Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06341/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24th October 2019	**On 27th November 2019**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

RACHAEL [O]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Ume-Ezeoke, Counsel, instructed by Waterdenes Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Aujla promulgated on 11th June 2019, which dismissed her appeal against the refusal of the Secretary of State for leave to remain on the basis of her family life with her partner under Appendix FM. The application was also refused on 25th March 2019 under Paragraph 276ADE and Gen.3.2 of Appendix FM.

The appellant is a citizen of Nigeria born on 5th March 1963 and arrived in the United Kingdom on 25th December 2004 with entry clearance as a visitor valid to 29th March 2005. She overstayed her visa and on 8th December 2012 made an application for leave to remain on human rights grounds which was refused with no right of appeal. A judicial review was also refused on 13th September 2014 and on 1st September 2015 the appellant was served with a notice of liability for removal as an overstayer. On 12th September 2015, she again applied for leave to remain on human rights grounds and this was refused on 16th March 2016. Her appeal was heard by First-tier Tribunal Judge Twydell on 16th August 2017 and dismissed in September 2017. As set out by Judge Aujla at paragraph 11 with reference to the earlier decision:

> *"11. The judge considered the Appellant's family life and private life claim, in particular the sponsor's health condition as evidence was submitted that he had mental health problems and was in receipt of medication. As regards family life, the judge found that there would be no insurmountable obstacles to the couple continuing with their family life in Nigeria. Any medication that the sponsor needed was available in Nigeria. Furthermore, as regards private life the judge found that there would not be very significant obstacles to the Appellant's integration into Nigeria on return. The judge therefore dismissed the appeal on both immigration and human rights grounds in a Decision and Reasons promulgated on 11 September 2017."*

Judge Aujla noted that permission to appeal to the Upper Tribunal was refused on 1st February 2018 and the appellant thereafter became appeal rights exhausted.

The appellant and sponsor were then married on 30th May 2018 and she again applied on 10th August 2018 for leave to remain on Article 8 grounds and that generated the refusal decision under challenge.

The grounds for permission to appeal.

It was submitted that the judge had failed to take into account the husband's mental health condition, which was not an issue raised at the first hearing, and the latest GP report stated that travelling was not recommended. The appellant challenged the judge's criticism of the GP's letter as not being a medical report by a properly qualified specialist in the field as this overlooked the fact that the GP was the first point of contact and, even though not a specialist in psychiatry, was in a position to comment on the fitness of the appellant's sponsor.

The judge erred with respect to his findings on the appellant's sponsor's ability to work at paragraph 35. That the appellant's sponsor was working on reduced hours could only have occurred because of the assessment of the employer or the occupational health services.

Further, there was critical evidence from the housing team that had been deduced since 2017, demonstrating that the sponsor and appellant had been rehoused because of the sponsor's suicidal tendencies.

In reaching the conclusions that there were no insurmountable obstacles to the appellant's spouse's return to Nigeria because he was familiar with the country and culture the judge failed to note that the appellant's spouse came to the UK aged 21 having concluded his technical education and he had never worked in Nigeria. He had not returned for over 30 years and in effect the judge failed to take this into account.

Analysis

Judge Aujla at paragraph 9 specifically set out the documentation that had been taken into account, which included the appellant's bundle of documents consisting of 54 pages which contained the GP letter together with the letter from the housing team. This bundle also included the decision of First-tier Tribunal Judge Twydell. The judge also directed himself appropriately in referring to the relevant Immigration Rules under Appendix FM and paragraph 276ADE and made reference to **Beoku-Betts [2011] UKHL**. The judge identified the reasons for the refusal in the Secretary of State's letter, made a variety of findings and concluded that there would not be very significant obstacles to family life between the appellant and the sponsor continuing abroad. Specifically, the sponsor's ill health was considered. It was noted the spouse was working and the medication he was receiving would be available in Nigeria (paragraph 25). The judge at paragraph 26 set out that the sponsor had lived in Nigeria from 1971 until 1989, for eighteen years, and had not been back to Nigeria since then. That information was given in the appellant's oral evidence. Her oral evidence also included that she had been caring for the sponsor for three years and he was suffering from psychosis, receiving NHS treatment and his condition was managed by medication and he was suicidal sometimes.

Specifically, submissions were made by the Secretary of State to the effect that there was no evidence to show that the appropriate treatment and medication would not be available to the sponsor in Nigeria if he chose to go with the appellant. Those were submissions made by the Secretary of State.

The judge was urged by the appellant's representative to consider the matter outside the Immigration Rules and to note that the sponsor's

condition had changed since the previous decision of the First-tier Tribunal in 2015. He had been diagnosed with psychosis and was in need of new medication.

Judge Aujla made specific reference to Judge Twydell's decision at paragraph 31, noting that the judge had carefully considered all of the evidence presented to her and set out the appellant's and the sponsor's circumstances. At paragraph 32 Judge Aujla specifically referred to Judge Twydell's consideration of the circumstances, which identified the issue of the sponsor's ill health as well as the education of the sponsor. Judge Aujla stated:

> *"The judge considered the issue of the couple returning to Nigeria to live there. She concluded that the appropriate medication would be available there. She did not find that there would be insurmountable obstacles to the couple carrying on with their family life in Nigeria."*

Judge Aujla specifically noted that the decision of Judge Twydell was the starting point under **Devaseelan [2002] UKIAT 00702**.

