Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34263/2015

THE IMMIGRATION ACTS

Heard at Rolls Building	**Decision & Reasons Promulgated**
On 13 March 2018	On 21 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

IFEOMA [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Sher, Counsel
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is a citizen of Nigeria born on 25 July 1982. The appellant came to the UK on 21 September 2011 having been granted leave to enter as a Tier 4 student. She extended her leave, initially as a Tier 4 student and then as a visitor until 24 March 2015. On that date she applied for further leave to remain as a visitor in order to receive private medical treatment. Her application was refused on 4 November 2015. The reasons for refusal letter referred to paragraph 54 of the Immigration Rules. The appellant had provided a letter with her application stating that she had been diagnosed with gallstones. The respondent had written to the appellant on a number

of occasions requesting further evidence with regard to the proposed or continuing treatment, frequency of consultations, probable duration of the treatment and details of the cost. However, satisfactory evidence had not been received from the appellant. The appellant did not meet the requirements of subparagraphs 54(i) to (iv) of the rules. Consideration was given to the appellant's right to enjoy her private life under article 8 of the Human Rights Convention by reference to paragraph 276ADE(1) of the rules. It was not considered that there were very significant obstacles to the appellant's integration to the country to which she would have to go.

2. The appellant appealed. Although she had not mentioned having any dependent children in her application, at the appeal she stated she had three children, born in 2011, 2012 and 2014 respectively. The eldest, D, was in primary school. The appellant appeared at the hearing unrepresented. She said the father of her children lived in Nigeria and he came to the UK about once a year. The appellant said she had stopped working when her visa expired in 2014, since when she had been relying upon food and clothes banks. She said she did not feel safe going back to Nigeria because the father of her children had not wanted the last child. The children are not familiar with Nigeria.

3. The appeal was heard by Judge of the First-tier Tribunal Raymond at Hatton Cross on 15 February 2017. In a determination promulgated on 31 May 2017, the Judge dismissed the appeal. His very short decision concluded as follows:

> "14. I find by reference to paragraph 276ADE(1)(iv) and (vi) that there would be no very significant obstacles to the appellant reintegrating with her children in Nigeria, as someone who has not been in the UK for over 20 years, and whose eldest child … has not been in the UK for at least 7 years. She has achieved an academic qualification which will be of use to her in working for the future betterment of her children in a country where she spent nigh on 30 years of her life. Also I do not accept that she would be without the support of the father of her three children who she says resides in Nigeria. I do not accept that the appellant feels in any way threatened by the father of her three children who has visited her in the UK. If she felt threatened by him when he was in the UK she could have reported him to the police. I consider her evidence that they are legally and not "physically" married, what she meant by this, to be evidence that the appellant was making up as she went along. The appellant also said that she has her parents and two brothers in Nigeria. They would also be available to afford her son support. Whilst her son [D] has become familiar with school in the UK, he is young enough to adapt to life in Nigeria with his mother, quite likely both his parents in fact."

4. Permission to appeal was granted by the First-tier Tribunal because it was arguable that the Judge had completely failed to consider the appellant's article 8 rights outside of the rules and in addition had failed to consider, at all, the best interests of the children.

5. The respondent filed a rule 24 response opposing the appeal.

6. I heard submissions from the representatives on the question whether the Judge made a material error of law in his decision.

7. Ms Sher told me the appellant has since given birth to a fourth child in the UK. Her oral submissions focused on the fact the best interests of the children should have been a primary consideration but the Judge does not allude to this important principle anywhere in his decision. He makes scant reference to the children. D had been in the UK since 2012 and was at school. She argued the appeal should be remitted for proper consideration of these matters. In particular, it was necessary to make findings on the circumstances which would await the children in Nigeria.

8. Mr Melvin accepted the decision was "succinct" but pointed out the Judge could only make findings on the evidence he received, which in this case was scant. The Judge did not find the appellant was a truthful witness. He pointed out the appellant had chosen not to disclose the fact she had children to the respondent and only disclosed it at the last minute at her appeal. Fundamentally, his point was that the Judge could not have come to any other conclusion than to dismiss the appeal.

9. Ms Sher pointed out the appellant had been unrepresented at her appeal. I accept that is the case, although I note she was previously represented and a bundle of evidence was filed at the tribunal prior to the hearing.

10. I note the appellant prepared a witness statement, containing a statement of truth. It is exceedingly short. In relation to her children, all it says is that D was six years of age and was attending primary school. His younger sister was attending nursery. She continued,

> "6. My children have integrated into the British culture and would be difficult relocate to Nigeria at these crucial stages of their lives."

11. In the bundle there was a copy of D's school report relating to his year in the reception class.

12. There is no getting away from the fact the Judge's decision is extremely short and fails to follow a structured approach. He deals briefly with the applicable rules relating to the appellant's private life but he does not apply the family life rules or section 117B of the 2002 Act. He does not address his mind to the possibility of there being compelling circumstances. He does not make findings on the best interests of the children. The decision could therefore be said not to live up to the high standards expected of the tribunal's decisions. In most cases, such paucity of reasoning would lead to the decision being set aside.

13. However, decisions will only be set aside if they contain a material error of law. In other words, it must be shown that, but for the error, the tribunal might have come to a different decision. In the particular circumstances of this case, I am not satisfied that has been demonstrated. Though brief, the Judge's findings are sufficient to show the appeal could not have succeeded.

14. The Judge was entitled on the sparse evidence provided to find that the children's father was supportive and that the family could relocate together in Abuja, where he lives. He was entitled to reject the appellant's claim to fear her husband. Having spent only 5½ years in the UK and 30 years in Nigeria prior to coming to the UK, the Judge was plainly entitled to find the appellant could not succeed under the private life rules. At the date of hearing, D, the eldest child, had not been living in the UK for a continuous period of seven years. He had lived in the UK for only five years at most. None of the children could gain the protection of section 117B(6) because they were not 'qualifying children'. Had the Judge turned his mind to the question of the best interests of the children, he can only have found that their best interests were preserved by their remaining with their mother and returning to live with her and their father. D's educational career was in its very earliest stages and nothing was put forward which was capable of showing his best interests would be harmed by relocating to Nigeria with the rest of his family. As the Judge found, he is young enough to adapt to life in Nigeria. As for the physical conditions awaiting them, the Judge was entitled to infer from the fact the appellant had been untruthful that there was no reason to consider there was any risk to the children at all.

15. There is no error of law in the First-tier Tribunal's decision to dismiss the appeal shall stand.

16. The appellant's appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal is upheld.

No anonymity direction is made.

Signed Date 13 March 2018

Deputy Upper Tribunal Judge Froom