Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02270/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 December 2017	**On 19 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MS R A O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Aborisade, O A Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 16 April 1951 who entered the UK as a visitor on 23 June 2003 and remained unlawfully after her leave expired.

2. On 5 May 2015 she applied for leave to remain in the UK on the basis of her family and private life. On 25 June 2015 the application was refused. The Secretary of State was not satisfied that the appellant was able to meet the requirements of the Immigration Rules or that there were exceptional circumstances to warrant a grant of leave outside the Rules.

3. The appellant appealed to the First-tier Tribunal where her appeal was heard by Judge Rowlands. In a decision promulgated on 22 March 2017 the judge dismissed the appeal. The appellant is now appealing against the decision of the First-tier Tribunal.

4. The appellant's case before the First-tier Tribunal, in summary, was that she resided with her daughter, son-in-law and four grandchildren, all of whom are British citizens. Her daughter had been diagnosed with terminal cancer and her son-in-law worked full-time. She claimed that she looked after her daughter and grandchildren. In her statement she stated that: "My grandchildren would not be able to cope without my support and they would be devastated if I were to be removed to Nigeria."

5. The judge found that the appellant had been caring for her daughter and her family since about 2012 although it appeared she had been living her life separately from them. He accepted that the appellant's daughter was very unwell and suffering from a life-limiting illness.

6. The judge considered whether the appellant was able to satisfy the Immigration Rules and concluded that she was not, finding that there were not very significant obstacles to her integration into Nigeria.

7. The judge then assessed whether the appeal should be allowed outside the Immigration Rules. He found at paragraph 16:

> *"There is no doubt that family life exists between the appellant and her daughter, grandchildren and son-in-law."*

8. The judge then stated that he was not convinced family life was as deep-rooted as the appellant claimed. He stated that he accepted that the appellant had been a great help to her family but not that the family would be unable to manage without her. The judge concluded at paragraph 19 that:

> *"As sad as the family's circumstances are I do not believe that the circumstances mean that their family life is such that removal would engage Article 8 at all."*

9. The grounds of appeal submit that the judge contradicted himself by finding at paragraph 16 that family life exists and at paragraph 19 that it does not exist. It is also maintained that a finding that family life does not exist is inconsistent with the factual matrix accepted by the judge which in essence was that the appellant has been caring for her daughter and family since about 2012.

10. A further argument in the grounds is that the judge failed to consider the best interests of the appellant's grandchildren.

11. The Secretary of State submitted a Rule 24 response where she accepted that the First-tier Tribunal had not carried out any obvious assessments of the best interests of the appellant's grandchildren as a separate consideration from the later analysis of proportionality and compelling

circumstances. The Rule 24 response went on to state: "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing."

12. Before me, Mr Jarvis on behalf of the Secretary of State and Mr Aborisade on behalf of the appellant both confirmed that the parties were in agreement that the judge had made a material error of law by failing to consider the best interests of the appellant's grandchildren and that consequently the decision of the First-tier Tribunal should be set aside and remade.

13. Mr Aborisade drew to my attention that the appellant's daughter had recently died.

14. Mr Jarvis expressed the view that extensive fact-finding might be required to assess the best interests of the appellant's grandchildren in light of the change of circumstances and therefore that it would be appropriate for the matter to be remitted to the First-tier Tribunal. Mr Aborisade was in agreement. I also agree.

Notice of Decision

15. The decision of the First-tier Tribunal contains a material error of law and is set aside.

16. The appeal is remitted to the First-tier Tribunal to be heard afresh before a judge other than First-tier Tribunal Judge Rowlands.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

Signed

Deputy Upper Tribunal Judge Sheridan Dated: 19 December 2017