



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

Appeal Number: HU/04143/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 February 2018**

**Decision & Reasons Promulgated  
On 27 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MO  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Smith, Counsel instructed by Wilson Solicitors LLP  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria, born on 24 November 1976. She entered the UK on 24 November 2012 with a visitor visa valid until 17 March 2013. She remained in the UK thereafter without lawful leave.

2. On 7 October 2015 the appellant made a human rights application for leave to remain in the UK on the basis that her removal would be contrary to Articles 3 and 8 of the ECHR. On 21 February 2017 her application was refused by the respondent.
3. The appellant appealed to the First-tier Tribunal where her appeal was heard by Judge of the First-tier Tribunal Walters. In a decision promulgated on 12 October 2017 the appeal was dismissed. The appellant is now appealing against that decision.

## **Background**

4. The uncontested evidence is that the appellant had multiple traumatic experiences in Nigeria, which include:
  - (a) being subjected to FGM;
  - (b) having her child taken from her;
  - (c) physical abuse from her mother;
  - (d) sexual abuse;
  - (e) alcohol and drug addiction;
  - (f) contracting HIV and being disowned by her family and husband when they found out she was HIV positive.
5. It is also uncontested that notwithstanding her very difficult circumstances the appellant graduated from university in 2002 and worked until shortly before she came to the UK (including for several years in a bank).
6. The appellant was diagnosed with HIV in 2009 but did not disclose this to her husband at the time. She took antiretroviral drugs which she paid for privately (one of the reasons she gave for paying privately was to avoid people seeing her queuing to obtain free medication at a government centre). When she eventually revealed the diagnosis to her husband with whom she had been undertaking IVF treatment the relationship broke down and he told her to leave. She took all their money from a joint bank account before travelling to the UK on a visitor's visa.
7. In the UK the appellant initially lived with a friend but did not mention she was HIV positive. When the friend discovered this she was forced to leave. She is now homeless. She volunteers at two charities: Body and Soul and Thames Valley Positive Support (TVPS).
8. At paragraphs 3 and 4 of her statement dated 24 August 2017 the appellant summarised her role at the charities in the following terms:

*“Notwithstanding all the problems I have I feel happy when I am at either Body and Soul or TVPS especially when I am helping others through the volunteering I do for them. I volunteer as a mentor for Body and Soul doing peer support. I make calls and check on other people in difficult situations who have HIV and live too far away to*

*come to the drop-in sessions. They draw support from me and I am happy that I have given a helping hand to someone else irrespective of my own problems.*

*At TVPS I do whatever they need help with, such as cooking for the people at the drop-in on Tuesdays and Thursdays and helping to clean up afterwards. There are other volunteers that help too. On Thursdays I do the preparation in the morning and then I leave early to go to Body and Soul. ...I worked in Nigeria after finishing my education until shortly before I left for the UK. I have not been allowed to work since but I would love to work and to be able to support myself and make a contribution to UK society. Even if I were granted leave to remain in the UK I would always volunteer in these charities."*

9. The appellant is receiving treatment from the NHS for HIV. She is regularly monitored and receives antiretroviral therapy ("ART" or "ARV"). She receives support from the aforementioned charitable organisations TVPS and Body and Soul including from Body and Soul counselling for her depression.
10. Since arriving in the UK, the appellant has been befriended by a man and his ex-wife Mr. and Mrs. [M] who give her some (modest) financial support and who she visits from time to time. They both wrote letters of support that were before the First-tier Tribunal. Mr [M] stated:

*"I have known [the appellant] for about 3 years. We met first online. She has visited me several times and met my ex-wife, children and grandchildren. When she visits we explore places of interest in the area. We have been to The Lake District and many times to the Yorkshire Dales. We walk the woods near my home with my dog. We go shopping and share cooking and housework. She is a nice person and a good friend. I pay her fare when she comes and give her a little financial support when needed. We keep in touch by phone regularly."*

### **Decision of the Respondent**

11. The respondent considered the appellant's application for leave under Articles 8 and 3 of the ECHR. The respondent concluded in the refusal letter that the appellant did not satisfy the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules as she has spent the vast majority of her life in Nigeria and has a full understanding of Nigeria's language and culture such that there would not be very significant obstacles to her integration. It was also found that there were not exceptional circumstances that would warrant allowing her application under Article 8 ECHR outside the Rules.
12. In respect of Article 3 ECHR, the respondent stated that the high threshold of severity was not met, given that ART and specialist HIV care is available free in Nigeria.

