IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14554/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 June 2015	**On 22 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS ADENIKE ADEROMOKE AKINYELE
(ANONYMITY DIRECTION NOT MADE)

Respondent/Claimant

Representation:
For the Appellant: Miss Alice Holmes, Specialist Appeals Team
For the Respondent/Claimant: Ms Michaela Bonsu, Counsel instructed by K C Law Chambers Solutions

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against a decision by the Secretary of State to refuse to grant her ILR on the ground that she had been continuously resident in the UK for over twenty years. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The claimant made her application in October 2013. In the covering letter, her solicitors said that she had been born on 11 September 1960 in Nigeria. Her father had come to the UK in 1960, just before she was born, and the claimant and her mother had joined him in 1964. She had travelled on her mother's passport, issued in Lagos on 25 August 1964.

3. The solicitors went on to give details of the primary school in Kent, and the secondary school in Hammersmith, which the claimant had attended between 1966 and 1972 (primary school) and 1972 to 1977 (secondary school).

4. They gave details of different addresses in London where their client instructed them she had resided between 1998 and 2013. She had, according to their instructions, variously resided on and off with her sister, her partner and an unidentified friend.

5. They said that their client had no established ties with Nigeria, but she had established a social and cultural background here in the UK. Her family were all here, although she had not had the best relationship with her mother and father who left "them" in the 1980s. She had significant private and family life in the UK. Her mother, sister and father were all British citizens, and all resided in the UK. Significant private life had been established through friends that she had had since she was 4 years old, and she had a relationship with her partner Gregory Lansquot "whom she has lived with for the past sixteen years".

6. They asserted that the claimant had provided documentary evidence to show length of residence, as set out within the guidance. At the end of the letter, there is a manuscript endorsement indicating that they were enclosing with the letter the claimant's Nigerian passport, number AO4569759.

7. Enclosed with the application was a letter from Mr Lansquot dated 6 December 2012 in which he confirmed that the claimant was his partner. He said he had been responsible for her accommodation and maintenance since the year 2000, and he was happy to continue to be responsible for her.

8. In the letter dated 26 September 2013, the claimant's sister said that the claimant had come to the United Kingdom in 1964 with their mother. She was writing to support her application, and willing to support her in any other way. She was her only sister, they were extremely close and she had a close bond with her husband and children.

9. On 14 February 2014 the Secretary of State gave her reasons for refusing the application. No evidence of lawful entry to the United Kingdom had been found, and it was therefore considered that she had entered the United Kingdom illegally. She had provided evidence that she was resident in the UK from 1966 to 1977 in the form of school records, and it was accepted that she was resident in the UK throughout this period. She had also provided bank statements and NHS letters as evidence of residence in the UK for the year 2013. She had not provided evidence of her residence in the UK between 1978 and 2012. If she had generally been resident in the UK continuously since 1977, she would have been able to have access to plenty of evidence. The onus was on her to establish residence in the UK, and she had failed to establish that she had been living in the UK continuously between 1978 and 2012. She provided photographs, letters of support from friends and relatives and greeting

cards as evidence of residence. But these documents were not from an official source, and little weight was therefore attached to them.

10. She also did not meet the requirements of limited leave to remain as a partner under Appendix FM. She had not shown there were any insurmountable obstacles to her return to Nigeria with her claimed partner, and continuing their relationship there. There were cultural differences between the UK and Nigeria, for both men and women. It was not unreasonable to expect her to fully support her partner through the transitional period on relocation to Nigeria to help him adapt to any changes he might encounter there. She had offered no explanation as to why her partner would not be able to regularise his status by applying for a visa to join her in Nigeria. Their preference to live together in the United Kingdom would not amount to insurmountable obstacles to continuing their relationship in Nigeria.

The Hearing Before, the Decision of, the First-tier Tribunal

11. The claimant's appeal came before Judge Sweet sitting at Hatton Cross in the First-tier Tribunal on 5th February 2015. The claimant was represented by Ms Bonsu of Counsel, and the respondent was represented by a Presenting Officer. The judge received oral evidence from the claimant and Mr Lansquot.

