



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02211/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 27th August 2019**

**Decision & Reasons Promulgated
On 6th September 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS OLASUNBO ABEBI OYEKUNLE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Dirie (instructed by Signature Law LLP)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

This is an appeal to the Upper Tribunal by the Appellant against a Decision and Reasons of Judge Anthony in the First-tier Tribunal promulgated on 28th May 2019. The judgment followed a hearing at Taylor House on 16th April 2019 when the Appellant did not attend and was not represented. In the Decision and Reasons, the judge dismissed the appeal, which had been brought on human rights grounds, on the basis of the Appellant's private and family life in the UK.

The grounds upon which permission was sought and granted are three. Firstly, criticising the Judge's finding that the Appellant was not entitled to benefits

because she was in the UK unlawfully. In that regard, the judge was in error in that, at the time the judge heard the case, by the operation of section 3C of the Immigration Act 1971, the Appellant was not unlawfully in the UK. The relevance of that I will come to later.

The second ground, and the one most strenuously argued, was that the judge was wrong to refuse to adjourn the case when the Appellant had not attended. The argument is that the Appellant through those advising her, Hackney Migrant Centre, had made an application prior to the hearing so that she could secure legal representation. That application was initially refused, and a further application not dealt with. That notwithstanding, the Appellant failed to attend. The Appellant says she did not know she ought to have attended. I am afraid that is no argument. There was a clear notice of hearing requiring her to attend and she failed to do so. The judge, in considering the adjournment application, noted the length of time since the Decision was taken and found that there was no indication that, had an adjournment been granted, she would have obtained legal representation. The judge reminded herself of Nwaigwe [2014] UKUT 00418 (IAC) and the considerations to be applied in an adjournment application and on the basis of the evidence before her was entitled to refuse to adjourn and to proceed to hear the case.

The third ground relied upon is the fact that the Appellant had submitted evidence to the Secretary of State in relation to a number of certificates confirming various courses, that she had undertaken and passed in the UK, that the Secretary of State had not provided to the Tribunal and were therefore not before the judge. However, those certificates could not have made any material difference to the case in front of the judge, which was being presented on the basis of her private and family life.

Turning back to the question of her unlawful presence in the UK, although she was lawfully present by the date of the hearing she had been illegally in the UK from June 1999, when the visit visa that she entered upon expired, through to 23rd May 2016 when she made a human rights application; so for some seventeen years she had been unlawfully in the UK. The basis of the grant of human rights that she had previously, was on the basis that she was the carer of her granddaughter. That was patently not the case by the time the matter came before Judge Anthony because by then she was living with another daughter and another granddaughter.

There was no evidence before the judge whatsoever in relation to any family life that she has in the UK or private life other than that which she would have inevitably built up in the time she has been in the UK. However, as the judge also noted, she had spent a great deal of time illegally in the UK and there was no evidence in front of the judge as to any insurmountable obstacles to her integration into Nigeria, where she had lived for a great many years before she came to the UK as a visitor.

I therefore find the grounds are not made out and there is no material error of law in the First-tier Tribunal's judgment. The appeal therefore to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is to the Upper Tribunal is dismissed

No anonymity direction is made.



Signed
2019

Date 2 September

Upper Tribunal Judge Martin

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



Signed
2019

Date 2 September

Upper Tribunal Judge Martin