



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

Appeal Number: IA/20934/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 October 2017**

**Decision & Reasons
Promulgated
On 9 November 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MISS OLUFUNMILOLA MARGARET LAWRENCE AKINRINMADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright, Counsel instructed by Perera & Co Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, born on 11 November 1961. She claims to have come to the United Kingdom in 1989, having been granted a visitor's visa. Thereafter she remained in the United Kingdom unlawfully. In January 2015 she was encountered as an overstayer by the immigration authorities and informed of her liability to be removed.
2. By an application dated 16 February 2015 she sought leave to remain on the basis of private and family life. The basis upon which the application was made is set out in a letter from her representatives dated 16 February 2015. In essence she was to say that most of her close family relatives

lived in the United Kingdom and she was supported by them. She had lost contact with her husband and children in Nigeria. In particular, and of significance, that she had lived in the United Kingdom for almost 25 years and had only returned to Nigeria for several weeks in November 2007 and that there were significant obstacles to prevent her integration into society in Nigeria, not least because of her lack of connection with that country over such a long period of time.

3. In a decision of 22 May 2015 the respondent refused the application on the basis that she had not lived continuously in the United Kingdom for at least twenty years and in particular had provided no acceptable evidence to cover the years 1998, 2004 and 2010. It was not accepted that there would be very significant obstacles to her integration into Nigeria and that there were no compelling circumstances which would prevent removal.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Hamilton on 12 August 2016. A large number of documents were presented and she gave evidence as did her brother on her behalf. The determination is a detailed one, promulgated on 7 February 2017.
5. The appeal is dismissed in all respects. The Judge found that the appellant had been absent from the United Kingdom on a number of occasions, visiting Nigeria. It was not accepted that the appellant had lost contact with her family and children in Nigeria such as to create significant obstacles to reintegration.
6. Challenge is made to the decision in a number of respects, in particular the delay that was occasioned through the illness of the Judge from hearing the matter to its promulgation. It was on the basis of possible unfairness in relation to delay, when credibility was in issue, that permission was granted to the Upper Tribunal to challenge the decision. Thus the matter comes before me.
7. Clearly a significant delay of some five months is an important matter to consider in the context of fairness of proceedings, particularly where matters of credibility and recollection may be involved. Challenge is made in the grounds of appeal that the passage of time may have affected the Judge's memory of subtle features relevant to the assessment of credibility.
8. At the hearing Mr Plowright most fairly indicated, however, that he did not rely upon the Judge's lack of recollection or inaccurate recall of evidence but solely upon one matter, namely that the Judge failed to make findings of credibility in respect of the evidence of the appellant's brother. There were a number of aspects of the brother's evidence which, on their face, would seem to be somewhat surprising. The appellant had three children and he communicated with them on Facebook and other media. He had not asked the appellant whether she had any messages from them since

she came to the United Kingdom. He did not ask her about her children. It was the appellant's evidence that she had lost contact with her children and it is perhaps somewhat surprising in that context that her brother was able to make the contact which she seemingly was unable to make. Given the length of time that she has been in the United Kingdom it is perhaps somewhat surprising that the brother has never asked her about her children.

9. The brother also indicated that he has not aware that he appellant had ever worked in the United Kingdom. It was her evidence, and indeed documentary evidence produced, that she had certainly been working, earning significant wages for a number of years. The question arises clearly as to what knowledge in practical terms the brother had of her affairs, given that he knew so little about her.
10. He also gave evidence that the only time she had left the United Kingdom was to attend her father's funeral.
11. At paragraph 41 of the determination the Judge noted there to be implausible elements in the oral evidence of the appellant and of her brother and comments that matters seem to be strange and odd. None of those issues either individually or cumulatively led the Judge to dismiss their accounts as untrue.
12. Mr Plowright relies upon the statement by the brother that the only time the appellant left the United Kingdom was to attend the funeral, as being a key element of his evidence which the Judge should have accepted as being wholly accurate. It seems to me, however, that the Judge is entitled to put that evidence within the entire context of the documentation and evidence that was submitted. As I have indicated, that the brother did not know that the appellant had ever worked in the United Kingdom simply highlights the question as to what contact or knowledge he really had with or of her generally.
13. For the most part the Judge has considered the documentary evidence that was presented and has come to a number of conclusions relating to the assistance which they provide to show that the appellant resided in the United Kingdom or otherwise. It may be said that the analysis of the documents was perhaps over complicated in many ways, with perhaps irrelevant considerations being applied to certain of them. That having been said, however, a number of relevant matters were noted by the Judge. At paragraph 45 the Judge noted the Nigerian passport which was issued on 4 October 1989 and the six month visa issued on 14 November 1989. The passport shows a visa issued on 26 May 1990 and two immigration stamps which appear to show that she passed through Gatwick Airport on 26 November 1989 and 17 November 1990. The Judge noted that the appellant had never said that she returned to Nigeria in that time but noted that it was not clear how she managed to return to the United Kingdom when her visa had expired in May 1990.