12. Mr Lansquot said that their relationship had started when he was 17 and she was 13. They had been in a relationship continuously since then. The claimant did not want children. Another woman had children for him, and their relationship had been on and off. He started living with the claimant "ten to fifteen years ago or earlier in 1997". They were not living together between 1978 and 1997, but he used to see that she was OK. She had a mental breakdown but took no professional help. Sometimes she spent time with her sister in the UK. She might have further documents at his home.

13. In her evidence, the claimant agreed there were no documents from 1979 onwards. She said that in her late teens she left home because she was being abused. She was homeless and she engaged in rough sleeping. Her parents were still alive. She had not spoken to the Nigerian High Commission, and did not know that they could help. She also had a letter of support from Asaf Meen, who said that he had known her since 2003. She said that in 2003 she had a chance encounter with Asaf when she was with her partner at Debenhams, and she was not homeless at that stage. She had become homeless in her late teens, "in the early or mid 1990s". She had not reported her abuse to the authorities, because it was too upsetting and she was ashamed. She had not returned to Nigeria after completing her UK education. She had been in a relationship with her partner from the age of 13 until 1995, when they had broken up for less than a year. He had had children with another woman in the 1980s. They moved around every six to nine months, so documents went missing. On re-examination, she confirmed that it was her parents who had abused her. She produced the marriage certificate for the wedding of her sister in the UK in August 2003, at which she said she had been a witness. Her sister had purchased for her the outfit which she wore at that wedding.

14. In his subsequent decision, the judge's findings of fact are set out at paragraphs [25] onwards. At paragraph [28] he said:

> "I have not found all aspects of the claimant's evidence regarding her stay in the UK to be satisfactory, and the lack of documentation from 1978 onwards (apart from the marriage certificate of her sister) is a concern – but I take into account that she has changed her address since and claims to have been homeless and therefore it would be difficult for her to retain or obtain documents confirming her stay. She states that she kept the documents relating to her schooling with one of her friends at one of the addresses at which she stayed."

The judge continued in paragraph [29]:

> "The claimant has given evidence that she has no ongoing ties to Nigeria, she does not have any accommodation or any other ties, whether social, cultural or family with that country. I conclude that the claimant has lived continuously in the UK for at least 20 years and therefore meets the requirements of paragraph 276ADE(iii) of the Immigration Rules. If I had not reached that conclusion, I would have allowed this appeal under paragraph 276ADE(vi) because although she would have lived continuously in the UK for less than twenty years, I am satisfied that she has no ties with the country to which she would have to go if she left the UK."

15. At paragraph [30], he said that although the evidence regarding her relationship with her partner was "somewhat unsatisfactory", given the lack of documentary evidence that she had been with him for the last ten to fifteen years at the same accommodation (or since 1997), he accepted that their evidence at the hearing was consistent with each other regarding their activities of the previous day and so if he had not allowed the appeal under Rule 276ADE in respect of private life, he would have allowed it under Appendix FM because she had a genuine and subsisting relationship with her partner in the UK who was a British citizen, and there were insurmountable obstacles to family life with that partner continuing outside the UK.

The Application for Permission to Appeal

16. A member of the Specialist Appeals Team settled an application for permission to appeal to the Upper Tribunal. The Tribunal had given wholly inadequate reasons for finding that the claimant met the requirements of Rule 276ADE(iii) or for finding that she was in a genuine and subsisting relationship with a partner within the meaning of Appendix FM, and that there were insurmountable obstacles to family life continuing elsewhere.

The Grant of Permission to Appeal

17. On 14 April 2015 First-tier Tribunal Judge Simpson granted permission to appeal as she was satisfied the grounds identified an arguable material error of law.

The Error of Law Hearing

18. At the hearing before me, Ms Bonsu submitted that the judge had received compelling oral evidence from the claimant, who had been extensively cross-examined by the Presenting Officer. She had given compelling evidence about her abuse, which explained why she had become homeless and also why she had not sought any medical help between 1978 (when an NHS medical card was issued to her) and 2013 (when the medical records evidencing her treatment by a GP begin). She had answered questions about things that had happened in the UK in the intervening period, such as the hurricane, which showed that she had been here.

