IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002482
First-tier Tribunal No: HU/56485/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ADETOKUNBO OYINKANSOLA LATONA
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. E. Ojbonna, Dorcas Fumni & Co. Solicitors
For the Respondent: Ms. J. Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 23 January 2024

DECISION AND REASONS

1. At a hearing on 21 September 2023 I set aside the decision of First-tier Tribunal Judge Moon. The appeal came before me to be remade.

The hearing

2. I heard oral evidence from the appellant and from her partner, Mr. Segun Owolabi. Both representatives made oral submissions. I reserved my decision.

3. The appellant is pregnant, and given her medical conditions, I asked her to let me know if she was feeling unwell or if she needed a break. She had a pause to have a drink, but then confirmed that she was feeling well enough to continue. I was content that she was able to take part fully in the hearing.

4. I have taken into account the documents contained in the appellant's bundle ("AB"; 125 pages as indicated in the index, but the digital version is only 120 pages; however it was confirmed that this was the full bundle and that the

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pagination had gone awry). I also had the bundle prepared by the Tribunal ("HB"; 238 pages). The appellant provided a skeleton argument.

5. It was agreed that the issue before me was whether or not the decision was a breach of Article 8. It was submitted that the appellant met the requirements of paragraph 276ADE(1)(vi) of the immigration rules, and that the decision was a breach of Article 8 in respect of her private and family life.

Burden and standard of proof

6. The burden of proof lies on the appellant to show that the respondent's decision is a breach of her rights, and/or those of her partner, to a family and/or private life under Article 8 ECHR. The standard of proof is the balance of probabilities.

Decision and reasons

7. I found the appellant and her partner to be reliable witnesses. They were both cross-examined at some length by Ms. Isherwood. They answered all questions put to them. The appellant has provided medical evidence in support of her appeal. I accept that she has not provided her full medical records, and not all aspects of her oral evidence were therefore corroborated, but this is not necessary, and I do not find it to be significant. I find that I can rely on the appellant's evidence.

Paragraph 276ADE(1)(vi)

8. I have considered whether the appellant has shown that she meets the requirements of paragraph 276ADE(1)(vi). In order to do this, she needs to show that there would be very significant obstacles to her reintegration into Nigeria.

9. I have considered the appellant's medical conditions and the impact that they would have on her reintegration into Nigeria. I find that the appellant has a brain tumour which is referred to more specifically in the medical evidence as prolactinoma or macroadenoma (pages 74AB, 76AB, 77AB, 79AB). I find that the appellant is prescribed Dostinex, which is a brand of Cabergoline, to treat her tumour. I accept the evidence of the appellant that she has found it hard to tolerate medications to treat her tumour and that Dostinex is the only brand which she can tolerate. The medical evidence shows that the dosage has been changed in line with what she has been able to tolerate.

10. I find that Dostinex is not available in Nigeria. The appellant provided a letter from Dr. I. Fasasi, described as a family physician, which stated that Dostinex was not available in Nigeria (page 91AB). Ms. Isherwood submitted that little weight should be attached to this letter for various reasons including that Dr. Fasasi's qualifications and background had not been provided, nor was it clear with what evidence he had been provided. However, the respondent's own evidence corroborates the evidence of Dr. Fasasi. The list of available medication at Annex A in the Country Information Note: Medical treatment and healthcare, Nigeria, December 2021 does not list Dostinex. Ms. Isherwood made no reference to this document, and did not submit that it could not be relied on.

11. I find that the respondent's own evidence shows that the medication used by the appellant to treat her brain tumour cannot be obtained in Nigeria. I have accepted her evidence that this is the medication that her body can tolerate, and that other brands of Cabergoline are not suitable. I find that were the appellant to return to Nigeria, she would not be able to access the medication needed to

manage her tumour. This would result in her tumour increasing in size with implications for her general physical and mental health, including her eyesight.