14. In paragraph 64 of the determination mention is made of the computerised medical records from 2006 to 2013, recording that the appellant received a tetanus vaccination in Nigeria on 10 May 2004.
15. In paragraph 52 the Judge considered documentation relating to the appellant's divorce, noting in particular that in them her husband is recorded as saying that their children were born in September 1985, August 1987 and October 1994. The claim that the last child was born in 1994 was considered significantly inconsistent with the appellant's claim to be living in the United Kingdom since 1988 and having separated from her husband before then. Remarks made by the husband on the court Record of Proceedings would seem to indicate that the appellant had been living more recently than that in Nigeria and had potentially absented herself concerning service.
16. Various other documents were considered relating to evidence as to employment, hospital appointments, study and significant gaps were found in the evidence that was presented, such as to lead the Judge to conclude in paragraph 82 of the determination that, looking at the evidence as a whole, the appellant had not shown that she was in the United Kingdom between November 2007 and October 2009.
17. In paragraph 84 the Judge noted that the appellant was able to travel to and from Nigeria in 2007 despite having no status in the United Kingdom. The Judge also found that the appellant was able to travel to and from the United Kingdom despite immigration controls.
18. There were other documents considered which perhaps were not essentially on the issue of absence.
19. Mr Plowright submits that, given the nature of the original decision of refusal, the Judge should have concentrated on the three years specified in the decision. Mr Duffy, however, submits that the lack of reference to other years did not expressly amount to a concession that the evidence submitted in relation to them was satisfactory. It was open to the Judge to consider the evidence as submitted and come to conclusions as to the nature of the same. He submits that such had been done by the Judge. The Judge concluded therefore that the appellant had visited Nigeria or at least had been out of the United Kingdom more frequently than she was prepared to admit.
20. In terms of family connections in Nigeria the Judge noted at paragraph 85 of the determination documents, including an affidavit, which would indicate that the appellant's mother lived in Nigeria rather than the United Kingdom and had lived there until 2015. It was not accepted by the Judge that the appellant had no relationship with her children or that there were significant obstacles to her reintegration into Nigeria. Some documents were considered which, although not directly relevant to her absence,

raised questions as to her credibility, particularly an invoice from Comet which showed a transaction taking place on 13 September 1997 but payment of the same seemed to be by a Maestro Card valid much later. Documents were considered in relation to potential inconsistencies as to addresses and places of residence. Some documents were found to be consistent with her account and others less so.

21. Clearly it is the function of the Judge to consider the documentation and to come to conclusions upon it.
22. Criticism is made of the Judge that the matters of concern which were noted were not put to the appellant at any stage of the proceedings. It is said that that rendered matters significantly unfair. A practical difficulty faced the Judge at the hearing, was that the respondent was not represented by a Presenting Officer and therefore that restricted, in practical terms, the ability to question and examine the appellant.
23. The large volume of documentary evidence is noted at paragraphs 14 to 18. There were many documents including two supplementary bundles. There would seem to have been little attempt by Mr Plowright, in representing the appellant at that hearing, to analyse in great detail the nature of the documentation that was presented or to assist the Judge with the approach to be taken to it. Sadly so often representatives produce a large bundle of documents which it is said speak for itself. It is then for the Judge to make such use of those documents as may be apparent upon examination.
24. Indeed there was presented with such documents a short skeleton argument on behalf of the appellant prepared by Mr Plowright on 10 August 2016, focusing exclusively on the narrow point that was advanced by the appellant that she had only returned to Nigeria for two weeks in November 2007. Such skeleton argument did not address the concerns expressed in the refusal letter about the three years in particular when it is said that she was absent nor indeed did the skeleton argument highlight any reference to the documents in the chronology of residence. Thus to a large extent the Judge was left to make sense of those documents which the Judge in the determination has sought to do. Such arguments as were presented gave the Judge no assistance whatsoever in analysing the documents or explaining their relevance. It is difficult to understand how in practical terms those concerns that were apparent in the documents could be presented to the appellant for further clarification. They were the documents relied upon by the appellant to establish her case and it seems to me entirely proper for the Judge to have come to the conclusions upon them which have been expressed.
25. As I indicated to Mr Plowright, one concern that I did have was the many documents considered by the Judge as perhaps serving to obscure the central focus of consideration. However it is clear from looking at the determination as a whole that the Judge was engaged in the process to

determine whether the documents produced established presence in the United Kingdom or not. In many cases the documents were found to establish presence and in others not. That was an analytic process properly conducted by the Judge.

26. In paragraph 28 of the grounds of appeal certain findings by the Judge in relation to the documentation are highlighted in (a) to (h). Apart from highlighting what the Judge found there is no comment as to whether that finding was or was not accurate, simply there is no comment upon them. Rather, the challenge continues that the Judge failed to make assessment of other documents set out in 29(a) to (f). Once again it is not entirely clear what relevance those documents have to the issues in this case.
27. What is abundantly clear is that on any basis the appellant does not meet the twenty year continuous residence. This matter was conceded by Mr Plowright at the hearing and indeed accepted by him before me. The real issue in the case is whether the absence in November was the only one. It was contended by the respondent in the decision that it was not, indeed that there were other absences and such was found by the Judge upon analysis of the documents properly conducted. The fact that the appellant was able, seemingly, to leave the United Kingdom and return in spite of immigration control was a relevant factor in the mind of the Judge and indeed not even dealt with by the appellant in connection with her claim to have gone to Nigeria in 2007 and returned.
28. Overall I find that the Judge faced with the task of analysing the documentation has done so. There is no suggestion that the lapse of time in doing so had impaired any ability to make that analysis. Overall, therefore, I do not find there to be any material error in the approach taken by the Judge to the documentation or to the evidence as presented. In the absence of any suggestion that any material matter was omitted or mis-recalled I do not find there to be any significant unfairness or any unfairness in the procedure overall, notwithstanding the delay in the promulgation of the decision.

Notice of Decision

29. In all the circumstances the appeal before the Upper Tribunal is dismissed. The decision of the Judge shall stand, namely that the appellant's appeal is dismissed in relation to her application for leave to remain both under the Immigration Rules and in respect of Article 8 of the ECHR.

No anonymity direction is made.



Signed

Date 9 November 2017

Upper Tribunal Judge King TD