19. On behalf of the Secretary of State, Miss Holmes submitted that, in the absence of documentation, the oral evidence would need to be very compelling to enable the judicial decision-maker to find in the claimant's favour on continuous residence. The judge had not set out in the decision the flow of questions and answers in cross-examination which demonstrated that the oral evidence given by the claimant reached this high threshold. On the face of it, the reasoning of the judge was completely inadequate and very naïve.

Reasons for Finding an Error of Law

20. I am mindful of the **Mukarkar** principle, and I recognise that the judge had the benefit of receiving oral evidence from the claimant and Mr Lansquot, whose evidence was tested in cross-examination. But while it was open to him to find their oral evidence persuasive, he needed to give adequate reasons for finding that the claimant had discharged the burden of proof.

21. The judge wholly failed to engage with the fact that the case being put forward was inconsistent and contradictory, and it was very vague for the period between 1978/9 and 1998. He did not take into account that the case had changed significantly from that put forward in the application. Among other things, the claimant and Mr Lansquot were giving a completely different account from that given in the application as to where the claimant had allegedly been residing since 1998. Also, it was not suggested in the application that the claimant was currently estranged from her parents. They were put forward in the application as being among her relatives with whom the claimant currently enjoyed family life. It is true that in the application it was said that the claimant had not had the best of relationships with her parents, but the reason given was not that they had abused her, but that they had abandoned her and her sister in the 1980s.

22. According to the application, she had been living on and off with her sister between 1998 and 2000; and again between 2002 and 2004; and for a third time between 2010 and 2012. This was all at the same address as the sister had given in her letter of support. Notably, her sister in her letter of support does not actually confirm that the claimant has been continuously resident in the UK since arriving here in 1964.

23. Mr Lansquot asserted in his letter of December 2012 that he had provided maintenance and accommodation for the claimant on a continuous basis since the year 2000. So what he said in the letter did not tally with the instructions given by the claimant to her solicitors. Moreover, in his oral evidence, he said that he started living with the claimant "ten to fifteen years ago or earlier in 1997". Only one of these three start dates is consistent with what he said in the letter of December 2012.

24. In the early or mid 1990s, the claimant would have been in her thirties, not in her late teens. So, according to her oral evidence as recorded by the judge at paragraph [13] of his decision, her oral evidence as to *when* she became homeless was internally contradictory.

25. The judge's alternative finding under Rule 276ADE(vi) is illogical and not supported by any reasoning at all. It is illogical because, in order to have lived continuously in the UK for less than twenty years, she would (on her own account) have had to have gone back to Nigeria after completing her secondary education in the UK. Without

having made a finding as to when the claimant is likely to have returned to the UK from Nigeria (for example, in time for her sister's wedding in 2003), the judge was not in a position to draw the inference that she had no ties with the country to which she would have to go if she left the UK.

26. The finding under Appendix FM is also inadequately reasoned. Essentially the only reason given is that the oral evidence at the hearing was consistent regarding their activities of the previous day. But all this showed was that the claimant and Mr Lansquot were *currently* living together as of the last 24-48 hours. It did not show that they had been living in a relationship akin to marriage for at least two years, as required by GEN 1.2(iv) of Appendix FM. The eligibility requirements for limited leave to remain as a partner make it clear that the applicant's partner cannot be the applicant's fiancé or proposed civil partner, unless the applicant was granted entry clearance in that capacity: see E-LTRP.1.12.

Conclusion

27. The decision of the First-tier Tribunal contained an error of law, such that it should be set aside and remade.

28. Both parties have been deprived of a fair hearing in the First-tier Tribunal, and so this is an appropriate case for the appeal to be remitted to the First-tier Tribunal for a complete rehearing.

Directions

29. This appeal is remitted to the First-tier Tribunal at Hatton Cross for a hearing *de novo* before any judge apart from Judge Sweet.

30. None of the findings of fact made by the previous Tribunal will be preserved.

31. My time estimate for the hearing is 2 hours.

32. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Monson