### **Expert Evidence of Dr Patrick**

13. The appellant submitted to the First-tier Tribunal a report by a Nigerian medical doctor with experience treating people with HIV and AIDS, Dr Okolie Patrick. Dr Patrick prepared two reports dated 25 March 2015 and 5 September 2017. The reports set out in detail his opinion on the circumstances faced by people with HIV in Nigeria. He notes at paragraphs 4, 9 and 11 of the second report that the drugs the appellant is currently taking are on the approved list in Nigeria and should be available at designated hospitals for free but they sometimes are not, particularly in rural centres. In the report he notes that there have been a shortage of drugs and instances where patients are asked to pay for them. He cites a report which found that only 38% of people eligible for ART medication had access in 2012. He also commented that the appellant is on her third regimen and has had at least one change due to drug resistance. He further commented that the cost of drugs privately would be between \$200 and \$250 a month.
14. At paragraph 13 of his second report Dr Patrick stated that at his centre which is located in the capital city patients are not asked to pay and there are not shortages of drugs. However he describes having encountered patients from rural centres who have had to pay or make do without medication they need. He stated at paragraph 13 the following:

“I have also encountered patients who had to make do with whatever medications were available at their centres because their recommended and prescribed ARTs were out of stock when they were due for a refill. These occurrences are usually experienced in the rural centres which are ill-equipped, poorly staffed and are hardly monitored or properly supervised.”
15. Dr Patrick also commented on the long waits for laboratory tests and insufficient frequency of monitoring that is commonplace in Nigeria. He further described the stigma faced by HIV sufferers and the limited support available from charities. He also commented on the lack of appropriate facilities for people with mental health problems. He concluded his report by stating as follows:

“I believe the appellant if returned to Nigeria with her present circumstances (lone female returnee from Europe with no family support, positive HIV status, no social welfare options and weak chances of employment) runs the risks of destitution and stigma. If she is unable to continue her ARTS she stands the chance of developing resistance to her medications and subsequent treatment failure and associated complications.”

### **Expert Report of Dr Wilson**

16. The appellant also submitted a report from Dr Wilson, a chartered clinic psychologist. The report, which is dated 28 August 2017, recounts in detail the appellant’s circumstances in Nigeria and the UK. It is noted that the

appellant has been homeless for four years and that she volunteers for a charity where she talks with attendees as well as cleans. The report describes the physical, sexual and emotional abuse the appellant has suffered and concludes that she has complex PTSD with severe disassociation and associated psychotic symptoms as well as severe depression. Dr Wilson advises that the appellant needs specialist multidisciplinary support. The report concludes that the appellant is at very high risk of suicide should she be forcibly removed to Nigeria and, in the event of her being returned safely, her mental health would likely deteriorate further.

17. At paragraph 157 of the report Dr Wilson states:

“In my opinion, the likelihood of the appellant being able to care for herself, work, financially support herself or access support services in Nigeria would be very compromised. She is manifestly not able to do so within the UK currently even if she had legal status to do so; in my opinion she is not able fit to work currently due to her serious mental health problems.”

### **Decision of the First-tier Tribunal**

18. At paragraphs 39 to 43 of the decision the judge considered whether the appellant would have access to ART in Nigeria. At paragraph 42 the judge summarised Dr. Patrick’s evidence in the following terms:

“The gist of Dr. Patrick’s report is that the availability of free ARVs is more problematic in rural centres. There are also cases where drugs run out and cases of persons having to pay bribes to get drugs.”

