Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09020/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 June 2016	**On 1 July 2016**

Before

Mr H J E LATTER
DEPUTY UPPER TRIBUNAL JUDGE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IBIRONKE OYALOWO ADETUNJI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Mr M Afzal, agent for IIAS

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal, Judge Colvin, allowing the applicant's appeal under para 276ADE of the Rules against

the Secretary of State's decision made on 16 February 2015 to refuse to vary her leave to remain in the UK and to give directions for her removal. In this decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. The appellant is a citizen of Nigeria born on 4 August 1994. She claims to have entered the UK in September 2006. On 11 January 2012 she was granted leave to remain as a dependent child of her mother until 18 August 2014 under the discretionary leave policy. On 6 August 2014 she applied for further leave to remain on the basis of her family and private life. Her application was refused on 16 February 2015. The respondent was not satisfied that the appellant was able to meet the requirements of para 276A(1) relating to private life or that there were any exceptional circumstances justifying a grant of leave outside the Rules under article 8.

The Hearing Before the First-Tier Tribunal Judge

3. At the hearing before the First-tier Tribunal the appellant explained that she had come to the UK in September 2006 with the help of an agent to join her mother who was already here. The two other children of the family came to the UK after her and they and their mother have been granted discretionary leave until 27 January 2018. The appellant had been back to Nigeria in 2013 for the marriage of a colleague and again in 2014. She did not know where her father was. She worked a lot of hours as a carer so that she could help out financially at home.

4. Her mother gave evidence that she had come to the UK in 2002 with the help of an agent and confirmed that the appellant had come in September 2006. Her two younger children who were 18 and 16 at the date of the hearing came together from Nigeria when they were 12 and 10 respectively. She has another son aged 8 who was born in the UK and is autistic. She has a partner in the UK, a British citizen aged 73 who was unable to work. The only income coming into the family was that of the appellant.

5. The judge accepted that the appellant had come to the UK in September 2006 noting that there was a certificate of attendance from her school for 2006 – 2007 and that her immigration status had subsequently been regularised together with that of her mother and two siblings in January 2012 when limited leave was granted until 18 August 2014. So far as her mother and siblings are concerned leave has been extended until January 2018.

6. The judge set out her conclusions in [14] as follows:

> "On the basis that the appellant arrived in the UK in September 2006 she has been here continuously for nine years. She was aged 20 at the time of

> the application and is now aged 21 at the date of the hearing. Whilst it cannot be said that she has spent half her life in the UK at the date of the hearing to fulfil the requirements of para 276ADE(v), it is necessary to consider whether there would be very significant obstacles to her integration on return to Nigeria under para 276ADE(vi). Her immediate family members of her mother and siblings are living in the UK. She has spent a formative nine years living with her family in the UK and being educated and working here. She still lives at home and is emotionally dependent on her mother and she helps financially and with her disabled half-brother. There are no family members in Nigeria and therefore no-one to support her on return or to provide her with accommodation. Taking account of the fact that she is only aged 21, I am satisfied that the circumstances mean that there would be very significant obstacles to her integration into Nigeria."

7. Accordingly the appeal was allowed under para 276ADE and the judge said that in these circumstances she did not find it necessary to consider article 8 outside the Rules.

The Grounds and Submissions

8. In the grounds it is argued that the judge erred in law by incorporating factual matters which were irrelevant to the question in issue, whether the appellant could reintegrate into life in Nigeria. In finding that reintegration was not possible because of the appellant's education, work and family ties in the UK, the judge had factored in wholly irrelevant matters. The assessment should have been linked to the appellant's ability to adapt and have a private life in Nigeria. It was not an assessment of whether or not she had family here although this might be relevant to a limited extent. The grounds set out at length the respondent's guidance on matters to be taken into account when assessing whether the requirements of para 276ADE(1)(v) are met.

9. Mr Tarlow adopted the grounds. He accepted that the Home Office guidance was not binding but nonetheless it indicated the kind of factors properly to be taken into account. The judge's findings of fact in [13] and [14] were not sufficient to enable a finding to be reached that there would be significant obstacles to the appellant being able to integrate into Nigeria. The judge's findings focused on her life in the UK and not on whether she would be able to reintegrate in Nigeria. In summary, he submitted that the judge had failed to take all relevant matters into account and had been swayed by a number of irrelevant matters.

10. Mr Afzal adopted his rule 24 reply arguing that the judge had not erred and had not considered wholly irrelevant matters. It could not be irrelevant that there was no-one in Nigeria who would support the appellant or provide her with accommodation. It was also relevant that the appellant had been in the UK for nine years spending her formative years here, supporting her mother financially and helping her disabled half-brother. He referred to and relied on the decision in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 29 submitting that the

respondent's appeal was devoid of any substance or merit and that the judge had made findings open to her and had given reasons making it clear how she reached her decision.

Assessment of Whether the First-Tier Tribunal Erred in Law

11. The issue I must consider is whether the judge erred in law in such a way that the decision should be set aside. It is common ground that the appellant was not able to meet the requirements of para 276ADE(1)(i)–(v). The judge therefore went on to consider whether she was able to meet the test in subpara (vi) requiring an assessment of whether there would be very significant obstacles to her integration on return to Nigeria.

12. This is a high threshold to meet: the obstacles must not only be significant but very significant. The respondent's guidance set out in the grounds of appeal is not binding but I am satisfied that the following accurately sets out the proper approach:

> "A very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision maker is looking for more than obstacles. They are looking to see whether there are 'very significant' obstacles which is a higher threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant."

13. The judge took into account that the appellant has spent nine years living with her family in the UK but did not factor into her assessment that the appellant had lived in Nigeria until 2006 and had returned in 2013 for the marriage of a colleague and again in 2014. Whilst the judge accepted that the appellant had no immediate family members in Nigeria, and said that therefore she had no-one to support her on return or to provide her with accommodation, there was no consideration of whether there were extended family members or friends in the country of return to whom she would be able to turn for assistance or of whether she would be able to obtain employment taking into account the fact that she has been working in the UK and to that extent has acquired some experience and she speaks English, the language widely spoken in Nigeria.

14. The judge took into account that she was still living at home and was emotionally dependent on her mother whom she helped financially and also that she helped look after her disabled half-brother. However, the extent of her private life established in the UK would not normally be relevant to the assessment of whether there are very significant obstacles to integration into the country of return although it may well be very relevant to a consideration of whether there are exceptional circumstances making refusal unjustifiably harsh for the appellant in her particular circumstances.

15. In summary, I am satisfied that the judge failed to take into account a number of factors relevant to whether the appellant would be able to meet the high test of showing that there were very significant obstacles to integrating in Nigeria and further erred by not putting into their proper context factors such as the appellant's private life in this country which were of secondary relevance to that assessment.

16. I am accordingly satisfied that the judge erred in law and the decision should be set aside. This leaves the fact, as I have already indicated, that the appellant has an arguable case that her circumstances are such that removal would in her case be unjustifiably harsh so justifying a consideration of whether discretionary leave should be granted outside the Rules. As the judge found that the requirements of para 276ADE(1)(vi) were met she did not go on to consider that issue. Mr Afzal also made the point that there was further evidence the appellant would wish to rely on in support of her appeal. In these circumstances I am satisfied that the proper course is for the appeal to be remitted to the First-tier Tribunal for a full rehearing on the merits.

Decision

17. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for a full rehearing on all issues.

18. No anonymity direction is made.

Signed H J E Latter Date: 30 June 2016

Deputy Upper Tribunal Judge Latter