



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001444

First-tier Tribunal No: HU/57697/2023
LH/00539/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**GRACE MGBOKWERE OGUIKE
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr. S. Jaisri, Counsel instructed by Adam Bernard Solicitors Ltd.
For the Respondent: Ms. S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 5 September 2024

DECISION AND REASONS

1. In a decision issued on 5 June 2024 I set aside the decision of the First-tier Tribunal to be remade.

The hearing

2. I heard oral evidence from the sponsor, Mr. Godfrey Oguike, and his sister, the appellant's daughter, Ms. Ezinne Nwachukwu. Both representatives made oral submissions. I reserved my decision.
3. I have taken into account the documents contained in the Upper Tribunal bundle (268 pages).
4. The issue before me is whether the appellant meets the requirements for entry clearance as an adult dependent relative, and/or whether the decision is a breach of Article 8 ECHR.

5. The burden of proof lies on the appellant, and the standard of proof is the balance of probabilities.

Decision and reasons

6. I found the sponsor and his sister to be honest and reliable witnesses. They answered all questions put to them in an open and straightforward manner. Their evidence was consistent with the documentary evidence provided. I find that I can rely on their evidence.
7. The respondent accepted in her review dated 16 January 2023 that the appellant required long-term personal care to perform everyday tasks, having considered the medical reports which showed that she had a diagnosis of dementia.
8. The sole issue before me was whether this care could be obtained in Nigeria. An applicant meets the immigration rule if she is “unable to obtain the required level of care in the country where they are living, even with the financial help of the sponsor because either: (a) the care is not available and there is no person in that country who can reasonably provide it: or (b) the care is not affordable”. I find that the appellant is not currently receiving any care. However, I find that this does not mean that she does not need any. It is accepted that she has a diagnosis of dementia, a progressive and deteriorating condition. It is accepted by the respondent that, as a result, she needs long-term personal care to perform everyday tasks. There was no attempt by Ms. Cunha to resile from this concession.
9. I find the fact that the appellant is currently not receiving any care is an indication that it is not available. I find that care was arranged for the appellant when her daughter came to the United Kingdom. I find that the sponsor has not been able to arrange further care following the departure of the appellant’s then carer, Joy. I find that the appellant is living alone, but this does not mean that she does not need care. She was rushed into hospital in June 2023. The letter from Dr. Gregory, Principal Medical Officer at the Federal Medical Centre states (page 176):

“On 6th July 2023, she was rushed into the emergency unit by family friends, unconscious, initial poor coordination, incoherent speech, intermittent vomiting with weakness of all her limb.

On investigation it was obvious her domestic help got married and left, she does not seem to trust distant relatives in providing support for her, as she is staying alone in her house.

The findings on clinical examination confirmed dementia with some neurological and psychological complications.”
10. She was also taken to hospital after an unwitnessed fall, and has a history of falls (pages 33 and 167). I find that the appellant continues to need care even if she currently not receiving any.
11. I have considered whether “long term personal care to perform everyday tasks” is available for the appellant in Nigeria. The appellant provided a medical report from Dr. Ize Andrew from the Imo State Specialist Hospital (page 166 to 170). He states that is the “consultant in charge” of the appellant. There was no challenge to the ability of Dr. Andrew to produce such a report, and the respondent relied

on this evidence when accepting that the appellant required long term personal care. In relation to the care required, Dr. Andrew states:

“Mrs. Grace Oguike requires assistance with Activities of daily living, especially grooming. She needs to have her family who she can identify and trust around her to make informed decisions on her behalf as she obviously lacks the capacity. Her children will keep her company and also provide her with much needed emotional support for her sustenance.

Mrs. Oguike also requires household help: she needs assistance with administering her medications as and when due, keeping up and attending medical appointments, she needs supervision with mobility to avoid falling over incessantly. She requires assistance shopping for groceries, preparing healthy meals, keeping the house and her surroundings tidy, attending to laundry, ironing and operating the water pumping machine that provides water to the house.

I have observed that Mrs. Oguike’s health has deteriorated since her daughter left for the United Kingdom. Mrs. Oguike exhibits numerous psychological changes: she became more withdrawn, suffers paranoia, depression and less susceptible to her medication. An external nurse or care giver cannot replace the benefit of Mrs. Oguike’s own daughter in looking after her.

In my view, Mrs. Oguike’s cognitive functions are unlikely to improve and would most likely get worse over time, as there is no treatment which can reverse her dementia. Sadly, there is no institutionalized care for the elderly and dementia patients in this environment (Nigeria). The infrastructure and capacity to manage the symptoms are non-existent. However, having the necessary care and being surrounded by loved ones who she can trust and relate to will greatly improve and enhance Mrs. Oguike’s quality of life.

I strongly recommend that Mrs. Grace Oguike reunite with her immediate family (daughter) as this is fundamental to her care plan and treatment. This will enable Mrs. Oguike lead a more fulfilled life.”