At paragraph 43 the judge concluded:

“I concluded from this evidence that ARVs would be available to the appellant free of charge and that it was likely she would be able to obtain these and the necessary tests and follow-up treatment in any of the large cities in the south of Nigeria.”

19. The judge considered the appellant’s mental health at paragraphs 44 to 60. The key findings are at paragraphs 55 to 60. Given their relevance to the grounds of appeal it is necessary to quote them in full as follows:

*“55. Dr. Wilson gives the opinion that if returned to Nigeria the Appellant would not be able to care for herself, work, financially support herself or access support services. She writes, ‘She is manifestly not able to do so within the UK currently even if she had legal status to do so; in my opinion she is not able fit to work currently due to her serious mental health problems’.*

*Dr Wilson also states that in her opinion the Appellant would be at very high risk of suicide should attempts be made to forcibly return her to Nigeria.*

*56. I found considerable contrast in this view of the Appellant between that of Dr. Wilson and Mr. and Mrs. [M]. Mr. [M] in describing the visits the Appellant has made to him says that they*

*'...explore places of interest in the area. We have been to the Lake District and many times to the Yorkshire Dales. We walk in the woods near my home with my dog. We go shopping and share cooking and housework. She is a nice person and a good friend'.*

57. *Mrs. [M]'s view of the Appellant is that 'she is a very caring, strong, intelligent person'. She states that she and the Appellant have spent many happy hours together, chatting, shopping and entertaining the grandchildren.*
58. *A TVPS letter speaks of the Appellant's willingness to speak to the media about HIV. She volunteers for TVPS by cooking and helping in the distribution of food. She provides support to those who are newly diagnosed with HIV. The letter continues, 'Her commitment to our organisation is very much appreciated, without her support our group simply wouldn't be able to operate as effectively as it does'. The letter describes the appellant as being a role model for other service users. It states, 'What inspires them (the other service users) the most is that she manages to do so without a roof over her head and despite suffering from bouts of depression that often leave her feeling exhausted. Throughout all of this she still manages to put others first, knowing that many at our group rely on her for support'.*
59. *I did not believe that the Appellant could be accepted as a role model for other persons suffering from HIV and do the voluntary work that she does if Dr. Wilson's conclusion that she is simply unfit for work is right.*
60. *I accept, of course, that the Appellant has expressed suicidal ideation to Dr. Wilson. In this connection I have considered the case of J v SSHD [2005] EWCA Civ 629. Arrangements will therefore have to be made by the Appellant's representatives to serve the Decision on her in the presence of the doctor so that suitable precautions can be taken. The case of J is authority for the proposition that the Respondent can be expected to take suitable precautions concerning all persons who are removed and who threaten suicide."*

20. At paragraphs 61 to 65 the judge considered the likelihood of the appellant being destitute in Nigeria. It is also necessary to quote these passages:

*"61. The Appellant states that she has been rejected by her family and would be alone and destitute if returned to Nigeria. The Appellant was aged 37 when she came to the UK on the second occasion in 2013. I did not accept that a person of that age would not have formed friendships in Nigeria. Indeed she mentions two friends who accompanied her to the UK on the two occasions she entered on Visit visas. The Appellant possesses a university degree and in Nigeria worked in a bank. She also had a job as a TV continuity person. I did not believe that a person who worked in such fields would be entirely friendless or without contacts. Additionally, the Appellant mentions a godfather in Lagos who encouraged her to take her degree in English at university.*

