Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/53412/2021
(UI-2022-000097)
IA/09694/2021

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 13 June 2022	**On : 29 July 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MORADEKE FLORENCE BOLARINWA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms D Revill, instructed by Anthony Ogunfeibo & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria, born on 29 March 1955. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for leave to remain on human rights grounds.

2. The appellant entered the United Kingdom on 20 November 2019 with entry clearance as a visitor valid from 4 January 2016 until 4 January 2021. Following an initial application on 18 May 2020, she was granted two successive periods

of leave to remain under the exceptional Covid-19 provisions until 31 July 2020. On 26 July 2020 she made a human rights claim for leave to remain in the UK on the basis of her family life with her children.

3. The appellant's application was refused on 1 July 2021. The respondent noted the appellant's claim to be in a parental relationship with her British daughter Oluwaseun Wumi Oluwasona but considered that she did not meet the eligibility requirements of Appendix FM or benefit from paragraph EX.1 on that basis, because her daughter was an adult, was not dependent on her and was living an independent life with her own partner and children. The respondent did not consider that there were any very significant obstacles to the appellant's integration in Nigeria for the purposes of paragraph 276ADE(1)(vi) or exceptional circumstances rendering refusal a breach of Article 8 on the basis of unjustifiably harsh consequences.

4. The appellant appealed against that decision. Her appeal came before the First-tier Tribunal sitting as a panel. The panel heard oral evidence from the appellant and her daughter and son-in-law. It was not disputed between the parties that the appellant had visited the UK several times since 2010 on multi-entry visas, to see her family members, and that she had never overstayed. It was also accepted that she had been unable to return to Nigeria initially owing to the Covid-19 pandemic. It was submitted on behalf of the appellant that she could not now return to Nigeria because her eyesight had deteriorated to the extent that she needed the practical support of her children in the UK. The appellant had suffered from a cataract eye-condition in both eyes for a number of years, and evidence was submitted to that effect, which was not disputed by the respondent. It was said that the appellant's vision was blurry when she was outside the house. She had had paid-for care in Nigeria and gave an account of having almost been hit by a car when out walking in Nigeria, which led her family to requiring her not to leave the house unaccompanied. The appellant had a son in Nigeria but he was often away from home travelling.

5. The Tribunal found that the appellant had not demonstrated that there were very significant obstacles to her integration in Nigeria for the purposes of paragraph 276ADE(1)(vi) of the immigration rules. The judge had regard to the fact that the appellant had lived with her daughter and son-in-law since arriving in the UK in November 2019 and that she had benefitted from their assistance and that of her grandchildren in terms of being cooked for and accompanied on walks, and had been financially supported by them whilst in the UK. On that basis the Tribunal accepted that the appellant had a family life in the UK in addition to the private life she had established here over the past two years. The Tribunal concluded, however, that the respondent's decision was proportionate and that there was no breach of Article 8, and they dismissed the appeal.

6. The appellant then sought permission to appeal by the First-tier Tribunal on three grounds: firstly, that the Tribunal had made no findings on the impact of removal on the appellant's family life with her daughter and son-in-law and or on the weight that that family life attracted; secondly, that the Tribunal had failed to address the factors in section 117A(2) and (3) of the Nationality,

Immigration and Asylum Act 2002 in relation to the appellant's fluency in the English language and financial independence; and thirdly, that the Tribunal had erred by importing a test of 'very substantial difficulties' into the proportionality assessment and had therefore construed the proportionality test too narrowly.

7. The matter was then listed for hearing and both parties made submissions before me, which I shall address in the discussion below.

Consideration and Findings

8. Ms Revill relied in particular upon the first ground, submitting that whilst the Tribunal had considered the best interests of the appellant's grandchildren and the impact of her removal upon them, there was a complete failure to make findings on the impact on the appellant of losing the support of her daughter and son-in-law and the emotional impact of that loss. She relied upon the case of Lama (video recorded evidence -weight - Art 8 ECHR : Nepal) (Rev 1) [2017] UKUT 16 in that respect, and in particular the observations made at [41] and [43] by the President of the Tribunal, Mr Justice McCloskey, as to the question of the relevant family carer being irreplaceable, when considered in qualitative and emotional terms. However Ms Revill's submissions failed to acknowledge that that case was very specific on its facts, as Mr Justice McCloskey was at pains to emphasise, referring at [46] to the "*special, unique and compelling features of the relationship and arrangements under scrutiny*" and to the case being "*highly unusual and intensely fact sensitive*". The facts of this appellant's case are very different and do not involve a similar immigration history or length of residence in the UK, or anywhere near the same level of disability, care needs or dependency.

9. In any event, it is clear that the significance of the loss of family care and the emotional impact that that would have on the appellant if she were removed from her family in the UK were matters considered by the panel. It was not a case, as Mr Revill suggested, of the panel focussing entirely on the care available in Nigeria without recognition of the impact of the loss of the care from family members in the UK. The Tribunal gave careful consideration to the level of care provided by the family in the UK, noting that the assistance required from her family members was limited to the role set out at [27] and [28], that there was limited evidence about her condition and prognosis and, at [31], that this was not a case where the appellant was dependent upon support and that she did not require personal assistance when in familiar surroundings. Similar findings were made at [38] and it is clear from the last sentence of that paragraph that the panel specifically considered the question of the emotional impact on the appellant of losing the support of her family, recognising that any care obtained in Nigeria would be underpinned by a professional rather than emotional bond. It is plain that, when considering proportionality under Article 8, the panel took account of the findings previously made in regard to the care provided by the appellant's daughter and son-in-law in relation to paragraph 276ADE(1)(vi) and that their findings at [44] on the best interests of the appellant's grandchildren were additional ones in their consideration of the weight to be given to her family life, rather than being the only factor considered in that regard, as Ms Revill suggested.

10. In the circumstances I reject the suggestion that the panel did not consider the impact on the appellant of the loss of care from her family and reject the suggestion that they did not give appropriate weight to the family life she had established in the UK with her daughter and son-in-law.

11. Likewise I find no merit in the second ground of appeal. The Tribunal was clearly aware of the appellant's case being that the factors in her favour, as against the public interest in her removal, were her ability to speak English, her financial independence and the weight to be given to her family life, as expressed at [43]. That was not simply a record of the appellant's submissions, with no further engagement, but was an acknowledgement of the factors relied upon by the appellant. The last of those factors has been discussed above and was clearly given detailed consideration by the Tribunal. As to the first two factors, the Tribunal was not required to do anything more and clearly took them into account in the overall proportionality assessment, to the extent required, as seen at [44]. There was nothing inconsistent with the findings in Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58.

12. As for the third ground, I reject the suggestion that the Tribunal imported a narrower construction into the test when considering proportionality under Article 8, when using the words 'very substantial difficulties'. I agree with Mr Tufan that it is simply a matter of semantics and that there was nothing inconsistent with the test in Agyarko and Ikuga, R (on the applications of) v Secretary of State for the Home Department [2017] UKSC 11. The Tribunal's assessment was entirely consistent with the guidance in Agyarko and involved a full consideration of all the appellant's circumstances, both in the UK and in Nigeria. I agree entirely with Mr Tufan that nothing material arose from this.

13. For all of these reasons I find no merit in the grounds and I uphold the decision of the First-tier Tribunal.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed S Kebede
Upper Tribunal Judge Kebede Dated: 13 June 2022