



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: PA/01651/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC  
On 17 December 2020

Decision & Reasons Promulgated  
On 6 January 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

KA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: In person. Not legally represented

For the Respondent: Mr C Bates, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Nigeria with date of birth given as 23.4.85, has appealed with permission to the Upper Tribunal against the decision of the First-

tier Tribunal promulgated 21.5.20 (Judge Hollingworth-Tennant), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 6.2.19, to refuse her claim for international protection.

2. The appellant was not legally represented but attended the remote hearing by video. An interpreter in Yoruba translated the proceedings, the various submissions, and my questions to the appellant.
3. The relevant background can be summarised as follows. After a number of failed attempts, the appellant obtained a visit visa the UK and arrived in September 2013, claiming she intended to stay only a very short period of time. She failed to leave within the 6-month limited and was served with notice of liability to be removed as an overstayer in August 2015. A human rights claim for leave to remain was refused and certified in May 2016.
4. In July 2016 she applied for asylum with her partner and their children as dependents. The claim was based on assertions that she had been forced into prostitution by her stepmother using magical powers, but had managed to escape with the help of neighbours in 2012. Although there had been no specific threat, she also claimed to be frightened that her children may be abducted and used for rituals. The human rights claim was based on her relationship with her partner and children, all citizens of Nigeria, and various health issues for herself, her partner and her youngest child.
5. The claim was refused in February 2019. On 6.6.19, her subsequent appeal before First-tier Tribunal Judge Herbert was dismissed on protection grounds but allowed on article 8 grounds. The respondent appealed to the Upper Tribunal but the appellant did not cross-appeal the dismissal of her protection claim. In the decision promulgated on 29.10.19, the Upper Tribunal (Judge King) set aside the decision of the First-tier Tribunal, remitting it to be remade afresh. In doing so, Judge King noted that the rehearing would particularly focus on article 8 and return to Nigeria, and suggested that in the absence of challenge to the asylum and humanitarian protection decision it may be that such matters should be preserved but I do not exclude argument to contrary if placed before the Tribunal Judge for that Judge to determine that issue."
6. At [23] of the impugned decision of the First-tier Tribunal, Judge Hollings-Tennant considered the scope of the appeal, noting that Judge Herbert rejected as fabricated the appellant's claim to have been forced into prostitution. Once again, the unrepresented appellant did not challenge the previous findings or present *"any arguments that could reasonably be construed as calling such findings into question."* However, the judge stated, *"I have independently considered and assessed the evidence in light of the issue as to whether the previous findings on protection stand."* Thereafter, the judge set out the findings and reasoning to entirely reject the claim for international protection and conclude that it had been fabricated and

that she had not told the truth about her experiences in Nigeria. Specifically, there was no risk of harm from her stepmother and no real risk of her children being kidnapped, as claimed.

7. In relation to the human rights claim, the judge considered the circumstances of the appellant and her family within and without the Rules. The respondent had accepted that the appellant was in a genuine and subsisting relationship with her partner and her children, twin boys aged 5 and a baby boy. They could not meet Appendix FM as the partner has no lawful status in the UK. Neither were any of the children qualifying children, as they were not British citizens and had not resided in the UK for 7 years. The judge found that there would be no very significant obstacles to the appellant's integration in Nigeria, where she had lived for most of her life until the age of 28. Applying section 117B of the Nationality, Immigration and Asylum Act 2002, the judge noted that she did not speak English and was not financially independent. Little weight could be given to her relationship with her partner as it was entered into when she was unlawfully present in the UK. Her status was always precarious and she became an illegal overstayer when she failed to leave at the end of her visit visa.
8. The judge considered the best interests of the appellant's very young children, which were to continue to be raised by both parents within the context of the family unit. After considering EV (Philippines) v SSHD [2014] EWCA Civ 874, and the circumstances of the children, the judge concluded that their best interests would be to return to Nigeria with their parents, neither of whom had any right or basis to remain in the UK. The judge concluded that the respondent's decision was proportionate.
9. The judge also considered the health issues, despite very limited evidence, but including treatment for the appellant's hepatitis B, her partner's treatment for glaucoma, and inoculations to prevent her youngest child contracting Hepatitis B from her. At [47] and [48] of the decision, the judge concluded, there was no evidence presented that suggests any treatment necessary for herself, her partner or child would not be available in Nigeria.

#### *The Grounds & Grant of Permission*

10. The appellant remains without legal representation. It appears that her handwritten and somewhat difficult to read grounds of application for permission to appeal to the Upper Tribunal were considered somewhat generously. On 22.7.20, the First-tier Tribunal considered the grounds as largely a disagreement with the findings of the Tribunal and noted that the appellant did not adduce any evidence on which it could be argued that the Tribunal could or should have departed from the previous adverse findings in relation to the claim for international protection. However, permission was granted on the basis of it being arguable that the judge failed to give adequate consideration to whether it

would be 'unduly harsh' for members of the family to return to Nigeria, given their health difficulties, and whether it is contrary to the best interests of the children to relocate to Nigeria with their parents. "Although the Tribunal did consider the best interests of the children it did not consider the impact on the individual children of such a move."