62. *Nor did I accept that the Appellant is incapable of work. She is unable to work in the UK because of legal restrictions. However, on return to Nigeria she would be able to enter the labour market without any form of restriction.*
63. *Mr. Talacchi submitted, in his closing speech, that if the Appellant is incapable of work on return to Nigeria she would be in exactly the same position there as she is here. She would be able to obtain her ARVs free of charge as she does presently through the NHS, and she would be reliant on charity to support her.*
64. *The Appellant has been brought up as an Anglican and says that there is a church in Slough that accommodates her some of the time. However, no enquiries appear to have been made by the Appellant's representatives as to what charities the Anglican church operates in the large cities in Nigeria which might be able to assist the Appellant.*
65. *It may well be that if the Appellant is removed to Nigeria TVPS might be able to give her some initial financial support. That question does not appear to have been asked of them, however, I found Mr. and Mrs. [M]'s contention that they would be unable to send financial support to the Appellant in Nigeria whereas they seem perfectly willing to financially support her here, to be incomprehensible."*

21. The judge then proceeded to consider the appellant's case under Article 3 and Article 8. In respect of Article 3 the judge found that the high threshold was not met given that free ARVs are available in Nigeria.
22. In respect of Article 8 the judge found that there were not significant obstacles to her integration into Nigeria such that paragraph 276ADE(1) (vi) would apply. The judge found that the appellant would be able to gain some employment despite her PTSD and would receive some initial financial support from friends in the UK and/or under the assistance voluntary return scheme.
23. The judge also considered the proportionality of removing the appellant under Article 8. In considering the mandatory considerations under Section 117B of the 2002 Act the judge made findings to the effect that the appellant is not financially independent and her private life was established whilst in the UK unlawfully. The judge also found that the appellant's mental health condition was not sufficiently severe for removal to be "a breach of her moral integrity".

### **Grounds of Appeal**

24. The appellant put forward the following five grounds of appeal:
  - (1) The judge failed to provide any/any adequate reasons for rejecting the expert evidence of Dr Wilson.
  - (2) The judge failed to make findings on material aspects of the appellant's account.

- (3) The judge failed to take material aspects of the report of Dr Patrick into account or provide any or any adequate reasons for rejecting his evidence.
- (4) The judge made findings on the availability to the appellant of support in Nigeria which are inconsistent with the evidence.
- (5) The judge made findings that were not based on any evidence and/or were entirely speculative.

## **Analysis**

25. I will consider each of the five grounds in turn.

### **Failure to provide any/any adequate reasons for rejecting Dr Wilson's evidence:**

26. Ms Smith, elaborating on the written grounds of appeal, argued that the judge had not given adequate or indeed any reasons for rejecting Dr Wilson's conclusion that the appellant would not be able to work either in the UK or in Nigeria because of her mental health problems. She argued that the judge appeared to have preferred the evidence of Mr and Mrs [M] who are merely friends who see the appellant from time to time over the expert opinion of Dr Wilson who had prepared a detailed and thorough report. She also argued that the judge had failed to consider Dr Wilson's conclusions (at paragraphs 156-158 of the report) about the deterioration the appellant would face because of her mental health in Nigeria that go beyond the risk of suicide.
27. Mr Tarlow's response was that the judge properly considered the expert evidence and was entitled to compare it to the other evidence that was before him and reach a conclusion as to which he preferred.
28. I agree with Mr Tarlow. The judge has given clear reasons why the conclusions of Dr Wilson about the appellant's ability to work were not accepted. At paragraph 58 of the decision the judge commented on a letter from TVPS that was submitted by the appellant. The letter states that the appellant:  

"cooks at our drop-in centre every week, she helps clean our centre, she provides support to those who are newly diagnosed through peer support and she continues to share her story anonymously to help others who may be isolated or afraid to seek support."
29. This evidence suggests, or at least can be interpreted as indicating, that the appellant regularly engages in activities which, were her immigration status different, she could be paid for i.e. cooking and cleaning.
30. The judge also noted, at paragraphs 56-57 of the decision, the letters from Mr and Mrs [M] which indicate the appellant is able to engage in various activities with them.



