



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

Appeal Number: IA/03844/2015

THE IMMIGRATION ACTS

Heard at Field House

On 21st April 2016

**Decision &
Promulgated
On 11th July 2016**

Reasons

UPPER TRIBUNAL JUDGE DEANS

Between

**MRS FOLASADE BELLO-AYODEJI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Wells of Counsel, instructed by Malik & Khan Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of First-tier Tribunal Phull dismissing an appeal under the Immigration Rules and on human rights grounds.
2. The Appellant was born on 2nd September 1978 and is a national of Nigeria. She appeals against the decision dated 5th January 2015 to refuse to vary leave and to remove her from the UK.

3. The Appellant arrived in the UK in August 2011 with leave until 25th November 2014. In October 2014 she applied for leave on compassionate grounds outside the Immigration Rules. Her application was based in part on a fear of returning to Nigeria and in part on private and family life she claimed to have established in the UK. Before coming to the UK the Appellant had lived with her husband in Nigeria. He died on 6th January 2013. According to the Appellant, her husband's death triggered a property dispute with her husband's family. A month after her husband's death she received an affidavit from her husband's brother stating that he had possession of all her husband's property. She telephoned him and told him that this property was hers and her daughters'. It seems that because the Appellant did not have a son, her husband's family did not want her to inherit.
4. According to the Appellant she has received threats from her husband's family. She reported these to the police but was informed that this was a family issue. Her mother, with whom two of her daughters live, was also threatened. Two men came to see her and said the Appellant should not return from the UK because she would be killed. The Appellant acknowledged that she could contest the allocation of the property and had a legal right to do so but was fearful of the threats and feared for her life.
5. The Appellant's circumstances in the UK are that she is living with her youngest daughter, who was 4 at the time of the hearing before the First-tier Tribunal. This child was due to start school in September 2015. The Appellant is allowed to work twenty hours a week and by doing this she supports herself and her daughter. She also receives help from family, friends and church members. The Appellant works in a care home and while she is at work friends look after her daughter. Her two daughters in Nigeria were aged 9 and 7 at the time of the hearing before the First-tier Tribunal.
6. So far as private and family life is concerned, the Judge of the First-tier Tribunal accepted that the Appellant has family and private life in the UK such as to engage Article 8. The Judge went on to consider the Appellant's fear of returning to Nigeria. The Judge observed that even if the Appellant feared her husband's family as she claimed, she had not sought to institute any legal proceedings in Nigeria for the return of her husband's property and this reduced the weight attached to her evidence. The Appellant's daughters remained in Nigeria and the evidence did not suggest that the girls were at risk from their paternal uncles. The Judge referred to the Appellant's evidence that two men went to her mother's house and threatened her should she return from the UK. For reasons given in the decision the Judge did not accept the Appellant's evidence on this point. The Judge noted that the Appellant had chosen not to claim asylum and make herself available for an interview. The Judge was not satisfied that the Appellant was at risk in Nigeria from her husband's family. His finding was made on the basis that there was a lack of evidence to support the Appellant's claims.

7. So far as the Appellant's daughter in the UK was concerned, the Judge found that it was in her best interest to stay with her mother and return with her and be reunited with her sisters. The Secretary of State's decision was not disproportionate.
8. The Appellant drafted the application for permission to appeal herself. She was unrepresented at the hearing before the First-tier Tribunal. Permission to appeal was granted on one ground only. The Judge, in granting permission to appeal observed that the Appellant was served with a Section 120 notice and arguably, in the course of her appeal, she raised protection issues claiming that she was at real risk of harm from non-state agents in the event of her return to Nigeria. Arguably it was not clear from the Tribunal's decision that the lower standard of proof was applied to her evidence in this respect.

Submissions

9. At the hearing before me, Mr Wells, for the Appellant, pointed out that the Judge had addressed the Appellant's humanitarian protection claim at paragraph 23 of the decision in the terms summarised above. At paragraph 3, however, the Judge set out the standard of proof as the balance of probabilities, which was not relevant to a claim for humanitarian protection. There was no reference at paragraph 23 to the correct standard of proof.
10. Mr Wells further pointed out that although at paragraph 23 the Judge said that a police report of 15th January 2015 relied upon by the Appellant did not have a reference number, in fact the report did bear a reference number.
11. For the Respondent, Mr Wilding agreed that paragraph 23 was the part of the decision which was under scrutiny. It was not correct to say the Judge had not considered the humanitarian protection point. The Judge gave sound reasons for rejecting the Appellant's alleged fear. Even if the police report had a reference number, it was still unsigned and undated. There was no evidence from the Appellant's mother about the threats she had received, or what she had said to the police, or what other action she took. No asylum claim had been made by the Appellant. The Judge had not accepted the evidence, which did not establish a risk on return.
12. There was some discussion about whether the humanitarian protection claim constituted a new matter under an amendment to the 2002 Act. Mr Wilding acknowledged that the Appellant's original grounds of appeal had been lodged before April 2015 and were therefore not subject to the new legislative provision.

Discussion

13. In considering this appeal I bear in mind that the Appellant was not represented at the hearing before the First-tier Tribunal and it was

therefore the duty of the Judge to render her such assistance as was necessary to ensure that she obtained a fair hearing. It was not clear from the decision that the Judge had considered the appeal under Article 3 at all. The Judge's decision appeared to be entirely made under Article 8.

14. At paragraph 3 of the decision the Judge set out a standard paragraph on the standard of proof, which was stated to be the balance of probabilities. When dealing with the Appellant's fear of harm in Nigeria, at paragraph 23, there was nothing to suggest the Judge had applied any different standard.
15. I consider that the Judge's failure to consider properly the Appellant's claim under Article 3 and to apply the appropriate standard of proof of a real risk of serious harm is an error of law. Mr Wilding submitted that the Judge's reasons for rejecting the Appellant's evidence in relation to her fear were nevertheless sound. In my view, although the reasons may appear sound, they do not rest upon a proper foundation. That foundation would have been to assess the Appellant's evidence as an Article 3 claim applying the proper standard of proof. As that has not been done, the reasons given by the Judge cannot be accepted as adequate.
16. The proper course in these circumstances is for the decision of the First-tier Tribunal to be set aside and for the appeal to be remitted to the First-tier Tribunal for a hearing before a different Judge with no findings preserved.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for a hearing before a different Judge with no findings preserved.

Anonymity

Although the Judge of the First-tier Tribunal recorded on the first page of the decision that an anonymity direction was made, at the end of the decision it is stated that no anonymity direction is made. I proceed on the basis that no anonymity order has been made. I have not been asked to make such an order and I see no reason of substance to make one.

Signed

Date: 11th July 2016

Upper Tribunal Judge Deans