Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00915/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 December 2019	**On 19 December 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MARIAN [E]

(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. L. Tarlow, Home Office Presenting Officer

For the Respondent: Mr. E. Pipi of counsel, instructed by Devine Solicitors

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent is a national of Nigeria. She entered the United Kingdom on 2 October 2004, as a student, and was subsequently granted further leave to remain until 31 May 2015. However, her last period of leave was curtailed to end on 9 June 2011, as she had not been able to start her course. She applied for leave to remain on the basis of her medical conditions

and her private life rights on 11 January 2012, but her application was refused on 22 May 2013.

2. This decision was reconsidered but then maintained on 9 September 2014 and on 2 September 2015 she was served with a notice of removal. She made a human- rights claim on 15 August 2017 which was refused on 23 February 2018. She appealed against this decision and First-tier Tribunal Judge Devittie allowed her appeal on human rights grounds in a determination promulgated on 7 August 2019.

3. The Appellant appealed and on 23 October 2019 First-tier Tribunal Judge Osborne refused her permission to appeal. However, Upper Tribunal Judge Blundell granted the Appellant permission to appeal on 7 November 2019.

ERROR OF LAW HEARING

4. Counsel for the Respondent made an oral application for an order to admit a Nationwide statement, an email exchange and a witness statement from a case worker who had previously advised the Respondent. However, as this evidence had not been before First-tier Tribunal Judge Devittie, I informed counsel that I would only consider his application if I found an error of law in the Judge's decision and also decided to remake the appeal myself. The Home Office Presenting Officer and Counsel for the Respondent both made oral submissions and I have referred to them below, where relevant.

ERROR OF LAW DECISION

5. The Respondent's appeal was allowed on human rights grounds on the basis that there were very significant obstacles to her being able to reintegrate into society and her community, if she were to be removed to Nigeria. The findings made by First-tier Tribunal Judge Devittie in paragraphs 7 to 13 of his determination were not challenged by the Appellant in her grounds of appeal.

6. Instead, in her second ground of appeal, the Appellant submitted that the Judge had "incorrectly determined that the [Respondent's] removal would be disproportionate by focusing solely on her medical condition and finding that the disparity in the standard of treatment would mean that her removal to Nigeria would be disproportionate".

7. However, it was not the case that the Judge allowed the appeal solely on the basis of disparity of health care between the UK and Nigeria. When considering paragraph 276ADE(1)(vi), the

Judge also took into account the deaths of the Respondent's close family members, the social stigma and discrimination she would experience in Nigeria on account of her medical condition, her lack of support and the likelihood of social ostracization there.

8. But, as the Respondent had made a human rights claim, First-tier Tribunal Judge Devittie should have applied his mind to the contents of section 117B of the Nationality, Immigration and Asylum Act 2002, when reaching a decision to allow the Respondent's appeal on human rights grounds.

9. In relation to the first ground of appeal, it is correct that the Appellant relied on two reasons for finding that she did not meet the suitability requirements which were a gateway to the Respondent meeting the requirements in paragraph 276ADE(1)(vi). One of these was the fact that, for the purposes of paragraph S-LTR.4.4., it was asserted that a costs order had been made against her on 8 July 2015, which remained unpaid and which amounted to a litigation debt. The Respondent had provided a copy of the order made by Upper Tribunal Judge Kekic which confirmed that such a costs order was made.

10. Counsel for the Respondent, who had represented her at first instance, asserted that First-tier Tribunal Judge Devittie had been shown a copy of the Nationwide statement on the Respondent's phone at the appeal hearing and that this was why he did not need to deal with this sub-paragraph. The record of proceedings in my file was very difficult to read but did not appear to confirm this and neither party had their own record of the proceedings. In any event, the statement showed that the Respondent had paid her litigation debt on 18 January 2019, which was after the decision under challenge and, at the very least, the Judge should have addressed this.

11. First-tier Tribunal Judge Devittie did address paragraph S-LTR.2.2. of Appendix FM and the fact that the Respondent had failed to disclose a conviction on 24 February 2017, which led to a suspended prison sentence of four months, a curfew requirement and a victim surcharge. In oral evidence at the hearing the Respondent did not deny that this was the case but explained the circumstances of her offence and said that she had pleaded guilty.

12. Paragraph S-LTR.2.2. contains a discretionary basis for finding that leave should not be granted but the issue to be considered when considering whether to exercise such discretion was whether there was an explanation for not disclosing this offence which would trigger the

exercise of this discretion. Instead, in paragraph 16 of his decision, the Judge only considered the circumstances in which the offence took place.

13. In her witness statement, the Respondent had asserted that she had not filled in her application form but that it had been completed by her legal representative. However, this did not absolve the Respondent of the responsibility to disclose all relevant factors in her application. Her counsel submitted that she was mentally unwell when she signed her application form on 15 August 2017 and could not read through the form but merely signed it. However, the medical evidence goes no further than to find that she suffered from anxiety and depression. There is no suggestion that she was unable to understand the case being made against her or give proper instructions to her legal representative at that time.

14. For these reasons I find that there were errors of law in First-tier Tribunal Devittie's determination.

15. I also heard submissions in relation to whether this appeal should be remitted. On balance and taking into account the lack of clarity on many points in the decision under challenge, I found that it would be in the interests of justice for the appeal to be remitted. It would also enable a First-tier Tribunal Judge to have the benefit of relevant evidence which has now come to light.

DECISION

(1) The Appellant's appeal is allowed.

(2) First-tier Tribunal Judge Devittie's decision is set aside in its entirety.

(3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judges Devittie and Osborne for the issue of suitability to be considered.

Nadine Finch

Signed Date 16 December 2019
Upper Tribunal Judge Finch