



IAC-FH-AR-V1

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

Appeal Number: IA/04651/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6th January 2016**

**Decision & Reasons Promulgated
On 22nd January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer
For the Respondent: Miss C Charlton, Bhogal Partners Solicitors

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order.

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. Although the Appellant before this Tribunal is the Secretary of State I refer to the parties as they were before the First-tier Tribunal.
2. The Appellant, a citizen of Nigeria, appealed to the First-tier Tribunal against a decision of the Secretary of State made on 9th January 2015 to refuse her application for leave to remain in the UK on the basis of her private and family life. First-tier Tribunal Judge Wilson allowed the appeal under paragraph 276ADE(i)(vi) of the Immigration Rules. The Secretary of State appeals with permission to this Tribunal.

Background

3. The background to this appeal is that the Appellant entered the UK lawfully in 2010 as an overseas domestic worker. An extension of stay was given until 4th March 2014. She made two further applications for leave to remain on the basis of her private and family life. The application the subject of this appeal was made on the basis that the Appellant is HIV positive and suffers from mental health issues including severe depression and stress. The appellant claims that she has no-one to return to in Nigeria as she is estranged from her family there and from her family members who live in the UK. The Secretary of State refused that application on 9th January 2015 on the basis that the appellant did not meet the requirements of paragraph 276ADE (1) (vi) of the Immigration Rules as there are no insurmountable obstacles to her returning to Nigeria, she has no family life in the UK and could not meet the requirements of Appendix FM and her return would not breach the UK's obligations under Article 3 and 8 of the European Convention on Human Rights in respect of her medical conditions. The First-tier Tribunal Judge considered the appeal under paragraph 276ADE (1) (vi) and found that there are very significant obstacles to the Appellant's integration into any community including the Nigerian community and he allowed the appeal on that basis.
4. The Secretary of State contended in the grounds of appeal that the judge had not adequately engaged with the reasons for refusal and had not given adequate or valid reasons for concluding that the requirement of paragraph 276ADE (1) (vi) is met. Permission to appeal was granted on the basis that it is arguable that the judge's approach to paragraph 276ADE (1) (vi) was flawed and that the judge had made no finding to suggest that the Appellant met the high threshold of Article 3 on the basis of her mental health. It was considered arguable that the decision fails to offer an explanation as to what the 'very significant obstacles' are in circumstances where the appellant has been in the UK for such a short period and had not experienced a catastrophic failure of her mental health in the UK and has family in Nigeria from whom she could be expected to seek shelter and support.

Error of Law

5. In his submissions Mr Kotas accepted that it was lamentable that no Presenting Officer was present at the First-tier Tribunal hearing but he submitted that the judge ignored the fact that the Appellant arrived in the United Kingdom when she was aged 35 on a temporary visa, and he submitted that this could not be divorced from the other findings made by the judge in relation to the Appellant's mental health and HIV status.
6. He submitted that the judge ignored the evidence in the Appellant's witness statement where she said that her parents died when many years ago and that she has a 10 year old son who she was supporting in Nigeria. He submitted that there must have been a period when the Appellant was coping in Nigeria where she was said to have worked as a seamstress. She also has the support of the Pentecostal Church in the UK but the judge has not explained why she could not seek the support of the church congregation in Nigeria.
7. At paragraph 13 the judge says: "The difficulty being as this relates to future events the evidence is conjectural". Mr Kotas submitted that it cannot be right for the judge to refuse to speculate about the Appellant's future in Nigeria as speculation about the future is part of the assessment as to whether there are very significant obstacles to reintegration in Nigeria. He submitted that the judge's findings on this matter are unsustainable.
8. Mr Kotas accepted that there was no Presenting Officer at the hearing to cross-examine the Appellant but submitted that the bare assertion in paragraph 29 of the Appellant's witness statement that she has lost contact with her 10 year old son could not have just been accepted by the judge who did not mention this. He submitted that there were also conflicts in the Appellant's evidence in that at paragraphs 23 and 30 she made contradictions in relation to her HIV status and it is unclear how her sister found out about it. He submitted that there are several credibility issues that the judge has not engaged with.
9. Mr Kotas submitted that the judge said that the Appellant's mental health issues are at the forefront of his mind but has not given reasons for giving such weight to this issue. He submitted that there must be a more careful analysis as to how the mental health issues of the Appellant would impact on her ability to access mental health services in her own country. In relation to the Appellant's HIV status, the medical evidence is that her prognosis is good if she is accessing regular therapy. He submitted that the judge failed to engage with what the reasons for refusal letter said about the availability of mental health services in Nigeria.
10. Miss Charlton submitted that the determination is direct and to the point. The judge accepted the Appellant's credibility at paragraph 7 despite the discrepancies in her evidence and gave reasons for that. She submitted that if the Home Office wished to attack credibility they should have