12. The appellant is pregnant, and her pregnancy is classed as high risk owing to her tumour "which could increase in size during the pregnancy with threat to her optic chiasm and her vision" (page 76 AB). She also has Type II Diabetes. It was acknowledged in the medical evidence that although this was in remission prior to her pregnancy, it could recur during the pregnancy. I find that it has recurred. I find that, due to her pregnancy, the appellant is currently insulin dependent as she cannot manage her diabetes through diet alone. She gave evidence that her medication and diet was being monitored by the hospital using an app on her phone. Although she had not provided documentary evidence to corroborate this, she asked for permission to show her phone to Ms. Isherwood. Ms. Isherwood then accepted that the appellant's food and insulin intake is being monitored by the hospital using an app on her phone.

13. I find that the appellant suffers from mental health issues including anxiety, agoraphobia and low mood (pages 76, 78, 79 and 81 AB). I have considered the impact that her mental health would have on her ability to reintegrate into Nigeria. I find that she is receiving weekly counselling for her mental health. This takes place online as she cannot do face-to-face as there would be too many people present. She gave evidence that she has frequent panic attacks, and sometimes has a blackout. She said that she was fearful of being left alone and needs her partner with her. However, in oral evidence the appellant and her partner said that she was sometimes left on her own at home without her partner. I find that prior to her pregnancy, she accompanied him to his place of work in order not to be left alone. I find that, even though she is left alone at home sometimes, this is not for the whole day. I find that she is in frequent contact with him when he is not at home over the phone and using video calls.

14. I further find that the appellant does not go out alone. She said that she rarely goes out, and that her therapist has been giving her assignments specifically to encourage her to go out of the house. Her partner gave evidence that he accompanies her when she goes out. He said that she shakes and panics when she is out of the house. I accept their evidence, and find that the appellant is accompanied by her partner when she is out. I find that her anxiety and claustrophobia prevent her from travelling on public transport.

15. The appellant's partner has said that he will not return to Nigeria and I find that she would be returning alone. It is not necessary to set out here his immigration history, as it is not disputed, except to state that he has been granted leave to remain by the respondent on the grounds of 20 years continuous residence. I find that he has a Conclusive Grounds Decision that he was trafficked to the United Kingdom where he was a victim of modern slavery. The respondent accepts the manner in which he came to the United Kingdom and the treatment that he experienced here.

16. The appellant's partner's account is that his parents were murdered by other family members owing to an inheritance dispute following the death of his grandfather. Ms. Isherwood submitted that he had not claimed asylum and so this had not been tested. While she made much of the fact that he had not claimed asylum, I do not attach so much weight to this. He was asked during his trafficking interview whether he wished to claim asylum. He took instructions from his representatives, and then said that he did not want to (page 104 HB). I do not know what he was advised and why. His trafficking interview took place in

June 2016. He had come to the United Kingdom in May 2000. The fact that he did not claim asylum, nor that his account of his parents being killed has not been tested in an asylum claim, does not mean that I can attach no weight to this evidence. It was accepted in reliance on the evidence given at his trafficking interview that he had been trafficked and was a victim of modern slavery. I accept the circumstances in which he met Victor in Nigeria, and how he was brought to the United Kingdom. I accept his explanation for why he does not want to return to Nigeria.

17. I have considered whether there are any other family members in Nigeria who could assist the appellant to reintegrate. I find that her father has died. Her mother lives in the USA. The appellant has two siblings in Dublin and one in the United Kingdom. I find that she has no close family members living in Nigeria. I find that she has no property in Nigeria to which she could return. I find that she receives some financial support from her sister in the United Kingdom, but it is not significant. She gave evidence that her sister sometimes gives her money for taxis as she cannot go on public transport.

18. I find that the appellant's partner has no contact with family in Nigeria given the circumstances in which he left Nigeria. He has been absent from Nigeria for 20 years, as acknowledged by the respondent.

19. In any event, even if the appellant's partner were to return with her, or even if there were other family members there who could support her, this would not affect her inability to access the treatment she needs for her brain tumour. I find that, were the appellant to return to Nigeria, irrespective of her pregnancy and the additional risks that this presents, her tumour would not be treated and her health would likely deteriorate, including a worsening of her eyesight. I find that her mental health would also deteriorate given that she would be without her partner. She has no accommodation to go to, and nobody to support her. I find that she would struggle to find employment given her tumour and her mental health. She would consequently struggle to find accommodation. The situation would be even more critical at the moment given her pregnancy, which is high risk, and which is being carefully monitored.

