



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/07468/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2018**

**Decision & Reasons Promulgated
On 23 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**MARIA [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N B Khan of Counsel instructed by Greenland Lawyers LLP

For the Respondent: Mr N Bramble of the Specialist Appeals Team

ERROR OF LAW DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria born on 6 July 1994. In September 2007 she arrived as a child visitor. Her next application for leave to remain as the child of a settled person was refused and her appeal dismissed in December 2008. She subsequently applied for leave to remain on the basis of her private and family life which was refused in August 2015. A further application was made on a similar basis which the

Respondent refused on 11 February 2016 and which is the subject of this appeal.

The First-tier Tribunal Proceedings

2. By a decision promulgated on 27 October 2017 Judge of the First-tier Tribunal Thorne dismissed the Appellant's appeal. He accepted her account of what had happened to her as a child both in Nigeria and the United Kingdom but found the public interest in maintaining immigration control outweighed her claim to remain in the United Kingdom and so it was proportionate for her to return to Nigeria.
3. On 19 December 2017 Judge of the First-tier Tribunal Chohan refused the Appellant permission to appeal. She renewed her application to the Upper Tribunal.
4. On 7 March 2018 Deputy Upper Tribunal McGeachy granted her permission to appeal because it was arguable the Judge had erred in law by not referring to paragraph 276ADE(1)(vi) of the Immigration Rules in his consideration of her claim based on her private and family life in the United Kingdom.

The Hearing in the Upper Tribunal

5. The Appellant attended with Jonathan [S] and Debora [O], his niece and her friend, who like the Appellant lives at the same address as part of Mr [S]'s family.

Submissions for the Appellant

6. The Appellant's representative Mr Khan relied on the grounds for appeal submitted to the Upper Tribunal. These were the same as submitted to the First-tier Tribunal. They refer to the absence of any consideration of paragraph 276ADE(vi) of the Immigration Rules which resulted in a lack of a finding whether there were very significant obstacles to the Appellant's re-integration on return to Nigeria. The other ground refers to the Judge's finding that the Appellant had lived with Mr [S] and his family since she was 18 and looks upon them as a surrogate family. The grounds challenge the Judge's finding that upon return to Nigeria the Appellant would be able to call upon members of Mr [S]'s extended family for assistance.
7. The Judge had made positive credibility findings. At para.50(x) of his decision he had rejected the conclusion in the Social Work report that the Appellant's psychological health would be at risk on return. The Judge had not challenged any other aspect of the report and so it should be considered as having been accepted. Mr Khan submitted the Judge had given inadequate reasons for rejecting the report's conclusion that the Appellant's psychological health would be at risk on return. The decision contained a material error of law and should be set aside.

Submissions for the Respondent

8. Mr Bramble accepted that the Judge had not dealt with the Appellant's claim under Article 8 with reference to paragraph 276ADE of the Immigration Rules. Whilst this might be an error it was not material because the Judge's findings at para.50 were extensive and exhaustive. The Judge had dealt with the Social Work report at paras.23 and 26-28. He had accepted the Appellant's account of what had happened to her in her childhood. He had taken this into consideration when assessing the proportionality of her return to Nigeria.
9. Para.50 of the Judge's decision had taken into account all his findings and was sufficient to support his assessment of the proportionality of the Appellant's removal and his conclusion at para.51. Having considered all the circumstances identified in para.50, the failure of the Judge specifically to make a finding that there were not any very significant obstacles to her return to Nigeria was not a material error of law. The assessment of the obstacles to her return to Nigeria had been comprehensively in paras.50 and 51 of his decision which should stand.

Findings and consideration.

10. Given the narrow grounds upon which the Upper Tribunal granted permission to appeal, Mr Bramble's argument that the Judge at para.50 had conducted a comprehensive assessment sufficient to render any reference to paragraph 276 ADE unnecessary had a certain attraction and some force.
11. At paras.26-28 the Judge accepted the Appellant's evidence that she had been sexually abused as a child in Nigeria and bullied by her older sister. Her father had brought her to the United Kingdom in September 2007 when she was aged 13 and had left her with a couple who were strangers to her. Both the man and the woman were violent towards her and after some fifteen months she went to live with her step-sister. At the age of 15 she was sexually assaulted by her step-sister's husband and later assaulted by her step-sister, who threw her out of the house. Subsequently in December 2012 she was taken in by Mr [S] and his family.
12. The Judge made his assessment of the proportionality of the decision to return the Appellant to Nigeria at paras.50 and 51 of his decision. He made no reference to any difficulties which she might face in consequence of the sexual and physical abuse she had suffered as a child and a teenager and considered only the physical circumstances of her likely reception in Nigeria. The omission of any express reference to the issue whether there were any very significant obstacles to the Appellant's re-integration on return to Nigeria and the omission of any express reference to the Appellant's history of abuse in the Judge's proportionality assessment is an error of law such as to make the proportionality assessment and safe.
13. The Judge found she would be able to rely on the support of Mr [S]'s extended family. The hearing before the Judge disclosed that Mr [S] had

extended family in Nigeria whom he visited but there was no evidence or explanation of their circumstances and capacity and willingness to assist the Appellant if she were returned.

14. At para.50(x) of his decision the Judge rejected the social worker's view that the Appellant's psychological health would be at risk on return to Nigeria but gave no reasons for the difference of opinion.
15. I find these matters amount to material errors of law in that the Judge did not adequately take into account the Appellant's past history which is an important element in the assessments of any difficulties she might face on return to Nigeria and of the proportionality of her return to Nigeria and whether she would face very significant obstacles to re-integration. Consequently, the decision must be set aside. Both parties agreed that the findings of fact already referred to were sound and should stand.
16. I have set aside the decision of the First-tier Tribunal and have considered whether I am in a position to re-make it. Mr Khan indicated the Appellant may need to obtain additional evidence about the circumstances of Mr [S]'s extended family in Nigeria and their willingness to assist and support her may need to be obtained and that he was not in a position to proceed with a re-hearing.
17. I have had regard to Practice Statement 7.2 and bearing in mind the extent of the additional fact-finding which is likely to be required and its impact on any assessment of the proportionality of the Respondent's decision, I consider it appropriate to remit the appeal for re-hearing in the First-tier Tribunal.

Anonymity

18. There was no request for an anonymity direction and having the appeal, I find none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained a material error of law because it did not adequately deal with the issue whether the Appellant would face very significant obstacles to re-integration on return to Nigeria and consequently the assessment of the proportionality of the decision was also in error. The Judge's findings of facts contained or referred to in paragraphs 12 - 23 and 26 - 28 shall stand.

No anonymity direction is made.

Signed/Official Crest
2018

Date 02. v.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal