Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15631/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 December, 2017 corrected, signed and sent to Promulgation on 13th January 2018.	**On 15 January 2018**

Before

Upper Tribunal Judge Chalkley

Between

JOSEPHINE [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance by or on the appellant's behalf
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 8 October 1972. The appellant applied for a visit visa to visit her sister in the United Kingdom on 28 August 2007. That application was refused by the Secretary of State on 10 September 2007 with a right of appeal.

2. On 27 September 2007, the appellant made a further application to visit her sister and on 4 October 2007, she was issued with a visit visa valid until 4 April 2008. The appellant entered the United Kingdom on 20 November, 2007. She overstayed when her visit visa expired on 4 April 2008. She did nothing about regularising her stay until on 4 April 2011, she submitted an application for permission to remain in the United Kingdom on the basis of her Article 3 and Article 8 rights, but on 27 May 2011 that application was refused with no right of appeal.

3. On 8 August 2011, the appellant's representatives asked for a reconsideration of the refusal decision and for a right of appeal. On 21 February 2014, the appellant was sent a current circumstances form which she duly completed and returned, and on 1 September 2015, was issued with a notice of liability for removal. She responded by letter of 27 November 2015.

4. On 21 January 2016, she was sent a letter reminding her that her case remained outstanding asking for any further information in respect of her application to remain in the United Kingdom. In February 2016, an undated letter was received from her, at about the same time a letter was received from [GP] dated February 2016. The respondent wrote to the appellant's representatives on 29 April 2016, advising that the appellant make an application for asylum, because she had on more than one occasion claimed to have a fear of return to Nigeria because she feared that her husband would kill her. On 23 May 2016, the appellant's representatives responded saying that she had begun to live with [GP] in November 2015. The appellant has not made an application for asylum and her representatives have confirmed that she does not intend to make such an application for asylum.

5. On 1 June 2016, the respondent refused the appellant's application for leave to remain on human rights grounds on the basis of her Article 3 and 8 rights and gave directions under paragraph 10A of Schedule 2 to the Immigration Act 1971 for her removal from the United Kingdom. The appellant appealed and her appeal was listed before First-tier Tribunal Judge Carlin in Birmingham on 7 August 2017.

6. The appellant was represented before the judge who heard oral evidence from both the appellant and from her partner, [GP], with whom she claimed to enjoy a family life. The judge found that the appellant could not bring herself within the Immigration Rules and therefore looked at the appellant's circumstances to see whether it might be appropriate for him to allow the appeal on the basis that leave should be granted to the appellant in recognition of her Article 8 rights outwith the Immigration Rules. He reminded himself of the decision of the House of Lords in *Razgar* and in *Huang and Kashmiri*. It had been argued before him that family life between the appellant and [GP] could not be enjoyed in Nigeria, because [GP] was not able to eat African food. It was suggested that a lack of suitable diet meant that he could not live in Nigeria and that he could not make the seven or eight hour flight to Nigeria, because he needed oxygen when making a one hour flight to Aberdeen. The judge

found that while it might be difficult for [GP], there were no insurmountable obstacles to family life continuing with him should the parties so desire it. He did not accept the argument that diet would be a problem, because it would be possible for [GP] to eat food which would not cause him problems. There was no medical evidence to the effect that he had been advised not to fly and he did not accept the claimed difficulties would in practice be particularly serious problems. He took into account medical evidence comprised in a letter from a Dr Hall relating to [GP]'s medical problems, but noted that he was not given any information indicating that [GP] would not be able to obtain any medical treatment he needed in Nigeria. He took account of the fact that [GP] had a close family in the United Kingdom and a close relationship with his two adult sons, several grandchildren and great-grandchildren. It was not claimed that either of his sons were dependent on [GP] financially or otherwise, and it was not claimed that he was dependent on them. In any event he took the view that [GP], if resident in Nigeria, would still be able to keep in touch with his family by visits and telephone calls.

