



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10391/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25 January 2018

Decision & Reasons Promulgated
On 05 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR TEMITOPE IAM MICHA-GRACE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sharma of Counsel
For the Respondent: Mr Naith, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. He was born on 21 May 1971.
2. The appellant appealed against the respondent's refusal to grant him leave to remain in the United Kingdom, the application having been made on 30 October 2015.
3. Judge Hembrough (the judge) dismissed the appeal in a Decision promulgated on 26 September 2017.
4. The grounds claim the judge arguably erred "*..... in the way he dismissed Mr Micha-Grace's appeal*" as follows:

- (a) At [49]-[51] the judge erred in seeking to attach no weight to the evidence and the submissions of the appellant.
- (b) The judge accepted that the appellant had provided a great deal of physical and emotional support to his mother for the preceding ten years. He was living with his mother until August 2017 and after that had been visiting her three times a week. In considering how the appellant's removal would affect his mother, the judge failed to consider that the appellant would not be able to provide her with that physical and emotional support from Nigeria. Despite living 27 miles apart as of the date of the hearing, he visited his mother three times every week.
- (c) The appellant was the primary carer of his mother and had been for ten years.
- (d) The appellant had gone through a form of religious marriage to Ms Faloye. They had been unable to register their marriage here as he did not have his ID documents which are in the possession of the respondent. The grounds claimed the judge erred in finding that family life could continue in Nigeria; Ms Faloye is British, she was born here and has never lived in Nigeria. Further, the grounds relied on 276ADE
- (e) With regard to Ms Faloye as I understand the grounds, the claim at [8] is that if it was reasonable to expel an alien from the UK if that person has lived here for at least twenty years then it was disproportionate to expect a British citizen to leave the UK because she meets the residential requirements of 276ADE.

5. Judge McGinty granted permission on 23 November 2017 finding:

"It is arguable that the learned First-tier Tribunal Judge has materially erred in failing to adequately explain why there was not family life for the purposes of Article 8 between the appellant and his mother, given the appellant's evidence regarding him having lived with her until two months previously, his ongoing visits three times per week and what the judge found to be a 'great deal of physical and emotional support' given to his 83-year-old mother."

6. The respondent filed and served her Rule 24 response on 18 December 2017. The respondent claimed that the judge directed himself appropriately. He was entitled to take into account that the appellant and his mother had overstated their relationship and ties. Bearing in mind **Kugathas [2003] EWCA Civ 31** and **Agyarko [2017] UKSC 11**, the judge did not err.

Submissions on Error of Law

7. Ms Sharma relied upon the grounds. She submitted that family life was continuing. The distance of 27 miles between mother and son did not detract from daily contact and thrice weekly visits. Family life was continuing particularly given there were particular issues affecting the appellant's mother in terms of the death of her daughter 22 years ago, history of domestic violence, and her health conditions.

8. Mr Naith relied upon the Rule 24 response. The judge found that the appellant's circumstances did not reach the necessary relationship to constitute the family life.

Conclusion on Error of Law

9. The grounds claim the judge attached no weight to the evidence and the submissions of the appellant. As can be seen from what I say at [10]-[14] below, the judge did attach some weight to the evidence and submissions. Matters of weight were for the judge to assess. He set out the evidence and proceeded to carry out an analysis of that evidence and submissions in reaching his decision.
10. I find the judge carried out a careful and comprehensive assessment of the appellant's evidence which he set out at [7]-[10] and [17]-[37].
11. The judge accepted that the appellant had provided for some time, a great deal of physical and emotional support to Mrs Atoki and that he had been a comfort to her, but I find nevertheless on the evidence before the judge which he describes, it was open to him to find that the appellant's ties with his mother were not such as to be more than the normal emotional ties. See **Kugathas** at [19]. "*.....neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8.*"
12. The judge set out his findings and reasons at [39]-[59]. For the reasons he gave, the judge did not accept that Mrs Atoki had any significant care needs that were not being met or could not be met through the various agencies of the welfare state. See [45]. The judge did not accept that the appellant was Mrs Atoki's primary carer or that she was in want of care. See [46].
13. Given the appellant and his mother did not live together, that she was not physically dependent and that such care needs as she had could be provided by the state, for the reasons he set out, the judge did not accept that such emotional attachment as existed between the appellant and his mother was such as to amount to dependence so as to engage Article 8 family life. See [51]. The judge found that to some extent Mrs Atoki's emotional needs were managed remotely from 27 miles away notwithstanding visits and he found they could continue to be managed remotely from Nigeria. See [51]. It was open to the judge to find that the appellant and his mother had overstated their relationship and ties.
14. As regards the appellant's relationship with his wife, which did not form part of the original claim, the judge considered the same but for the reasons he set out at [52]-[54] he found it was a matter of personal choice for Ms Faloye as to whether she wished to join the appellant to live in Nigeria or not.
15. I conclude that the decision did not contain a material error of law, such that the decision of the First-tier tribunal should be set aside.

Notice of Decision

16. The decision of the First-tier Tribunal contains no error of law and shall stand.

No anonymity direction is made.

Signed

Date 25 January 2018

Deputy Upper Tribunal Judge Peart