31. The judge also, earlier in the decision, referred to the appellant's evidence that she had graduated from University and worked in Nigeria until shortly before relocating to the UK (see the extract from her Statement quoted above at paragraph 8).
32. It was for the judge to take into consideration, and weigh against each other, the evidence relevant to the question of whether the appellant would be capable of working in Nigeria. This included:
  - (a) the appellant's own evidence about what she did in Nigeria before coming to the UK (she continued working despite difficult health and family circumstances);
  - (b) the evidence from TVPS about her current activities as a volunteer (cooking, cleaning and provision of support);
  - (c) the evidence from Mr and Mrs [M] about what the appellant does with them (cooking, housework, walks, entertaining children); and
  - (d) the expert opinion of Dr Wilson (that the appellant is incapable of work because of her mental health problems).
33. The relative weight to give to the evidence was a matter for the judge and it was not an error of law for the judge to prefer the evidence of the appellant, her friends and TVPS about what the appellant actually does (or has done) to the expert opinion of Dr Wilson when reaching a view on whether the appellant would be capable of undertaking paid work.
34. I also do not accept Ms Smith's argument that the judge failed to consider the risk of deterioration in Nigeria as set out in paragraphs 156-158 of Dr Wilson's report. Dr Wilson believes the appellant will deteriorate for a combination of reasons, including isolation, lack of proper medical care and inability to support herself. However, reading the decision as a whole, it is readily apparent that these factors have been considered by the judge, for example the judge found that the appellant would be able to gain employment in Nigeria (paragraph 71), would have some contacts (paragraph 71), that she would have some initial financial support (paragraph 72), and that she would have access to ARVs (paragraph 67).

*Failure to make findings on material aspects of the appellant's account*

35. Ms Smith argued that the judge failed to make findings on the appellant's account of her background of abuse and ill-treatment in Nigeria and did not make it clear whether the appellant's account was accepted or rejected.
36. Ms Smith also submitted that it is unclear why the judge at paragraph 61 has not accepted the appellant's claim to not have friends who can assist her in Nigeria.
37. It is clear from the decision that the judge has accepted the appellant's account of her background of abuse and ill-treatment in Nigeria. It does not appear that this was in question before the First-tier Tribunal and the

judge's summary of the evidence concerning the appellant's history is set out under a sub-heading "My Findings of Fact".

38. The only aspect of the appellant's account about her life in Nigeria that was rejected is her contention that she has no connections or friends. The judge at paragraph 61 stated that this was not accepted because he would expect a person who left Nigeria at the age of 37, who had attended university, had worked in a bank, and who had been accompanied by a friend when she travelled to the UK, to have formed friendships in Nigeria. The judge stated that he did not accept that a person with the appellant's history would be entirely friendless or without contacts. It was a matter for the judge to assess the evidence and reach a finding on whether the appellant has connections in Nigeria and this is what the judge has done.
39. Contrary to the assertion in this ground of appeal, the judge has made findings on all material aspects of the account and it is clear that the appellant's account has been accepted almost entirely. In particular, the appellant's background of abuse and ill-treatment in Nigeria which forms the basis of her PTSD diagnosis has been accepted in full. The area of contention is not the events that caused the PTSD (which were not disputed) but whether the PTSD should prevent her removal to Nigeria. This ground of appeal therefore has no merit.

*Failure to take material aspects of Dr Patrick's evidence into account*

40. The third ground of appeal maintains that the judge failed to take into consideration relevant aspects of Dr Patrick's report which highlighted that, inter alia, the appellant would face stigma, lack support, and face difficulty (and possibly substantial expense) accessing appropriate HIV treatment.
41. Dr Patrick is a Nigerian medical doctor who works as a clinician for people with HIV. He wrote a detailed report which primarily dealt with the availability of HIV medication in Nigeria. However, the report also touched on other areas, such as the stigma faced by, and lack of support for, those with HIV in Nigeria.
42. The judge's assessment of Dr Patrick's report, at paragraphs 40-43 of the decision, addresses in clear terms Dr Patrick's conclusions about the availability of HIV medication. The judge found that the "gist" of Dr Patrick's evidence was that treatment and medication would be available in large cities. Having carefully reviewed Dr Patrick's report, I am satisfied that this is an accurate summary of his conclusion about the availability of HIV medication.
43. Whilst I agree with Ms Smith that the judge has not addressed the comments by Dr Patrick about HIV sufferers facing stigma and discrimination, I do not consider this an error of law. It was not necessary for the judge to summarise all aspects of Dr Patrick's report. The key issue dealt with by Dr Patrick was the availability of HIV medication and for