#### *Error of Law Considerations*

11. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
12. The appellant had little to say that was relevant to the error of law issue. I explained to her that I could only interfere with the decision of the First-tier Tribunal if I found an error of law in its making. Most of what she had to say was a "plea for mercy" for herself, her husband and her children so that they could remain in the UK and continue to receive free education for her children and medical treatment, which she said they would not be able to do in Nigeria. She said that her youngest child was still on observation following Hepatitis B vaccination, and that one of her twins was having speech therapy. Given that she does not speak English, I found her claim that the children do not speak or understand Yoruba not credible. She said she was able to speak a little English to them. The twins may well be taught in English at school but given that she and her husband converse between themselves in the family home in their native Yoruba, I am satisfied that the children have at least an understanding of that language. The appellant maintained that they have no friend or family in Nigeria to provide them with food, shelter or clothing. She also said that their safety could only be guaranteed in the UK. They have no means of financial income in the UK and she explained that her husband could not work because of his eye condition and also high blood pressure. She said that she was also under medical observation for her Hepatitis B.
13. Mr Bates submitted that the First-tier Tribunal had adequately addressed the health issues between [44] and [49] of the decision, and that the appellant had failed to adduce sufficient evidence that appropriate treatment would not be available to the family in Nigeria. In relation to the best interests considerations, Mr Bates submitted that the judge adequately dealt with this between [39] and [40] of the decision. In summary, due to their young age, the children have no real private life outside the family. Through their parents, they must be familiar with Nigerian culture and language. He submitted that there would be no interference with family life under article 8 as the family would all be returned to Nigeria together, to the country of their nationality and heritage, where it will be open to their parents to find employment to support the family. He submitted that the decision was proportionate.

14. In response to my specific queries about the grant of permission, Mr Bates questioned the materiality of the alleged errors, pointing out that other than the medical issue evidence, and given their young age, there was nothing to suggest that there was anything to distinguish the individual best interest of the children individually. In relation to Judge Finch's reference to 'unduly harsh', Mr Bates submitted that this should be taken as a reference to 'unjustifiably harsh' consequences of removal sufficient to amount to compelling exceptional circumstances. He submitted that there was nothing to demonstrate such exceptional circumstances on the facts of this case.
15. I am not satisfied that there is any error in the decision of the First-tier Tribunal in respect of consideration of the s55 best interests of the children, even taken as a primary consideration. The two twins were only 5 years of age, now 6, and the youngest child only 2. It is obvious that the focus of all three children would be within the immediate family unit, where their parents speak Yoruba. They are not qualifying children and are, like their parents, citizens of Nigeria. Nothing in the evidence before the First-tier Tribunal suggested any basis for distinguishing between the best interests of the children. They are young enough to return and settle in Nigeria with the support of their parents. They have no entitlement to remain in the UK and it would be difficult to justify a finding that their best interests are not to return to Nigeria with their parents.
16. It remains clear that the appellant cannot meet the requirements of the Rules in respect of either family life under Appendix FM or private life under paragraph 276ADE. On the findings of the First-tier Tribunal, there are no insurmountable obstacles to continuing family life in Nigeria and no very significant obstacles to integration. Section 117B considerations are significantly adverse to the appellant and do not assist her at all. The children are not qualifying children and little weight is to be accorded to family life with her partner. She is neither English-speaking nor financially independent. In reality, there is nothing in the circumstances of the appellant and her family to even begin to outweigh the public interests in her removal to Nigeria.
17. Neither can I see any basis to find such compelling circumstances on the facts of this case that would, exceptionally, render removal unjustifiably harsh. Mere hardship or difficulties on return to Nigeria, as pleaded by the appellant in her oral submissions, is insufficient. It is clear from [53] of the decision that the judge had this consideration in mind, specifically finding no exceptional circumstances to justify allowing the appellant to remain. The medical evidence does not demonstrate that adequate treatment would not be available in Nigeria. Two of the children have minor issues for treatment, the appellant has her ongoing Hepatitis B monitoring, and her husband has his own conditions. These do not reach the high threshold of N or Paposhvilli for article 3 and are insufficient to succeed on article 8 grounds.

18. I am satisfied that the First-tier Tribunal Judge applied a holistic approach and assessed all relevant factors before reaching the conclusion that the decision of the respondent was proportionate to the article 8 rights of the appellant and her family members. There were no compelling or exceptional circumstances for any of the family members.

19. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

### **Decision**

The appeal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 17 December 2020

### **Anonymity Direction**

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

*"Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."*

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 17 December 2020