12. Dr. Andrew states that there is no institutionalised care for the elderly in Nigeria. It was not submitted by the respondent that there any care homes in Nigeria which could provide for the appellant. The appellant’s daughter was asked about care homes, and said that there were none in Nigeria. She was also asked about day care and activities for the elderly, and said that there were none of these either. In any event, neither of the latter would provide the long term personal care that the appellant needs. Ms. Cunha focussed on whether the appellant would be able to receive care from a live-in carer.
13. I find that when the appellant’s daughter came to the United Kingdom she left the appellant in the care of Joy. She lived with the appellant for a period of about five months. I find that Joy had cared for her mother who had dementia, and so knew how to care for someone with the appellant’s medical condition. I find that Joy then married and went to live with her husband. I have considered the evidence from Joy dated 25 April 2024 (page 32). She states that she lived with her for about five months, and visited her after that until illness in pregnancy prevented it. “I stopped coming to see her and even tried to ask around for someone who could work like I did but didn’t get anyone. I also got in touch with the local health center to check if any of the nurses would be happy to visit Grace but was told it was against their policy.”
14. The sponsor’s evidence is that he has tried to find another individual like Joy to care for the appellant but that it has not been forthcoming. I accept that he has

tried to find someone by placing advertisements in a church newspaper and a daily newspaper, and also by word of mouth at church. I accept that the sponsor is reluctant to advertise too widely that the appellant is living alone given how vulnerable she is. The advertisements provided date from April and May 2024 (pages 30 and 31).

15. The appellant provided two letters from Samuel Anusiem dated 22 April 2024 and 9 August 2024. He placed the advertisements for the sponsor. He states in the later letter:

“I am writing to provide an update on the job advertisement for a live-in carer for Mrs. Grace Oguike.

Regrettably, I have not been able to identify a suitable and qualified candidate for this position. To date, I have only received one phone call from an individual who was seeking accommodation following a divorce, which is not relevant to the job requirements.

I believe the reasons for the poor uptake could be firstly attributed to cultural beliefs that demand that caring for the elderly is the sole responsibility of their respective children. Secondly, the insecurity situation in the region poses a high risk of kidnapping for ransom, especially for individuals or households who have relatives living overseas.

I apologise for not being able to provide a more positive update, and I will provide updates once there are new developments.”

16. I accept the evidence of Mr. Anusiem that nobody suitable has come forward. Ms. Cunha asked the sponsor whether Mr. Anusiem was an expert on cultural beliefs, as he had set out why he thought nobody had come forward. The sponsor said that everyone in Nigeria knew that the culture was for family members to look after their elderly relatives. I accept on the balance of probabilities that this is the case. The fact that Mr. Anusiem has stated this in his letter does not reduce the weight that I give to that letter. I accept that over a period of some four months, Mr. Anusiem was unable to find anyone suitable to look after the appellant.
17. I have considered whether there are any other family members in Nigeria who could provide care to the appellant. The sponsor gave evidence that there were no other family members who could provide her with care. The appellant has only two children, the sponsor and his sister, who are living in the United Kingdom. I find that she has distant relatives living in Nigeria. However, I find that none of these relatives are willing to look after the appellant, in part due to her behaviour towards others caused by her dementia.
18. The sponsor gave evidence that due to her dementia, the appellant had “a lot of issues remembering people and her day-to-day activities. As a result of this, she has had trouble with friends and family and the relatives who now do not feel comfortable in assisting with the care she needs”. He stated that distant family members did not wish to provide the required level of care (page 21).
19. He stated at [9]:
- “As a result of Joy leaving my mother's health deteriorated and she cannot remember new people and has trust issues with strangers. The diagnosis of dementia has made my mother more prone to having issues with strangers and on

occasions she has accused them of theft, and she has accused them of trying to cause her harm. This has resulted in issues with our distant family and friends as they are now not willing to help care for my mother.”

20. He later stated at [16] that due to her dementia it was harder for the appellant “to be able to interact with new people and to trust them to assist her daily”. He gave evidence at the hearing that the appellant had accused a distant relative who tried to help of theft. The appellant was very irritable and emotional, and the relative had left. The appellant’s sister gave evidence that when Joy went to visit the appellant during the day after she had moved out of the home, the appellant did not consider Joy to be familiar anymore and so would not accept any care from her.
21. I find that the appellant’s daughter cared for her until she came to the United Kingdom. I accept that her health has deteriorated since then. I find that she received the care she needed from Joy for a period of about six months, but that since then the sponsor and his sister have not been able to find the required care for the appellant. I accept the unchallenged evidence of Dr. Andrew that there are no suitable care homes. I accept that the sponsor has not been able to find a live-in carer. Further, I find the appellant is not willing to accept care from strangers. I find that her distant relatives in Nigeria are not willing to provide care due to the fact that she has accused them of theft. I find on the balance of probabilities that the appellant has shown that the required long term personal care is not available in Nigeria.
22. Taking all of the above into account, I find that the appellant has shown that she meets the requirements of the immigration rules for entry clearance as an adult dependent relative.
23. I have considered the Appellant’s appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27 taking into account my findings above. I have found that the appellant meets the requirements of the immigration rules for entry clearance as an adult dependent relative. I find that the appellant has a family life with the sponsor and her daughter sufficient to engage the operation of Article 8. I find that the decision interferes with this family life.
24. 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.
25. 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 that the appellant meets the requirements of the immigration rules so there will be no compromise to effective immigration control by allowing her appeal.

26. I have taken into account TZ (Pakistan) [2018] EWCA Civ 1109, [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.”
27. In line with this, the headnote to OA and Others (human rights; ‘new matter’; s.120) Nigeria [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.”
28. There are no English language requirements under this rule (section 117B(2)). The application was not refused in relation to the financial requirements (section 117B(3)). Sections 117B(4) to 117B(6) are not relevant.
29. Taking all of the above into account, I find that the appellant has shown that the decision is a breach of her rights, and those of the sponsor and her daughter, to a family life under Article 8.

Decision

30. The appeal is allowed on human rights grounds, Article 8. The appellant meets the requirements of the immigration rules for entry clearance as an adult dependent relative.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 September 2024