



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

Appeal Number: IA/25167/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 18 August 2015**

**Decision and Reasons
Promulgated
On 21 August 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NNEAMAKA ORIE AWAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Dingwall, of Ethnic Minorities Law Centre, Glasgow

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 22 January 1988. Having been in the UK with leave as a student and later in the Tier 1 Post Study category, she applied on 14 March 2014 for settlement outwith the Immigration Rules. The respondent refused that application for reasons explained in a letter dated 3 June 2014. The respondent noted that the appellant had made several trips back to Nigeria; had been here in a category not leading to settlement; even if she had no living family members in Nigeria, she was a 26 year old woman and an independent adult; she could maintain relationships with extended family members in

the UK “through modern means of communication and visits, as many families around the world do”; there was no evidence of relationships going beyond the normal ties; and it was reasonable to expect her to continue her private life in her country of origin.

2. The appellant appealed to the First-tier Tribunal. In her grounds she said that Nigeria was an unsafe environment because of ongoing crises and that there were insurmountable obstacles to prevent her living safely there. In her statement of additional grounds she said, “Whilst acknowledging that I am a grown adult capable of taking care of myself, it is quite important for the Home Office to recognise that it is unsafe for me to go back to Nigeria especially being a lady, given the Boko Haram crisis going on in the country”.
3. The appellant did not seek an oral hearing. First-tier Tribunal Judge Somal dealt with the case “on the papers” and dismissed the appeal by determination promulgated on 11 August 2014. In considering family and private life, the Judge said there was an absence even of letters from extended family members in the UK to establish “any family in the UK to speak of”.
4. The appellant sought permission to appeal to the Upper Tribunal, contending that a bundle of documents posted to the First-tier Tribunal had not been considered when making her decision.
5. Reference having made to materials on the tribunal file, Mr Mullen acknowledged that certain documents had been forwarded to the First-tier Tribunal in good time but had not been considered by the Judge (most probably, due to not having been placed promptly on the file).
6. Those materials are copied at pages 21 to 22 and 63 to 65 of the appellant’s bundle produced by representatives now instructed in the Upper Tribunal.
7. The first item is a letter from the appellant dated 27 July 2014 in which she explains that she has strong family connections in the UK including her “legal guardian appointed by her mother”, and repeats the grounds above mentioned.
8. At page 63 onwards there is evidence of the death of the appellant’s mother in Nigeria on 5 November 2011.
9. In a letter dated 30 July 2014 the appellant’s aunt, living in London, states that she is the appellant’s “appointed legal guardian in the UK” and describes the appellant’s educational achievements and further educational hopes.
10. In a letter dated 10 December 2014 another aunt of the appellant states that she is residing in Scotland and that the appellant’s brother, currently undertaking a Masters Degree in the University of Aberdeen, resides with her.
11. The appellant presently resides in Glasgow.
12. Ms Dingwall submitted that there had been procedural errors of such significance that the determination should be set aside and the decision

remade. The case was put not on protection but on family and private life grounds. On the basis of the appellant having no family ties in Nigeria and close family ties with two aunts and her brother in the UK, the appeal should be allowed under Article 8. She referred to *Singh [2015]* EWCA Civ 630 at paragraph 24 to support the proposition that family life should be found to exist in this case. She accepted that notwithstanding the terminology used by the appellant and her aunt, there could be no question of legal guardianship in UK law, the appellant being an adult. The appellant had a family network in the United Kingdom but not in Nigeria and it would be disproportionate to interfere with her family and private life here.

13. Mr Mullen submitted that the procedural mishap was immaterial, the further material not being enough to call for a further determination. The evidence demonstrated no more than the normal emotional ties among adult relatives. It was doubtful whether the respondent's decision even amounted to interference but if there were any, it was proportionate. The effect of the decision was simply that the appellant would be separated by thousands rather than by hundreds of miles from her relatives. Her brother was in the UK as a student. He appeared to be a citizen of Nigeria and not of the UK. The presumption to be made was that his residence was for short term educational purposes, not permanent. If there were to be a fresh decision, it should again be against the appellant.
14. I reserved my determination.
15. It is agreed that there has been a procedural mishap in this case, in all probability through no fault of the Judge, but in principle capable of being treated as a legal error and displacing the determination. Not all procedural mishaps must have that result; but as these materials went to the heart of the appellant's case, even if it was not a particularly strong one, I think it is preferable to make a fresh decision, taking account of the further evidence.
16. It was correctly acknowledged that the case does not amount to a need for international protection. Whether the appellant's relationship with her aunts amounts to family life in the Article 8 sense is doubtful, but her relationships with them require to be taken into account in any event. The presence in the UK of her brother as a student is of no great significance (and his emergence rather contradicts her evidence of having had no living relatives in Nigeria). The respondent's decision does interfere to some extent with family and private life relations which the appellant has in the UK but she is an independent adult with no realistic claim to remain here on human rights grounds, outside the immigration rules. The effect of the decision is plainly proportionate.
17. The determination of the First-tier Tribunal is **set aside**. The following decision is substituted: the appeal, as brought to the First-tier Tribunal, is **dismissed**.
18. No anonymity order has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman
19 August 2015