attended the hearing and that Mr Kotas had engaged in conjecture as to how the Appellant would have answered questions in cross-examination. She submitted that the judge had the benefit of hearing from the Appellant and was entitled to accept that the Appellant was vulnerable and was credible. She submitted that the judge did consider familial ties in Nigeria and found that these were not likely to be available to the Appellant. The judge gave proper reasons why he accepted that very significant obstacles to the Appellant reintegrating in Nigeria and was entitled to reach that conclusion on the basis of the evidence.

11. Mr Kotas submitted that if this case was put on mental health grounds in terms of Article 3 or Article 8 it would not have been allowed. He submitted that there is no acknowledgement in relation to the time spent in the Appellant's own country.

Error of Law

12. Paragraph 276ADE (1) of the Immigration Rules states as follows:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
- (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

13. The issue to be determined by the judge in this case was whether the Appellant, having lived in the UK for less than twenty years, would face "very significant obstacles" in integrating in Nigeria if she was required to leave the UK. The judge considered the medical evidence from Dr Persaud and accepted, in the context of the other medical evidence, that the Appellant has HIV, severe depression and some form of psychosis [7]. The judge considered the discrepancies in the Appellant's oral evidence but

accepted that the Appellant was credible in light of her mental health issues. The judge accepted that the Appellant has a sister in the UK who does not assist her, noting that in fact the Appellant accuses her sister of physical abuse and of throwing her out of the house some years earlier. The judge accepted that there was no family support in the UK and that the Appellant has difficulty managing her personal life in the UK.

14. The judge did acknowledge the fact that the Appellant has two siblings in Nigeria with whom she has little contact and that her first language was Yoruba [10]. However, the judge concluded that “the Appellant’s physical and mental health is such that she has real and practical difficulties in the UK at present” [11]. The judge accepted that the Appellant’s first language is Yoruba and that she has family in Nigeria. At paragraph 12 the judge set out his approach to paragraph 276ADE(1)(vi) as follows:

“The phrase “very significant obstacles’ to the integration of the Appellant reintegrating” on a natural reading of must include all evidence both as to her family and language but also as to any physical or mental health aspects that a person has. Indeed such an approach avoids the danger of splitting the analysis partly under the Rules partly under Article 8 and missing consideration of the individual attributes of an Appellant.”

15. Having set out this approach the judge went on at paragraph 13 to set out the factors that he considered amounted to very significant obstacles. These include the significant difficulties the Appellant has at present, the likelihood that her difficulties would be aggravated through losing the support of her current congregation and the effect upon her of the difficulties in accessing UK health care. The judge decided that this is not a temporary situation and that it was conjecture to speculate as to whether a comparable church congregation would in due course be able to assist her in Nigeria. The judge considered the medical evidence and decided that future difficulties in Nigeria would not be temporary. The judge said at paragraph 13 “The Appellant’s mental health being at the forefront of my analysis rather than her HIV position.”
16. I am satisfied on the basis of the judge’s analysis of the factual background that he took into account all of the evidence before him. Whilst Mr Kotas submitted that the judge ignored the fact that the Appellant had a 10 year old son it is clear that the judge was aware of the Appellant’s situation and the judge does not have to make findings on every element of the case. The judge is required to make findings on all matters of conflict and resolve those and the judge did so in this case.
17. I accept that the emphasis of the determination in this case is on the Appellant’s mental health issues and on how the Appellant has coped in the UK. However the judge very clearly had in mind the issue of “very significant obstacles” and it is clear that the judge concluded that the very significant obstacle in this case is primarily the Appellant’s fragile mental health state.

18. Whilst I accept that this is a conclusion that not every judge may have reached in this case, I do not consider that this decision is irrational or that it was not based on the evidence before the judge. I accept that a judge making a decision on freestanding Article 8 or a freestanding Article 3 may well have reached a different decision but in this case in these circumstances the judge was considering paragraph 276ADE(1)(vi) and the judge reached a decision which he was entitled to reach on the basis of the evidence before him in considering this paragraph.
19. In these circumstances I am satisfied that the judge made no material error of law in the determination of this appeal.

Notice of Decision

20. The judge made no material error of law. The decision of the First-tier Tribunal shall stand.

Signed

Date: 21 January 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 21 January 2016

Deputy Upper Tribunal Judge Grimes