reasons explained above I am satisfied that the judge accurately interpreted Dr Patrick's conclusions.

*Making findings on the availability to the appellant of support in Nigeria which were inconsistent with the evidence*

44. In assessing whether the appellant would be destitute upon return to Nigeria, the judge stated that he did not accept that she would be entirely friendless or without contacts. The judge also commented that the Secretary of State's submission (which appears to have been adopted by the judge) was that the appellant would be in the same position in Nigeria as she is in the UK.
45. The grounds of appeal argue that these conclusions are inconsistent with the evidence, as the evidence shows that the appellant would have less support in Nigeria than she has in the UK and that she was rejected by family and friends.
46. There is not an inconsistency between the judge accepting the appellant's account of being rejected by family and friends and his finding that she is likely to have some contacts in Nigeria. The appellant attended university and worked in at least two different jobs. The appellant could have contacts from her time as a student or employee even though her family and friends rejected her. This is not an inconsistency and the judge was entitled to conclude, for the reasons given in paragraph 61 of the decision, that the appellant is unlikely to be entirely without friends or contacts in Nigeria.
47. Contrary to the assertion in the grounds of appeal, the judge did not state that the appellant would have the same level of support in Nigeria as she does in the UK. Rather, the judge, in the context of assessing whether the appellant would be destitute in Nigeria, observed that aspects of the appellant's circumstances would be the same in Nigeria if she were unable to obtain work, in that (amongst other things) she would be reliant on charity to assist her. The judge did not say that the level of support from charity would be identical to that which she receives in the UK and I am satisfied that the judge reached conclusions about whether the appellant would be destitute that were consistent with the evidence before him.

*Findings that were not based on any evidence and/or were entirely speculative*

48. The fifth ground of appeal argues that the judge speculated when finding that the appellant could seek assistance from the Anglican Church in Nigeria and that the charities in the UK that support her might give her some initial financial support. Ms Smith noted that there was no evidence to suggest the charities in the UK, which have as their purpose to support people in the UK, could or would support her in Nigeria.
49. Having reviewed the evidence that was before the First-tier Tribunal, I am in agreement with Ms Smith that there is no evidence to suggest that the

appellant will obtain support, following her return to Nigeria, from the Anglican Church or from a UK based charity, and that it was an error of law to so find. However, I do not consider this error to be material. These findings were made in the context of considering whether the appellant would be destitute on return to Nigeria. The judge made several findings that were open to him, including that the appellant has contacts in Nigeria, that she would be able to enter the labour market, that she would be able to obtain HIV medication free of charge, and that she would benefit from the assistant voluntary return scheme funding (should she so wish). Having made these findings, it was open to the judge to conclude that the appellant would not be destitute, or face very significant obstacles to reintegration, irrespective of any support from the Anglican Church or a UK charity. It is clear from the decision that the judge's conclusion did not depend on his finding about possible support from Anglican Church or a UK charity.

### **Conclusion**

50. For the reasons I have given, I am satisfied that the judge has taken into consideration all of the evidence before him that was material to the issue of whether returning the appellant to Nigeria would breach Articles 3 and/or 8 ECHR and has reached a decision, for which adequate reasons have been given, that was open to him based on the evidence.

### **Decision**

51. The appeal is dismissed.

52. The decision of the First-tier Tribunal does not contain a material error of law and stands.

### **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 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.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 25 February 2018