I pause there to record sections of Judge Twydell's decision which specifically at paragraph 22 recorded that the partner's health included "mental health issues". At the close of paragraph 22 Judge Twydell stated:

> *"In any event a letter from Mind (page 98) refers to her partner having taken an overdose as a reaction to his mother's death in 2001. Regarding his mental health more recently, the appellant states that if her partner feels suicidal she talks him through it. That strategy appears to work because the partner is managing to hold down employment and carry on with his life without any mental health incident."*

At paragraph 23 Judge Twydell stated:

> *"Further, despite having these medical conditions the appellant's partner is able to continue with his employment and the amount of time off from that employment, as detailed below, is in my view minimal and unlikely to impact on him on a day-to-day basis in respect of his ability to manage his health (and also obtain employment) in Nigeria. I do not accept, as the appellant claims, that her partner needs to be with his doctor in the UK. All of his conditions are being medicated and controlled and can continue to be medicated and controlled in Nigeria and the appellant could accompany him to those appointments in the same way she does in the UK. Based on all of this evidence I find there are no insurmountable obstacles to the appellant being in Nigeria with her partner on the basis of his health."*

At paragraph 24 Judge Twydell found that obtaining and sustaining employment in Nigeria "can be achieved by both the appellant and her partner".

It was legally proper to treat that decision as the starting point and, on careful reading of Judge Aujla's decision, it is not apparent that he erred by failing to take into account further evidence of medical changes. It was open to Judge Aujla to find at paragraph 34 of his decision that there was "nothing new in the appellant's bundle that could make a material difference" to enable him to depart from the findings made by Judge Twydell.

As can be seen from above, it was incorrect to state in the application for permission to appeal that Judge Twydell had not considered the mental health condition. The mental health condition was clearly addressed and included references to suicide.

It is also evident that Judge Aujla did take into account any medical changes that the sponsor was suffering from psychosis and the GP's letter. There was an observation that there was no medical report by a properly qualified specialist in the field but moreover, the appellant gave evidence that the sponsor was still working and clearly had continued to work since the decision of Judge Twydell. As Judge Aujla found, there was no reason to believe that the appellant would have been declared fit for work if his condition as a result of his psychosis was so bad he was considered a danger to himself or members of the public. The judge was correct to observe that there was no evidence of such an assessment and indeed the appellant's sponsor continued to work.

It was asserted in the application for permission to appeal that there was implied criticism of the GP's letter but it was merely an observation that there was no specialist report. Moreover, the criticism in the grounds of appeal which stated that reduced working hours for his employers could only have happened upon assessment by the employer would appear to be conjecture and ignores any change of the sponsor's own volition. The fact that the appellant's sponsor continued to work, demonstrated that his medical conditions remained controlled.

It was clear from the judge's decision at paragraph 36 that he was aware that the appellant had been designated as a carer for the sponsor and in fact, that had already been highlighted by Judge Twydell. Judge Twydell had also identified that there were suicidal tendencies.

Specifically, at paragraph 37 Judge Aujla stated, "I find that there was no material, credible and reliable evidence before me which came into existence since the findings made and conclusions reached by Judge Twydell". Having made that finding, however, the judge concluded that there was essential medication available in Nigeria and, although

it may not be free as it was in the UK, the cost of medication did not amount to an insurmountable obstacle. The judge found that, "subject to the complaint for which he was on medication, the sponsor was also fit and well for otherwise he would not be able to keep his employment". That finding was entirely open to the judge.

As submitted by the Secretary of State, there was conjecture that the sponsor "may not get adequate care if he is to go to Nigeria" from Dr Raphael on 10th April 2019 but no firm evidence placed before the Tribunal to the effect that there were no medical facilities or medication treatment available in Nigeria.

As explained by Holroyde LJ in *Secretary of State v R (Kaur) [2018] EWCA Civ 1423*

> *'The matters put forward certainly provided good reasons why both would much prefer to continue their family life in this country; but they did not come close to establishing any insurmountable obstacle which would meet the stringent test in paragraph EX.1(b). In the recent case of R (Mudibo) v SSHD [2017] EWCA Civ 1949 this court has emphasised the distinction, in this context, between evidence and mere assertion'*.

Mr Ume made much of the community mental health nurse letter dated 21st February 2018, which identified that the sponsor had recently started on psychotropic medication and that his application for rehousing was supported in view of the suicidal thoughts. This, however, alluded, as did the previous First-tier Tribunal Judge, to the support that his wife afforded him and the requirement to relocate. Nothing in this letter undermined the fact that there was no mental health care in Nigeria and as such there would be no insurmountable obstacles to their family life continuing there. Mr Ume also criticised the decision by the judge on the basis that there were many years since the sponsor had lived in Nigeria and that the sponsor would be unable to adjust. That seems to ignore the fact that the sponsor would be relocating with his wife if he chose to do so and had her grown-up children, as referred to by Judge Aujla, in Nigeria to assist him in adjusting. The appellant is fully familiar with the country and its culture, speaks the language in addition to English and it was open to Judge Aujla, as he did at paragraph 35 to note that the sponsor had lived for his first and formative eighteen years in Nigeria and was therefore familiar with the country and aware of its culture.

Judge Aujla specifically addressed the issue of the appellant's private life noting that had remained in the United Kingdom for nearly 15 years. She had lived in Nigeria until she was 41 years old, had grown up children there and was fully familiar with the culture and language which undermined a claim to have very significant obstacles to

integration in Nigeria. There was a finding of no exceptional circumstances outside the Rules (paragraphs 41 – 42).

On the basis of the above, it is evident from a careful reading of the decisions of both Judge Twydell and Judge Aujla that detailed consideration was given to the evidence both in relation to Appendix FM, Paragraph 276ADE and further outside the rules but for sound and cogent reasons, the appeal was dismissed.

Notice of Decision

I therefore find no material error of law in the decision and the decision of Judge Aujla appeal will stand. The appeal remains dismissed.

No anonymity direction is made.

Signed Helen Rimington Dated 25th November 2019

Upper Tribunal Judge Rimington