20. Taking all of the above into account, I find that the combined circumstances of the appellant's physical and mental health, together with the lack of support in Nigeria, and her inability to access the necessary medication, mean that there would be very significant obstacles to the appellant's reintegration into Nigeria. I find that she would not be able to reintegrate and form a private life. I find that she meets the requirements of paragraph 276ADE(1)(vi).

Article 8

21. I have considered the appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. It has not been suggested that the appellant and sponsor are not in a genuine and subsisting relationship. She is pregnant with their child. I find that the appellant and sponsor have a family life sufficient to engage the operation of Article 8. I find that the decision would interfere with this family life. I find that the appellant has been in the United Kingdom since April 2014, a period of almost ten years, and has built up a private life during this time sufficient to engage the operation of Article 8. I find that the decision would interfere with her private life.

22. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision

taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

23. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the appellant meets the requirements of paragraph 276ADE(1)(vi) in relation to her private life. I therefore find that there will be no compromise to the maintenance of effective immigration control by allowing her appeal.

24. The appellant's first language is English (section 117B(2)). The appellant is financially dependent on her partner, who is self-employed with a small cleaning business. I do not have details of his financial situation but there is no evidence that the appellant or her partner are in receipt of any public funds (section 117B(3)). I accept that the appellant has received medical care in the United Kingdom. She acknowledges that, without such care, she would not likely be alive. I find that she became very unwell when in the United Kingdom and that the diagnosis of her tumour took some time. It was a serious medical problem which occurred when she was here. She did not come to the United Kingdom with a pre-existing condition in order to obtain medical treatment. She has also received fertility treatment. In her statement the appellant said that she had been advised that the best treatment for her tumour would be to remove it, but that this might affect her fertility. As she wanted a child, she has sought fertility treatment as soon as possible. The evidence of her partner is that he has paid for this, and there has been no suggestion from the respondent that this is incorrect.

25. Section 117B(4) provides that little weight should be given to a relationship formed with a qualifying partner when it is established when the person is in the United Kingdom unlawfully. The relationship began in 2016 while they were both in the United Kingdom without leave, although her partner has now been granted leave on account of the fact that he has been in the United Kingdom for 20 years. The appellant was asked why she had waited so long to seek legal advice. She denied that she had waited a long time, and gave evidence that she met her partner not long after her relationship with an EEA national ended. The appellant's partner's trafficking interview took place in 2016. This application was made in September 2021 on the basis of the appellant being a dependent on her partner who had been resident for 20 years.

26. Taking into account the appellant's and her partner's circumstances holistically, I find that the interference in their family life would be disproportionate. Her partner has leave to remain in the United Kingdom. He does not want to return to Nigeria on account of his experiences there as a child and his being trafficked to the United Kingdom into a situation of domestic servitude. The appellant relies on her partner owing to her poor physical and mental health. This is especially the case at the moment owing to her pregnancy, which is high risk and being closely monitored by medical services. Even if her partner were to return with

her to Nigeria, they would have no accommodation and no support. She would not be able to access the medication that she needs for her tumour and so would require even more support from her partner as her health deteriorated. He has no employment experience in Nigeria apart from working as a child when he was living on the streets. He would be unable both to find employment to financially support them, as well as to provide the physical and emotional support to the appellant.

27. While section 117B(5) states that little weight should be given to her private life as the appellant did not have leave, I have found above that she meets the requirements of paragraph 276ADE(1)(vi). This provides a route under the immigration rules where the respondent gives greater weight to an applicant's private life given the very significant difficulties in re-establishing her private life in her country of origin.

28. Section 117B(6) is not relevant.

29. I have found that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules. The case of TZ (India) [2018] EWCA Civ 1109 states at [34]:

> "That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

30. Further to this, the headnote to OA and Others (human rights; 'new matter'; s.120) India [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

31. Taking all of the above into account, I find that the rights of the appellant and her partner outweigh the weight to be given to the public interest in maintaining effective immigration control. I find that the appellant has shown on the balance of probabilities that the decision is a breach of her rights, and those of her partner, to a family and private life under Article 8 ECHR.

Notice of Decision

32. The appellant's appeal is allowed on human rights grounds, Article 8. The appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules.

33. I have not made an anonymity direction.

Kate Chamberlain

Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber
2 February 2024