7. The appellant sought permission to appeal. The grounds first assert that the judge failed to adequately consider the seriousness of [GP]'s medical problems as set out in Dr Hall's letter. I have read the letter; it is two pages and is in the following terms:

> **"Re: [GP] – Date of birth [ ] 1939**
>
> **Your reference: AA/**
>
> Thank you for your request regarding information for [GP] who is a 77 year old gentleman registered to this Practice.
>
> At present [GP] is waiting Orthopaedic opinion regarding his hip. He has had a previous hip replacement which has required two revisions. He is having left hip pain and has been referred back to Orthopaedics.
>
> [GP] has also been referred to the Memory clinic and is awaiting assessment as he found that his memory has been poor recently. He was also seen by the Fall's clinic last year because of increasing falls at home.
>
> He has a past history of angina, low pack pain and breathlessness. He also has a diagnosis of diverticulitis in 2016.
>
> He is on a variety of medications. His medications are:
>
> Aspirin 75 mgs one taken daily
>
> Atorvastatin 50 mgs tablet taken once at night
>
> Bisoprolol 2.5 mgs taken daily
>
> Carmellose 0.5% eye drops – 1-2 drops 5 times daily
>
> Clenil Modulite 100 mcg Inhaler two doses twice daily
>
> Furosemide 40 mgs taken one daily
>
> Gaviscon Advance Oral suspension – 5-10 mls four times a day
>
> Omeprazole 20 mg tablet once a day
>
> Paracetamol 500 mg tablet taken once or twice six hourly.

> I am unable to give an accurate prognosis of [GP]'s long term health as he is awaiting Orthopaedic opinion regarding his hip pain and Memory clinic assessment regarding his poor memory.
>
> I would note that in 2016 he was seen by the Pulmonary Rehabilitation clinic to try and improve his breathing function and he does get a degree of shortness of breath. However, I am unable to comment as to whether this would restrict his travel".

8. So far as the first challenge is concerned, it is clear that the judge did consider the letter from Dr Hall and there was nothing in that letter to indicate that any medication or treatment that [GP] might require would not available to him in Nigeria.

9. The second challenge was that it was part of the oral evidence of [GP] that his dead wife's ashes were being kept with his son and it was important for [GP] to see his dead wife's ashes regularly. In addition, apparently, there were other arrangements he had with his children in the event of his death and the judge omitted this important piece of evidence as part of his proportionality exercise. With very great respect if [GP]'s dead wife's ashes were so important to him there would be no reason at all why he should not take them with him to Nigeria. In the event that [GP] should die in Nigeria, there is no reason why his body could not be flown back to the United Kingdom in order that his children could make whatever arrangements he had agreed with them for his funeral. This does not disclose any error of law either.

10. The third challenge is that at paragraph 38 of the decision the judge was wrong to conclude that the provisions set out in Section 117B of the Nationality, Immigration and Asylum Act 2002 were not of significance in this present case. What the judge said at paragraph 38 was that he would add that he was of the view that the provisions set out in Section 117B were not significant. The appellant can speak English and the appellant is dependent on [GP] financially and is not likely to be a burden on the taxpayer. What the judge said was entirely correct and I find no error of law there either.

11. At the hearing before me today neither the appellant nor her representative appeared. When the matter was called for hearing at 11.30 the usher attempted to make contact with the appellant's representatives using their main telephone line, but that was not answered. She also attempted to make contact with a mobile line but that was not answered and she left a message. She rang another number as well, but that was answered with a recorded message indicating that messages could not be left. In the circumstances, I proceeded to hear the appeal in the absence of the appellant, no reason having been given for her absence.

12. Mr Melvin indicated that there was no error in the judge's determination and invited me to dismiss the appeal.

13. I have carefully read the determination and the grounds of appeal. I have concluded that there is no error in the judge's determination and his decision shall stand. The appellant's appeal is dismissed.

No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley