living together in a genuine and subsisting relationship.
28. I accept that the Appellant has been in the UK since 2003 but she does not meet the requirements of Paragraph 276ADE of the Immigration Rules. The decision was made in February 2014 so the original version of paragraph 276ADE (vi) applies -

'(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.'
29. The Appellant claims to have no ties to Nigeria but I do not accept that. I have found her evidence to be unreliable. She is a young woman who lived in Nigeria until she was 16 years old. The people she has had most contact with in the UK are Nigerian. There is no credible evidence that she has no social, cultural or family ties to Nigeria.
30. The Appellant has not established a right to remain in the UK under the Immigration Rules.
31. With regard to Article 8 ECHR, given my findings I do not accept that she has a family life with Mr Olubayo which engages Article 8. There is no credible evidence of a family life with her sister or her sister's children which is close enough to engage

Article 8. I accept that the Appellant has developed a private life in the UK but as I have said above she fails to meet the requirements of the Immigration Rules.

32. In **Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC)** the Tribunal said

“... (b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin);

(c) the term “insurmountable obstacles” in provisions such as Section EX.1 are not obstacles which are impossible to surmount: MF (Article 8 – new rules) Nigeria [2012] UKUT 393 (IAC); Izuazu (Article 8 – new rules) [2013] UKUT 45 (IAC); they concern the practical possibilities of relocation. In the absence of such insurmountable obstacles, it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh: Nagre.”

33. In light of the number of years the Appellant has been in the UK I have considered the proportionality of her removal outwith the Rules. I have borne in mind the decision in **Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27 (17 June 2004)**

34. I have also considered the public interest considerations relevant to all Article 8 as set out in Section 117 of the **Nationality Immigration and Asylum Act 2002**. These are -

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

35. I take account of the fact that the Appellant speaks English and that she would be able to work in the UK to support herself but great weight must be given to the fact that she attempted to make a false application for leave to remain in the UK and that I have found that her account in support of this appeal is not credible. I must take the view that she has determined to gain leave to remain in the UK on any basis and I find that there is nothing in her private life to render her removal disproportionate to the public interest in her removal.
36. For completeness I would say that even if I had found that her relationship with Mr Olubayo was genuine and went on to consider Appendix FM of the Rules, there is no evidence before me to show that there are insurmountable obstacles to him going to live with the Appellant in Nigeria. They formed a relationship when she had no leave to be here. His children lived with their mother and are now adults and the fact that he does not want to give up his job and leave the UK to live in Nigeria does not constitute insurmountable obstacles.

DECISION

The determination of the First-tier Tribunal has been set aside and is replaced with this decision.

The appeal of the Appellant is dismissed under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed

Date: 7th May 2015

N A Baird
Deputy Judge of the Upper Tribunal